

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.81 OF 2019

1) Rahul s/o Gajanan Gawande,
aged about 30 years, occupation :
Driver, r/o Mundgaon, Tahsil
Akot, District Akola.

2) Ganesh s/o Mahadeorao Billewar,
aged about 32 years, occupation :
private, r/o Mundgaon, Tahsil Akot,
District Akola.

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Petitioners

- Versus -

1) State of Maharashtra, through its
Secretary, Department of Revenue,
Mantralaya, Mumbai.

2) The Collector, Department of
Revenue, Collectorate Building,
Akola.

3) The Sub-Divisional Magistrate,
Akot, Tahsil Akot, District Akola.

4) Taluka Magistrate and Tahsildar,
Telhara, Tahsil Telhara,
District Akola.

5) Talathi, Mouza Adsul, Tahsil
Telhara, District Akola.

6) The Police Station Officer,
Police Station, Telhara,
Tahsil Telhara, District Akola.

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Respondents

Shri S.N. Nandeshwar, Advocate for petitioner.

Shri V.A. Thakare, Assistant Government Pleader for respondents.

CORAM : R.K. DESHPANDE AND
S.M. MODAK, JJ.

DATED : MARCH 26, 2019

ORAL JUDGMENT (PER R.K. DESHPANDE, J.) :

Rule, returnable forthwith. Heard finally by consent of the learned Counsel appearing for the parties.

2) It is not in dispute that the seizure of vehicle unauthorizedly carrying sand, can be made under Section 48(7) of the Maharashtra Land Revenue Code, 1966 by Officer not below the rank of Tahsildar, who is authorized by the Collector. We can understand if the Officer other than Tahsildar detains the vehicle and then Tahsildar prepares seizure panchanama under his own signature. We can also understand that if the offence of theft is registered in respect of the sand carried in vehicle and such vehicle is detained by Naib Tahsildar or the Officer below the rank of Tahsildar and then Police Officers come and prepare seizure panchanama of the vehicle along with sand therein. But, none of these things has happened in the present case. The seizure panchanama is made by Talathi, who is not authorized in law. The question is concluded by the decision of this Court in the case of Sharad Ganpat Saundile and another vs. State of Maharashtra, delivered on 5/12/2018. The vehicle cannot, therefore, remain with the respondents.

3) We allow this petition Panchanama dated 30/5/2018 is hereby quashed and set aside. The respondents are directed to release Tractor No. MH-30 AB 8395 and Trolly No. MH-30 AN 767. The proceedings of penalty shall continue in accordance with law.

4) Rule is made absolute in the above terms with no order as to costs.

JUDGE

JUDGE

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