

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.12640 of 2015
Date of decision: 02.05.2016

M/s Grewal Stone Crusher

... Petitioner

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ajaivir Singh, Advocate for the petitioner.
Mr. Ashwani Talwar, Addl. AG, Punjab with
Mr. Sunil Kumar Vasisth, AAG, Punjab.

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

ARUN PALLI J.

A writ in the nature of certiorari is prayed for to quash the demand notice, dated 05.05.2011 (Annexure P1), vide which the petitioner was directed to furnish royalty amounting to ₹ 14,14,800/- on account of unauthorized excavation of minor mineral (gravel); notices dated 06.02.2013 (Annexure P7), dated 07.03.2013 (Annexure P8), whereby the said amount was sought to be recovered as arrears of land revenue; as also the order dated 06.11.2013 (Annexure P12), vide which the appeal preferred by the petitioner against the proposed recovery was dismissed by Director Mining, Industries and Commerce, Punjab (respondent No.2).

Facts that are required to be noticed are limited.

Petitioner is a Stone Crushing Unit situated at village Khera Kamlot (Nangran), Tehsil Nangal, District Roopnagar. A Committee was constituted by the respondent-Department to check illegal or unauthorized mining by the Stone Crushing Units located in and around Khera Kamlot (Nangran). During the course of survey/inspection by the Committee, it was found that the petitioner i.e. M/s Grewal Stone Crusher, Khera Kamlot/Nangran, had caused unauthorized mining of minor mineral (gravel). Accordingly, a report, dated 06.04.2011, with requisite details was submitted by the Committee to the Mining Officer, Mohali. Consequently, the Assessing Authority, vide notice, dated 21.04.2011 (Annexure R3), directed the petitioner to appear on a date specified in the notice and produce its books of accounts and other related records. However, neither did the petitioner appear before the assessing authority nor furnish any document/reply/objection to the said notice. Thereafter, in terms of the Punjab Minor Mineral Concession Rules, 1964 (for short, 'the 1964 Rules'), a demand notice, dated 05.05.2011 (Annexure P1), was issued by the Mining Officer, vide which petitioner was required to pay royalty amounting to ₹ 14,14,800/- by 9th of June, 2011. But, for the petitioner failed to deposit the royalty within the specified time, the Mining Officer, vide letter dated 12.11.2012 (Annexure R4), in Form 'M', requested the Collector, Roopnagar, to recover the said amount as arrears of land revenue. As a result, Assistant Collector, Grade II -cum- Naib Tehsildar, Nangal

(respondent No.4), issued two separate notices, dated 06.02.2013 (Annexure P7), dated 07.03.2013 (Annexure P8) and required the petitioner to deposit ₹ 14,14,800/- in the treasury. But, in the meanwhile, petitioner preferred an appeal before the Director Mining, Industries and Commerce, Punjab (respondent No.2), against the demand and consequent recovery that was sought to be effected. However, the Appellate Authority, vide order dated 23.04.2013 (Annexure P10), dismissed the appeal being barred by time. The said order was assailed by the petitioner vide CWP No.11951 of 2013 before this court, and vide order dated 19.07.2013 (Annexure P11), the Division Bench set aside the same. The matter was remitted to the Appellate Authority for decision on merits. But, for the Appellate Authority, on a consideration of the matter in issue and the material on record, found that the petitioner had indeed mined the land(s) without any permit/Theka/lease from the Government, vide order dated 06.11.2013 (Annexure P12), the appeal was dismissed. That is how, as indicated above, petitioner is before this court.

Learned senior counsel for the petitioner submits that all what form basis of the proceedings initiated by the respondents, and the amount that is sought to be recovered, is the report dated 06.04.2011 (Annexure R2), but a copy thereof was never furnished to the petitioner. Nor the petitioner was associated with the proceedings at any stage, till he received a notice from the Collector under the Land Revenue Act. Therefore, he submits that the proceedings in its entirety are vitiated on account of serious breach

of the principles of natural justice. Secondly, before the department could raise a demand, requiring the petitioner to deposit royalty on account of unauthorized mining, an order of assessment, in terms of Rule 54-C of the 1964 Rules, was a pre-requisite. For, order of assessment was never passed by the Assessing Authority, recovery of an amount that purports to have been assessed defies logic.

As opposed to this, learned State counsel submits that a registered notice, dated 21.04.2011 (Annexure R3), in Form 'R' was issued to the petitioner and it was afforded due and adequate opportunities to appear and produce the requisite records before the matter could be proceeded further. However, neither did the petitioner appear before the Assessing Authority nor furnished any response. Therefore, the Assessing Authority was choice-less but to assess the amount of royalty that was due from the petitioner. He contends, that the order dated 05.05.2011 (Annexure P1), is indeed an order of assessment as envisaged under Rule 54-C (5) of the 1964 Rules.

We have heard learned counsel for the parties and perused the records.

In context of the issue that arises for our consideration, it would be apposite to refer to Rule 54-C (5) and (6) of the 1964 Rules, which read thus:

“(5) If upon information, which has come into his possession the Assessing Authority is satisfied that any person has raised, without any lawful authority, any minor mineral from any land and has not paid the royalty due therein to the Government, the Assessing Authority shall within three years after the expiry of the

period during which the land was occupied by such person serve on such person a notice in Form 'R' and after giving such person a reasonable opportunity of being heard, proceed to assess to the best of his judgment the amount of royalty due from him. The Assessing Authority may also pass an order for recovery from such person of the minor minerals so raised or where such minor mineral has already been disposed of the price thereof.

