

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8915 OF 2024**

Shahaji Uttam Rakibe

... Petitioner

versus

The State of Maharashtra and ors.

.... Respondents

Mr. Anshuman Deshmukh, Advocate for the Petitioner.

Ms. Aloka A. Nadkarni, AGP for Respondent Nos.1 to 3/State.

CORAM : R. M. JOSHI, J.

DATE : 30th AUGUST, 2024.

P.C. :

1. This petition takes exception to the order passed by Tahasildar-Niphad under the provisions of Maharashtra Land Revenue Code 1966 (for short "the Code") levying penalty under Section 48 (7) (8) thereof.

2. The petitioner claims to be engaged in the business of transport and is having vehicle bearing MH-16-CC-7687. It is the case of the petitioner that the said vehicle was proceeding towards Vani for repairing purpose and it was empty. Some unknown persons had stopped the said vehicle. On suspicion, the vehicle was intercepted and incorrect panchanama was drawn and thereafter the vehicle was seized and parked near police station. This incident happened on 30th March 2024. It is further case of the petitioner that on 3rd April 2024,

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respondent Nos. 2 and 3 issued vague show cause notice to the petitioner and he was called upon to respond as to why penalty under Section 48(7) (8) of the Code should not be imposed to the tune of Rs.50,905/- for illegal transport of Murum (minor mineral). He was called upon to file reply without giving a specific time therefor. After receipt of the show cause notice, the petitioner approached to respondent Nos. 2 and 3 by submitting his reply contending that he is the owner of the said vehicle and that on 29th March 2024 at about 11.00 pm to 12.00 am, the said empty vehicle was proceeding towards Vani by Chinchkhed road for repairing of the vehicle. It is denied that the vehicle was carrying Murum as alleged. In spite of the said reply, the respondent authority passed order of penalty for illegal transportation of six brass Murum to the tune of Rs.2,00,000/- and Rs.50,905/-.

3. The petition has been filed on the ground that the order passed by the authority is arbitrary and contrary to the provisions of law. It is contended that the authority did not follow procedure prescribed under sub-section 8 of Section 48 of the Code. Sub-Section 8(2) of Section 48 provides that the machinery used for unauthorised transportation shall be produced before the Collector or such officers not below the rank of Deputy Collector authorized by the Collector in his behalf, within 48 hours of such seizure. It is contended that the vehicle in question was neither produced nor inspected by respondent No.2 and that this authority in

violation of the provisions of Section 48(8)(2) of the Code has passed the impugned order. It is also contended that this Court in Writ Petition No.1273 of 2018 has dealt with the said issue and direction of release of the vehicle was issued by imposing cost of Rs.10,000/- on the revenue authorities. On these amongst other grounds, petition is filed.

4. Mr. Vishal Naikarwade, Tahsildar Niphad filed affidavit-in-reply opposing the petition. It is his contention that the seizure of the vehicle belonging to the petitioner was done for illegal transportation of Murum. It is also claimed that the petitioner has alternative remedy for filing an appeal before the Additional Collector under Section 247 of the Code and, as such, the petition is not maintainable. It is also alleged in the reply that the vehicle in question was found without number plate and was caught while unloading the Murum. It is, however, not specifically claimed that there is compliance of Section 48(8)(2) of Code.

5. Learned counsel for the petitioner has placed reliance on the judgment of the Division Bench of this Court in case of Deepak Logistics and Forwarders and anr. Versus The State of Maharashtra and ors. in Writ Petition No.1273 of 2018 passed on 6th February 2018, wherein it is observed as follows:

"It is noticed in most of the matters that the amended provisions of sub-section 8(2) of Section 48 of the Act has not been breached by the Revenue Officials. In fact it is mandatory for the Revenue Officials to produce attached vehicles before the Collector within a period of 48 hours. This seizure of vehicles, without verifying

whether the act alleged is an offence or violation of any of the regulations, and failing to produce it before prescribed authority to facilitate its release causes great prejudice and also financial loss to the owner. Apart from the harassment caused on account of illegal actions of the Revenue Officials in seizing vehicles and goods, there is failure to observe provisions of Section 48 (8)(2) of M.L.R.Code. In the instant matter it is noticed that the reliance has been placed by the Collector, Palghar on the notification issued by the State of Gujarat, for issuing illegal directions without verifying as to whether the same is operative even in that State leave apart its inapplicability in State of Maharashtra. The ill actions of the Respondents causes prejudice to the Petitioners. Apart from this, the mandate of Section 48-8(2) of the Act has also not been followed by the Revenue Officials. In the circumstances, while directing the release of the seized vehicles as well as the material attached, we direct the Respondent - State to deposit the costs of Rs.10,000/- in each Writ Petition, in this Court within a period of four weeks from today."

