



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2623 OF 2022

Salman Illiyas Kha Pathan,
Aged 28 years, Occ. Business,
R/o. Ward No.3, Baslapura,
Post : Manjarkheda, Tah. Chandur
Rly., District : Amravati.

.... **PETITIONER.**

// VERSUS //

1. State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
2. The Additional Collector,
Amravati, District :Amravati.
3. The Sub-Divisional Officer,
Morshi, Tah. Morshi,
District : Amravati.
4. The Tahsildar, Morshi,
Tah. Morshi, District : Amravati.
5. Police Station Officer,
Police Station, Morshi,
Tah. Morshi, District : Amravati.

.... **RESPONDENTS.**

Shri A.R.Ingole, Advocate for Petitioner.
Shri N.R.Patil, A.G.P. for Respondent Nos.1 to 5.

CORAM : ANIL S. KILOR, J.
DATE OF RESERVING THE JUDGMENT : 01/05/2024
DATE OF PRONOUNCING THE JUDGMENT: 03/06/2024

JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. In the present petition a declaration is sought that the action on the part of the respondent No.5-Police Station Officer in seizing the vehicle in question is illegal and contrary to law. Further the petitioner is seeking to quash and set aside the order dated 20/10/2022 passed by respondent No.4-Tahsildar and order dated 22/11/2022 passed by respondent No.3-Sub-Divisional Officer, being illegal.

Brief facts of the present case are as under :

4. The petitioner is the owner of the truck bearing No. MH-27-X-8989. On 13/02/2022 the respondent No.4 intercepted the above referred truck at 05:30 p.m. during the patrolling and since it was

overloaded, it was detained. Since the truck was carrying minor minerals i.e. sand the said information was given to the concerned Revenue Authorities.

5. The Tahsildar, thereupon, drawn panchnama on 14/02/2022 at 04:30 p.m. and initiated action under the provisions of Maharashtra Land Revenue Code, 1966 (hereinafter referred to as “the MLR Code”).

6. Thereafter, the impugned order was passed by the Tahsildar on 20/10/2022 under Section 48(8) of the MLR Code imposing penalty of Rs.1,66,296/-.

7. At the same time, the Sub-Divisional Officer vide order dated 22/11/2022 imposed penalty of Rs.2,00,000/- on the vehicle for illegal transportation of minor minerals.

8. It is pertinent to point out that the Regional Transport Officer also imposed fine of Rs.2,02,000/- on the ground that the said truck was overloaded, in contravention of the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as “the M.V. Act”). Hence, this petition.

9. I have heard the learned counsel for the petitioner and the learned A.G.P. for the respondents.

10. Shri Ingole, learned counsel for the petitioner, submits that it is a settled law that the Police Officer has no authority to seize or detain the vehicle under the provisions of the MLR Code. Whereas, the said power lies with the Tahsildar.

11. It is submitted that, though the petitioner was having a valid Transit Pass for transportation of the minor minerals, the respondent No.5 not only seized the vehicle without any jurisdiction, but further handed it over to the Tahsildar without pointing out under which provision it was handed over to the Tahsildar.

12. It is submitted that the respondent No.5 as well as the respondent Nos. 3 and 4 have committed illegality and acted without jurisdiction in the present matter. In support of his submission the learned counsel for the petitioner has relied upon the judgments of Division Bench of this Court dated 13/03/2019, passed in **Writ Petition No.8424 of 2018** (*Gufran Khan Rahmatullah Khan ..vs.. State of Maharashtra & others*) and judgment dated 21/03/2023 passed in **Writ**

Petition No.917 of 2023 (*Nilesh Banudas Thakare ..vs.. State of Maharashtra & Ors.*).

13. On the other hand, the learned A.G.P. strongly opposed the present writ petition.

14. It is submitted that the police have every authority and right to seize or detain the vehicle under Section 207 of the M.V. Act and at the same time powers are given under the Government Resolution dated 28/01/2022 to the Police Authorities to take action in such matters to prohibit illegal mining and transportation of minor minerals.

15. It is further argued that under Section 21 of the Minor Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as “the Act of 1957”) it is the duty of the authorities to initiate action in such matters. It is further submitted that no illegality has been committed by the respondent No.5 in detaining the vehicle and subsequently handing it over to the Tahsildar to initiate action under Section 28 of the MLR Code.

16. In light of the rival contentions, I have perused the record and the impugned orders.

17. The Division Bench of this Court vide its judgment dated 13/03/2019 in **Writ Petition No.8424/2018** (*Gufran Khan Rahmatullah Khan ..vs.. State of Maharashtra & others*) has observed thus:

“4. First reply filed on behalf of respondents no. 2 to 4 shows that the order of seizure was indeed passed by the Tahsildar, Balapur. This order is at page 20. It shows that the order of seizure has been passed by the Tahsildar on 14.11.2018 directing seizure of the vehicle on 13.11.2018. We do not understand as to how seizure order could be passed about one day after the actual seizure was made. A question would arise as to where the vehicles were lying during the interregnum and the undisputed facts show that the vehicle was lying in the custody of police during that period of time. This circumstance would only show that the conclusion reached by us earlier regarding completion of action of seizure on 13.11.2018 itself is not without any justifiable reason. So, the fact that the vehicles was lying in the custody of police during the period from 13.11.2018 to 14.11.2018 would only confirm the fact that seizure was actually made on 13.11.2018 and this seizure has been done not by Tahsildar under Section 48(8)(1) of the Maharashtra Land Revenue Code, 1966, but by a police officer and as such the action of seizure in this case is rendered illegal.

