

Manoj S/o Namdevrao Chincholkar,
Aged about 47 years, Occ. Business,
R/o. Sadguru Nagar, Ekarjuna,
Taluka Warora, District Chandrapur

... PETITIONER(S)

// VERSUS //

- (1) **State of Maharashtra,**
Through its Secretary, Department of Revenue,
Mantralaya, Mumbai 440 032
- (2) **The Sub-Divisional Officer,**
Warora, District Chandrapur
- (3) **The Tahsildar,**
Warora, Office of Tahsildar, Warora,
District Chandrapur
- (4) **Police Station,**
Warora, Through its Sub-Inspector,
Warora, District Chandrapur

.... **RESPONDENT(S)**

Mrs. (Dr.) R.S. Sirpurkar, Advocate for the Petitioner(s)
 Ms. D.I. Charlewar, AGP for the Respondent/State

CORAM : M.S. JAWALKAR, J.
MARCH 11, 2025

ORAL JUDGMENT:-

(1) **RULE.** Rule made returnable forthwith. Heard finally by consent of learned Counsel for the respective parties.

(2) The preliminary objection is raised by the learned AGP that alternative remedy is available to the Petitioner. The learned AGP relied on the judgment of the Hon'ble Supreme Court in the case of **Gurudassing Nawoosing Panjwani vs. State of Maharashtra & others reported in 2015(6) Mh.L.J. 915**. The Hon'ble Supreme Court, in Paragraph Nos. 30 and 32, held as under:-

“30. From perusal of the entire scheme of the Code including Section 257, it is manifest that the revisional powers are not only exercisable by the State Government but also by certain other Revenue officers. There is nothing in the Code to suggest that if these revisional powers are exercised by a Revenue officer who has jurisdiction, it cannot be further exercised by a superior Revenue officer or by the State Government. A fair reading of Sections 257 and 259 suggests that if revisional powers are exercised by a Revenue officer having jurisdiction to do so, further

revisional power can be exercised by the superior officer or by the State Government.

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32. Considering the entire scheme of the Code, and the provisions contained in Sections 257 and 259, we are of the definite opinion that the Minister concerned of the State Government can entertain second revision to satisfy the legality and propriety of the order passed by the Revenue Officer. The Division Bench of the Bombay High Court has elaborately discussed the question and passed the impugned order holding that Section 257 confers jurisdiction to the State Government to entertain its revision against the order passed by any Revenue Officer either in appeal or in revision. We find no infirmity in the impugned order passed by the High Court. Hence, this appeal has no merit which is accordingly dismissed.”

(3) As against this, learned Counsel for the Petitioner submits that there is no seizure of vehicle as per Section 48(8) of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as “the Code”). In fact, there is no such order of seizure. There is no question of challenging the same as per Section 257 of the Code. Secondly, the order dated 29/02/2024 passed by the

Respondent No. 3 - Tahsildar is based on the report dated 09/02/2024 submitted by the Police Station, Warora.

(4) It is contended that before conducting panchnama of seizure of sand, neither any opportunity was granted to the Petitioner nor from the order it appears that there is any consideration by the Tahsildar to the objection raised by the Petitioner. Though the learned Counsel pointed out the provisions under which the vehicle can be seized, however there is no order passed in respect of the seizure of vehicle and it was mentioned that the said decision will be taken by the Sub-Divisional Officer, Warora. Admittedly, the seized vehicle was not produced before the Collector or the authorized Authority within 48 hours and the said vehicle is in the Police Station, Warora.

(5) I have perused the impugned order and the documents annexed with the Petition. On perusal of the impugned order, it does not reflect that the objection raised by the Petitioner herein are considered by the Tahsildar while imposing the penalty. There is no separate statement recorded by the Tahsildar of any

person and passed order based on the report of the Police Station, Warora. It is held that the driver of the JCB Shri Omprakash Parchaki has admitted that the sand in question belongs to Shri Manoj Namdevrao Chincholkar i.e. Petitioner.

(6) My attention is also drawn that the Tahsildar invoked his power under Section 48(7) of the Code. The sand which was seized is shown of place Sakhardoh whereas the Police report shows that the said sand & vehicle is seized from Ghanshyam Nagari, vacant plot of Balaji Town, Warora. As such, there is discrepancy in respect of the place from where the sand is seized.

(7) It appears that the Petitioner filed an Application for release of the vehicle before the learned Judicial Magistrate First Class, Warora which came to be rejected by the order dated 15/03/2024. On perusal of the said order, it appears that the learned JMFC has refused to interfere in the matter by stating that the crime is not reported against the Accused and it is not clear from the record under which Act or under which provision, the vehicle is seized. Therefore, it is held that there is no ground

to order release of the vehicle from the Court, however, the Petitioner was granted liberty to avail appropriate remedies.

(8) In that view of the matter, the impugned order passed by the Respondent No. 3 - Tahsildar appears mainly to be based on the report dated 09/02/2024 submitted by the Police Station, Warora. There is no independent application of mind by the Tahsildar. As such, the order passed by the Tahsildar is liable to be quashed and set aside.

(9) As the vehicles are not seized as per provisions of the Code, specifically Section 48(8), they are required to be released immediately.

(10) Hence, I proceed to pass following order:-

ORDER

(a) The Writ Petition is **allowed**.

(b) The order dated 29/02/2024 passed by the Respondent No. 3 – Tahsildar, Warora is hereby quashed and set aside.

(c) The matter is remanded back to the Respondent No. 3 – Tahsildar to re-consider the matter afresh after giving fair opportunity of hearing to the Petitioner and to take a decision in the matter by following the principles of natural justice.

(d) The parties to appear before the Respondent No. 3 – Tahsildar on 24/03/2025 at 11:00 am.

(e) The Respondent No. 4 – Police Station, Warora is hereby directed to forthwith release the vehicles of the Petitioner i.e. JCB bearing registration No. MH-34 AP0089, Jupiter bearing registration No. MH-34 BS 7673, Hero Honda Splendor bearing registration No. MH-34 AS2808.

The Petition stands **disposed of** in the above terms.
Pending Application(s), if any, stand(s) **disposed of**.

(M.S. JAWALKAR, J.)