



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2936/2022

Pravin S/o Tulsiram Shivankar

...Versus...

The Additional Collector, Gondia, Tah. & Dist. Gondia and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. A.N. Vastani, Advocate for petitioner
Mr. A.V. Palshikar, AGP for respondents

CORAM : N.R. BORKAR, J.

DATE : 18/07/2024

1. On 29/04/2019, the revenue authorities had seized the vehicle owned by the petitioner for illegally transporting the minor minerals i.e. sand.
2. Learned counsel for the petitioner submits that after seizure of the vehicle respondent No.3- the Tahsildar, Amgaon, had issued notice to the petitioner to show cause as to why penalty under Section 48 (7) of the Maharashtra Land Revenue Code, 1966 (for short "MLR Code" hereinafter) should not be imposed for illegally transporting the minor minerals. It is submitted that though the show-cause notice was for imposition of penalty in terms of Section 48 (7) of the MLR Code, however, respondent No.3 by the order dated 03/05/2019, has imposed the penalty in terms of Section 48 (8) of the MLR Code. It is submitted that penalty in terms of

Section 48 (8) of the MLR Code can be imposed either by the Collector or such other officer not below the rank of Deputy Collector authorized by the Collector. It is submitted that thus the order of respondent No.3, to the extent of imposing penalty in terms of Section 48 (8) of the MLR Code is without jurisdiction and needs to be set aside.

3. On the other hand, learned Assistant Government Pleader for the respondents submits that appropriate order may be passed.

4. I have perused the order of respondent No.3. There are two penalties. One in terms of Section 48 (7) of Rs.15,000/- and another in terms of Section 48 (8) of Rs.1,00,000/-.

5. Section 48 (8) of the Maharashtra Land Revenue Code reads thus :

“48 (8) (1) : Without prejudice to the provision of sub-section (7), the Collector or any revenue officer authorised by the Collector in this behalf, may seize and confiscate any mineral extracted, removed, collected, replaced, picked up or disposed of from any mine, quarry or other place referred to in sub-section (7), the right to which vests in, and has not been assigned by the State Government, and may also seize and confiscate any machinery and equipment used for unauthorised extraction, removal, collection, replacement, picking up or disposal of minor minerals and any means of transport deployed to transport the same.

(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 of 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.”

6. It is clear on a perusal of the above provision that the order of penalty in terms of Section 48 (8) of the MLR Code can be passed by the Collector or the officer not below the rank of Deputy Collector authorized by the Collector. The order passed by the respondent No.3 to the extent of imposing the penalty of Rs.1,00,000/-, therefore, will have to be set aside. Ordered accordingly.

7. Respondent No.3 shall refund the amount of Rs.1,00,000/- to the petitioner.

8. The writ petition is partly allowed in the aforesaid terms. No order as to costs.

(N.R. BORKAR, J.)