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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15040 of 2011
Date of Decision: 16.02.2015

Vikram Singh ......Petitioner

Versus

The State of Punjab and others .....Respondents

CORAM: ***HON'BLE MR. JUSTICE SURYA KANT***
HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashwani Chopra, Senior Advocate with
Mr. Vishal Gupta, Advocate
for the petitioner.

Mr. Ashwani Talwar, Addl. A.G., Punjab with
Mr. Sunil Kumar Vashisht, AAG Punjab.

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1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

RAJ MOHAN SINGH, J.

In this writ petition, petitioner assails Memo No.501 dated 11.04.2011 (Annexure P/9) issued by respondent No.3 wherein a demand of ₹2,35,09,967/- has been made against him in respect of lease amount of quarry of village Jhajjo Hadbast No.229 for the period 09.04.2008 to 31.03.2010 and in the event of failure, amount of security deposited was proposed to be forfeited and the remaining amount was to be recovered as revenue cess. Petitioner also claims refund of amount of ₹1,21,76,324/- along with interest @ 12% from the date of deposit of royalty and security against the bid of

₹1,60,00,000/- for extracting the minor minerals from the land measuring 51.61 acres which was neither approachable nor made available by the respondent-Department to him. The enquiry report (Annexure P/8) of the Divisional Commissioner, Patiala Division, has also been assailed.

[2]. State of Punjab issued an auction notice on 20.02.2008, thereby announcing the auction of ditches of minor minerals, sand and gravel in various districts of the State. In district Patiala, auction was fixed for 29.03.2008 at the site of village Jhajjo, Tehsil Rajpura, District Patiala. The area sought to be auctioned was 51.61 acres. The extraction of minerals from cultivated land was restricted as per the auction condition. The contractor was also not to be permitted to carry out extraction from the land on which mining of minerals had not taken place for the last two years without the prior permission of the land owners.

[3]. In the auction which was held on 29.03.2008, the petitioner was the highest bidder at the rate of ₹1,60,00,000/- for the years 2008 to 2010. The requisite royalty and security in the ratio of ₹40,00,000/- each were deposited in time.

[4]. Petitioner alleged that he could not extract minerals and gravel from the auctioned land as the substantial portion of the land was found under cultivation and according to the restriction on extraction of minerals from cultivated land, the same could not be done. In addition to that there was no passage provided by the

authorities to make ingress in the land. As a cumulative effect of aforesaid, the extraction of sand and gravel could not be done.

[5]. Petitioner further alleged that his representation to the competent authority i.e. General Manager, Industries and Commerce-Mining Officer, Patiala, did not yield any result and the petitioner ventured to file ***CWP No.8338 of 2008*** in the Court. This Court took cognizance of the dispute and passed the following order on 19.08.2008:-

> *"Having heard learned counsel for the parties for some time, we have arrived at the conclusion that there is a serious factual dispute between the parties. In so far as the petitioner is concerned, it is contended on his behalf that although 51.61 acres of land had been allowed to be mined by him at Village Jhanjo, District Patiala, most of it is either under cultivation or under private ownership wherein the mining has not been effected for the last two years. Resultantly, it is not open to the petitioner to effect mining therein in consonance with the guidelines issued by the Supreme Court.*
>
> *On the other hand, it is the vehement contention of the learned counsel for the respondents based on the instructions received from Mr. Sushminder Singh, Geologist who is present in Court that the entire land is vacant and amenable to mining for which it has been leased out to the*

petitioner.

In the facts and circumstances noticed hereinabove, we hereby permit the petitioner to carry out the activities for which the land in question has been leased out to him, with effect from 20th of August, 2008 Mr. Sushminder Singh, Geologist shall attend to his duties at the land in question, during office working hours so as to ensure that there is no impediment to petitioner from, either the persons, who have cultivated the land or from the private owners thereof, if any. The instant direction of ours will necessarily require modification of the order of this Court dated 5.6.2008. The interim order passed on 5.6.2008 is accordingly vacated with the direction to the petitioner to deposit all installments due upto-date, by 4 p.m. on 22.8.2008. The said deposit shall be made by way of a demand draft which shall be handed over to Mr. Sushminder Singh, Geologist at the site. The operation of mining shall continue till 26.8.2008. So as to find out, whether or not, the instant order has been given effect to, we consider it just and appropriate to list this case for hearing on 27th of August, 2008.

