

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 3015 OF 2000

M/s. Vijay Constructions,
(a registered Partnership Firm),
through its General Power of
Attorney Holder/Authorised
signatory Shri. Kantilal Nayar,
Age 61 years, Occu. Business,
R/o. At/post Yedashi,
Tq. and Dist. Osmanabad.

....Petitioner.

Versus

1. The State of Maharashtra
- 1A. The Advocate General,
State of Maharashtra,
Office of Bombay High Court
Building, Fort,
Mumbai - 400 032.
2. The Ministry of Revenue,
through its Secretary,
Govt. of Maharashtra,
Mantralaya,
Mumbai - 400 032.
3. The Additional Commissioner,
Aurangabad Division,
Aurangabad.
4. The Collector,
Collectorate Premises,
Osmanabad,
Dist. Osmanabad.
5. The Tahsildar,
Osmanabad,
Tq. and Dist. Osmanabad.

....Respondents.

Mr. R.M. Sharma, Advocate for petitioner.

Mrs. P.V. Diggikar, A.G.P. for respondent/State.

WITH
WRIT PETITION NO. 3248 OF 2000

Shri. Sham s/o. Mangaldas Manwani,
Age 39 years, Occu. Contractorship,
R/o. Shakti Appartment, Vasmat Road,
Parbhani, Dist. Parbhani.**Petitioner.**

Versus

1. The State of Maharashtra
Through Secretary
Revenue and Forest Department,
Mantralaya, Mumbai-32.
2. The District Collector and
District Magistrate, Hingoli,
Dist. Hingoli.
3. The Tahasildar,
Aundha Nagnath,
Tq. Aundha Nagnath,
Dist. Hingoli.

....**Respondents.**

Mr. J.N. Singh, Advocate for petitioner.

Mrs. P.V. Diggikar, A.G.P. for respondent/State.

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

RESERVED ON : 19/06/2017.

DECIDED ON : 18/07/2017.

JUDGMENT :

. In both the proceedings, the power of State Government to collect royalty in respect of minor minerals and also the power to impose penalty on the persons who have committed default in making the payment of royalty is challenged. In brief, it is the contention of the petitioners that in view of the provisions of Mines and Minerals (Development and

Regulation) Act, 1957 (hereinafter referred to as 'the Act' for short) and the Rules framed thereunder, the Maharashtra State has no power to collect the royalty. In both the proceedings, notices issued by the respondent, State/Government for recovery of royalty and penalty amount are challenged and relief of quashment of those orders made by the revenue authority are claimed. Additional relief of setting aside of the order of seizure of the truck for recovery of such amount made against the petitioner of the first proceeding is also claimed. Both the sides are heard.

2) The petitioner from Writ Petition No. 3015/2000 is having stone crusher and it collects mining material for this stone crusher from various persons. It is the case of petitioner that it pays royalty on such minor minerals. This petitioner has no land or quarry and so, the petitioner purchases and collects minor minerals from others.

3) It is the case of petitioner from Writ Petition No. 3015/2000 that it is in construction business also and it undertakes the construction of Government projects etc. It is contended that under the Government policy and the contract,

the petitioner is entitled to get refund of the royalty amount and this circumstance also needs to be considered in his favour.

4) In August 1994, the Officers of revenue authority visited the site where the stone crusher of the petitioner from Writ Petition No. 3015/2000 is functioning. The Officers noticed that there was unaccounted minor mineral at this site and even in the account of stone crusher, there was much quantity of minor minerals in respect of which royalty was not paid. Show cause notice was then issued in September 1995 and the petitioner was asked as to why the royalty amount of Rs.45,150/- and penalty of Rs.8,19,956/- should not be recovered from the petitioner. As no show cause was shown, recovery order was made. Then the petitioner filed review application. After considering the contentions of the petitioner and the record of royalty receipts, review application was decided on 16.3.1996 and the amount of royalty was reduced to Rs.37,100/- and the amount of penalty was also reduced to Rs.7,10,862/-. This order made by the Collector, revenue authority was challenged by filing appeal before the Divisional Commissioner by the petitioner under the provisions of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to

as 'the Code' for short). The appeal came to be dismissed. It is the contention of the petitioner from this petition that the decision is now challenged before the Government, before the Hon'ble Minister and the said proceeding is still pending. It is also the contention of the petitioner that even when the Minister has granted stay to the recovery of amount, coercive action is being taken for the recovery of amount and so, the petitioner is required to file the present proceeding.

