

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 WRIT PETITION NO.4143 OF 2021
WITH
CIVIL APPLICATION NO.7257 OF 2021

SANTOSH DASHRATH AMTE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Sayyed Tauseef Yaseen
AGP for Respondents/State: Mr. K. B. Jadhavar
...

CORAM : AVINASH G. GHAROTE, J.

DATE : 4th August, 2021

PER COURT :

. Heard.

2. The petition challenges the order dated 19/12/2020, which imposes a fine of Rs.7,68,876/- upon the petitioner, on the ground that the JCB MH-23-T-4022, was found to have excavated sand illegally without any permission and sand to the extent of 0.5 brass was found in the vehicle. The petition also seeks a relief, for release of JCB belonging to the petitioner.

3. Insofar as the prayer clause 'C' is concerned, relating to release of the JCB, it is material to note, that the FIR in this matter

was registered by the Police Station, Pimpalner vide Crime No. 254/2020, in which proceedings, the said JCB has been seized on 13/08/2020. Since the said JCB was seized by the police authorities in Crime No.254/2020, an application u/s 457 of the Code of Criminal Procedure came to be filed by the petitioner, before the J.M.F.C Court No.5, Beed, which came to be registered as Misc. Criminal Application No. 2041/2020 and by an order dated 08/10/2020, the police authorities were directed to release the said vehicle upon the terms as mentioned in the order dated 08/10/2020.

4. The JCB however, has not been released by the police authorities, on account of the impugned order dated 19/12/2020, whereby, penalty has been imposed, u/s 48, 8(1)(2) of the Maharashtra Land Revenue Code, 1966.

5. When a query was made, to the learned Assistant Govt. Pleader regarding the order of seizure, of the JCB as reflected from the order dated 22/06/2021, a statement is made that there is no such order passed by the Tahsildar or any other Officer authorized in this behalf u/s 48 (8) (1) of the Maharashtra Land Revenue Code. Since there is no such order of seizure, it is axiomatic that

the vehicle, is not in the custody of the Tahsildar or any revenue official and continuous in the custody of the police authorities, who consequent to the order dated 08/10/2020, no longer have right to retain the same. The petitioner, is therefore free to take appropriate action against the police authorities in this regard as it is now clear, that the vehicle is not seized by the revenue authorities under the provisions of Section 48 (8)(1) of the Maharashtra Land Revenue Code.

6. Insofar as the issue, as to whether in absence of a seizure u/s 48 (8)(1) of the Maharashtra Land Revenue Code, whether the authority can exercise the power u/s 48 (8)(2) of the Maharashtra Land Revenue Code, learned Assistant Govt. Pleader seeks time to prepare. List the matter on 09/08/2021.

(AVINASH G. GHAROTE, J.)