A copy of this order be furnished to the learned counsel for the parties under the signatures of the Special Secretary to this Bench."

[6]. In pursuance of the order passed by this Court, petitioner handed over the requisite amount of ₹41,76,324/- by way of different demand drafts to Sh. Sushminder Singh, Geologist, who was assigned duty on the spot by the Court to ensure no impediment in the way of the petitioner for utilising the land for extracting of minerals.

[7]. Sh. Sushminder Singh, Geologist, as a matter of fact found that at the time of starting mining with the help of JCB machines and tractor trolleys at the site, villagers objected to and claimed that they will not allow passing of vehicles through their land lying in the riverbed inside the river protection bundh. He reported that a passage does exist through the village upto the riverbed in the revenue record but the petitioner has taken another passage upto the riverbed through the privately owned lands and also pointed out that on 26.08.2008 some of the land owners gave affidavits that they are not willing for the use of their land for mining purposes.

[8]. The said officer further pointed out that there was mistake in calculation of leased out area. In fact figure 412-18 had mistakenly been considered as Kanal and Marla, otherwise at the spot it was in Bighas and Biswas. On correction, the leased out area was stated to be 86 acres. The officer found in his report dated 27.08.2008 that out of total 434 Bighas 6 Biswas, area of *gair mumkin ghagger* is 41 acres and area of vacant land is 01 acre and in this way total area of 42 acre was found to be worth mining which was free from any

cultivation and could be used for mining purposes.

[9]. A co-ordinate Bench of this Court vide order dated 27.08.2008 decided the above stated ***CWP No.8338 of 2008*** filed by the petitioner thereby giving two options. The first option was to allow the petitioner to mine over the available land and to reduce the lease amount proportionately. Second option was that since the respondents have not been able to allow the petitioner to mine, the petitioner can be permitted to walk out of the agreement along with refund of deposit made by him. The petitioner opted for the second option. The above-said case was disposed of accordingly.

[10]. The official respondents went in SLP which was disposed of by the Hon'ble Supreme Court vide order dated 05.01.2010, directing the Commissioner, Revenue, Patiala Division to look into the controversy raised by the petitioner regarding his inability to start the mining operation. The Commissioner was further directed to provide opportunity to both the parties to advance their respective claims and also carry out joint inspection, if necessary. The operative part of the order reads as under:

> *"We, therefore, dispose of the appeal by directing the Commissioner, Revenue, Patiala Division, to look into the questions which have been raised by the respondent regarding his inability to initiate or carry on any mining operations of the lands in questions. Such consideration is to be done after giving both the parties an opportunity of*

> *placing their respective cases, and, if necessary, upon joint inspection. The Commissioner shall be entitled to determine and demarcate the lands which are available out of the lands allotted to the respondent for mining purposes and on that basis make over possession of the same to the respondent for carrying on such operations, which we are informed are to continue till 31st March, 2010. Having regard to the paucity of time left, we also direct the Commissioner, Revenue, Patiala Division, to complete the inquiry/inspection and give his decision in the matter within a period of 15 days from the date of communication of this order."*

(emphasis applied)

[11]. In purported compliance to the above said directions, the Commissioner, Revenue, Patiala Division, delegated his authority to Additional Deputy Commissioner (General) SAS Nagar, for the purpose of collecting evidence. The Additional Deputy Commissioner vide report dated 26.03.2010 pointed out that a revenue *Rasta* was available to reach the mining site and the contractor, in addition had arranged a private *Rasta* by paying compensation to the land owners. It was also pointed out that some of the area out of the auctioned land was under cultivation by the owners. Out of them some of the owners were ready to allow mining on payment and some of them were not ready to allow the mining operations. Since

no payment was made to the private owners, therefore, they did not allow the mining operations. The contractor could only continue with mining for 15-20 days. The Additional Deputy Commissioner also referred to the area of lease which was actually auctioned. The area was allegedly found to be 405 Bighas 01 Biswa equal to 84 acres instead of 51.61 acres. It was also pointed out that discussion was made with both the parties for verification. Parties nominated their representatives for authenticating the record and facts were verified. The above-stated report suggests that one revenue *Rasta* existed and one *Rasta* was privately arranged by the contractor by paying *chakota* to the private owners. The area of 49 acres was found to be under cultivation and three land owners were found willing to allow mining operations subject to, being compensated by the contractor. The mining lasted only for 15-20 days after having started in April 2008 because the land owners restrained the contractor for want of compensation.

