AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.3207 of 2004

1. Amit Kumar Vasnik S/o. Late Ramchandra Vasnik, Aged About 33 years, R/o. Village Ghodari, District Mahasamund (CG)
2. Anand Kumar Vasnik, S/o. Late Ramchandra Vasnik, Aged About 26 years, R/o. Village Ghodari, District Mahasamund (CG)
3. Smt. Arpana Khaparde W/o. Shri Yashwant Rao Khaparde, Aged About 31 years, R/o. Ayodhya Nagar, Mahasamund, District Mahasamund (CG)
4. Smt. Seema Meshram W/o. Shri Chandrakant Meshram, Aged About 31 years, R/o. Raja Ramnagar Behind Ambika Nagar, Tahsil & District Yawatmal (Maharashtra)
5. Smt. Mangla Vasnik Wd/o. Late Ramchandra Vasnik, Aged About 59 years, R/o. Village Ghodari, District Mahasamund (CG)

----Petitioners

Versus

1. State of Chhattisgarh Through Collector, Mahasamund, Distt. Mahasamund (CG)
2. Mining Inspector, Mahasamund, Distt. Mahasamund (CG)
3. Tahsildar (Revenue) Mahasamund, Distt. Mahasamund (CG)
4. Additional Commissioner (Revenue), Raipur, Distt.Raipur (CG)
5. Board of Revenue, Chhattisgarh Bilaspur (Circuit Court Raipur) District Raipur (Chhattisgarh)

---- Respondents

For Petitioners	:	Mr.Manoj Paranjape, Advocate
For Res.No.1 to 4	:	Mr.Ashish Surrana, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

09/10/2017

1. The present writ petition is directed against the order dated

27.8.2004 passed by the Board of Revenue by which his appeal challenging the order of the Collector has been dismissed.

2. Learned counsel for the petitioners would submit that the Collector has passed an order directing recovery of mineral extracted by the petitioner to the extent of ₹ 1,36,115/- and passed an order imposing penalty of ₹ 1,36,115/- i.e. total ₹ 2,72,230/-, which are unsustainable and bad in law. He would further submit that the Collector has relied upon the report of the Mining Inspector and the Mining Inspector was also examined behind the back of the petitioner, however, no opportunity of hearing was afforded to the petitioner thereby evidence of the Mining Inspector cannot be relied upon and the Mining Inspector has also been stated that he has never conducted any enquiry.

3. Mr.Ashish Surana, learned Panel Lawyer for respondents No.1 to 4/State would support the impugned order.

4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

5. The Collector has passed the order under Section 247 (7) of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as "Code') which states as under:-

> "247 (7) Any person who without lawful authority extracts or removes minerals from any mine or quarry, the right to which vests in, and has not been assigned by, the Government shall, without prejudice to any other action that may be taken against him be liable, on the order in writing of the Collector to pay penalty

> not exceeding a sum calculated at four times /double the market value of the minerals so extracted or removed:
>
> Provided that if the sum so calculated is less than one thousand rupees/twenty five thousand rupees, the penalty may be such larger sum not exceeding one thousand rupees/twenty five thousand rupees as the Collector may impose."

6. The Collector in exercise of power and jurisdiction vested upon him under Section 247(7) of the Code has relied upon the report of the Mining Inspector and the Mining Inspector has also been examined, but the Mining Inspector was not allowed to be cross-examined by the petitioner and there is no other enqury conducted by the Collector before directing recovery of cost of floor stone (mineral) alleged to have been illegally extracted by the petitioner from government mines and penalty has also been imposed under Section 247(7) of the Code, but no enquiry was conducted in presence of the petitioner before the impugned order was passed.

7. The Division Bench of the High Court of Madhya Pradesh in the matter of **<u>Laljibhai Vs. Board of Revenue, M.P. and others</u>**[1] while dealing with Section 247(7) of the Code held that under Section 247(7) of the Code enquiry must be made by the Collector while passing the order. It was observed as under:-

> "5. It appears from the order of the Collector (marked annexure P-2) that if the boulders had been removed before September 1965 for Government purposes, no royalty would be chargeable for the same. This position is not denied before us even by the learned counsel fort the State. Consequently, it was necessary, in the present case, for the Collector to have held an enquiry into the question whether the boulders had been extracted or removed by the petitioners from any mine

1 1977 RN 479

> or quarry and, if so, whether they had done so before September, 1965. This has obviously not been done. Consequently imposition of royalty or penalty in absence of a finding on the aforesaid two points can not be held to be legal and proper."

8. Following the principle of law laid down by the High Court of Madhya Pradesh in **Laljibhai** (supra), I am of the considered opinion that the Collector should have made full-fledged enquiry before passing the impugned order under Section 247(7) of the Code. That has not been done in this case.

9. Accordingly, the impugned order passed by the Collector and Board of Revenue are hereby set aside. The matter is remitted to the Collector, Mahasamund to hold an enquiry after affording an opportunity of hearing to both the parties on the question of extraction of minerals from government mines and to pass the order afresh within a period of three months from the date of receipt of copy of this order.

10. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-
(Sanjay K.Agrawal)
Judge

B/-