5) It appears that in Writ Petition No. 3015/2000, by making interim order on 2.8.2000, this Court directed the respondent to hand over the custody of the seized truck of the petitioner, subject to condition of payment of royalty which was due and the royalty which would become due in future. Thus, indirectly this Court granted stay to the order of revenue authority by which the petitioner was directed to pay the penalty.

6) The petitioner of Writ Petition No. 3248/2000 is the owner of the land and in that land by doing mining activity, the petitioner is collecting the minor mineral for his stone crusher. It is the case of the petitioner that he has been paying the royalty

regularly. It is the grievance of the petitioner that the rate of the royalty is increased illegally by the respondent/State and the increase in rate is illegal as the rate was changed before completion of four years from the date when the previous rate was fixed. In this case, demand notices dated 10.11.1999, 22.2.2000, 18.3.2000 and 22.6.2000 are mentioned for challenging them. They are in respect of different periods. The orders of recovery of royalty amounts are not challenged by this petitioner before the Commissioner or the Government as provided by the Code and the petitioner has directly come to this Court.

7) In both the proceedings, the respondent/State has filed reply. It is contended that the orders are issued under the provisions of the Code. It was submitted for the State that when the orders are made by the revenue authority under the Code, they need to be challenged by filing proper proceeding like appeal or revision as provided under the Code and the petition is not tenable. It was submitted for the State that factual aspects are involved in the matters as specific quantities are mentioned by the revenue authorities in notices and on the basis of rate fixed of royalty, notices are issued and unless there is record

with the petitioner to show that royalty is paid, the other challenge like the challenge to power of the respondent/State is not possible. In view of the provisions of the Code and also Central Act, this Court holds that there is much force in the contentions made by the respondents. Though the challenge to the power of the State Government is available in writ petition, for challenging the demand notices, the petitioners ought to have approached the revenue authorities by filing appeal or revision as provided under the Code. Though there is this circumstance, this Court is considering that aspect also in the present matters as the matters are pending for more than 17 years and indirectly, the petitioners are benefitted due to pendency of the present proceedings.

8) So far as the law point raised by the petitioners with regard to the power of the State Government to recover the royalty is concerned, this Court has no hesitation to observe that this point is no more *res-integra*. The learned counsels for the petitioners are placing reliance on one order made by the Apex Court by which the decision given by the Apex Court in the past is referred to the larger bench. But there is no force on this ground. This Court has carefully gone through the two cases of

the Apex Court reported as **(1990) 1 SCC 12 [India Cement Ltd. and Ors. Vs. State of Tamil Nadu and Ors.]** decided by the seven Hon'ble Judges of Apex Court and the case reported as **(2004) 10 SCC 201 [State of W.B. Vs. Kesoram Industries Ltd. and Ors.]** decided by five Hon'ble Judges of Apex Court. Careful perusal of the observations made by the Apex Court and the law laid down in these two cases show that the power of the State Government to make Rules for recovery of royalty in respect of minor minerals was never under challenge and the Apex Court has also not held that the State Government has no such power. In the case reported as **2006 (3) Mh.L.J. 529 [Ajit Majur Kamgar Sahakari Sanstha Vs. State of Maharashtra and Ors.]**, this Court has laid down that the powers of the State Government under the Code are not inconsistent with the provisions of the Act, Central Act mentioned above. In the Code only the procedure is given for the recovery of royalty. Thus, the provisions of both the Central Act and the Code were considered by this Court in the case cited supra.

9) This Court has gone through the provisions of the Act and the Code. Section 15 of the Act shows the power of the

State Government to recover royalty and to make Rules in this regard. This power includes the power to enhance the royalty/dead rent once in three years. The power is also given for fixing fine/penalty. The provision of section 48 (7) of the Code shows that when there is illegal mining activity, the penalty not exceeding a sum determined at three times the market value of the minerals can be recovered. The power to seize and confiscate the minor minerals which are extracted illegally is there with the State Government. Under the Code, the Government can recover such amount as revenue amount and for that, both the movable and immovable property can be seized. Thus, the Code only gives the procedure for recovery of amount and the power is given in the Act itself.

