



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5266 OF 2024

Datta Tukaram Dhage

VERSUS

The State Of Maharashtra Through It's Principal Secretary
And Others

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Advocate for the Petitioner : Mr. S.S. Thombre

AGP for Respondents : Mr. A.S. Shinde

CORAM : S. G. CHAPALGAONKAR, J.

Dated : 27th June, 2024

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COURT'S ORDER :-

1. The petitioner approached this Court under Article 227 of the Constitution of India assailing show cause notice dated 24.5.2024 issued by the Tahsildar, Loha, District Nanded in pursuance to attachment of the vehicle bearing registration No.MH-10/CR-5023 while carrying minor mineral (sand) without valid authorization.

2. The petitioner is called upon to show cause as to why the penalty of Rs.2,63,000/- shall not be imposed upon him in terms of section 48 (8) of the Maharashtra Land Revenue Code, 1966 (for short hereinafter referred to as the MLR Code).

3. Mr. Thombre, learned advocate appearing for petitioner submits that Tahsildar has no authority to impose penalty in respect of use of vehicle for transportation of the minor minerals. The show cause

notice seeks to impose penalty of Rs.2.00 Lakhs towards use of the vehicle for unauthorized transportation of the sand. In support of his contentions, he placed his reliance on the order passed by this Court in Writ Petition No.9114 of 2023 dated 1.8.2023 and submits that petitioner is ready to deposit 50% of amount of penalty proposed under show cause notice and seeks release of the vehicle subject to final orders that would be passed by the Competent Authority.

4. Mr. Shinde, the learned AGP appearing for the respondents refutes contentions of the petitioner. He submits that Tahsildar is empowered to impose the penalty under section 48 (7) of the MLR Code for illegal transportation of the sand to the extent of five times of the market value of the minerals transported in addition to amount of Royalty. He would further submit that further orders as regards to use of the vehicle for transportation of the sand may be passed by the Deputy Collector authorized in this behalf by the Collector under section 48 (8) (2) of MLR Code. Therefore, there is no substance in the petition.

5. Having considered the submissions advanced, it is apparent that section 48(7) of the MLR Code authorizes the Collector as well as the Tahsildar to impose penalty in respect of unauthorized extraction of the minerals. However, sub-clause no.8 (2) specifically deals with power to confiscate machinery, equipments or means of transport used for unauthorized extraction, removal,

collection, transportation, etc. Said provision authorizes the Collector or Deputy Collector to impose penalty for use of any machinery or equipments or means of transport. Such powers are not available to the Tahsildar under the scheme of Section 48 of MLR Code. Apparently, show cause notice issued to the petitioner to the extent of proposed penalty towards use of vehicle as means of transport for carrying unauthorized sand appears to be without jurisdiction. Even any order passed in pursuance of show cause notice would be invalid to that extent.

6. This Court in catena of judgments interpreted provision of section 48 (7) (8) of the Code and ruled that Tahsildar cannot exercise jurisdiction which is specifically conferred upon the Collector or Deputy Collector in terms of section 48(8)(2) of the MLR Code, 1966. Reference can be given to the judgment of Division Bench of this Court (at Nagpur) in Writ Petition No.7165 of 2018 in the matter of Harihar Mahadev Puri Vs. State of Maharashtra.

7. In view of the aforesaid legal and factual position, impugned show cause notice to the extent of that it proposes to impose penalty of Rs.2.00 Lakhs towards use of vehicle bearing registration no.MH-10/CR-5023 for transportation of the sand cannot be sustained.

8. However, the petitioner shall be liable to be dealt with by the Tahsildar to the extent of penalty towards sand in terms of section 48 (7) of the MLR Code. Hence, order :-

ORDER

- i. Writ Petition is partly allowed.
- ii. The show cause notice dated 24.5.2024 and consequential proceeding to the extent of penalty towards the use of vehicle is hereby quashed and set aside.
- iii. The Respondents shall release the vehicle bearing registration No.MH-10/CR-5023 subject to condition that the petitioner deposits 50% of the amount of assessed penalty towards use of the vehicle within a period of 7 (seven) days from the date of this order. Such deposit shall be subject to further orders that would be passed by the Deputy Collector in terms of section 48 (8) of the MLR Code only if such action is proposed against the petitioner within the period of four weeks from the date of this order.
- iv. If no proceeding initiated by Deputy Collector against the petitioner in terms of section 48 (8) of the MLR Code, he shall be entitled for refund of the amount deposited in compliance of this order.
- v. Writ Petition stands disposed off in aforesaid terms. No costs.

(S. G. CHAPALGAONKAR)
JUDGE