[12]. The petitioner objected to the aforesaid report. Thereafter, the Commissioner, Revenue, Patiala Division, conducted his own inquiry in the light of report of ADC and the objections of petitioner. The Commissioner visited the spot on 06.04.2010 in the presence of concerned parties and clarified that total prospective area for mining was 405 Bighas 01 Biswa i.e. 84 acres rather to be 51.61 acres as mentioned in the auction notice issued by the Mining Department. The misunderstanding was statedly on account of wrong mentioning

of Kanals in place of Bighas. Reference was made to the claim of the petitioner that for want of revenue or private path, mining was impossible. The allegation of the petitioner was refuted in the context of availability of revenue *Rasta* and one private *Rasta* to the contractor to approach mining site. It was further clarified that katcha path leading to the mining site was being used by the contractors for the last 8-10 years. Though it was a private path but the same was in existence and was being used regularly by paying rent to the owners of this katcha path. The existence of another revenue path was also observed. The Commissioner with reference to different Annexures found that as per *Goshwara* of mining area of *Kharif* 2008, 84 acres of land was found in existence, out of which 41 acres of land was under cultivation, 14 acres of land was vacant and 29 acres of land was *gair mumkin ghagar* river. In this way 43 acres of land was found available to the contractor for mining purposes and for the 45 acres of land which was under cultivation, the contractor was under obligation to approach the mining site by approaching to the land owners as per condition of the auction notice. The mining area of *Rabi* 2009 was found to be 84 acres, out of which 41 acres were found under cultivation 9 acres were found vacant and 35 acres were found embarked as *gair mumkin ghagar.* In this way 44 acres of land was found available to the contractor for mining activities during the period 2008-09 *.* For *Kharif* 2009, 36 acres were found under cultivation, 11 acres were lying vacant and 37 acres of land was available as *gair mumkin ghagar.* In this way 48 acres of land were found available with the contractor for mining purposes. For *Rabi* 2010, out of 84 acres, 49 acres were found to be under cultivation, 13 acres were recorded to be vacant and 22 acres were found as *gair mumkin ghagar.* In this way 35 acres of land was found available for mining purposes. The Commissioner observed that had the contractor approached to the farmers with compensation, they would have given their cultivated land to him for mining purposes. The mining operations were to be carried out by the contractor from April 2008 to 31.03.2010 for a period of two years.

[13]. The Authority (Commissioner, Revenue, Patiala Division) attributed fault to the petitioner alone and fastened the total liability upon him to pay full compensation to the Department for his irresponsible action. The bid of ₹1,60,00,000/- for the years 2008 to 2010 was ordered to be forfeited and the loss to State exchequer was sought to be defrayed by adjusting security and royalty. The Authority also observed that the State would suffer further unmitigated loss if the petitioner is allowed to operate the mining operations for another two years on the same land without compensating the State for the periods 2008 to 31.03.2010. The amount of ₹1,21,00,000/- already deposited towards security and royalty by the petitioner was recommended to be adjusted because of the loss caused to the State exchequer.

[14]. The respondent No.3 on the basis of such observations

recorded by the Commissioner, Revenue, Patiala Division, issued notice in the sum of ₹2,35,09,967/- recoverable from the petitioner in respect of lease amount of quarry Jhajjo for the period 09.04.2008 to 31.03.2010 requiring the petitioner to deposit the same. In the event of failure the security amount of ₹40,00,000/- would be forfeited and the remaining amount would be recovered as revenue cess. This order has been assailed in the present writ petition.

[15]. Both the sides have been heard and the record perused.

