

GAHC010145642024



2024:GAU-AS:12868-DB

THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Writ Appeal No. 276/2024

Rakesh Kumar Singh,
S/o Lt. Saheb Singh,
R/o Namrup, District- Dibrugarh,
Assam, PIN-786623.

- Appellant

-Versus-

1. The State of Assam, represented by the Secretary to the Govt. of Assam, Forest Department, Dispur, Guwahati.
2. The Commissioner & Secretary to the Government of Assam, Forest Department, Dispur, Guwahati, Assam.
3. The Principal Chief Conservator of Forest, Assam, Aranya Bhawan, Panjabari, Guwahati, Assam.
4. The Divisional Forest Officer, Dibrugarh, Assam.
5. The Range Forest Officer, Jeypore Range, Jeypore, District-Dibrugarh, Assam.

- Respondents

**-BEFORE-
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

For petitioner(s)/appellant(s): Mr. G.N. Sahewalla, Sr. Advocate
Mr. S. Murarka, Advocate

For respondent(s) : Mr. P. N. Goswami, Add. AG, Assam
Mr. I. Kalita, SC, Forest Deptt.

Date of Hearing : 10.12.2024.

Date of judgment : 18.12.2024

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

1. This writ appeal has been preferred by the appellant being aggrieved with the judgment and order dated 21.06.2024 passed by the learned Single Judge in WP(C) No. 5052/2022 and WP(C) No. 1357/2015.

The learned Single Judge has dismissed the writ petitions wherein the appellant had questioned the jurisdiction of the forest officials of issuing notices dated 13.07.2022 to the drivers of the trucks owned by the appellant, bearing registration Nos. AS-06-B-9835 and AS-23-CC-0218, respectively, under Rule 63/64(i)/73 of the Assam Minor Mineral Concession Rules, 2013 (hereinafter to be referred as "Rules of 2013") and Section 49 of the Assam Forest Regulation (Amendment) Ordinance, 1994 and Rules made under Section 40 of the Transit Rules of the Assam Forest Regulation 1891 (hereinafter to be referred to as "Regulation of 1891"). In the writ petition the appellant had also assailed the validity of the Vehicle

Seizure Penalty Tickets dated 12.07.2022 and 15.07.2022, whereby penalty of Rs. 63,108/- and Rs. 66,588/- have been imposed.

In the writ petition, the appellant had also prayed that the above-referred trucks be directed to be released which were seized by the forest officials on 08.07.2022.

2. Heard Mr. G. N. Sahewalla, learned senior counsel appearing for the appellant and Mr. P. N. Goswami, learned Additional Advocate General, Assam, assisted by Mr. I. Kalita, learned Standing Counsel, Forest Department, appearing for the respondents.

3. The precise case of the appellant before the learned Single Judge was that the appellant is the proprietor of a Stone Crusher unit situated at Namrup, in the District of Dibrugarh, Assam, and has been running the said Stone Crusher unit from the last about thirty years. It is contended that the Stone Crusher unit is used for the purpose of crushing stones and boulders into pieces of various sizes and for screening of stone-chips/stone-dust, which are supplied to the government as well as to private individuals for use in constructional works and development of roads, dams, etc.

The cause of action arose to the appellant to approach the writ court when the trucks belonging to the appellant, which were transporting crushed stones from the Stone Crusher unit of the appellant to supply the same to some consumer, were seized by the forest officials on

08.07.2022 and the drivers of the said trucks were issued notice dated 12.07.2022 under various provisions of the Rules of 2013 as well as the Regulation of 1891.

4. It is the case of the appellant that aggrieved by the seizure of his trucks, he moved a representation before the Divisional Forest Officer (DFO), Dibrugarh Division, on 12.07.2022 and 14.07.2022. However, the DFO issued the impugned Penalty Tickets dated 12.07.2022 and 15.07.2022 imposing penalty. It is further contended by the appellant that against the said penalty, he filed objection and prayed for withdrawal of the above-referred Penalty Tickets.

5. The appellant challenged the action of the forest officials before the writ court contending that as per the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter to be referred to as "MMDR Act"), the item "stone" is defined as minor mineral. It is contended that Section 3(3) of the MMDR Act defines "minor minerals", which means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the official Gazette, declare to be a minor mineral, are treated as minor minerals.

