## IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.3921 of 2015**

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Palle Chandrashekhar Reddy son of late Palle Ranga Reddy Managing Partner of M/s Pallavi Constructions, a partnership firm, resident of Flat No. 101, Sai Ville Apartment, Dawarkapuri Colony, Punjagutta, P.S. Panjagutta, Hyderabad - 500082

.... .... Petitioner

Versus

1. East Central Railway (Construction Organization) through the Chief Administrative Officer/(Construction)/South East Central Railway, Mahendrughat, P.S. Pirbahore, Town & District Patna - 800004.
2. Chief Administrative Officer/(Construction)/South, East Central Railway, Mahendrughat, P.S. Pirbahore, Town & District Patna - 800004.
3. Chief Engineer/(Construction)/Central, East Central Railway, Mahendrughat, P.S. Pirbahore, Town & District - Patna.
4. Deputy Chief Engineer/Construction/East Central Railway, Hazaribagh, At & P.S. Town & District Hazaribagh (Jharkhand).
5. The State of Jharkhand through the Secretary, Mines & Geology Department, Government of Jharkhand, Engineer's Hostel, 2nd Floor, Sector - 3, Dhurwa Road, Ranchi (Jharkhand).
6. Assistant Mining Officer, Mines & Geology Department, Government of Jharkhand, Engineer's Hostel, 2nd Floor, Sector - 3, Dhurwa Road, Ranchi.
7. Assistant Mining Officer, Hazaribagh, At & P.O., P.S. Hazaribagh (Jharkhand)

.... .... Respondents

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**Appearance :**

For the Petitioner : Mr. Umesh Prasad Singh, Sr. Advocate
Mr. Rajiv Ranjan Prasad, Advocate

For the State of Jharkhand : Mr. Dhrub Mukherji, AAG
Mr. Arup Kumar Chongdar, Advocate

For the Railways: Mr. Anil Kumar Sinha and
Mr. Ankit Katriar, Advocates

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**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN**

C.A.V. JUDGMENT

**Date: 09-09-2015**

I have the parties and have perused the records of this case.

The petitioner seeks quashing of the order/direction contained in letter dated 30.01.2015/08.02.2015 issued under the signature of the Deputy Chief Engineer/Con//1, East Central Railway, Hazaribagh, by which he has directed the firm Pallavi Construction to submit O & P Form as per agreement provision otherwise royalty with penalty in terms of Assistant Mining Officer's letter no. 97/M dated 20.01.2011 will be deducted from his bill. The petitioner further seeks direction that the demand of royalty by the State of Jharkhand for use of ordinary earth for cutting, filling, compaction, blanketing, turfing, construction of minor bridges and other associated works being done by the petitioner treating it as minor mineral as illegal and without authority of law and seeks that it should be held that no royalty is chargeable on the ordinary earth used for filling or levelling purposes in construction of embankment, road, railways, building, in terms of the Rules framed under section 15 of the Mines and Minerals (Development & Regulation) Act, 1957, known as "Jharkhand Minor Mineral Concession Rules, 2004", specially in view of the fact that Schedule II attached to the Rules does not provide charging of royalty as notified by the Central Government vide Notification No. GSR 1995(E) dated 03.02.2000 bringing the ordinary earth for the aforesaid purposes into the definition of "Minor Minerals".

The petitioner by filing Interlocutory Application No. 4062 of 2015 has also challenged deduction of royalty by the authority of respondent no. 1 in view of the directive of the concerned Department of the State of Jharkhand @ Rs. 15/- per cubic meter, which comes to Rupees One Crore.

The petitioner, who claims to be the managing partner of M/s Pallavi Construction which is a partnership firm, submitted a tender in response to NIT for use of earth for cutting, filling, compaction, blanketing, turfing, construction of minor bridges and other associated works between Koderma to Hazaribagh in construction of a new broad gauge line from Koderma to Ranchi. The petitioner was granted work in terms of the agreement contained in Annexure 1 executed by the competent authority of the East Central Railway (Construction Organisation) through the Chief Engineer/CON/Central, East Central Railway MHX, Patna in the name of the President of India at one hand and M/s Pallavi Construction at the other hand. The petitioner executed the work and submitted the bills for payment which were pending consideration, however, the same have been finalized after deducting the royalty amount for the use of the earth for the aforesaid work at the rate of Rs. 15/- per cubic meter.

