IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CIVIL WRIT PETITION NO.7428 of 2015(O&M)

RESERVED ON: SEPTEMBER 17, 2015

DATE OF DECISION: SEPTEMBER 29, 2015

Dalip Singh son of S.Kartar Singh ....Petitioner

Versus

State of Punjab and others ....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.CM Munjal, Advocate for the petitioner.

Mr.Ashwani Talwar, Additional Advocate General, Punjab.

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TEJINDER SINGH DHINDSA, J.

The instant petition is directed against the demand notice dated 28.10.2013 issued by the General Manager-cum-Mining Officer, District Industries Centre, Ferozepur, respondent No.3, calling upon the petitioner to deposit a sum of ₹25,37,245/- towards royalty and price of sand on account of illegal extraction of minor mineral i.e. sand from his land situated in village Behak Fattu, Tehsil Zira, District Ferozepur. Further challenge is to the order dated 30.3.2015 passed by the Director, Mining-cum-Industries and Commerce Department, State of Punjab, respondent No.2, whereby the statutory appeal preferred by the petitioner against the impugned demand has been dismissed.

2. Brief facts, that may be noticed, are that Civil Writ

Petition No.17013 of 2013 was filed in this Court seeking the issuance of a mandamus to stop the illegal sand mining and excavation thereof from the lands situated in the revenue estates of villages Behak Fattu and Ghuddu Wala, Tehsil Zira, District Ferozepur. Assertion in the writ petition was to the effect that illegal sand mining was being done by a "sand Mafia" headed by respondent No.5 therein (present petitioner) in connivance with the official authorities. The writ petition was disposed of by a Division Bench on 6.8.2013 without putting the respondents to notice and with the directions to the Deputy Commissioner concerned to depute a responsible senior officer not below the rank of a Tehsildar to visit the spot and to verify the factual position. It was further observed that if any illegal mining is found to be going on, the same be stopped forthwith and further action be taken as per law. Pleadings on record would show that in purported compliance of the directions issued by the Division Bench, Tehsildar, Zira along with Senior Industrial Promotional Officer, Sangrur, Field Kanungo, Patwari Halqa, Behak Fattu and Sarpanch of the village conducted inspection on the spot and submitted a report. A report was also called for from the Station House Officer of the Police Station having jurisdiction over the village in question.

3. As a follow up action, notice dated 26.9.2013 was served by the respondent-Department upon the petitioner alleging that minor mineral i.e. sand has been extracted unlawfully during the period May to August 2013 from land bearing Rect.No.1, killa Nos.18,19,23/2, 23/1, village Behak Fattu,

Tehsil Zira, District Ferozepur which was under his possession and ownership. Petitioner was called upon to appear before respondent No.3 on 4.10.2013 to submit objections, if any, and to plead his case. The impugned demand notice dated 28.10.2013 has thereafter been served upon the petitioner directing him to deposit a sum of ₹25,37,245/- towards royalty as also price of the sand towards illegal mining for the period May to September 2013. Such demand stands affirmed by virtue of order dated 30.3.2015 passed by respondent No.2 whereby the appeal preferred by the petitioner has been rejected.

4. Mr.Munjal, learned counsel appearing for the petitioner would submit that contract for mining sand in 1.75 acres comprised in Rect.No.1, killa Nos.16 and 17 also owned by the petitioner had been awarded by the respondent-Department in favour of one Sukhwinder Singh, Contractor for the period 1.7.2011 to 30.6.2014. The Contractor having mined the sand had stopped the work w.e.f. 26.7.2013 and left behind huge pits. It is further submitted that only with a view to fill up the pits and to level the land, ordinary earth had been raised from the adjoining land under the ownership of the petitioner pertaining to Rect.No.1, killa Nos.18, 19, 22, 23/1 and 23/2. Learned counsel has also adverted to the report of the Tehsildar, Zira dated 11.9.2013, Annexure P5, as also to the report dated 14.10.2013 of the Station House Officer concerned, Annexure P6, to contend that findings had been returned that there was no sand mining being carried out and rather paddy crop was stated to have been sown. It is also the contention raised by the learned counsel that

such reports are not conclusive with regard to the question of fact as to whether the petitioner had raised ordinary earth or sand from the land in question for purposes of levelling the adjoining land. Submission has also been raised that no royalty can be charged pertaining to an activity of levelling of an agricultural field by a land owner or possessor and the same stands exempted under the provisions of the Punjab Minor Mineral Rules, 2013.

