



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

Writ Petition No.8646 of 2018
SANJAY SATYADEOPRASAD ROY
VS

THE DIVISIONAL COMMISSIONER, NAGPUR AND OTHERS

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

Court's or Judge's Order

Shri R.S. Charpe, Advocate for the Petitioner/s
Shri N.S. Rao, AGP for the Respondent/State

CORAM : ANIL S. KILOR, J.
DATED : 08.01.2024

1. Heard.
2. This writ petition takes an exception to the order passed by the Additional Commissioner, Nagpur dated 11.10.2018, upholding the order passed by the Additional Collector, dated 29.06.2018 for imposing penalty in respect of illegal transportation of Murum.
3. It is the case of the petitioner that, the provisions of the Section 48(7) of the Maharashtra Land Revenue Code, 1966 (in short "the MLR Code"), would not apply to this case as the excavation of Murum was done by the petitioner from the private land leased out by the Government.
4. It is submitted that the relevant documents i.e. transit pass as well as the order of renewal of lease of the land from which the excavation was done, were not considered and appreciated by both the authorities below. The documents filed on record along

with writ petition show that on 25.04.2018, the application was moved by the petitioner for permission to file transit pass on record and thereafter, on 08.06.2018 another application was filed on record for permission to file on record the order of renewal of lease of the land in question. Both the applications were moved prior to order passed by the Additional Collector.

5. On the other hand, the learned AGP submits that under the Maharashtra Land Revenue (Extraction and Removal of Minor Minarals) Rules, 1968 requires that even if the excavation is done from the land leased out by the Government, permission of Tahsildar is required.

6. Even if the argument of the leanred AGP is accepted, it is apparent on the face of the orders, no such reason was recorded by both the authority in this case that there is no permission taken by the Tahsildar.

7. Moreover, it is evident that from the orders passed by the Additional Collector as well as the Additional Commissioner that both the authorities have not taken into considered the case of the petitioner that the excavation was not made in the Government Land but it was made in the land leased out by the Government to the private party.

8. In the circumstances, having held that the above referred documents which ought to have considered by both the authorities and since this issue goes to the root of the matter to decide, whether Section 48(7) of the MLR Code would apply to this case or not, I am of the opinion that the matter needs to be

remanded back to the Additional Collector, Chandrapur for taking into consideration the above referred documents and decide the matter afresh after hearing the petitioner. Accordingly, I pass the following order:

- (i) The writ petition is partly **allowed**.
- (ii) The judgment and order dated 29.06.2018 passed by Additional Collector, Chandrapur and the order dated 11.10.2018 passed by the Additional Commissioner, Nagpur, are hereby quashed and set aside.
- (iii) The matter is remanded back to the learned Additional Collector, Chandrapur for deciding the same afresh, after hearing the petitioner and after taking into consideration the transit pass and the order of renewal of lease.
- (iv) Till final decision, the interim order dated 07.01.2019 granted by this Court, shall continue.
- (v) The petitioner shall appear before the Additional Collector, Chandrapur on **16.01.2024 at 11.00 a.m.** Thereupon, the Additional Collector, Chandrapur may decide the matter within one month.

Accordingly, the writ petition is disposed of in the above terms. No order as to costs.

[ANIL S. KILOR, J.]

Corrections
carried out as
per Court's
order
dated 12.01.2024