5. ...

6. In view of the above, we find that the action of seizure by Police Station, Balapur itself being without jurisdiction, all further actions taken in the present case by the Revenue Authority would also have to be termed as the ones without jurisdiction. Writ Petition deserves to be allowed.”

18. The Division Bench vide its judgment dated 21/03/2023 in **Writ Petition No.917/2023** (*Nilesh Bhanudas Thakare..vs.. State of Maharashtra & others*) has observed thus:

“4. On perusing the documents on record, we find that the transit pass issued to the petitioner was in operation at the relevant point of time when the vehicle was seized. The vehicle came to be seized at 0.50 hours on 24/01/2023 while transit pass was valid till 5.04 am of the same day. It appears that on account of overloading of the said vehicle action was taken by the Regional Transport Office Authority and the petitioner has paid a fine of Rs.46,000/- in that regard. It is therefore clear that for violation of provisions under the Motor Vehicles Act, 1988, action has been taken against the petitioner. For same reason, further action under Section 48(7) of the Maharashtra Land Revenue Code, 1966 appears to be unwarranted especially when the petitioner possesses a valid transit pass. Moreover, in terms of Section 48(8)(ii) of the Code, the seized vehicle was not produced before the Deputy Collector within a period of forty eight hours. We therefore find the action of seizing the vehicle to be unsustainable though fine amount of Rs.46,000/- has been paid.”

19. From the above referred observations made by the Division Bench of this Court it is evident that the only power to seize the vehicle under Section 48(8) of the MLR Code is with the Revenue Officer and not with the Police.

20. Undisputedly, in the present matter, on 13/02/2022 at 05:30 p.m. the vehicle was seized by the Police Officer i.e. respondent No.5 vide Property Search and Seizure Form. It is also not in dispute that at the time of seizure the petitioner was holding a valid Transit Pass.

21. As far as the contentions of the respondent that under Section 207 of the M.V. Act, the police have authority to seize and detain the vehicle, is concerned, on perusal of the said provision it is evident that such seizure or detention of the vehicle is permissible where there is contravention of the provision of Section 66(1), 3 and 4 of the M.V. Act.

22. In the present matter, no document is produced on record to show that there was any contravention of Section 66(1) or Sections 3 or 4 of the M.V. Act or any ground was available, as mentioned under Section 207 of the M.V. Act, for seizure or detention of the vehicle.

23. Furthermore, under Section 207 there is no provision to handover the vehicle to any other authority, including the Revenue Authority as done in the present matter. The learned A.G.P. has failed to point out under which provision the vehicle was handed over to the Tahsildar, who has subsequently initiated action under the provisions of the MLR Code.

24. In the matter at hand, the vehicle in question or minor minerals were not seized by the Tahsildar but it was seized by the Police

Authorities and it was not seized under Section 207 of the M.V. Act, which is evident from the entry made in the General Diary Details dated 13/02/2022 which says that the truck was detained as it was overloaded.

25. In the circumstances, I have no hesitation to hold that the seizure of the truck in question by the respondent No.5 was without jurisdiction. Furthermore, in absence of any provision to handover the vehicle seized or detained by the respondent No.5 to the respondent No.4-Tahsildar, the panchnama prepared by the Tahsildar taking possession of the vehicle from the respondent No.5 is also illegal and without authority. Thus, the present matter is squarely covered by the judgments of the Division Bench in the cases of *Gufran Khan Rahmatullah Khan* and *Nilesh Bhanudas Thakare* (supra)

26. Moreover, the contentions of the learned A.G.P. that the Government Resolution dated 28/01/2022 gives authority to the Police to take action in such matters to prohibit illegal mining and transportation, cannot be accepted for the simple reason that in the Seizure Memo or in the General Diary Details there is no mention that the Police Officer, who intercepted the truck, was the part of the raiding squad constituted under the said Government Resolution dated

28/01/2022 to deal with the illegal transportation and mining of minor minerals.

27. The Regional Transport Officer has already imposed fine of Rs.2,02,000/- on the ground that the truck was found overloaded and since, except overloading of the said truck there was no justification in seizing of the said truck in question, particularly when the petitioner was carrying valid transit pass, I do not find any error committed by the Regional Transport Officer.

28. Thus, in the peculiar facts and circumstances of the present case, I have no hesitation to hold that the seizure of the vehicle by the respondent No.5 as well as the action of the respondent Nos.3 and 4 under the provisions of Sections 47 and 48 of the MLR Code is contrary to law.

29. Accordingly, I pass the following order :

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 20/10/2022, passed by the respondent No.4-Tahsildar, Morshi in R.C. No.37/MNL-37/Pala T. Point Morshi/2022-23 and impugned order

dated 22/11/2022 passed by respondent No.3-Sub-Divisional Officer, Morshi in R.C. No.MNL-37/Pala/37/2022-23 are hereby quashed and set aside.

- iii) Respondents shall release the vehicle of the petitioner bearing registration No.MH-27-X-8989, forthwith.

The Writ Petition is **disposed of** accordingly. No order as to costs.

(ANIL S. KILOR, J)

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