

Abdul Rab Ansari S/O Abdul Kayyum Ansari Vs State Of Maharashtra Through Its Secretary For Revenue And Forest Department, Mumbai And Others

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Aug. 16, 2018

Acts Referred: Constitution of India, 1950 – Article 20

Maharashtra Land Revenue Code, 1966 – Section 48[1], 48[7], 48[8], 48[8][2], 48[9][1], 328[2], 329[2]

General Clauses Act, 1897 – Section 26

Mines & Minerals (Development and Regulation) Act, 1957 – Section 15

Maharashtra Land Revenue (Extraction and Removal of Minor Minerals) Rules, 1968 – Rule 8[6], 9[1][2]

Maharashtra Land Revenue (Extraction and Removal of Minor Minerals) Rules, 2013 – 66(14), 78

Hon'ble Judges: B.P. DHARMADHIKARI, J; Z.A HAQ, J

Bench: Division Bench

Advocate: K.A. Kothari, A.B. Patil, N.R. Patil

Final Decision: Dismissed

Judgement

– B.P. DHARMADHIKARI, J

1. In all these petitions, common question involving the provisions contained in Sections 48[7] and – 48[8] of the Maharashtra Land Revenue Code,

1966 (hereinafter referred to as – “the MLR Code” – for short] and the Maharashtra Land Revenue (Extraction and Removal of Minor Minerals)

Rules, 1968, hereinafter referred to as – “the Rules” – framed thereunder, arise for consideration. Other set of Rules with which we are concerned

are the Maharashtra Minor Mineral – Extraction (Development and Regulation) Amendment Rules, 2013 – as amended in 2017. These Rules are

referred to as – “the 2017 Rules” – in this judgment.

2. Shri A.B. Patil and Shri – K.A. Kothari, learned Counsel have advanced arguments on behalf of petitioners and Shri N.R. Patil, learned A.G.P. on

behalf of – respondents has opposed – their contentions. – With their consent, and considering the controversy placed for consideration, matters

are taken up for final disposal. Hence, we issue Rule in all these petitions and make the same returnable forthwith.

3. The bare facts show that the Vehicle – Truck belonging to respective petitioners is claimed to be caught while carrying sand illegally. – Sand

therefore, is seized and penalty – therefor has been levied under Section 48(7). – Similarly, for use of truck, the truck also has been seized and

penalty as prescribed under the Rules has been charged or is being charged under Section 48(8)., Basic contention therefore, was this constituted

double jeopardy.

4. We need, to point out that prayers made in the Writ Petitions challenge the order levying penalty under Section 48(7) of the MLR Code for

illegal, excavation of sand; demanding royalty and, equal amount as penalty; market value of sand and amount of Rs. 2 lakh for illegal use of

transport vehicle under Section, 48(8) thereof, is assailed in all the petitions. There is no challenge to any statutory provisions.

5. Facts in Writ Petition No. 3105/2018 have been used and, pressed into service by all to support legal submissions. In this petition, the order

impugned is dated 24.05.2018, and it is passed by respondent Sub Divisional Officer. Its' perusal shows that on 19.05.2018, Tipper bearing No.

MH,40/AK,5691 was used for transporting, sand illegally. It was caught at Mouza Taregaon Khurd, and a seizure memo/ japti nama was

prepared. At that time, statement of driver " Gajanan Gawade, was recorded. The said driver accepted that he was not having transport permit

for transporting sand, and it was being carried in said truck illegally. Sand was then measured and was found to be 4.46 brass. Hence, action under

Section 48(7) of the MLR Code and Rules as amended on 12.01.2018, has been taken. The relevant Rule is Rule 9(1)(2). Respondent Sub

Divisional Officer found that illegal transport of sand, established and therefore, he has charged an amount of Rs.35,680/, towards illegal

excavating of sand; an amount of Rs.1784/, towards Royalty. Thus, total amount of Rs. 37,464/, has been levied. Thereafter, action under

amended Rule 9(1)(2) (supra), has been taken, and petitioner has been asked to pay penalty of Rs. 2 lakhs. The impugned order mentions that after

these amounts are, deposited, separate orders, shall be passed for releasing the vehicle.

