



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

949 WRIT PETITION NO. 9022 OF 2024

Gunaji Ramji Surnar,
Age : 75 years, Occu. : Agri.,
R/o. Rudha, Tq. Ahmedpur,
Dist. Latur.

VERSUS

1. **The State Of Maharashtra**
Through Secretary,
Revenue Department, Maharashtra State,
Mantralaya, Mumbai.
2. The Tahsildar,
Ahmedpur, Tq. Ahmedpur,
Dist. Latur.
3. Sub Divisional Officer,
Ahmedpur, Tq. Ahmedpur,
Dist. Latur.
4. The Collector,
Latur, Dist. Latur.
5. Additional Commissioner,
Aurangabad.

Mr. Vasant Digambarrao Salunke, Advocate for the Petitioner
Mr. S. M. Ganachari, AGP for Respondent Nos.1 to 5/State

CORAM : AJIT B. KADETHANKAR, J.

DATE : 26.03.2026

JUDGMENT :-

. Rule. Rule made returnable forthwith. With the consent of the parties and considering the nature of the controversy involved, the matter is taken up for final disposal.

Subject matter :

This is a typical case demonstrating how responsible Revenue Authorities undertake erogenous matters in utmost casual manner, which results into hardship to the farmers.

Brief facts of the case :-

1.1 The petitioner is owner of an agricultural land comprising of Gat No.208 of village Rudha, Tq. Ahmedpur, Dist. Latur.

1.2 A letter dated 08.02.2022 was addressed by the Talathi, Sajja Gangahipparga to the Tahsildar, Ahmedpur, informing that on 04.02.2022 a JCB machine/an earth-mover was found stationed in the said land of the Petitioner. It was alleged that the JCB was suspected to have been stationed there with an intention of illegal excavation of sand from the riverbed. It was further intimated that a Panchanama was conducted which is placed on record at page No.26. The panchanama records that the JCB was stationed in Gat No. 208 with the intention of illegal excavation of sand.

1.3 On the basis of the said communication, the Tahsildar by a communication dated 09.02.2022, issued a show cause notice to the petitioner calling upon him to explain why penalty should not be imposed on him for illegal excavation of sand from the riverbed.

1.4 The notice stated that **on 08.02.2022**, the JCB was found stationed in the petitioner's land for illegal sand excavation.

1.5 The petitioner submitted a reply to the show cause notice denying the allegations. He specifically stated that the JCB did not belong to him and that he didn't commit any offence whatsoever as alleged.

1.6 However, without conducting any inquiry, the Tahsildar by order dated 03.03.2022, imposed a penalty of Rs. 7,50,000/- upon the petitioner. The said order records that **on 08.02.2022**, a JCB was found stationed in land bearing Gat No. 208, owned by the petitioner. That, the JCB was launched in the field of the Petitioner with an intention of excavating sand illegally from the riverbed.

1.7 Aggrieved by the said order, the petitioner preferred an appeal before the Sub-Divisional Officer, Ahmedpur (SDO). The SDO, however concurred with the findings recorded by the Tahsildar and confirmed the penalty order, by passing an order on 02.06.2022.

1.8 The petitioner preferred an appeal before the District Collector Latur, which came to be turned down vide order dated 12.09.2022. Thereafter, the petitioner filed a revision No.405 of 2022 before the Additional Commissioner, Aurangabad Division, which also came to be turned down by the Additional Commissioner vide order dated 31.10.2023.

1.9 The petitioner also sought review of the order passed by the Additional Commissioner. Vide order dated 26.02.2024, the Additional Commissioner refused to entertain the review application for want of review provision. Aggrieved by all the aforesaid orders, the petitioner has approached this Court.

