

Court No. - 3

Case :- WRIT - C No. - 27135 of 2023

Petitioner :- M/S Anjanisut Infrastructure Pvt. Ltd.

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Vibhu Rai, Abhinav Gaur, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Siddhartha Varma, J.

Hon'ble Manoj Bajaj, J.

(1) The petitioner, a company received a notice dated 9th June, 2023 that it had excavated more mineral than was permitted by the permit dated 27.04.2023. There was a specific allegation that the petitioner had excavated minerals to the extent of 44,623 cubic meters which was much more than the permitted quantity which was 20,000 cubic meters. The petitioner replied to that notice on 21st June, 2023. In reply to the notice it was categorically mentioned that no permit was ever applied for by the petitioner and also the same was never obtained and it had also been stated that no 'Form MM 11' was ever applied and that on the spot in question there were no vehicles of the petitioner's parked.

(2) Thereafter, when the District Magistrate upon considering the reply of the petitioner on 12th July, 2023 cancelled the permit of the petitioner after holding that the petitioner had mined in excess to the permit which was granted to him, the petitioner had approached this Court. On 21.08.2023, we had passed an order asking for specific instructions. The order is being reproduced hereas under:

"From the instructions, which we have received it appears that an application was received in the office of the respondents on 11.04.2023. The initial fee of Rs.2,000/- was also deposited. Along

with the application the Adhar Card of Sri Sushant Pawar, one of the Directors was also appended and the PAN Card of the company was accompanying the application.

The case of the State is that even mining plan was submitted by the petitioner. Even from the instructions, it is evident that the Mines Officer had given a licence for the excavation of 20,000 cubic meters. From the spot in question certain vehicles have also been seized.

However, learned counsel for the petitioner has stated that neither the company had applied nor they had deposited any royalty etc.

We find that the application was made online and also for the removal of the minerals the OTP was issued.

It would, therefore, in the fitness of things that the mining department may investigate as to whether any application was sent from the office of the petitioner and also whether the vehicles belonged to the petitioner.

List this case on 29.08.2023 as fresh. By that time also all the policies by which the sand on the land of a bhumidhar is auctioned be produced by the department."

(3) In response thereof instruction was received on 8th August, 2023 and on 5th September, 2023. A perusal of the instructions shows that permit was granted on 27.04.2023, thereafter MM-11 was also granted and all these were a result of a valid application by the petitioner.

(4) Learned counsel for the petitioner upon perusing the instructions has argued that the petitioner which is a company had never applied. He has also stated that no amount to the tune of Rs.26,00,000/- which was required to be deposited for getting of the permit was ever deposited. It has been submitted that the petitioner would never deposit Rs.26,00,000/- by cash. It has also been submitted that the accepting officer had not put his signature on the *challan* by which the application fee was deposited. Still further learned counsel for the petitioner upon perusal of the

instructions has stated that the application was accompanied by a PAN Card and an affidavit. He submits that the signatures of the applicant on the application; the PAN Card and on the affidavit are absolutely different from each other and he, therefore, submits that the application, the grant of the permit etc. was never there at the behest of the petitioner. He states that malafidely things had been done behind the back of the petitioner, which has its office in Delhi; and the land is situate at Baghpat.

(5) Learned Standing Counsel, however, in reply has submitted that there was an application which was accompanied by an affidavit and all the required documents and also the required fee of Rs.26,00,000/- was paid. He submits that even applications were made for the grant of MM-11 by the petitioner.

(6) Having heard the learned counsel for the petitioner and the learned Standing Counsel, we are of the definite view that when the petitioner received the notice dated 9th June, 2023, he had filed a specific reply that he had never applied for the permit. We also find from the reply that the petitioner had stated that even MM-11 was never applied for and no OTP etc. was received at the end of the petitioner.

(7) However, upon a perusal of the order dated 12th July, 2023 which is impugned before us, we find that these aspects of the matter have not been considered. The District Magistrate has only relied upon the inspection report dated 06.06.2023 and 07.07.2023 and has concluded that the petitioner had excavated more than 20,000 cubic meters for which it had the permit and had instead excavated 44623 cubic meters which was in excess by 24623 cubic meters. We also find that none of the grounds which were taken by the petitioner in the reply it had submitted on 21st June, 2022 had

been considered.

(8) In this view of the matter, we are of the definite view that the order dated 12th July, 2023 cannot be sustained in the eyes of law and thus deserves to be set aside. We accordingly, quash the order dated 12th July, 2023 and remand the matter back to the District Magistrate who shall in accordance with law after considering the objection which was filed by the petitioner on 21st June, 2023 decide the matter afresh by passing a speaking and a reasoned order.

(9) We also make it clear that such documents which have been received by the petitioner by way of instructions, which the learned Standing Counsel had supplied on 8th August, 2023 and 5th September, 2023 and did not form a part of the notice, may also be explained by the petitioner by an additional reply.

(10) With these observations, this writ petition is **allowed**.

Order Date :- 12.10.2023

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