6. Petitioners submit that illegal excavation of sand has not been established at all. Material on record does not show that the sand came from sand

ghat or other place not assigned by the State Government, and it has not been established that the said sand was, therefore, vesting in State

Government. Hence, Section 48(7) of the MLR Code itself is not applicable. It is contended that Section 48(7), is not at all attracted in case of

persons like petitioners, who are only operating as transporters and in no way, excavate the sand.

7. It is further contended that as Section 48(7) is not applicable, Section 48(8), is also not attracted, hence, the impugned order asking petitioners to

pay penalty under Section 48(7) as also Section 48(8), is bad.

8. It is claimed that in present facts, due to contentions urged to demonstrate that ingredients of Sub,section (7) are not attracted, even independently

Section 48[8], is also not applicable since theÃ, petitioners have neither removed nor excavated the sand.

9. Other submission is, levying of 5 times the market value of Mineral as penalty along with Royalty is itself a punishment.

Therefore, either fine or penalty under Section 48[8][2], for releasing the vehicle is unwarranted and it constitutes double jeopardy.

10. Petitioners have relied upon a judgment reported at 2010 (1) Mh.L.J. 9363 (Vijay Dashrath Shirbhate .vrs. State of Maharashtra and another),Ã,

(paragraph nos. 9 and 13).

11. Petitioner has by amendment brought on record details of Ghat (river bed) from which he collected the sand for transporting.Ã, On the basis of

these details, petitioner submits that as no action has been taken against the person to whom that sand ghat is assigned, the action against petitioners

alone is not sustainable.Ã, They rely upon an unreported judgment of this Court dated 19.12.2017 in Criminal Writ Petition No. 1105/2017.

12. Inviting attention to the nonÃ,obstante clause with which Section 48[8]Ã, begins, it is submitted that the clauseÃ, therefore, cannot be interpreted

in a wider sense and dehors the context of Section 48[7].Ã, Even otherwise, being penal provision, Sections 48[7] and 48[8] must be interpreted

strictly.

13. By inviting attention to the reply placed on record, it is submitted that though respondents rely upon a notification dated 12.01.2018, the transport

permit is not issued inÃ, proforma prescribed therein till date.Ã, It is urged that, therefore, on the basis of such a document, action either under

Section 48[7] or Section 48[8], is not permissible.

14. Learned A.G.P. appearing on behalf of the respondent State and its officers, submits that the vehicle Ã¢â¬" Trucks in all these petitions were not

having transport permit.Ã, Entire stock ofÃ, sand by virtue of Section 48[1] of the MLR Code, vests in State Government, hence, finding any sand or

minor mineral at a place without legal documents, casts burden upon persons like petitioners to explain its illegal custody.Ã, He relies upon the

statement of object and reasons of the Maharashtra OrdinanceÃ, No.XII of 2015, by which provisions of Sections 48[7] and 48[8] have been suitably

amended. Our attention is also drawn to said SectionsÃ, to point out that there after in SubÃ,rule, clause [19], consequential amendment is also carried

out.Ã, Ã, They submit that petitioners have been rightly asked to pay 5 times the market value, as penalty, Rs. 2 lakhs towards vehicle and single

amount of royalty.Ã, They submit that none of the petitioners challenge constitutional validity and even did/do not object to levy of single royalty.

TheyÃ, argue that Sections 48[7] and 48[8], form part of the Scheme evolved to protect Minor Minerals and Environment.Ã, They are

complementary to each other.Ã, Burden is upon petitioners to bring on record source of sand.

15. Inviting attention to provisions contained in Rules, particularly Rule 78, they submit that absence of transport permit, statutory presumption of illegal

transport arises.Ã, Ã, The amendment effected to Rules on 12.01.2018, does not change the legal position. They submit that respondents have taken

action for separate wrongs against sand and against vehicle independently as per provisions of law.Ã, Ã, They also point out that view expressed in

Writ Petition No. 1325/2018, is already referred to Larger Bench on 17.04.2018.Ã,

16. Shri Kothari, learned Counsel appearing forÃ, petitioners in reply points out that in Writ Petition No. 3230/2018, seizure is on 22.06.2018, and the

notice issued by the Tahsildar, does not specify any legal provision.Ã, Petitioner therein gave reply to that notice on 29.05.2018, and then the impugned

order has been passed only under Section 48[7].Ã, There is no order as yet under Section 48[8]. However, if Sub Divisional Officer passes further

orders, it will be double jeopardy.Ã, He submits that in paragraph no.10 of the Writ Petition, Government Resolution dated 12.01.2018, amending

Rules is claimed to be void.Ã, He therefore, prays for allowing Writ Petitions.