(6) The amount of royalty due and the price of minor mineral, if any shall be paid by the assessee into the Government Treasury by such date as may be specified in the notice in Form 'S' issued by the Assessing Authority for this purpose and the date so specified shall not be less than thirty days from the date of service of such notice:

Provided that the Assessing Authority may in respect of any particular assessee and for reasons to be recorded in writing extent the date of such payment or allow the payment of royalty and price, if any by installments not exceeding four."

A bare analysis of sub-rules (5) and (6) of Rule 54-C irresistibly shows that if a person is found to have raised, without any lawful authority, any minor mineral, the Assessing Authority shall serve upon that person a notice in Form 'R' and after affording a reasonable opportunity of being heard, proceed to assess the amount of royalty that is due. And, in terms of the assessment order, which has to be passed in Form 'O', vide notice in Form 'S', shall require the assessee to deposit the royalty in the Government treasury by a specified date, but not less than 30 days from the date of service of such notice. Apparently, in the matter in hand,

the Assessing Authority issued a notice, dated 21.04.2011 (Annexure R3), in Form 'R', to the petitioner, vide which he was required to appear and put forth its defence. Even if, it is assumed for a moment that petitioner did not choose to respond to the said notice, in terms of Rule 54-C (5), the Assessing Authority was required to pass an order of assessment. Thus, the short but a significant question that arises for our determination is; whether the document, dated 05.05.2011 (Annexure P1), is indeed an order of assessment, in terms of Rule 54-C (5) of the 1964 Rules.

For, a reference to the document (Annexure P1) is imperative, the same is being set out hereafter:

**"Form S
See rule 54-C (6)
Demand Notice**

To,

**M/S Grewal Stone Crusher,
Vill. Nangran, Distt. Rup Nagar

In continuation of Notice No. 102 issued to you by Registered post on the dated 21.04.2011, you are hereby inform that total production of minor mineral Gravel during the year 2010-11 has been finally determined at 58950 tonnes of Gravel and accordingly royalty amounting to Rs. 14,14,800/- (Rs. Fourteen Lacs Forteen thousand eight hundred only) and price of Rs. NIL only is payable by you.

You are hereby directed to pay the sum of Rs.14,14,800/- (Rs. Fourteen Lacs Forteen thousand eight hundred only) as detailed below into the nearest Treasury on or before the 9th day of June 2011 and to produce before the Undersigned a copy of the relevant Treasury Challan as proof of

payment not later than 10th day of June 2011 failing which the said amount of Rs.14,14,800/- (Rs. Fourteen Lacs Forteen thousand eight hundred only) will be recoverable from you as an arrear of land revenue.

DETAILS OF ASSESSED AMOUNT

1.	Amount of royalty payable Rupees:	14,14,800/-
2.	Deduction amount already paid Rs.	NIL
3.	Net amount payable rupees:	14,14,800/-

**Seal of the Assessing Authority
No.635 dated: 05.05.2011
Place: SAS Nagar**

**Sd/-
Mining Officer,
Dept. of Industries,
SAS Nagar”**

Ex facie, the document referred to above is a demand notice, issued in Form ‘S’, under Rule 54-C (6). Needless to assert, the notice in Form ‘S’ is issued post assessment of the amount of royalty. Therefore, it cannot, by any stretch of imagination, be construed as an order of assessment, which under the rules has to be passed in Form ‘O’. Further, it shows that the same was issued pursuant to a final determination of the amount of royalty, that was assessed at ₹ 14,14,800/-. Still further, the order rendered by the appellate authority itself reveals that the order of assessment, in terms of Rule 54-C (5), rendered by the Mining Officer was not available on the record. The observations that have been made, at pg 61 of the paper book, in this regard reads thus:

“Here, it is pertinent to mention here that regarding royalty assessed about unauthorized mining, in Form ‘O’ under Punjab minor Mineral Concession Rule 1964,

there is no paper available in the file regarding passing the assessment order by the Mining Officer.”

The Assessing Authority may have passed an order of assessment, but the proceedings as also the said order were found missing from the record. The authorities were free to fix the culpability and resort appropriate measures, but could not, faced with this situation, term the notice, dated 05.05.2011, in Form ‘S’, to be an order of assessment. That being so, the only and the inevitable conclusion that could be arrived at is; that no order of assessment exists or is placed on record. And in the absence thereof, notice issued in Form ‘S’, dated 05.05.2011 (Annexure P1), and also the notices issued by the Collector to recover the amount of royalty, pale into insignificance.

In the conspectus of this position, we are choice-less but remit the matter to the Assessing Authority (respondent No.3) to initiate the proceedings afresh and pass an appropriate order in terms of Rule 54-C (5) of the 1964 Rules. Needless to assert, petitioner shall be afforded due and adequate opportunity to participate in the proceedings and express its defence. For, the matter is being remitted to the Assessing Authority, we are not required to examine the issue, as to what would have been the ramifications of non-furnishing the survey report, dated 06.04.2011 (Annexure R2), to the petitioner. Particularly, now when the report is on record and is appended as Annexure R2 with the written statement.

Accordingly, the demand notice dated 05.05.2011 (Annexure P1), notices dated 06.02.2013 (Annexure P7), dated 07.03.2013 (Annexure P8), as also the order dated 06.11.2013 (Annexure P12), rendered by the appellate authority, are set aside. The matter is remitted to the Mining Officer, Department of Industries, SAS Nagar, Mohali (respondent No.3), to proceed therewith in accordance with law. The petitioner shall appear before the Mining Officer on 16th May, 2016 at 11:00 A.M. and thereafter shall continue to appear on the dates that shall be fixed by the Assessing Authority. However, in the wake of the nature of controversy involved in the present lis, the Authority shall pass an appropriate order positively within three months from today.

The petition is disposed of accordingly.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

02.05.2016

Rajan