



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13588 of 2026

Tarak Nath Das

....

Petitioner

Mr. Soumya Ranjan Mohanty, Advocate

-Versus-

State Of Odisha & Ors.

....

Opposite Parties

Ms. Biswabara Dash, ASC

**CORAM:
HON' BLE THE CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE CHITTARANJAN DASH**

Order No.

**ORDER
21.07.2026**

- 02.**
- 1.** The spate of litigations are exploding the dockets of this Court when the Tahasildar of the respective jurisdictions are passing an order in relation to sand sairat sources after an amendment has been brought by virtue of a notification dated 27th December, 2022 (the Odisha Minor Minerals (Second Amendment) Rules, 2022) redefining the term “authorized officer” to mean the Director of Mines and Geology or any officer duly authorized by the Government in writing for the purpose.
 - 2.** The fulcrum of the said amendment having brought into the Odisha Minor Mineral Concession Rules, 2016 (for short, the “OMMC Rules”) is the transmission of the powers to the Mining Department and the conferment of power upon them. The said amendment takes effect on the date of publication in the official



gazette which was admittedly published on 28th December, 2022. The moment the amendment brought into the OMMC Rules, 2016 to take effect from the date of its publication in the official gazette, it denuded the power of the erstwhile authority to deal with any aspect of the mining including the quarry leases, and, therefore, such authority cannot assume power to deal with it. It further provides that all the records which are lying with the erstwhile competent authority shall be transmitted to the authority who has now been conferred power to deal with such aspect which further corroborates the intention of the legislators that the erstwhile authority cannot usurp power in this regard.

3. The challenge is made to order dated 17th July, 2023 passed by the Tahasildar, Vysanagar in cancelling the lease in respect of Nayahatapatana Baitarani River Sand Quarry and forfeiting the security amount after the amendment came into force and also made a payer to direct the competent authority, i.e., Mining Officer to take consequential steps to execute a fresh lease deed in favour of the petitioner.

4. We have been dealing with the identical cases time and again and it is painstaking to notice that despite our decision having rendered interpreting the nuances of the amendment having brought, the illegality and/or infirmity remains a recurring feature. In one of the Writ Petitions being W.P.(C) No.31118 of 2025 (*Dinesh Agrawal Vs. State of Odisha and others*), in an identical situation, we set aside the order of the Tahasildar as he is denuded of the power to take any decision relating to such quarry leases under the said Rules and



directed the competent authority as defined in the amended provision to take a decision afresh.

5. We vividly recapitulated the principles of law laid down as far back in the year 1936 (*Nazir Ahmad Vs. King Emperor*) reported in *AIR 1936 Privy Council 253* followed uniformly in a subsequent decision rendered by the Apex Court and the other Courts of the country that, where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. It was further highlighted that once such power is restricted to do a certain thing, it impliedly takes away the other method of performance. In the case of *Deepak Agro Foods Vs. State of Rajasthan* reported in (2008) 7 SCC 748, the Apex Court has held that mere wrong exercise of the jurisdiction does not ipso facto invite such decision a nullity but if the jurisdiction is taken away and there is a lack of jurisdiction into the authority, then the order passed or a decision taken by such authority is intricately related to the concept of nullity. In *Central Potteries Ltd., Nagpur Vs. State of Maharashtra* reported in *AIR 1966 SC 932*, the Apex Court highlighted the distinction between the want of jurisdiction and the illegal and/or irregular assumption of jurisdiction in passing an order or taking a decision. In a later case, the question of jurisdiction is not an issue, but the assumption and exercise of such jurisdiction remained an issue which does not *ipso facto* render the said judgment a nullity but at best can be termed as erroneous but the moment there is a lack of jurisdiction and if the same is exercised, such order or a decision cannot be said to be a valid order or a decision in the eye of law. The moment the amended Rules has taken away the jurisdiction from the Tahasildar and vested it upon the



Mining Officer, any order or a decision taken by the Tahasildar is *per se* illegal and/or a nullity for want of jurisdiction and power, and therefore should not be allowed to occupy a space in the administrative field.

6. We, thus, *set aside* the impugned order dated 17.07.2023 issued by the Tahasildar, Vyasagar. The Tahasildar is directed to transfer all the records, if not already transferred, to the Mining Department, within a period of two weeks from date. Correspondingly, the Mining Officer is directed to take a fresh decision independent of the observations made hereinabove by recording proper reasons in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

7. With these observations, the writ petition stands disposed of.

(Harish Tandon)
Chief Justice

(Chittaranjan Dash)
Judge

AK.Pradhan/Priyanka