[16]. The lease notice (Annexure P/1) though reveals that the area leased out was 51.61 acres. The respondent-Department claimed the aforesaid calculation as a mathematical mistake by not showing the land in Bighas and Biswas, instead showed the same in Kanal and Marlas. This fact has been established by the findings recorded by three different Authorities viz. Mr. Sushminder Singh (Geologist), Additional Deputy Commissioner (General), SAS Nagar and the Commissioner, Revenue, Patiala Division, who on the basis of fact-finding inquiry and report concurrently endorsed that actually the leased out area was 84 acres. The aforesaid plea of the respondent-Department can be co-related if calculation of the total area shown in Annexure P-5 is made. The total area shown in the aforesaid document is 412-18 without unit. Due to wrong calculation the aforesaid area was shown in Kanal and Marla and it should be in Bighas and Biswas. If 412 Bigha 18 Biswa of land is converted into acres then a necessary calculations in terms of acres would be

approximately 84 acres. The plea of the Department is fully coincided with the aforesaid calculation if made on the available data on record. The plea of the respondent-Department re: 84 acres of land is on account of fact-finding mechanism adopted by it after the decision of the Hon'ble Supreme Court. The Apex Court while disposing of the SLP authorised the Commissioner with an onerous duty to determine and demarcate the land which was available to the allottee for carrying out mining operations. The aforesaid exercise in determining the actual area to the tune of 84 acres was an exercise undertaken by the Commissioner on the basis of aforesaid authorisation. The discrepancy in the nomenclature of the area makes all the difference to espouse the cause of the petitioner.

[17]. The factum of availability of exact area must have been verified by the petitioner himself before and after the auction. The 'Note' appearing at the end of the table of auction notice (Annexure P-3) makes it abundantly clear that such a recital is always made to rectify inadvertent clerical mistake even after auction of the land in favour of prospective bidders. The bidders are expected and presumed to have surveyed the area in order to make their assessment for the potential of the area for which bids were made. The petitioner has no where disputed that the subject-land at the site has been measured and recorded by the revenue authorities in 'Marlas' and 'Kanals'. Therefore, it does not lie to the mouth of the petitioner to say that the area leased out to him was only 51.61

acres. That apart, such a finding of fact calls for no interference by a writ Court especially when no motive is attributed to three different officers who carried out the revenue measurements.

[18]. Sh. Sushminder Singh (Geologist), who was first assigned the job at the spot found as a matter of fact that out of 434 Bighas 6 Biswas of land, *gair mumkin ghagar* is in 41 acres and 1 acre of land was found to be vacant. In this way, area of 42 acres was found to be worth mining which was free from any cultivation by the farmers and was fit to be used for mining purposes. The aforesaid factual matrix in terms of available area also coincided with the fact-finding report submitted by the Additional Deputy Commissioner. The said Authority found area of 49 acres to be under cultivation. The Commissioner himself undertook the assignment of visiting the spot on 06.04.2010 in the presence of parties and also calculated prospective area for mining purposes. The Commissioner with the help of *Goshwara* (details of land) of mining area of *Kharif* 2008 found that 41 acres of land was under cultivation, 14 acres as vacant land and 21 acres of land was *gair mumkin ghagar.* According to this *Goshwara* out of total 84 acres of land 43 acres of land was available for mining purposes. Similarly as per *Goshwara* of *Rabi* 2009, the report revealed that 44 acres of land was available to the contractor for mining activities and or *Kharif* 2009, 48 acres of land was found available with the Contractor for carrying out mining activities. *Goshwara* of *Rabi* 2010 also revealed that 35 acres of land was

found available for mining activities. If necessary calculations are made for the entire period of 2 years, then the average of available area for mining purposes comes out to be 43 acres. Even the report of the Authorities revealed that the petitioner had in fact did mining activities for 15-20 days.

[19]. The question arises "whether the contractor/petitioner was sufficiently prevented from carrying out mining operations either for want of pathway or on account of non-availability of area so leased out to him?"

The initial report of Geologist is categoric in nature, showing that out of total area of 434 Bighas 6 Biswa, area of *gair mumkin ghagar* is 41 acres, vacant land is 01 acre and if this area is deducted from total area of 84 acres, the available area which is free from any cultivation would be 42 acres and this area could have been used for mining purposes by the petitioner. The report showed availability of 42 acres of land which was worth mining and was free from any agricultural pursuits by the private owners. This fact-finding analysis made by the Geologist was subsequently highlighted by the Commissioner, who undertook to determine the exact area available for mining by paying visit to the spot and made analysis from the *Goshwaras* of land mining area from *Kharif* 2008 to *Rabi* 2010. Such an exercise undertaken by the Commissioner was in consonance with the authorisation given by the Hon'ble Supreme Court for determining and demarcating the available land to the contractor for mining purposes. Therefore, no fault can be attributed in adopting such a course which was duly authenticated by the dictum of the Hon'ble Supreme Court.

