IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 WRIT PETITION NO. 13201 OF 2026

Gajanan Bhagwan Kakade

VERSUS

The State Of Maharashtra Thr The Secretary And Others

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Mr.Apparao Bhimrao Kharosekar for the Petitioner.
Ms.Vaishali Chaudhari, AGP for the Respondent/State.

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CORAM : MANJUSHA DESHPANDE, J.

DATE : 29.10.2026

PER COURT :

1. It is the case of the Petitioner that his JCB machine (bearing MH-12-EB-1655) has been seized by the Tahsildar, Pathri, District Parbhani on 19.05.2026 for illegal excavation of sand from Godavari River without any permission, which passes from village Charugavhan to Pathri road.

2. According to the Petitioner, he was not at all engaged in any excavation when the seizure of the vehicle was made by the Tahsildar. He was returning after completion of the levelling of the land of one of his friend, and after completing his work, when he was proceeding towards his house, the JCB was intercepted and without making any proper inquiry, it has been seized. He submits that he has made an application to the Tahsildar, Pathri on 16.07.2026 bringing it to his notice that the JCB machine was not engaged in any kind of excavation of sand. However, his application was not taken into consideration by the Tahsildar, and a

show-cause notice has been issued to him on 12.08.2026 calling upon him to explain as to why penalty of Rs.7,50,000/- should not be imposed upon him for illegal excavation of sand.

3. According to the Petitioner, although the JCB machine was seized on 19.05.2026, a show-cause notice has been issued to him on 12.08.2026, thereby there is a breach of Section 48(8)(2) of the Maharashtra Land Revenue Code, 1966 (***the 'MLR Code'***), which requires production of the vehicle, machinery or equipment seized by the Revenue Authority to be produced before the Collector or Deputy Collector, who is the competent Authority for release of such vehicle. He relies on various decisions of this Court which reiterate the aforementioned position of law.

4. The learned AGP opposes the prayer made by the Petitioner and submits that after seizure of the JCB machine on 19.05.2026, a Panchanama was conducted on 20.05.2026, and now an order imposing penalty has been issued by the Sub-Divisional Officer on 28.08.2026. Hence, now the only remedy available to the Petitioner is to file an appeal against the said order.

5. After hearing the respective parties and going through the documents placed on record, it appears that the JCB machine of the Petitioner was seized on 19.05.2026. As per the reply filed by the Revenue Authorities, Panchanama was conducted on 20.05.2026. After a long gap of more than three months, a show-cause notice as to why

penalty should not be imposed on the Petitioner has been issued on 12.08.2026. Thus, there is a non-compliance of Section 48(8)(2) of the MLR Code, which requires the Tahsildar to produce the machinery, vehicle, etc. before the Sub-Divisional Officer within 48 hours, which is admittedly not done in the present case.

6. In view of various decisions of this Court, including Writ Petition No.4844 of 2011 decided on 08.08.2011, Writ Petition No.1273 of 2018 decided on 06.02.2018, and a decision rendered by this Court in Writ Petition No.10440 of 2026 decided on 04.09.2026, it is no more *res integra* that Section 48(8)(2) of the MLR Code is a mandatory provision, which is required to be followed by the Revenue Authorities, and in case of failure to follow the aforementioned provision, the order imposing penalty becomes unsustainable.

7. In the present case, it is apparent that no such procedure as mandated under Section 48(8)(2) of the MLR Code is followed. Hence, the Writ Petition deserves to be allowed. Even though the order imposing penalty has been passed on 28.08.2026, the same becomes unsustainable in view of failure to follow the mandatory statutory procedure as provided in the statute.

8. At this stage, the learned Advocate for the Petitioner seeks permission of this Court to make necessary amendments to incorporate challenge to the said order. The Petitioner is granted liberty. Amendment to be carried out forthwith.

9. In view thereof, Writ petition is allowed by setting aside the order passed by the Sub-Divisional Officer dated 28.08.2026, and the Sub-Divisional Officer, Pathri, District Parbhani is directed to forthwith release the JCB machine of the Petitioner.

[MANJUSHA DESHPANDE, J.]