IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO.5168 OF 2023

Abhijit Arun Dhadge
VERSUS
State Of Maharashtra Through Its Secretary And Others
...
Advocate for the Petitioner : Mr. A.B Jagtap
AGP for Respondents : Mr. P D Patil
...

CORAM : S. G. CHAPALGAONKAR, J.
Dated : June 14, 2024

...

PER COURT :-

1. The petitioner impugns the order dated 21.4.2023 passed by respondent no.4, thereby imposing penalty of Rs.1,20,850/- against the petitioner under the provisions of Section 48 of the Maharashtra Land Revenue Code (for short the MLRC), 1966. The petitioner contends that he is the owner of the tractor bearing registration No.MH-17/CX-1303. It was intercepted by the revenue authority on the ground that it was carrying the minor minerals without Authorization. The petitioner was served with a show cause notice dated 20.4.2023 as to why the penalty of Rs.1,20,850/- shall not be imposed upon him. The petitioner replied and pointed out that the vehicle was carrying stone metal (gitti) which is a finished product and does not fall within the meaning of Minor and Minerals. However, the Tahsildar proceeded to pass the impugned order imposing penalty for same amount.

2. Learned advocate appearing for the petitioner submits that the issue whether the stone metal/Gitti falls

within the meaning of Minor Minerals is no more *res-integra* and this Court has already ruled upon the same holding that the stone metal does not fall within the meaning of minor minerals and cannot be regulated by the revenue authorities under the provisions of MLRC. In support of his contentions, he relied upon the Judgment of this Court dated **22.3.2022 in case of Subhash Matte Vs. State of Maharashtra and others** alongwith companion matters at Nagpur Bench. He also placed reliance on the judgment of this Court in writ petition no.8194 of 2022 in case of **Vishal Shinde Vs. State of Maharashtra dated 25.8.2022 and order passed by the Division Bench of this Court in case of Pralhad s/o Wayade and others Vs. State of Maharashtra and others**.

3. Per contra, the learned AGP appearing for the respondent-State placed his reliance on a notification dated 4.6.2021, wherein the rates of royalty have been prescribed for various minor minerals. It is, therefore, contended on behalf of the respondent-State that stone metal is still regulated under provisions of the MLRC and notifications issued by the State. As such, the learned AGP justifies the impugned order.

4. Having considered the submissions advanced, it can be noticed that on 19.4.2023 vehicle of the petitioner was intercepted by squad of revenue authorities and found carrying the stone metal. It was accordingly seized and a show cause notice was issued as to why penalty in terms of section 48 (7) and (8) of the MLRC shall not be imposed. Petitioner opposed the action on the ground that there is no provisions under the MLRC to regulate the stone metal/Gitti and also placed his

reliance on the aforesaid judgments. Pertinently, this Court has ruled upon the aforesaid aspects in various judgments. In case of Pralhad Vishnu Wayade and others Vs. State of Maharashtra and others (WP 4700 of 2009) Division Bench of this Court noted purport and scope of provisions of section 48 of code;

> "The Division Bench then articulated thus :-
>
> "4. In the present case, it is not the charge that the petitioner has extracted the raw material (Kapchi) from any working or derelict mines, quarries, old dumps, fields, bandhas, nallas, creeks, river-beds, etc., as contemplated by the provision of sub-section (7) of Section 48 of the Maharashtra Land Revenue Code. Undisputedly, the vehicle in question was carrying the finished product of Gitti (metal stone) collected from the stone crusher of the petitioner, for which o transit pass is required. The question as to whether the transporter was required to explain his source of metal stone or extraction of clay has been dealt with in para 7 of the aforesaid decision, which is reproduced below :-
>
> 7. As regards the justification offered by the respondents for requiring transit passes, if at all the respondents in reality have wished to see if the clay extracted is being properly used for the purposes of manufacturing bricks, then for verifying the same they could have restored to a simple procedure for inspection as may be authorized by law. Having regard to the same, it is wholly unnecessary to go in the question of action taken by respondents being innocent as observed by the Apex Court in a decision in the case of Smt. S.R. Venkataraman Vs. Union of India and another reported in (1979) 2 Supreme Court Cases 491 wherein while considering the question of malice in law by quoting the observations of Viscount Haldane in the decision in the case of Shearer Vs. Shields reported in (1914) AC 808, it has been observed by Apex Court in paragraph no.5 of the said decision."

5. Similarly, in case of **Sumit Har Govind Lanje Vs. State of Maharashtra and others** (WP No.1579 of 2022) dated 25.3.2022 this Court referred to the observations made by the Division Bench of this Court in case of Bansilal s/o Lunkaranji Chandak (dead) through L.Rs. Vs. State of Maharashtra and another and concluded that the gravel defined as Mineral under the Act of 1957 cannot be interpreted to include Gitti or stone material.

6. Considering the law laid down by this Court in aforesaid judgment, it is crystallized that stone metal cannot be regulated by the revenue authorities in exercise of the powers conferred under section 48 of the MLRC.

7. Although, the learned AGP relied upon the notification dated 4.6.2024, it simply shows that rates of penalty to be imposed in respect of various mines and minerals have been prescribed in pursuance of Rule 46 (I) and 51 (1) of theft under Mines and Minerals (Development and Regulations) Act. 1957. Minute reading of list of the materials would show that '*Gitti*' or Stone metal is not made part of the said notification. Resultantly, the impugned order cannot be sustained in law. Consequently, Writ Petition is allowed in terms of prayer clause 'B' and 'C' and disposed off. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

...

aaa/-