17. The prayer clauses in petition mostly end in challenging the orders passed by the concerned Sub Divisional Officer.Ã, In Writ Petition Nos. 3105,

3024, 3103, 3104, 3233, 3229 of 2018 there is at least a prayer to quash and set aside the notification dated 12.01.2018.Ã, There is no such prayer in

Writ Petition Nos. 3230 and 3232 of 2018.Ã, There is no prayer for amendment also in these two writ petitions.Ã, Though Civil Applications seeking

leave to amend are moved in other matters, additional grounds sought to be raised are about the power exercised under Section 48[7] of the MLR

Code. The amendment has been partially allowed on 23.07.2018. Thus, there is no challenge to the constitutionality or otherwise of Section 48[7] or

Section 48[8] of the MLR Code.

18. Notification dated 12.01.2018 isÃ, in respect of amendment to the Rules andÃ, known as Maharashtra Land Revenue (Extraction and Removal of

Minor Minerals) (Amendment) Rules, 2017.Ã, Ã, The notification is issued in exercise of powers conferred by SubÃ,sectionÃ, [9] of Section 48, and

subÃ,section [1] of clause XIX of subÃ,section [2] of Section 328 read with subÃ,section [2] of Section 329 of the MLR Code.Ã, This amendment

vide its Clause 6 substitutes Rule 8 forÃ, earlier Rule 8.Ã, As per amended and substituted Rule 8, for breach of Rules, penalty of an amount not

more than 5 times the amount of royalty on such Minor Mineral or Rs. 1000/Ã,â€¸,Ã, which ever is more, can be imposed.

19. Vide Clause 7, this notification adds Rule 9, and it prescribes penalty under subÃ,section [8] of Section 48.Ã, It contains a table and in that table,

wish to claim any interest in said sand, they have to establish their legal title to its ownership or possession. If they are possessing a licence to

operate sand ghat, and sand is extracted from it, and is being transported as per law, burden is upon them, to demonstrate necessary facts, for this

purpose. When petitioners before us are not claiming any such lease of sand ghat and argue that they are plain transporters, necessary

documents to support that role also needed to be produced by them. Such documents may show a contract with the specific sand ghat lease holder

to transport that sand to a particular destination or then it may be a contract with the purchaser of sand to deliver it to him at a particular address.

Necessary receipts and transport permit could have demonstrated this. Petitioners do not possess any such documents. They remain satisfied by

contending that respondents have not shown custody of sand with petitioners in respective trucks, to be illegal.

22. This argument overlooks the impact of Maharashtra Minor Mineral Extraction (Development and Regulation) Amendment Rules, 2017. This

amendment amends the parent rules i.e. the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013 which are framed

under Section 15 of the Mines & Minerals (Development and Regulation) Act, 1957. 2017 Rules amend Rule 66(14) and substitutes Rule 78 of

the parent 2013 Rules. As per Rule 66(14), the vehicle transporting the sand must carry the transit pass. It is prepared in duplicate and the original

goes to the purchaser of sand. This sub-rule declares that in absence of the transit pass, the minor mineral carried in the vehicle is treated as

“illicit and unlawful”, to be dealt with as per the prevailing provisions of the applicable law. Rule 78 substituted by of the 2017 amendment,

is on same lines. Thus, absence of transit pass or transport permit renders the sand in respective vehicle of the petitioners illicit and

unauthorized. It therefore, attracts Section 48(7) as also Section 48(8) of the MLR Code. This entire scheme in the MLR Code and the Rules

looked into by us supra, give birth to a full proof mechanism. Lacuna therein, if any, must be interpreted by us keeping in mind the purpose and

object as also the possible injury to the environment. A wrongdoer can not be permitted to benefit thereby.

