



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL WRIT PETITION NO. 5015 OF 2024

Sunil Bhausahab Dhage

...Petitioner

Versus

The State of Maharashtra & Ors

...Respondents

- Mr. K. N. Shermale, Advocate for the Petitioner
- Mr. B. A. Shinde, AGP for the Respondents/State

CORAM	: R. M. JOSHI, J
RESERVED ON	: MAY 02, 2025
PRONOUNCED ON	: MAY 08, 2025

ORDER :

1. This Petition takes exception to the show cause notice dated 16.05.2024 and order dated 21.05.2024 passed by Respondent No. 3 – Sub-Divisional Officer, Sangamner (for short 'the SDO').

2. It is the case of the Petitioner that his father, who is no more, was owner of JCB. On 07.12.2022, Revenue Officer purportedly prepared panchnama and it was shown that JCB owned by the Petitioner was involved in excavating the minerals from the land. The Circle Officer reported the said fact to the Tahsildar. It is the grievance of the Petitioner

that without issuing any notice under Section 48(7) and (8) of the Maharashtra Land Revenue Code, 1966 (for short '**the Code**'), an order of imposition of penalty came to be passed against the Petitioner. This order came to be assailed by filing Appeal No. 95/2023 before Respondent No. 2 – Collector, Sangamner. The Collector by order dated 14.03.2024 allowed the said appeal and relegated the matter back to the SDO for fresh consideration. Petitioner, in the meantime, filed Writ Petition bearing no. 3874/2024. This Petition came to be disposed of by this Court by order dated 03.05.2024 directing SDO to decide the proceedings on or before 20.05.2024. Tahsildar thereafter issued proposal dated 15.05.2024 to SDO and action was sought to be initiated under the provisions of Section 48(8)(2) of the Code. SDO issued communication dated 16.05.2024 to the Petitioner informing that the Tahsildar has no authority to release the JCB. Respondent No. 3 issued show cause notice to the Petitioner 16.05.2024. Present Petition came to be filed on 20.05.2024 taking exception to the show cause notice issued by the Tahsildar. Since during the pendency of the Writ Petition, order dated 21.05.2024 came to be passed by

SDO, this order was permitted to be challenged in this Petition. Amendment was allowed to that effect on 21.08.2024. As such, the Petitioner challenges both action of issuance of show cause notice dated 16.05.2024 and the order passed by the SDO dated 21.05.2024.

3. Learned Counsel for the Petitioner submits that there is seizure of JCB on 07.12.2022 and in spite of said fact, JCB has not been produced before the Authorities within a period of 48 hours, as contemplated by Section 48(8)(2) of the Code. It is his submission by relying upon following judgments that the entire action initiated against the Petitioner vitiates for non production of the JCB before the Authorities within stipulated time. To support his submissions, he placed reliance on orders passed by this Court in cases of Shahaji Uttam Rakibe vs. The State of Maharashtra and Others, Writ Petition No. 8915/2024 & Damodar Nivrutti Parge vs. The State of Maharashtra and Others, Writ Petition No. 1441/2024 to submit that in similarly placed facts, this Court has set aside the entire action initiated against the Petitioners therein. It is

his submission by referring upon the judgment of Division Bench of this Court in case of *Dipak Logistics and Forwarders and Another vs. The State of Maharashtra and Others, Writ Petition No. 1273/2018* that the provisions of Section 48(8)(2) of the Code is mandatory in nature and non compliance thereof would result in setting aside the entire action. He has also placed reliance on the judgment of Hon'ble Supreme Court in case of *Gangadhar Narayan Nayak @ Gangadhar Hiregutti vs. State of Karnataka and Others, Criminal Appeal No. 451/2022* in order to submit that in case this Court wishes to take any different view than the earlier judgments, a reference will have to be made to larger bench.

4. Learned AGP opposed the Petition by contending that there is alternate remedy available for the Petitioner to challenge the orders impugned.

