

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/MISC. CIVIL APPLICATION NO. 1131 of 2018**

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BABUBHAI RAGHUNATHBHAI DESAI

Versus
SHRI. M.K.DAS

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Appearance:

MR SATYAM Y CHHAYA(3242) for the PETITIONER(s) No. 1
for the RESPONDENT(s) No. 1,2,3,4

MR ROHAN YAGNIK, ASSISTANT GOVERNMENT PLEADER for the
RESPONDENTS

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CORAM: HONOURABLE THE CHIEF JUSTICE MR. R.SUBHASH REDDY
and

HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date : 30/10/2018

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI)

1. This application is filed under the provisions of the Contempt of Courts Act, 1971, in which, the applicant has alleged that the respondents have willfully and deliberately disobeyed the order dated 21.08.2018 passed by this Court in Special Civil Application No.12845 of 2018 and, therefore, appropriate action be taken against the respondents.

2. Heard learned advocate Mr.Satyam Y. Chhaya for the applicant and learned Assistant Government Pleader Mr.Rohan Yagnik for the respondents.

3. Learned advocate Mr.Satyam Chhaya appearing for the applicant submitted that the machine of the applicant is illegally detained by the concerned respondent and the same is kept with the respondent authorities. The said machine was seized on 10.07.2018. The said machine is not released by the respondent authorities and, therefore, the applicant filed Special Civil Application No.12845 of 2018 before this Court. The applicant has shown willingness to pay penalty of Rs.2 lacs as per the Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 (hereinafter referred to as "the Rules of 2017" for short). However, even the said request was made to the respondent Collector and the Geologist. The same was not accepted and, therefore, this Court disposed of the petition, by an order dated 21.08.2018, by which, the respondent authorities were directed to decide the representation of the applicant in accordance with law and as expeditiously as possible, preferably within a period of one week from the date of the receipt of the said order.

3.1 Learned advocate Mr.Chhaya, thereafter, submitted that the Assistant Geologist passed an order on 04.09.2018, by which, the applicant is asked to pay an amount of Rs.2 lacs for Hitachi Machine and Rs.16,20,240/- for the alleged illegal excavation of the ordinary sand by way of compounding fees.

3.2 Learned advocate for the applicant, thereafter, submitted that the order dated 04.09.2018 passed by the Assistant Geologist is in violation of the direction issued by this Court as well as the same is contrary to the Rules of 2017. It is submitted that till date, the FIR is not registered against the applicant nor any prosecution is launched against him and, therefore, it is not open for the respondent Assistant Geologist to ask the applicant to pay an amount of Rs.18,20,240/- by way of compounding fees.

3.3 Once again, learned advocate has submitted that the applicant is ready and willing to pay Rs.2 lacs for the machine and for the recovery of the penalty of Rs.16,20,240/- for alleged illegal excavation of the ordinary sand, the respondent may file necessary

proceedings against the applicant. However, it is not open for the respondent authorities to seize the machine indefinitely. Learned advocate Mr.Chhaya has placed reliance upon Rule 12 of the Rules of 2017 as well as the decision rendered by the Division Bench of this Court in the case of ***Zaverbhai Nanubhai Devani Vs. State of Gujarat, passed in Letters Patent Appeal No.397 of 2018.***

4. On the other hand, learned Assistant Government Pleader Mr.Rohan Yagnik has opposed this application and submitted that as per the direction issued by this Court in the order dated 21.08.2018, the respondent authority has taken the decision and, therefore, it cannot be said that the respondents have willfully and intentionally disobeyed the order passed by this Court. It is, therefore, urged that this application be dismissed.

5. We have considered the submissions canvassed by the learned advocates appearing for the parties. At the outset, we would like to refer the relevant paragraphs of the order passed by this Court in the

case of **Zaverbhai Nanubhai Devani Vs. State of Gujarat, Letters Patent Appeal No.397 of 2018** (*supra*), which read as under:

"9. Rule 12 of the Rules of 2017 provides as under:

"12. Seizure of property liable to confiscation.-

(1) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or other thing (hereinafter referred to as "property") shall be liable to be seized by the Government in the manner specified in sub-rule (2) of this rule.

(2) Every Authorised Officer seizing any property under these rules shall photograph the property and place on such property a mark in such manner as may be prescribed, indicating that the same has been so seized and shall:

(a) issue a notice in Form J informing the person from whom the property is seized of the property so seized;

(b) conduct:

(i) an investigation and if he is satisfied that a compoundable offence has been committed in respect of the property, he may, subject to receipt of a compounding application, order payment of such amount for compounding the offence as may be deemed appropriate; or

(ii) a preliminary investigation and shall produce the property seized before

a court empowered to determine commission of such offence, if compounding is not permissible under rule 22 or if no application for compounding is received pursuant to clause (a) above, upon the expiry of fifteen days from the date of seizure or upon completion of the investigation, whichever is earlier.

