



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

939 WRIT PETITION NO. 5583 OF 2024

Santosh Dasharath Warpade

....Petitioner

VERSUS

The State of Maharashtra & others

.....Respondents

Mr. P. S. Anerao, Advocate for the Petitioner.

Mr. K. B. Jadhavar, AGP for the State.

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 14th AUGUST, 2024.

PER COURT :

1. Petitioner impugns order dated 02.11.2023 passed by Tahsildar, Tq. Kandhar-Respondent No.4 in exercise of powers under Section 48 of MLR Code imposing penalty to the tune of Rs. 2,51,190/- of which, amount of Rs. 2,00,000/- is towards unauthorised use of the vehicle for transportation of minor minerals.

2. Learned counsel for Petitioner would submit that the order so far as it imposes penalty of Rs. 2,00,000/- towards unauthorised use of the vehicle is concerned, it is without jurisdiction

since provisions contained under Section 48(7)(8) of MLR Code bestow such power with the Collector and not with the Tahsildar. To buttress his submissions, he relies upon order passed by the Division Bench of this Court in case of Santosh Dashrath Warpade vs. the State of Maharashtra (Writ Petition No. 14716/2023 dated 04.12.2023) and order passed by this Court in case of Datta Tukaram Dhage vs. The State of Maharashtra (Writ Petition No. 5266/2024 dated 27.06.2024).

3. Learned AGP supports the impugned order relying upon the affidavit-in-rely filed by Mr. Anil s/o Madhukarrao Parlikar working as Naib Tahsildar at Kandhar.

4. Having considered the submissions advanced, it can be observed that Section 48(7) of the MLR Code authorises the Collector as well as the Tahsildar to impose penalty in respect of unauthorised extraction of minor minerals. However, sub-section 2 specifically deals with the powers to confiscate machinery, equipments or means of transport used in unauthorised extraction, removal of the minor minerals. The Collector or Deputy Collector is authorised to impose penalty for use of any such machinery or equipments. There is

nothing in the MLR Code that would authorise the Tahsildar to exercise such powers.

5. In that view of the matter, so far as the impugned order to the extent it imposes penalty of Rs. 2,00,000/- for unauthorised use of vehicle is concerned, it is without jurisdiction. The Tahsildar could have restricted exercise of powers to the extent of imposition of penalty towards unauthorised excavation or transportation of the minor minerals. In that view of the matter, following order is passed :-

ORDER

(i) The impugned order to the extent it imposes penalty of Rs. 2,00,000/- towards vehicle is hereby quashed and set aside.

(ii) The vehicle of the Petitioner be released on furnishing personal undertaking that he shall surrender vehicle in case adverse order is passed by competent authority and on deposit of 50% of the amount of penalty with the Tahsildar within a period of 2 weeks from today.

(iii) Deposit of the amount shall be subject to the further orders to be passed by the competent authority.

(iv) It is made clear that the competent authority shall be at liberty to take up appropriate action and pass further orders, if so advised.

(v) It is also made clear that this Court has not expressed any opinion as regards penalty of Rs. 52,190/- imposed towards valuation of the minor minerals and Petitioner shall be at liberty to take up appropriate proceeding as permissible in law in that regard.

(S. G. CHAPALGAONKAR)
Judge

dyb