Submissions on behalf of the parties :

2. Mr. Vasantrya Salunke, learned Counsel raised following objections :
 - (i) There is major discrepancy in the record of the respondent authorities,
 - (ii) The Panchanama was prepared behind his back. No notice before conducting panchanama was given to him, even while the panchanama was carried out allegedly in his field.
 - (iii) No inquiry was conducted as to the ownership of the JCB earth-mover, nor any notice was given to its owner to ascertain the fact as to whether the Petitioner has engaged the JCB for the alleged purpose of excavating the sand illegally.
 - (iv) How the quantum of penalty is counted, is absolutely in dark.
 - (v) It is not the case of the respondents that the JCB was owned by the Petitioner and that it was caught while actually excavating the sand illegally from the riverbed.
3. Learned counsel for the petitioner was at pains to submit the use of a JCB could be employed in the agricultural field for a number of reasons. Still, it was for the authorities to clearly demonstrate the specific alleged purpose for which the JCB was engaged by the petitioner and that, accordingly it was stationed in his field.
4. Mr. Salunke, learned Advocate for the Petitioner invites my attention to the order passed by this court while issuing notice. He would submit that this court has recorded to have been shocked to see the facts of the case. He would lastly submit that the revenue authorities have acted in utmost casual manner and imposed penalty on the petitioner for Rs.7,50,000/-. He would submit

that the authorities even recorded a mutation entry and imposed charge on Petitioner's land for the penalty amount.

5. Mr. Salunke, learned counsel has placed reliance on order dated 30.08.2024 passed in Writ Petition No.8915 of 2024. Mr. Salunke, concludes his argument with a prayer to allow the writ petition.

6. The learned Assistant Government Pleader referred to the reply affidavits filed by the various authorities in response to the present writ petition. On instructions he makes following submissions :

(i) Petitioner's land is a small piece of land, and that the use of a JCB may not be necessary for any agricultural purpose particularly considering the extent of the land.

(ii) For the reason stated above, possibility could not ruled out that the JCB was stationed only for the purpose of illegal sand excavation.

(iii) Learned Assistant Government Pleader submits that Petitioner's land is adjacent to the river, and marks were seen that some vehicle, purportedly an earth mover had come out of the river. He submits that the authorities sought to explain that the marking could be of the same JCB found stationed in Petitioner's field.

(iv) He further submitted that, although the petitioner contended that the land had been given to his nephew on a "Batai basis," no material has been placed on record to substantiate the alleged transfer of possession on such basis.

(v) The learned Assistant Government Pleader also invited the Court's attention to the photographs annexed by the authorities which according to them, demonstrate that the JCB is stationed in the petitioner's field, i.e., Gat

No. 208 of village Rudha.

Discussion and findings :

7. With the able assistance of the learned counsel for the parties including the learned Assistant Government Pleader, I have cautiously perused the case papers of the writ petition, including the various reply affidavits filed on behalf of the respondent–authorities.

8. It is abundantly clear that there exists a serious discrepancy in the dates as narrated by the authorities. The first communication is dated **04.02.2022**, wherein the Talathi, Sajja Gangahipparga has reported that on **04.02.2022**, a JCB machine was allegedly found stationed in the petitioner’s field. The said communication refers to a panchanama. However, interestingly, the said panchanama does not bear the date on which it was drawn.

9. A perusal of the contents of the panchanama indicates that the panchas have conclusively recorded that the JCB was stationed in the petitioner’s field with the object of excavating sand illegally from the riverbed. No evidencing factors are recorded in the Panchanama. It is not disputed by the respondent authorities that notice of the Panchanama was not given to the Petitioner despite the Panchanama was carried out in his field and in respect of the JCB stationed in his field for the disputed purpose.

10. In my opinion, the Panchanama is absolutely not worthy to be considered for the facts recorded above.

11. Thereafter, all subsequent communications, including the impugned order as well as the show cause notice state that on **08.02.2022**, the JCB was noticed stationed in the petitioner’s field. It is surprising that the responsible revenue authorities have not even looked to this major discrepancy. This

creates strong doubt that the story arranged against the Petitioner is a cooked one.

12. Now, there is something more serious in this case. The respondent authorities were not coming forwards before this court to give justification behind the impugned orders. Hence this court has passed certain directions against them. Hence at later stage, the authorities filed reply affidavits with the submissions as advanced by the learned Assistant Government Pleader.

13. The reply affidavit also contain certain photograph showing a stationed JCB. This is the strongest and last attempt by the respondent revenue authorities to demonstrate that they conducted the entire action in most perfect manner.

