

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.10744 OF 2024

Ramakant Krishna Patil

Age: 50 yrs., Occ: Business

Diva Anjur Village, Taluka Anjur,

Bhiwandi, District Thane.

...Petitioner

Versus

1. State of Maharashtra
(Through Revenue Department)
Mantralaya, Mumbai.

2. The Tahsildar
Thane.

3. The Sub-Divisional Officer,
Thane Division, Thane.

...Respondents

Mr. Rohan Kaiche i/b Mr. Sachin R. Pawar for the Petitioner.

Mr. B. V. Samant, Addl.G.P. a/w Mr. S. P. Kamble, A.G.P. for the
Respondents-State.

Mr. Dnyaneshwar Tarachand Choudhari, Revenue Assistant from
Revenue Department, Thane, is present.

***CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.***

DATE : 11th JUNE 2025

ORAL ORDER (Per Revati Mohite Dere, J.) :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned Addl.G.P. waives notice on behalf of for respondents– State.
3. By this petition, the petitioner essentially seeks a writ or order directing the respondent No.2-Tahsildar, Thane, to release the petitioner's truck vehicle bearing No. MH-04-DK-4575, which has been seized by the respondent No.2 and which is presently in the custody of the respondent No.2. The petitioner also seeks quashing and setting aside of the order dated 17th April 2023 passed by the respondent No.2 in Revenue/Room-1/Te-4/Gaukh/Reinquiry Order/Kavi-4575/2022.
4. Learned counsel for the petitioner submits that the vehicle could not have been seized by the respondents, considering that the

vehicle was carrying ‘*Gitti*’ which is not a mineral. He submits that since ‘*Gitti*’ is not a mineral, the question of paying any royalty does not arise. Learned counsel relied on the order dated 14th December 2023 passed by this Court in *Ashapuri Enterprises Through Karmiram B. Choudhary v/s The State of Maharashtra and Others*¹. He submits that despite the Courts repeatedly having held that ‘*Gitti*’ is not a mineral product, the petitioner’s vehicle came to be seized and as such the said seizure is illegal and in breach of the orders passed by this Court.

5. Learned Addl.G.P fairly does not dispute the legal position. He also does not dispute that the vehicle was carrying ‘*Gitti*’. He, on instructions, states that the vehicle which was seized by the Tahsildar, Thane alongwith the ‘*Gitti*’, will be released forthwith. Statement accepted.

6. Perused the papers. It appears that the petitioner is in the business of transportation of ‘*Khadi*’/ ‘*Gitti*’ in Thane region. On

¹ Writ Petition No.3957/2023 dated 14th December 2023.

12th November 2022, the petitioner's truck vehicle bearing No. MH-04-DK-4575 was transporting 2 brass '*Khadi*'/'*Gitti*', when the said vehicle was impounded by the respondent No.2-Tahsildar, Thane and respondent No.3-The Sub-Divisional Officer, Thane Division, Thane, at Saza Kolshet, Thane. Pursuant thereto, the respondents-authorities vide order dated 29th December 2022 directed the petitioner to pay a fine of Rs.1,34,200/- for unauthorised transportation of mine and materials. The said order is at Exhibit - 'B' on page 13 of the petition. Being aggrieved by the said order, the petitioner preferred an appeal being Appeal No.10004 of 2023, before the respondent No.3-The Sub-Divisional Officer, Thane Division, Thane. The said appeal was allowed and the matter was remitted back to the original authority i.e. respondent No.2, for fresh hearing. The respondent No.2 after hearing the parties vide order dated 17th April 2023 directed the petitioner to deposit Rs.1,34,200/- for unauthorised transportation of mine and materials. Hence, this petition.

7. This Court has repeatedly in several orders and in particular the judgment passed by the High Court Bench at Aurangabad in *Vishal s/o. Laxman Shinde v/s The State of Maharashtra and Others*²; order dated 14th December 2023 passed by this Court in *Ashapuri Enterprises Through Karmiram B. Choudhary (Supra)* and judgment of the Division Bench of this Court in *Pralhad s/o Vishnu Wayade and Others vs. The State of Maharashtra and Others*³ has held that ‘Gitti’ is not a mineral product.

8. In this context, it would be apposite to quote the relevant paras of the order in *Ashapuri Enterprises Through Karmiram B. Choudhary (Supra)*. The said paras 4 to 7 read thus:-

“4. Ms. Mishra relied upon a judgment of the Division Bench of this Court in *Pralhad s/o Vishnu Wayade and Ors. vs. The State of Maharashtra and Ors.* and an order passed by the learned single Judge of this court in *Vishal s/o. Laxman Shinde vs. The State of Maharashtra and Ors.* to submit that Gitti or Khadi are not minerals and hence the question of obtaining any transit pass or payment of any royalty does not arise.

² Writ Petition No.8194/2022 dated 25th August 2022.

³ Writ Petition No.4077/2009 dated 19th March 2010.

5. *The learned single Judge in Vishal s/o. Laxman Shinde (supra) has expressly held in Paragraph No. 7 as under :*

7. In the case at hand, this Court is constrained to exercise jurisdiction under Article 227 of the Constitution of India as time and again this Court has held that Gitti is not a mineral product, still the authorities are passing the orders and seizing the vehicles in which Gitti is transported in flagrant violation of the Judgment and orders of Division Bench and the Single Judges. Therefore, this Court has to exercise jurisdiction under Article 227 of the Constitution of India. In view of this, petition is allowed in terms of prayer clauses – ‘B’ and ‘C’.

6. *In Sumit s/o Hargovind Lanje vs. State of Maharashtra⁴ the learned single Judge of this court (Nagpur Bench) has held that the coercive action initiated against the transportation of Gitti will have to be held illegal and ultra vires. In that case also respondent has relied upon the said Rule.*

7. *In the circumstances, since the courts have repeatedly held that Gitti is not a mineral product, seizure of petitioner’s vehicle is illegal and in breach of the orders passed by this court.”*

9. Despite the aforesaid judgments/orders and legal position the petitioner’s vehicle was seized by the respondent No.2. Admittedly, it is not in dispute that the petitioner’s vehicle was

4 Writ Petition No.1579/2022 dated 25.03.2022.

transporting '*Gitti*'. In this view of the matter, the seizure/impounding of the vehicle is clearly illegal and in breach of the judgments/orders passed by this Court.

10. At this stage, learned Addl.G.P. fairly states that the petitioner's vehicle which was seized in 2022 alongwith the '*Gitti*', will be released forthwith. Statement accepted. Mr. Dnyaneshwar Choudhari, Revenue Assistant from Revenue Department, Thane, is present before this Court. He shall ensure that the petitioner's vehicle is released forthwith.

11. In view of the aforesaid statement made by the learned Addl.G.P. the Petition is allowed and is accordingly disposed of. Rule is made absolute in the aforesaid terms.

12. Needless to state, that the learned Addl.G.P. to forward the order dated 14th December 2023 passed by this Court in ***Ashapuri Enterprises Through Karmiram B. Choudhary (Supra)***, to the Secretary, Revenue and Forest Department, who in turn shall ensure

that the said order is circulated to all the Revenue Authorities in the State of Maharashtra, so as to ensure that there is no seizure of any vehicle carrying ‘Gitti’. We make it clear, that in the event any seizure is made, we may consider imposing costs on the authorities. Needless to state, that it is open for the authorities to conduct an enquiry, if so permissible in law.

13. Since royalty has not been deposited by the petitioner, the question of directing refund of the same in the facts, does not arise.

. All concerned to act on the authenticated copy of this order.

DR. NEELA GOKHALE, J.

REVATI MOHITE DERE, J.