It is argued that once the item "stone" is declared as minor mineral, the forest authorities has no jurisdiction or competence under the MMDR Act or the Rules of 2013, to

take any action against any person dealing with stone. It is contended that the item "stone" cannot be termed as forest produce and, in such circumstances, the forest officials cannot take any action in respect of the stone crushed and supplied by the Stone Crusher unit, owned by the appellant, to its consumers and, therefore, the impugned action of the forest officials of issuing the Penalty Tickets and seizing the trucks cannot be sustained. Accordingly, it is prayed that the impugned order passed by the learned Single Judge be set aside and the writ petitions filed by the appellant be allowed.

6. The respondents have contested the claim of the appellant and have argued that under the Rules of 2013, the forest officials are empowered to take action against the drivers of the trucks for illegally transporting stone and, therefore, there is no illegality in the action of the forest officials in issuing Show Cause notices to the drivers of the trucks owned by the appellant and in imposing the penalties as prescribed under the Rules of 2013. The respondents have also contended that the item "stone" is a forest produce as per the definition of "forest produce" provided in the Indian Forest Act, 1927 as well as the definition of "forest produce" given in the Regulation of 1891.

7. The learned Single Judge, after considering the submissions made on behalf of the parties concerned and after taking into consideration the provisions of the of the

Indian Forest Act, 1927, the Regulation of 1891 and the MMDR Act has dismissed the writ petition filed on behalf of the appellant, while concluding that the item “stone” comes within the definition of “forest produce”, as provided under the Definition Clause of the Indian Forest Act, 1927 as well as the Regulation of 1891.

8. Now the question for determination by us is whether the item “stone” comes within the definition of “minor minerals”, or “forest produce” and whether the officials of the forest department can take action against a person under the provisions of the Rules of 2013.

9. It is gainful to take into consideration the relevant provisions of the MMDR Act, the Rules of 2013, the Indian Forest Act, 1927 and the Regulation of 1891.

Section 3(e) of the MMDR Act provides the definition of “minor minerals”, which reads as under:

“3. Definitions- In this Act, unless the context otherwise requires,-

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(e) “minor minerals” means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the official Gazette, declare to be a minor mineral;”

10. “Minor minerals” have not been defined in the Rules of 2013. However, Rule 2(2) of the Rules of 2013 says that all other words and expressions used in the Rules but not defined shall have the same meanings as have been respectively assigned to them in the MMDR Act.

From the above definition, it is clear that the item “building stones” is defined as minor mineral.

11. The definition of “forest produce” is provided in Section 2(4) of the Indian Forest Act, 1927, which reads as under:

“2. Interpretation clause- In this Act, unless there is anything repugnant in the subject or context,-

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(4) “forest produce” includes-

(a) the following whether found in, or brought from, a forest or not, that is to say – timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth [Ins. By Act 26 of 1930, Sec.2] and myrabolams, and

(b) the following when found in, or brought from a forest, that is to say-

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

*(iv) **peat, surface soil, rock and minerals (including lime-stone, laterite, mineral oils, and all products of mines or quarries);”***

It is noticed that Regulation 3(4) of the Regulation of 1891 also defines “forest produce”. However, the same is *pari materia* to the provisions of Section 2(4) of the Indian Forest Act, 1927.

12. From the above, it is clear that the item "building stone" is defined as minor mineral in the MMDR Act and in the Rules of 2013. However, at the same time, "rock" is defined as a forest produce in the Indian Forest Act, 1927 as well as in the Regulation of 1891.

In common understanding, the items "building stone" and "rock" are synonymous and the meanings of both the words are alike. However, the item "stone" can be treated as forest produce if its origin is from forests or the stone is brought from forests.

Section 2(4) of the Indian Forest Act, 1927 defines "forest-produce". It says that the items mentioned in Clause (a), whether found in, or brought from, a forest or not, will be treated as forest produce. However, Clause (b) provides that the items mentioned in Clauses (i) to (iv) will be treated as forest produce when found in, or brought from a forest. Item rock finds place in Clause (iv), which is synonym to stone. However, for the purpose of treating stone as forest produce, the officials of the Forest Department have to ascertain whether the stone transported by any transporter is brought from forests or not.

In the present case, no such material is available on record which suggests that before seizing the trucks as well as the stone, the forest officials had verified that the stone transported in the trucks belonging to the appellant was brought from forests.

