

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

902 WRIT PETITION NO.4143 OF 2021

**SANTOSH DASHRATH AMTE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. Sayyad Tauseef Yaseen, Advocate for the petitioner
Mr. A.A. Jagatkar, AGP for the respondent/State

**CORAM : SANDEEP K. SHINDE, J.
DATE : 22-06-2021**

P. C.

. JCB bearing Registration No.MH-23-T4022 was allegedly used for unauthorized excavation of sand (minor minerals). Whereafter, offence was to be registered on 30th August, 2020 under Section 379 of the IPC read with 21 and 48 (1) of the Mines and Minerals (Development and Regulation) Act, 1957. The learned Magistrate directed to return the JCB to the petitioner subject to outcome of confiscation proceedings, if any, initiated by the revenue authorities under the MLR Code. The learned counsel for the petitioner would dispute correctness of the order on the ground jurisdiction under Section 457 of the Code of Criminal Procedure cannot be made subject to provisions of other acts. He relies on the order of this court in the Criminal Application No. 190 of 2021. He would further submit that the JCB was not produced before the Collector or such other officer not below the rank of the Deputy Collector authorized by the Collector within a period of 48

hours of 'such seizure', as required under Section 48 (8)(2) of the Maharashtra Land Revenue Code, 1966. It is, therefore, submitted the provisions being a mandatory and since the authorities had not produced the JCB before the Collector, the order seizing the JCB stood vitiated.

2. Learned AGP seeks time to verify a date on which the subject vehicle was, 'seized' by the revenue authorities. Time granted.

3. In my view, the provision of Section 48 of the MLR Code is a self contained Code. Sub-Section 8 of Section 48 provides seizure and confiscation of minerals unauthorizedly excavated and any machinery and equipment used for such excavation. Thus, Sub-Section 8 contemplates 'order of seizure'. As such seizure of JCB by the Police after lodging the FIR, cannot be equated with the order of seizure as contemplated under Sub-Section 8 of Section 48 of the MLR Code. Learned AGP is, therefore, directed to place before this court the 'order of seizing' of JCBs, if any passed by the Collector or Officer authorized by him. In this regard, the State shall file an affidavit-in-reply within a week from today.

4. List the petition for consideration on 13th July, 2021.

[SANDEEP K. SHINDE, J.]