[20]. Since the Commissioner, Patiala Division, Patiala, was obliged to determine and demarcate the land as per the directions issued by the Hon'ble Supreme Court, his authorisation to Additional Deputy Commissioner for carrying out the inspection or to elucidate necessary facts cannot be said to be an exercise in futility. The Commissioner was fully justified in adopting any such mechanism of collecting relevant facts which may have strengthened his wisdom in the given situation.

[21]. The Commissioner, Revenue, Patiala Division visited the spot on 06.04.2010 and found that the prospective area for mining was actually 405 Bighas and 01 Biswa i.e. 84 acres and not 51.61 acres and in this way the error was sought to be explained with reference to the available area of mining in the village. The Commissioner also pointed out that there existed *katcha* path leading to the mining site which connected embankment of Ghagar river and it was being used by mining contractor for the last 8-10 years. Although this was a private arrangement of contractors. According to the *Goshwara* of mining area of the village for *Kharif* 2008, Rabi 2009, Kharif 2009 and Rabi 2010, 43 acres, 44 acres, 48 acres and 35 acres of land, respectively were found available for mining operations. The aforesaid calculations were derived by the

Commissioner from the available record of *Goshwara* in respect of mining area of the village.

[22]. After calculating the aforesaid details, the Commissioner observed that qua the remaining land, the contractor could have approached the owners for making them ready to give their cultivated land to the contractor for mining purpose after paying suitable compensation to them. The Commissioner, proceeded on the premise that there were 84 acres of land for mining purposes and if average is taken from different *Goshwaras* then $42^{1/2}$ to 43 acres of land were available for mining operations. For the remaining land, petitioner was to approach to the private owners for making necessary ways of approaching the area from privately owned lands.

[23]. The findings recorded by the Commissioner are germane to the actual facts, the availability of 43 acres of land for mining purposes fully coincided with the report of Geologist, who found 42 acres to be the available area for mining operations. This availability of land for mining operation has to be construed as percentage of available land from 84 acres of land so leased out to the petitioner. The anomalous situation is discernible if we conclude that total leased out land was 84 acres. The availability of land for mining operations was 43 acres and the remaining land was under cultivation and for other encumbrances could not be made available to the petitioner for mining operations. In total scenario, respondent-Department was not aloof, rather equally responsible for such a

situation which has given rise to the aforesaid conclusion.

[24]. The Hon'ble Supreme Court while deciding the SLP vide order dated 05.01.2010 has categorically observed that the Commissioner will be entitled to direct deductions of the amounts already deposited which were payable by the contractor by way of royalty in accordance with the area available for the purpose of mining. The Hon'ble Court further observed that since the mining operations could not be commenced since 09.04.2008, therefore, the respondent No.2 was directed to consider extension of the period of the mining lease for an extended period on the same terms and conditions.

[25]. Since the respondent-Department has proceeded to issue notice of recovery to the tune of ₹2,35,09,967/-, therefore, the first option for considering extension of mining period on the same terms and conditions does not seem feasible looking to the totality of facts and circumstances. It would be just and expedient to work-out necessary details in the context of suffering loss by the respondent-Department in not carrying out mining operation by the petitioner in the available land i.e. 41 acres. While applying the aforesaid apportionment the respondent-Department is held responsible for not making available the entire area of 84 acres for mining purposes and at the same time petitioner is also responsible for not carrying out mining operations on the actually available area of 41 acres of land. In this way it would be appropriate to relegate the issue to the

Commissioner, Patiala Division, Patiala, to work-out necessary calculations and re-determine the dues recoverable from the petitioner on account of his failure to undertake mining operations on the available land i.e. 41 acres only.

[26]. With the aforesaid reasoning Commissioner, Patiala Division, Patiala, is directed to carry out the necessary calculations in determining the loss suffered by the respondent-Department in respect of 41 acres of land available for mining by the petitioner and after calculations thereof, the petitioner can be put to the same for making good the amount in favour of the respondent-Department. Keeping in view the allegation and counter-allegation and also the amount which is lying deposited with the respondent-Department under different heads, it would be lawful not to penalise either of the party for payment of interest on respective amounts.

[27]. For the reasons recorded above, this writ petition is disposed of.

(SURYA KANT)
JUDGE

(RAJ MOHAN SINGH)
JUDGE

February 16, 2015
Atik