10) The learned counsels for the petitioners are placing reliance heavily on the circumstance that in the case reported as **2011 AIR SCW 2617 [Mineral Area Development Authority etc. Vs. Steel Authority of India and Ors.]**, the bench of three Hon'ble Judges of Apex Court has referred some points to larger bench. The bench has observed that the decision of Apex Court given by five Hon'ble Judges in the case of **State of W.B. Vs. Kesoram Industries Ltd. and Ors.** cited supra could be

read as departing from the law laid down by the Hon'ble seven Judges of the Apex Court in the case of **India Cement Ltd. and Ors. Vs. State of Tamil Nadu and Ors.** cited supra. It was submitted by the learned counsels for the petitioners that in the present matters, in view of this circumstance present matters cannot be decided and they need to be kept pending till the decision of the larger bench of Hon'ble Apex Court comes out. It was submitted that the previous bench of this Court had made such order also. This Court expressed that there is nothing in the order of reference to show that the present matters need to be stayed and the point involved in the present matters is involved in the reference matter. This Court has no hesitation to hold that the present petitioners are intentionally trying to mislead the Court for getting the time and to create complications. Careful perusal of the observations made in the aforesaid case, by which reference is made shows that the point involved in the present matters of the power of the State Government to recover the royalty and penalty is not at all referred by the Apex Court to larger bench. In the two cases already mentioned viz. **State of W.B. Vs. Kesoram Industries Ltd. and Ors.** and **India Cement Ltd. and Ors. Vs. State of Tamil Nadu and Ors.** Hon'ble Apex Court considered the point,

"Whether 'royalty' defined under section 9/15 (3) of the Act can be treated as tax ?" The facts in the case decided by the bench of Hon'ble seven Judges show that 'cess' was levied on the royalty amount by using provisions of State legislation. This cess and also the provisions made by the State Government in the said Act were under challenge. The seven Judges bench of Hon'ble Apex Court held that such cess amounts to tax and the State has no power to levy such cess on royalty amount. The bench of five Judges of the Hon'ble Apex Court has observed that the royalty cannot be treated as tax when the seven Judges bench had mentioned in the decision that it is tax. The bench of five Judges has given reasoning for making such observations. This Court does not feel it necessary to go in to that reasoning as the point is referred to larger bench. The right of the Government to recover cess may be also under consideration before the larger bench, but the right of the State Government to recover the royalty and penalty as mentioned above will not be under consideration before the larger bench. Thus, there are no merits on the law point raised in the present matters and it is clear that the petitioners have raised this point only to see that they are not made to pay the penalty and additional amount of royalty. When proceeding is pending in the High Court, the

authorities are reluctant to take action against the persons like petitioners and this way, the petitioners have misused the process of law.

11) The learned counsel for petitioner in Writ Petition No. 3248/2000 argued one more point. He submitted that there are no Rules for fixing rates of minor minerals which can be applied to the present matter and the rates and rules which were fixed and made for Vidharbha region are used against the present petitioner. There is no force in this submission also. Copy of circular dated 17.1.1994 and copies of notifications of the State Government dated 1.6.1998, 1.2.2001 are produced. They show that rates of royalty are revised by the State Government for entire State. These circular and notifications are not under challenge. It is already observed that the State Government has such power. For this reason also, no relief can be granted to the petitioners.

12) In Writ Petition No. 3015/2000, it was submitted that the right of the petitioner to get refund of royalty amount in view of the policy of the State Government in that regard in favour of the Government contractors needs to be considered. It

can be said that this again involves factual aspect and there is virtually no record with the petitioner to show that the petitioner is entitled to get the benefit of that scheme. Specific procedure is provided for getting that benefit by the State Government and copy of circular dated 21.2.1983 in that regard is produced by the State. For getting the benefit of the scheme, application is required to be moved by mentioning the work undertaken and the recommendation of the Executive Engineer needs to be annexed with the application and only after that, the matter can be considered by the revenue authority. The notices show that they are of different period and in respect of minerals which were found on the site of the stone crusher and there is no record produced to show that in the past mineral mentioned in account was used for Government project and the mineral found at the site was to be used for Government project. This circumstance again shows that this petitioner has tried to create complications by making submission which has no support of record.

13) In both the matters, the Court cannot ignore the point of burden of proof. When there are provisions in the Central Act and the Code showing that particular procedure

needs to be followed for extraction of minerals even by the owner of the land, the burden is always on the persons like the petitioners to show that they had followed that procedure and they need to give account in respect of minor minerals used by them and the minor mineral which was found in their custody. The burden is on them to produce the record of payment of royalty in respect of said minor minerals. If such record is not there, there is presumption available against such persons that they were involved in illegal mining activity and they have not paid royalty on the minerals in their possession and used by them. Thus, on facts also, there are no merits in both the proceedings.

14) In the result, both the proceedings stand dismissed. Each petitioner is to pay cost of Rs.25,000/- (Rupees twenty five thousand) to the respondent/State. Interim relief, if given of any nature, is vacated. Rule is discharged in both the cases.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

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