23. The contention of petitioners, noted supra shows that they are putting cart before the horse. Sand found with them is not for their personal

use. They claim it and attempt to justify their possession contending that they were transporting it. Thus, when they claim sand to be for their

business purposes, burden is upon them to explain its source and prove their right to possess it. In absence of this, presumption that they are

holding sand illegally, i.e. contrary to Section 48 of Code follows. The provisions in Rules also mandate possession of transport permit with the

person carrying the sand, and drawing of adverse inference, if it be not there. Petitioners therefore, have failed to discharge their burden. Not

only this, they have also not approached, either the Authorities or this Court with clean hands and are trying to take, roving pleas and for that

purpose invoke various technicalities. We find their endeavor unsustainable.

24. They have relied upon reported judgments. Division Bench judgment in, case of Vijay Dashrath Shirbhate .vrs. State of Maharashtra and

another, (supra), considers the scope and applicability of Section 48[7]. It holds that the said provision is not attracted when person excavates

with lawful authority. It also holds that even if such excavation be without royalty, if it is from a place assigned to him by the State Government,

Section 48[7] is not attracted. Facts in that judgment show that the petitioner had excavated 545 brass from an area not included in his lease and

action under section 48[7], was taken only in relation to this 545 brass sand. It was not for balance 664 brass extracted by him from leased area.

This judgment, therefore, does not apply in present matter. Here, petitioners have not demonstrated that the sand has been excavated from the

area assigned to them by lease or from leased area of any other allottee. This judgment also does not hold that Section 48[7], is not attracted when

such unaccounted Minor Mineral is found being transported without proper documentation.

25. Judgment in Criminal Writ Petition No.1105/2017 (Neha Anil Agre .vrs. State of Maharashtra and others), in paragraph no.6 holds that Sections

48[7] and, 48[8], are not attracted when person extracts sand with lawful authority. It also holds that if the transporter of Mineral is different,

than the assignee of rights of extraction, the transporter cannot be booked for unauthorisedly carrying sand unless it is shown that the extraction of

sand by assignee himself was unauthorised and illegal. It is held that these provisions do not empower the Revenue Authorities to seize and,

confiscate the vehicle carrying Mineral in excess, of weight permitted to be carried in it. These observations appear to be in relation to

“carrying capacity” of that vehicle in terms of Motor Vehicle Legislation. The sand ghat owner in said matter was not given, any show cause

notice. Facts do not show that the transporter in case of Neha Anil Agre .vrs. State of Maharashtra and others (supra), was not having transport

permit for transporting the sand and because of transport permit with him, the sand ghat owner could have been traced out. This judgment,

therefore, considers case where, a petitioner, can establish himself to be only a bonafide transporter. This is not the position in, present

matters. None of the petitioners before us have established their status only as transporters.

26. When petitioners avoided to disclose source of sand, due to Section 48[1] of the MLR Code, its excavation in violation of Section 48[7], stands

established. Under Section 48[7], words with wide import are employed. Thus, even picking up or removal of sand by an unauthorized

person is prohibited. Words "Extracts, Removes, Collects, Replaces, Picks up or Dispose of" cannot be seen as synonymous. Operation

like "Replacement" or "Removal" or

"Dispose of" or "Picking up", take within its fold even transporting.

Under Section 48[8], power is given to the Government to seize and confiscate the machinery and equipments used for unauthorized operations,

prohibited under Section 48[7]. Clause 2 of sub-section [8], expressly permits seized vehicle to be dealt with in a manner prescribed therein.

When a vehicle like truck is loaded with stolen sand and the sand is being carried away, action against the person who is transporting it for

excavation and/or for transportation is definitely envisaged under Section 48[7] read with Section 48[8] of the MLR Code. Petitioners cannot

contend that though illegal sand was found in their trucks, no action can be taken against the said truck. Learned A.G.P. is right in submitting that

the trucks have been used to accomplish the clandestine operation prohibited by Section 48[7]. The truck, therefore, becomes a property in the

prohibited operation and hence, separate action against it cannot be said to constitute double jeopardy.

27. We therefore, find no substance in these Writ Petitions. The same are accordingly dismissed. Rule discharged. No cost.

Writ Petition Nos. 3105, 3104, 3024 and 3103 of 2018.

28. In all these Writ Petitions, interim orders are operating and hence, Advocate Patil seeks continuation of it for further period of three weeks.

Request is being opposed by Shri N.R. Patil, learned AGP.

29. In the interest of justice, we continue interim orders for further period of three weeks and same shall cease to operate automatically thereafter.