5. Per contra, Mr.Ashwani Talwar, learned Additional Advocate General, Punjab, appearing for the respondents, would justify the impugned demand of royalty and price of sand by stating that in response to the notice dated 26.9.2013 having been served, the petitioner had duly appeared before respondent No.3 on 4.10.2013 and had admitted with regard to having lifted sand from the land comprised in Rect.No.1, killa Nos.18, 19, 22, 23/1, 23/2 and having filled up the pits in the adjoining land in killa Nos.16 and 17 for purposes of levelling. It has been argued that sand is a minor mineral and which is vested in the State and lifting of the same, be it for the purposes of levelling, without any valid mineral concession, would amount to unauthorized mining. Learned counsel would argue that the impugned demand notice as also the order of the Appellate Authority had been passed after following due procedure and in consonance with the principles of natural justice and as such, do not call for any intervention by this Court.

6. It would be expedient to refer to certain relevant statutory provisions. Section 3 (a), (d) and (e) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short

“1957 Act”) read as under:

> *“**Definitions** – In this Act, unless the context otherwise requires, -*
>
> *(a) “minerals” includes all minerals except mineral oils;*
>
> *(b) ....*
>
> *(c) ....*
>
> *(d) “mining operations” means any operations undertaken for the purpose of winning any mineral;*
>
> *(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”*

7. Section 4 of 1957 Act deals with general restrictions on undertaking prospecting and mining operations and the relevant extract thereof is as follows:

> *“**4. Prospecting or mining operations to be under licence or lease** – (1) [No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder]:*
>
> *Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms*

and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement."

8. Section 2 (b) and (c) of the Punjab Minerals (Vesting of Rights) Act, 1994 defines "minerals" and "land" in the following terms:

2. In this Act, unless the context otherwise requires, -

a) ....

b) "Minerals" means minerals and minor minerals as defined in clauses (a) and (e) respectively of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act No.67 of 1957) :

(c) "land" means land whether assessed to land revenue or not and include river beds and the sites of buildings and other structures."

Section 3 deals with vesting of minerals in the State Government and reads as follows:

"3 (1) The State Government may, from time to time, by notification, acquire the right to the minerals in any land and notwithstanding anything contained in any law for the time being in force, from the date of the publication of the notification the right to the minerals in the land specified in the notification shall vest absolutely in the State Government and the State Government shall, subject to the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act No.67 of 1957), have all the powers

necessary for the proper enjoyment or disposal of such rights.

(2) If the State Government has assigned to any person its right to the minerals in any land, and if for the proper enjoyment of such right, it is necessary that all or any of the powers specified in sub-section (1) should be exercised, the Collector may, by an order, in writing subject to such conditions and reservations as he may specify, delegate such powers to the person to whom the right has been assigned.

Explanation – In this section and section 4, the expression "right to the minerals in any land" includes the right of access to the land for the purpose of prospecting and working mines and for the purposes subsidiary thereto including the sinking of pits and shafts, erection of plants and machinery, construction of roads, stacking of minerals and deposit of refuse, quarrying and obtaining building and road materials, using water and taking timber and any other purpose which the State Government may declare to be subsidiary to mining."

9. Rule 3 of the Punjab Minor Minerals Rules, 2013 governs exemptions. Rule 3, Clause 1 (iii) and Rule 3 (2) would be relevant for the issue at hand and, as such, are extracted hereunder:

"Exemptions – (1) *Notwithstanding anything contained in these rules, no rent, royalty or permit fee shall be* *charged or weighment slip required for,-*

i) ....

ii)........

iii) levelling of any agricultural fields by a land owner or possessor, as the case may be, within land in his possession where no disposal of ordinary earth outside the area is involved;

(2) *No royalty shall be charged for removal of any ordinary earth by the owner or the possessor, as the case may be, from the land in his possession for meeting personal land-filling requirements either in another agricultural field or for meeting his personal bona-fide requirements."*

10. A conjoint reading of the provisions reproduced hereinabove would make it clear that sand is a minor mineral and the same vests with the State Government. Mining and excavation thereof would amount to a mining operation and the same is permissible only upon and in the light of the terms and conditions of a mining lease having been granted by the competent authority. Apparently, no rent, royalty or permit fee is to be charged for levelling of any agricultural fields or for meeting personal land filling requirements by a land owner or possessor. However, such exemption is only in relation to ordinary earth and not to sand which comes within the definition of minor mineral under the 1957 Act. The embargo qua sand mining/excavation would apply even if the same is to be carried out for the personal use of the land owner/occupier.