5. In order to appreciate the submissions of rival side, it would be apt to take into consideration the provisions of Section 48(7) & (8) of the Code, which reads thus:

Section 48 - Government title to mines and

minerals

(7) Any person who without lawful authority extracts, removes, collects, replaces, picks up or disposes of any mineral from working or derelict mines, quarries, old dumps, fields, bandhas whether on the plea of repairing or construction of bunds of the fields or on any other plea, nallas, creeks, river-beds, or such other places wherever situate, the right to which vests in, and has not been assigned by the State Government, shall, without prejudice to any other mode of action that may be taken against him, be liable, on the order in writing of the Collector, or any revenue officer not below the rank of Tahsilar authorised by the collector in this behalf to pay penalty on an amount upto five times the market value of the minerals so extracted, removed, collected, replaced, picked up or disposed of, as the case may be:

(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. Perusal of sub-section (7) indicates that it is within the Authority of Collector or any Revenue Officer not below rank of Tahsildar as authorized by Collector in this behalf to call upon any person who without lawful Authority extracts, removes etc of any minerals from the places as mentioned therein to pay penalty upto five times of market value of the

minerals. The provision, therefore, rattles imposition of penalty upto five times of the mineral extracted unauthorizedly. It would, therefore, apply on ascertainment of the quantity of mineral extracted unauthorizedly. Needless to say that this provision does not deal with the imposition of penalty for use of machine/vehicle etc for such extraction of minerals.

7. Sub-section 8(1) commences with the wording that this provision is without prejudice to sub-section (7). Perusal of this provision indicates that it essentially deals with the issue of seizure and confiscation of the machinery and equipment used for unauthorized extraction, removal, collection, disposal of minor minerals. Sub-section (2) mandates that where such machinery/transport vehicle is seized, the same shall be produced before the Collector or other Officer not below the rank of Deputy Collector authorized by the Collector in this behalf within a period of 48 hours of such seizure. On production of such machinery or vehicle, said Authority may release the seized machinery/equipment or means of transport on payment by the owner of said penalty as may be prescribed and also

on furnishing personal bond on an amount not exceeding the market value of the seized machinery.

8. It is, therefore, necessary to consider as to whether in the instant case the provisions of Section 48(7) or (8) are made applicable to the Petitioner. In so far as notice issued to the Petitioner is concerned so also the report of the Tahsildar dated 15.04.2024 indicates that JCB was seized at the time of excavation work being done in the night of 07.12.2022. Even in order dated 07.12.2022, Tahsildar does not determine the penalty on extracted mineral but for use of JCB for extraction thereof. Thus, there is no allegation against the Petitioner of extracting the minerals. The allegation against Petitioner is that the JCB was used for the said extraction. The case, therefore, is squarely covered by sub-section 8 of Section 48 and not under sub-section 7.

9. Now only issue that remains for consideration is whether the Respondents can be permitted to proceed further with the case for non compliance of provision of production of JCB within 48 hours before SDO. In this regard, it would be relevant to take note of judgment

of the Division Bench in case of Dipak Logistics and Forwarders and Another (supra) wherein it is held that the provision of Section 48(8)(2) of the Code is mandatory in nature and non production of the vehicle/machinery before the Authority within a period of 48 hours vitiates the action of seizure. The order passed by the SDO also clearly indicates that the present case is covered by Section 48(8)(1) & (2) and not by Section 48(7) of the Code.

10. Admittedly, the JCB was seized on 07.12.2022 and the same is not produced before the SDO or any other Officer as authorized by the Collector under sub-section 8(2) of the Code within a period of 48 hours. Once such mandatory provision is not followed, consequential actions cannot be allowed to be continue. Hence, Petitioner has made out a case for setting aside the show cause notice as well as order passed by the SDO imposing penalty against the Petitioner.

11. In view of above, Petition stands allowed in terms of prayer clauses 'C' and 'C-1'.

(R. M. JOSHI, J.)