6. He submits that there is no substance in the contention of the respondents with regard to the challenge to the maintainability of the petition for availability of alternate remedy. It is his submission by referring to sub-section 8 of Section 48 of the Code that as per the said provision, the vehicle is required to be produced before the concerned authority within 48 hours of its seizure. Since admittedly seizure of the vehicle has been done on 30th March 2024, there would be no fruitful purpose served by relegating the petitioner to the appellate authority. To support his submissions, he has also placed reliance on the judgment of the Division Bench of this Court in case of **Kalpataru Power Transmission Limited versus State of Maharashtra and ors. 2023 (5)**

Bom.C.R.362, in order to argue that mere existence of the alternate remedy is no ground for non-maintainability of the petition, more particularly, when the authority wholly without jurisdiction or in breach of principles of natural justice has passed the order impugned.

7. Learned AGP has supported the impugned orders by referring to the affidavit-in-reply as well as documents produced along with the same.

8. There is no dispute about the fact that on 30th March 2024, the vehicle in question was seized by the authorities. Perusal of panchanama indicates that as per the said panchanama, the vehicle was found while unloading Murum. Thus, on the face of it, it seems that at the time of seizure of the vehicle, no Murum was found therein. In the light of these facts, the provisions of Section 48(8)(2) of the Code becomes relevant. The said provision is reproduced for ready reference as under :

48. Government title to mines and minerals.—

(1)...

(8) (1)....

(2) Such machinery or equipment or means of transport, used for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals or transportation thereof, which is seized under sub-section (1), shall be produced before the Collector or such other officer not below the rank of Deputy Collector authorised by the Collector in this behalf, within a period of forty-eight hours of such seizure, who may release such seized machinery, equipment or means of transport on payment by the owner thereof of such penalty as may be prescribed and also on furnishing personal bond of an amount not exceeding the market value or the seized machinery, equipment or

means of transport, stating therein that such seized machinery, equipment or means of transport shall not be used in future for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and transportation of the same]"

This provision demonstrates that it is a mandate of law that after seizure of the vehicle which as allegedly transported the minerals, is required to be produced before the Collector or his authorised persons in his behalf within a period of 48 hours from such seizure. In the instant case, there is nothing on record to indicate compliance thereof. Even in reply, no such specific plea has been raised by respondents. This Court has held in the case of **Deepak Logistics (supra)** that this provision is mandatory. The Court has observed that in most of the matters, the amended provisions of sub-section 8(2) of Section 48 of the Code are breached by the revenue officials. In the said proceeding, the direction of release of vehicle was made with cost of Rs.10,000/-. It is thus clear that in spite of such order being passed by this Court, the revenue authorities for the reasons best known to them, are not adhering to the mandatory provisions of the Code. Since the order impugned is passed in utter disregard of the said mandatory provision and also there would not be any propriety in directing the petitioner to prefer an appeal before the appellate authority as the period of 48 hours from the seizure of the vehicle has already elapsed. In these peculiar set of facts, this Court finds no reason for not entertaining the present petition.

9. In view of the above facts, the provisions of Section 48(8)(2) of the Code and the law settled by this Court, petition deserved to be allowed. Hence, the petition is allowed in terms of prayer clause (B) which reads thus:

B. The Hon'ble High Court may be pleased to issue a writ of certiorari or any other appropriate writ, direction, thereby quash and set aside impugned orders of penalty dtd. dated 29/04/2024 and 30/04/2024 passed by respondent no.3 and 2 respectively, being illegal and arbitrary in nature and consequential the respondent authorities be asked to release the vehicle detained by them bearing registration no. MH-16-CC-7687 without further delay and for that purpose issue necessary orders.

(R. M. JOSHI, J.)