

Court No. - 27

Case :- APPLICATION U/S 482 No. - 7071 of 2022

Applicant :- Rakesh Kumar

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home And Another

Counsel for Applicant :- Alok Kr. Misra

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Ajeet Kumar Mishra holding brief of Sri Alok Kr. Misra, learned counsel appearing for the applicant and Ms Charu Singh, learned Additional Government Advocate and perused the record.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has assailed validity of the order dated 20.07.2022 passed by Judicial Magistrate-I, Gonda whereby an application for release of a vehicle has been rejected by the trial court on the ground that as per the provisions contained in Section 72(6) of the Uttar Pradesh Minor Minerals (Concession) Rules, 2021 (hereinafter referred to 'the Rules, 2021'), the District Magistrate is authorized to pass an order for release of vehicle.

The applicant had filed Criminal revision No.273 of 2022 challenging the aforesaid order dated 20.07.2022 and the revision has been dismissed by means of the the judgment and order dated 19.06.2022 passed by the Additional Sessions Judge, Gonda and the applicant has challenged the validity of that order also.

3. Briefly stated facts of the case are that the applicant owns a JCB brand excavation machinery, which was seized on 06.07.2022 on the allegation that it was found engaged in digging a pond without any permit.

4. Contention of the learned counsel for the applicant is that the applicant's excavation machine was hired by one Awadhest Kumar for digging of a pond in furtherance of permission granted to him by the Sub Divisional Magistrate Colonelganj, Gonda, a copy whereof has

been annexed with the application.

5. The trial court has rejected the application on the ground that he has no power to release the vehicle under Section 72(6) of the Rules, 2021.

6. Rule 72 aforesaid provides as follows:-..

"72. Restriction on transport of the Minerals-

(1)The holder of a mining lease or permit or a person authorised by him in this behalf shall issue a pass in Form MM-1 I or Form e-MM-11 prepared through electronic process to every person carrying, a consignment of minor mineral by a vehicle, animal or any other mode of transport, the State Government may, through the District Officer, make arrangements for the supply of printed MM-1 1 Form books on payment basis.

(2) No person shall carry, within the State a minor mineral by a vehicle, animal or any other mode of transport, without carrying a pass in Form MM-11/ Form e-MM-11 issued under sub rule (I), valid transit pass issued under rule 7(3) of Uttar Pradesh Mineral (Prevention of Illegal Mining, Transportation and storage) Rules, 2018 or similar valid transit pass issued by any other State:

Provided that if the State Government enters into an agreement to collect the Royalty through contractor, receipt of royalty or zero receipt as the case may be shall be issued by such contractor and in such cases carrying out such receipt with Form MM-11/ form e-MM-11 will be mandatory for transportation.

Provided further that the transportation of the mineral will be valid only after the State Government has determined the regulation fees imposed from time to time on the mineral coming from other State.

(3)Every person carrying any minor mineral shall, on

demand by any officer authorised under Rule 67 or such officer as may be authorised by the State Government in this behalf, show the said pass to such officer and allow him verify the correctness of the particulars of the pass with references to the quantity of the Minor Mineral.

(4) The State Government may establish a check post for any area included in any mining lease or permit and when a check post is so established public notice shall be given to this fact by publication in the Gazette and in such other manner as may be considered suitable by the State Government.

(5) No person shall transport a minor mineral for which these rules apply from such area without first presenting the mineral at the check post established for that area for verification of the weight or measurement of the mineral.

(6) Any person found to have contravened any provision of this rule then the District Magistrate will recover penalty of Rs. 25, 000/- (twenty five thousands) along with the price of such minor mineral including royalty and any such penalty for violation of environmental norms, as prescribed by the State Government from time to time. After deposit of the entire amount mentioned above the vehicle etc including minor mineral will be released."