We are in agreement with the conclusion arrived at by the learned Single Judge that there is no room for any doubt whatsoever that “stone” can be held to be forest produce if its origin can be traced to forests. However, as observed earlier, no such material is available on record to come to the conclusion that the stone transported through the trucks belonging to the appellant originated from the forests.

13. Be that as it may, even if we assume that the stone which was being transported in the trucks belonging to the appellant was not forest produce, the question arises whether the action of the forest officials, under the Rules of 2013, of seizing the trucks as well as the stone being transported in the said trucks, is tenable in the eyes of law or not.

14. It is to be noticed that in the Rules of 2013, “minor minerals” have been bifurcated into two categories: (i) minor minerals for industrial and specific uses and (ii) minor minerals for uses other than in industry. The said bifurcation is provided in Schedule “X” and Schedule “Y” appended to the Rules of 2013.

In the Rules of 2013, the authorities for regulating mining lease, mining contract, permit or any other concession or licence, transit pass, or for controlling or regulating mining or other actions in respect of the minor minerals, as specified in Schedule “X” and Schedule “Y” of the Rules of 2013, are distinctly defined. Rule 2(i), (j) and

3 of the Rules of 2013 being relevant, are reproduced hereunder:

“Rule 2(i) ‘Department’ means the Department of Mines and Minerals, Assam in respect of minerals under Schedule-‘X’ and the Department of Environment and Forest in respect of minerals under Schedule-‘Y’.

(j) ‘Director’ means the Director of Geology and Mining.

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Rule 3: Power to grant mining lease or mining contract or any other concession or licence or transit pass or permit etc. – A mining lease or a mining contract or permit or any other concession or licence or transit pass or permit or licence or control or regulation of mining or other actions under these rules, etc. shall be granted/taken by:-

(a) The Director in respect of minor minerals for industrial and specific uses as specified in Schedule ‘X’;

(b) The Principal Chief Conservator of Forests and Head of Forest Force, Assam or any officer authorised by the Government by notification in this behalf in respect of minor minerals for uses other than in industry as specified in Schedule ‘Y’.”

15. Rule 3 of the Rules of 2013 gives power to the departmental authorities, i.e. Director of Geology and Mining, Assam and the Principal Chief Conservator of Forests and Head of Forest Force, Assam, or any other officer authorized by the Government, to grant mining lease or a mining contract or permit or any other concession or licence or transit pass or permit or licence or control or regulation of mining or other actions in respect of the minor minerals as specified in Schedule “x” and “Y”. The Director of Geology and Mining is the authority under Rule 3 in respect of the minor minerals specified in Schedule “X”, whereas the Chief Conservator of Forests

and Head of Forest Force, Assam, is empowered by Rule 3 in respect of the minor minerals specified in Schedule "Y".

16. Rule 67 gives power to the Director, Geology and Mining, or the Chief Conservator of Forests and Head of Forest Force, Assam, as the case may be, to review the orders passed by him under the Rules.

Rule 68 empowers the Director, Geology and Mining/the Principal Chief Conservator of Forests and Head of Forest Force, Assam to hear and decide an appeal against the order passed by any subordinate officers of the above-referred two departments.

Rule 68(2) provides that an appeal against the order passed by the Director, Geology and Mining, or the Principal Chief Conservator of Forests and Head of Forest Force, Assam, in respect of the minerals specified under Schedule "X", shall lie before the Government, Mines and Minerals Department and in respect of the minerals under Schedule "Y", such appeal shall lie before the Government, Environment and Forest Department.

17. From the analysis of the above provisions, it can be assumed that forest officials are also empowered to deal with the matters relating to minor minerals, as defined in Schedule "Y" of the Rules of 2013. As such, we find that the observations given by the learned Single Judge in paragraph 34 of the impugned order that no material was placed before the court to show that the State Government had framed any Rules under the MMDR Act empowering the Forest Department to deal with the minor minerals as

defined under the MMDR Act, is not in consonance with law.

18. It is not the case of the appellant that the stone which was transported in its trucks was not covered under Schedule "Y" of the Rules of 2013. In such circumstances, we find that the challenge of the appellant to the authority of the forest officials to take action under the provisions of the Rules of 2013 is without any merit. Hence, no interference with the impugned judgment and order is called for.

The writ appeal is, therefore, dismissed.

No order as to costs.

JUDGE

CHIEF JUSTICE

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