

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1604 OF 2016

Prafulla S/o Sahebrao Korde

-vs-

State of Maharashtra, through the Collector, Wardha, District Wardha and anr

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.T.H. Bewali, counsel for the petitioner.

Mr.Ambarish Joshi, AGP for the respondent the R-1 & 2.

CORAM : SMT. VASANTI A. NAIK &
V. M. DESHPANDE, JJ.

DATE : MARCH 31, 2016.

By this writ petition, the petitioner seeks a direction to the respondent No.2-Tahsildar, Aashti, District Wardha to release the truck of the petitioner that was seized under the provisions of Section 48(8) of the Maharashtra Land Revenue Code, 1966. The petitioner seeks a direction to the respondent No.2-Tahsildar to pay damages of Rs.10,000/- per day to the petitioner for wrongful detention of the truck of the petitioner. By filing an amendment application, the petitioner has sought to challenge the order of the Tahsildar imposing penalty on the petitioner.

It is the case of the petitioner that the respondent No.2-Tahsildar did not have jurisdiction to seize the truck of the petitioner as the petitioner possessed the necessary transit passes for transportation of the sand. It is submitted that no opportunity was granted to the petitioner before passing the order of penalty that is sought to be challenged by the proposed amendment. It is further submitted that the order imposing the penalty is liable to be set aside as the said

order was passed on 10.3.2016 and the petitioner was served with a notice to remain present before the Tahsildar on 17.3.2016. It is stated that the notice issued by the Tahsildar to the petitioner, asking the petitioner to remain present on 2.3.2016 was received by the petitioner on 21.3.2016. It is stated that since the order is passed in utter violation of the principles of natural justice, the impugned order imposing the penalty is liable to be set aside. The learned counsel for the petitioner has relied on the judgment dated 30.10.2015 in Criminal Writ Petition No.767 of 2015 to substantiate his submission.

Shri Ambarish Joshi, the learned Assistant Government Pleader appearing on behalf of the respondents submits that the truck of the petitioner was rightly seized. It is stated that though the petitioner was entitled to transport only two brass of sand to Bhusawal, the Tahsildar found that the petitioner's truck was carrying 7.866 brass of sand. It is submitted that proper opportunity was granted to the petitioner before imposing the penalty under Section 48(8) of the Act. It is stated that the said fact could be reflected from the order of the Tahsildar dated 10.3.2016, as it is clearly mentioned in the said order that the petitioner was asked to remain present before the Tahsildar on 2.3.2016, but the petitioner failed to remain present on that day. It is stated that the petitioner had made a representation to the respondent-Tahsildar and the same was considered by the Tahsildar and the petitioner was asked to remain present on 2.3.2015 to give his say in the matter of imposing penalty. It is submitted that the principles of natural justice cannot be said to have been violated in this case as ample opportunity

was granted to the petitioner before imposing the order of penalty. It is stated that if the petitioner is aggrieved by the order of the Tahsildar, imposing the penalty, the petitioner has a remedy of filing an appeal before the Sub-Divisional Officer under the provisions of the Maharashtra Land Revenue Code. It is stated that without availing the said remedy, the petitioner has rushed to this Court by incorrectly raising a plea that the petitioner was not granted an opportunity before the order of penalty was passed.

On hearing the learned counsel for the parties, it appears that it would not be proper to decide the issues that are involved in this writ petition in exercise of the writ jurisdiction. The petitioner has an alternate remedy of filing an appeal before the Sub-Divisional Officer, under the Maharashtra Land Revenue Code. It is asserted by the petitioner that the petitioner was not served with a notice to remain present before the Tahsildar in the penalty proceeding whereas the said fact is disputed by the respondents-authorities. There is word against word and the parties are relying on certain documents in support of their respective cases. In this view of the matter, specially in the circumstances of the case, it would be necessary for the petitioner to avail the alternate remedy under the provisions of the Maharashtra Land Revenue Code. The judgment dated 30.10.2015, in Criminal Writ Petition No.767 of 2015 and relied on by the counsel for the petitioner cannot be applied to the facts of this case as in that case admittedly, the petitioner therein was not granted any opportunity whatsoever.

In the circumstances of the case, we decline to

entertain the writ petition in view of the existence of the alternative remedy. The petitioner is free to avail the alternate remedy, if so advised.

Order accordingly. No costs.

The points raised in the petition are kept open.

JUDGE

JUDGE

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