(3) Where any property seized under sub-rule (1) is produced before a court under sub-clause (ii) of clause (b) of sub-rule (2) and the court is satisfied that offence has been committed in respect thereof, the court may order confiscation of the property under sub-section (4A) of Section 21 of the Act.

(4) No order for confiscating any property shall be made under sub-rule (3) unless the person from whom the property is seized is given:

(a) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and

(b) a reasonable opportunity of being heard in the matter.

(5) Upon expiry of fifteen days from the date of seizure of the property under sub-rule (2) and prior to:

(a) payment for compounding the offence under sub-clause (i) of clause (b) of sub-rule (2); or

(b) completion of the investigation by the Authorised Officer under sub-clause (i) of clause (b) of sub-rule (2); or

(c) a determination under sub-rule (3),

the Authorised Officer may release the property on the furnishing of a non-interest bearing security deposit or a bank guarantee.

(6) The bank guarantee issued under sub-rule (5) shall be valid for an initial period of one year and shall be renewed from time to time until payment for compounding the offence under sub-clause (i) of clause (b) of sub-rule (2) or a determination under sub-rule(3), as applicable, is made. The non-interest bearing security deposit or bank guarantee shall be for an amount equivalent to ten times of the market value of the mineral seized or for such other amount as may be specified by the Government through a notification, subject to a minimum of rupees two lakh:

Provided that, if upon a determination under sub-rule (3), a penalty for an amount exceeding the amount of non-interest bearing security deposit or bank guarantee is levied and the penalty amount is not paid, then the penalty amount may be recovered in the same manner as if it were an arrear of land revenue.

(7) The property seized under this rule shall be kept in the custody of the Authorised Officer, any other third party, nearest police station or Government premises until:

(a) payment for compounding the offence is made; or

(b) a bank guarantee is provided pursuant to sub-rule (5); or

(c) an order of the court directing its disposal is received by the Authorised Officer."

10. From the aforesaid provisions coupled with the facts of the present case, it is clear that after the seizure of the truck, notice was issued. However, thereafter, the respondent authority has not followed the provisions contained in Rule 12(2)(b)(ii) of the Rules of 2017. As per the said provision, if the

application for compounding of offence is not received, the vehicle so seized shall be produced before the Court empowers to determine commission of such offence, upon expiry of 15 days from the date of seizure or upon completion of investigation, whichever is earlier.

11. In the present case, after completion of 15 days from the date of seizure, when application for compounding of offence is not submitted by the petitioner, it was the duty of the respondent authority to produce the said vehicle before the concerned Court. In absence of production of such vehicle before the competent Court, the petitioner has lost his right to file an application under Section 451 of the Code of Criminal Procedure, 1973, for release of the vehicle.

12. Thus, in view of the aforesaid discussion, we are of the view that the respondent authorities have failed to justify the reason for seizure of the truck in question. When the respondent authorities have failed to follow the procedure prescribed under the Rules of 2017, we are of the view that this is fit case where the action of seizure of the truck in question taken by the respondent authorities is required to be quashed and set aside and direction is required to be given to the respondent authorities to release the truck in question forthwith."

6. Keeping in view the aforesaid decision rendered by the Division Bench of this Court, if the order dated 04.09.2018 passed by the Assistant Geologist, Gandhinagar, is examined, it is revealed that the machine in question is seized on 10.07.2018. The said machine is required to be produced before the

concerned Magistrate Court after completion of period of 15 days, if no request is made by the applicant for compounding of the alleged offence. It is not in dispute that till date, the offence is not registered against the applicant. Further, no request is made by the applicant to compound the alleged offence nor the applicant has shown willingness to pay the compounding fees and, therefore, the concerned respondent is duty bound to produce the machine in question before the competent Court. Till date, the machine in question is not produced before the competent Court and is still lying in the custody of the concerned respondent. The applicant has shown willingness to pay Rs.2 lacs for release of the machine in question without prejudice to his rights and contentions.

7. In the facts and circumstances of the present case, we are of the view that the respondents have not intentionally and willfully disobeyed the order dated 21.08.2018 passed in Special Civil Application No.12845 of 2018. However, in the peculiar facts and circumstances of the present case, the respondents

are directed to release the machine in question as and when the applicant deposits an amount of Rs.2 lacs. The said payment would be without prejudice to the rights and contentions of the applicant. At the same time, the applicant is directed not to transfer the machine in question in favour of any third party for a period of 6 months from today. It is further clarified that the release of the machine in question is subject to further proceedings, if any, filed by the respondents for recovery of the alleged illegal excavation of the ordinary sand as mentioned in the order dated 04.09.2018 passed by the Assistant Geologist, Gandhinagar.

8. The application is accordingly disposed of. Direct Service is permitted.

(R.SUBHASH REDDY, CJ)

(VIPUL M. PANCHOLI, J)

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