14. I meticulously checked the said photographs annexed with the reply affidavit. Its shocking that the photographs annexed by the respondent-authorities clearly demonstrate that the same were shot on 03.02.2022. There is geo tagging on those photographs.

15. The basic reporting by the Talathi, Sajja Gangahipparga is about **04.02.2022**. Show cause notice and the penalty order quotes date of the alleged offense as **08.02.2022**. The Photographs placed with affidavit on oath before this Court are showing JCB stationed in a field on **03.02.2022**. The deponent to the reply affidavit placing reliance on the photograph shot on **03.02.2022** are extremely adventurous. To cover one mistake, they committed another, even graver one. I am of the opinion that the respondent authorities have tried to give an eye wash to this Court.

16. It is also an admitted position that no opportunity of hearing was granted to the petitioner, thereby resulting in a clear violation of the principles of natural justice. As recorded supra, the record of the present proceedings

reveals that this Court had directed the respondent–authorities to file their reply affidavits. Initially, the authorities failed to comply with the said direction, and it was only upon this Court directing their physical presence that the reply affidavits came to be filed.

17. As recorded above, the respondent authorities submitted that considering area of land holding of the Petitioner there could be no purpose of stationing the JCB in the field except for excavation of sand illegally from the riverbed. They have even submitted that some residue of clay were noticed in the JCB bucket.

18. These submissions are nothing but most irresponsible explanations offered by the responsible revenue authorities. A judicial note is taken that a farmer may require JCB for a number of purposes in his field irrespective of area of the land holding. Besides, the JCB is an earth mover, not a costly lavish luxury car. Its obvious that always there would find some residues of clay, sand, earth etc. in its bucket. Hence, both the submissions (supra) can only be said to be an absurd submissions by the respondent authorities.

19. For the reasons recorded above, I am of the considered opinion that the defenses taken by the authorities, namely that (1) the use of a JCB may not be beneficial to the petitioner considering the small area of agricultural land in his possession, and that (2) residue of clay are found in the JCB, are nothing but a mockery of the Petitioner – farmer.

20. Same is the case with the another submission by the respondent authorities stating that the Petitioner didn't place anything to show that the land was given to his nephew on a "Batai basis". One fails to understand how this absolve the authorities of their responsibility to justify how their action was lawful and in accordance with due process.

This Court expects that the responsible higher authorities of the State Government look into this matter seriously.

21. Considering the facts in the case and for the reasons recorded above, I am of the firm opinion that the Petition must succeed.

22. In view of this, I pass following order :

ORDER

- a. The writ petition is allowed.
- b. (i) The impugned order dated 03.03.2022 passed by the Tahsildar, Ahmedpur,
(ii) The impugned order dated 02.06.2022 passed by the Sub Divisional Officer, Ahmedpur,
(iii) The order dated 12.09.2022 passed by Collector, Latur,
(iv) The order dated 31.10.2023 passed by the Additional Commissioner and
(v) The order dated 26.02.2024 passed by the Additional Commissioner are quashed and set aside.
- c. The Mutation Entry No.717 dated 19.01.2023 putting encumbrances on land bearing Gat No.208 and Gat No.166 owned and possessed by the petitioner is quashed and set aside.
- d. The amount if any, deposited by the petitioner to the respondents – authorities shall be remitted within four (4) weeks from today to the petitioner together with interest at the rate of 7% per annum.

e. Considering the reply affidavit filed by the respondent authorities and the observations recorded above, the District Collector, Latur, shall examine the record of this case, the copies of the reply affidavits filed by the Tahsildar Ahmedpur and the Sub-Divisional Officer (SDO) before this Court, particularly in light of the photographs dated 03.02.2022, and shall do the needful.

f. The concerned Talathi, Sajja Gangahipparga shall, within two weeks here-from shall strike off the mutation entry No.717 of Government encumbrances from the revenue record of petitioner's land bearing Gat No. 208 and Gat No.166 situated at village Rudha.

g. Rule is made absolute in above terms.

[AJIT B. KADETHANKAR, J.]