7. A bare perusal of the aforesaid provisions indicates that it imposes restriction on 'transportation of minerals'. Rule 72(5) provides that no person shall transport a minor mineral for which these rules apply, from which area without first presenting the mineral at the check post established for that area for verification of the weight or measurement of the mineral.

8. Rule 72(6) provides that any person found to have contravened any provision of this rule will be inflicted with penalty and the District Magistrate may order release of the vehicle after deposit of penalty.

9. Rule 72 imposes restrictions on 'transportation of minerals' whereas the applicant's vehicle which has been seized is not a vehicle used for transportation and it is a vehicle used as an excavation machinery. Therefore, it appears that the provisions of Rule 72 of the the Rules, 2021 will not be applicable to the vehicle of the applicant as it is not a transportation vehicle.

10. The Uttar Pradesh Minor Minerals (Concession) Rules, 2021 have been framed in exercise of powers conferred by Sub-section 1 of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act, 1957').

11. Section 4(1-A) of the the Act, 1957 provides that 'no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with provisions of this Act and the Rules made thereunder.

12. Section 21 of the Act, 1957 reads as under:-

*"21. **Penalties.**—254[(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1-A) of Section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.*

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.]

255[(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of Section 4, such trespasser may be served with an order of eviction

by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

256[(4) 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 any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4-A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.]

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.]

257[(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under sub-section (1) shall be cognizable.]

258[Explanation.—On and from the date of commencement of the Mines and Minerals (Development and Regulation)

Amendment Act, 2021, the expression “raising, transporting or causing to raise or transport any mineral without any lawful authority” occurring in this section, shall mean raising, transporting or causing to raise or transport any mineral by a person without prospecting licence, mining lease or composite licence 259[, exploration licence] or in contravention of the rules made under Section 23-C.]”

13. Section 21 (4-A) of the Act, 1957 provides that 'any mineral tool, equipment, vehicle or any other thing seized under sub-section (4) shall be liable to be confiscated by an order of the Court competent to take cognizance of the offence under Sub Section (1) and shall be disposed of in accordance with the directions of such Court.

14. Section 72 of the Rules, 2021 has been framed under the Act, 1957 and the provisions of the Act will obviously have precedents over the provisions of the Rules in case of any conflict.

15. Although Section 72 (6) of the Rules, 2021 based on certain restrictions on transportation of the minerals and empowers the District Magistrate to impose penalty in case of violation of those restrictions, the provisions of Rule 72(6) will not override the provisions contained in Section 21(4-A) of the Act, 1957. Therefore, I am of the considered view that the statute vests power of dealing with the confiscated tool, equipment or vehicle in the Court.

16. The Mining Inspector has entrusted the JCB excavation vehicle of the revisionist to the police and the entrustment letter dated 06.07.2022 states that the JCB was being used in digging of the pond and no document could be shown on the spot in this regard. Accordingly, the custody of the JCB was handed over to the police and the police has taken the same in its custody and it is recorded in the general diary on 06.07.2022.

17. Chapter XXXIV of Cr.P.C. deals with 'disposal of property' and Section 451 falling in this Chapter provides as follows:-

"Section 451 – Order for custody and disposal of property

pending trial in certain cases

When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of."

18. From the aforesaid statutory provisions, it appears that undoubtedly the Court has power to dispose of the seized vehicle of the revisionist, which is used in excavation of earth. The learned Judicial Magistrate has committed a manifest error in rejecting the application for release of the JCB vehicle on the ground that it has no jurisdiction.

19. Accordingly, impugned orders dated 20.07.2022 passed by Judicial Magistrate-I, Gonda and 19.06.2022 passed by the Additional Sessions Judge, Gonda are hereby quashed and the learned Judicial Magistrate-I, Gonda is directed to pass a fresh order on the application for release of the vehicle, in accordance with law, in the light of the observations made in this order, within a period of 30 days from the date of receipt of certified copy of this order.

(Subhash Vidyarthi, J.)

Order Date :- 23.2.2024
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