Mr. Umesh Prasad Singh, learned senior counsel, appearing for the petitioner has submitted that section 3(e) of the Mines and Minerals (Development & Regulation) Act, 1957 (hereinafter to be referred to as "the Act") defines minor minerals being 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. Under section 15 of the Act the State Government has been given power to make Rules in respect of minor minerals by notifying it in the Official Gazette for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals. Sub-section 1A(g) empowers the State Government to fix and collect the rent, royalty, fees, dead rent, fines or other charges with respect to the minor minerals. The State of Bihar in terms of the aforesaid power came up with the Bihar Minor Minerals Concession Rules, 1972 and by notification dated 28.09.1994 published in the Official Gazette on 06.10.1994 brought Entry No. 3 in Schedule II in Hindi and English. In Hindi version the words "Sadharan Mitti" was used whereas in English version the words "Ordinary Clay" was used. However, it was specified that the same if used for manufacturing of Raniganj tiles and commercial use would raise royalty at the rate of Rs. 15/- per cubic meter whereas it was specified that the same being used for other purposes would raise no royalty. However, the Central Government vide its notification no. GSR 1995(E) dated 03.02.2000(Annexure 5) in exercise of power conferred under section 3(e) of the Act brought the ordinary earth used for filling or levelling purposes in construction of embankment, road, railways, building within the definition of minor minerals in addition to the minerals already declared as such. The notification finally came for consideration before the Apex Court and the Apex Court vide the judgment dated 09.11.2009 rendered in Civil Appeal No. 2088 of 2007(M/s Som Datt Builders Ltd. v. Union of India and others) and other analogous matters upheld the inclusion of the ordinary earth, being used as mentioned in the notification, in the definition of minor minerals provided under section 3(e) of the Act. However, prior to that, the State of Bihar brought an amendment in Schedule II vide notification published in the Bihar Gazette dated 18.04.2006(Annexure 6/1) and included ordinary earth being used for construction of embankment, road, railways, buildings etc. for the purposes of levelling or filling for charging royalty at the rate of Rs. 15/- per cubic meter.

Then a question came for consideration before a Division Bench of this Court in **Hindustan Steel Works Construction and others v. The State of Bihar and others (2007(2) PLJR, 849).**. Considering the provisions of the Act and the Rules as well as the old provisions of Schedule II and amended provisions of Schedule II to the Bihar Minor Minerals Concession Rules made in the year 2006, the Division Bench came to the conclusion that even after inclusion of ordinary earth for the aforesaid purposes in section 3(e) of the Act, unless and until the State Government makes it chargeable by specifically bringing it in the entries of Schedule II of the Bihar Minor Minerals Concession Rules, 1972, royalty cannot be charged. The Division Bench has further held in the aforesaid background that such royalty could only be charged after 18.04.2006 when necessary entry was made in Schedule II but, though after inclusion of ordinary earth for the said purpose in the definition of minor minerals it became subject of royalty by the State Government, however, since it was not done immediately, any demand of royalty by the petitioner prior to 18.04.2006 would be illegal and unsustainable.

After reorganization of the State of Bihar in terms of the Bihar Reorganisation Act, 2000 and creation of the State of Jharkhand, the State of Jharkhand adopted the provisions of the Bihar Minor Minerals Concession Rules, 1972 and the Schedule thereof even in the Jharkhand Minor Minerals Concession Rules, 2004(Annexure 3) which would be apparent from its plain reading. However, though the State of Bihar came up with the amendment by bringing necessary provision making the use of ordinary earth for the aforesaid purposes reflected in the notification of the Central Government as contained in Annexure 5 as chargeable as royalty, however, the State of Jharkhand never came up with such modification/amendment. The Division Bench in **Hindustan Steel Works Construction and others (supra)** has clearly held that the

State of Bihar was not competent to charge royalty till such modification/amendment in the Schedule II of the Minor Minerals Concession Rules,1972 by including necessary provision, as discussed above was brought. A Single Bench of the Jharkhand High Court considered the issue in W.P.(C) No. 4737 of 2014 (M/s RAUS-SCL(JV) v. East Central Railways and others and other analogous matters and after relying upon the aforesaid decision of the Division Bench of this Court has restrained the State of Jharkhand from realizing royalty for ordinary earth used for filling or levelling purposes in construction of embankment, roads, railways, building without amending second schedule to the Jharkhand Minor Mineral Concession Rules, 2004. The decision rendered by the Jharkhand High Court has been appended by the petitioner as Annexure 7 in his reply to the counter affidavit filed on behalf of the respondent nos. 5 to 7. Respondent Nos. 5 to 7 were also parties to the batch cases, which have been disposed of by the Jharkhand High Court and, as such, in my considered opinion, having regards to the aforementioned facts and circumstances the State of Jharkhand is not competent to charge royalty from the petitioner for the use of ordinary earth for the purposes of levelling or filling in construction of railways till relevant entry is notified in Schedule II.

Therefore, the State of Jharkhand as well as the respondent nos. 1 to 4 are restrained from realizing any amount under such head and if the same has already been deducted then the amount so realized by the respondent nos. 1 to 4 should be credited in favour of the firm or be added in the final bills payable to it.

Accordingly, this writ application stands allowed.

However, there would be no order as to costs.

**(Dr. Ravi Ranjan, J)**

SC/-

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