11. Adverting back to the facts of the present case, the question as to whether the petitioner had excavated ordinary earth or sand would not detain us for long. It would also not be necessary for us to advert to the reports of the Tehsildar or of the Station House Officer concerned. This is in view of the fact that the petitioner himself in the appeal preferred against the impugned demand of royalty and price of sand has admitted that he has raised 4 feet of sand from land comprised in Rect./Muraba No.1, killa Nos.18, 19, 23/2 and 23/1 and for filling up the pits in adjoining killa Nos.16 and 17. Appeal dated 16.12.2013 filed by the petitioner against the demand notice has been placed on record and appended along with the petition as Annexure P12. In para 3 of the appeal, the petitioner had averred to the following effect:

> *".....appellant raised 4 feet sand from his adjoining land Murba No.1, Killa Nos.18, 19, 22, 23, 24 and 25 and filled the pit in land Murba No.1, Killa No.16 and 17 and after 10th June, the crop of paddy has been grown on all the above mentioned Killas and the appellant has never raised sand (Ratta) illegally.*

12. Still further, in para 5 of the appeal, the categoric assertion of the petitioner was as follows:

> *"..........the sand which was dug out from the Muraba No.1, Killa No.18, 19, 23/2, 23/1 was used for the filling pit in Murba No.1, Killa No.16 & 17 and the same has never supplied or sold to anyone, which comes under Exemptions in the Punjab Mine and Mineral Rules 2013."*

13. The petitioner, concededly, did not have the requisite

licence/mining lease for sand mining pertaining to the land in question. In the light of the categoric admission of the petitioner as discernible from the averments made in his appeal as regards sand having been lifted and excavated, be it for purpose of levelling, we do not find any infirmity in the action of the respondent-authorities in having proceeded against the petitioner under the relevant statutory provisions and thereby raising a demand for royalty as also sand price.

14. There is, however, another aspect of the matter. In the impugned demand notice, it has been stated that the unlawful sand mining for the period May to September 2013 has been "determined" at 22063 tonnes and, accordingly, a sum of ₹25,37,245/- towards royalty and sand price has become due and payable. The basis for such determination has not been disclosed. Grievance with regard to the petitioner having not been associated while reaching such determination has been raised for the first time only before the writ Court. It is possible that such contention was not raised by the petitioner before the Appellate Authority as he was under the bonafide impression that the exercise of sand lifting/excavation had been done only for levelling of his adjoining land and he had never sold the same to a third party and as such, was covered under the exemptions under the 2013 Rules.

15. We are of the considered view that it would be fair and equitable for the petitioner, who is stated to be an agriculturist, to be afforded an opportunity to submit his claim/objections confined to the aspect of quantification of the sand mining and resultant

demand of royalty/sand price. In taking such a view, we have also noticed a material discrepancy inasmuch as in the initial notice dated 26.9.2013 served by respondent No.3 upon the petitioner the period of unlawful sand mining was mentioned as May to August, 2013 from the land in question and whereas the final impugned demand has been raised for the period May to September, 2013.

16. Accordingly, the present writ petition is disposed of in terms of granting liberty to the petitioner to approach respondent No.2 i.e. the Appellate Authority to submit his claim/objections limited to the issue of quantification of sand mining and resultant determination of extent of royalty/sand price within a period of two weeks from the date of receipt of a copy of this order. Upon receipt of such objections/claim, respondent No.2 would be obligated to consider the same and to re-determine/revise the demand as he may deem fit in accordance with law and by passing a reasoned order within a period of four weeks thereafter.

17. Operation of the impugned demand notice dated 28.10.2013, Annexure P11, shall be kept in abeyance for a period of eight weeks and would thereafter be subject to the fresh determination as has been directed.

18. Disposed of accordingly.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

SEPTEMBER 29, 2015
SRM

Note: Whether referred to Reporter? (Yes/No)