

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 480 OF 2017

BALA NAIK.,

... Petitioner

Versus

THE DIRECTOR OF MINES AND GEOLOGY,
GOVT. OF GOA.,

... Respondent

Adv. Sagar B. Rivankar for the Petitioner.

Ms. Susan Linhares, Addl. Government Advocate for No.1.

Coram:- C. V. BHADANG, J.

Date:- 22nd November 2017

Oral Order:

By this petition under Article 227 of the Constitution of India, the petitioner is challenging the Demand Notice dated 24/3/2014 issued by the Director of Mines and Geology (DMG) levying an amount of Rs.30,60,480/- against the petitioner under section 49 of the Goa, Daman and Diu Minor Mineral Concession Rules 1985 (Rules for short). According to the DMG the petitioner has carried out illegal extraction of rubble stones from land survey no. 63/2 at Codar Tisk Ponda. That order has been modified by the learned Secretary (Mines), Government of Goa in Revision Application under section 49 of the Rules vide order dated 21/10/2016 reducing the penalty to 50% of what was imposed by the DMG. It appears that the said land is belonging to the Comunidade of Codar and the petitioner had entered into a

lease agreement for a certain area of the land with the Comunidade of Codar.

2. The petitioner filed an application to the DMG on 18/4/2012 for licence for extraction of laterite rubble stones from the land bearing survey no.63/2 of Codar. The petitioner also paid the necessary fees of Rs.500/- on 16/4/2012. It is undisputed that the petitioner was not granted any licence as according to the DMG, there were other co owners of the land whose NOC was not obtained and there was no compliance of certain other aspects by the petitioner. The fact remains that the petitioner was not granted any licence for quarrying in respect of land survey no.63/2.

3. A show cause notice was issued to the petitioner on 19/3/2013 based on the complaint lodged by one Bala Gaonkar in which the petitioner was called upon to show cause as to why action should not be taken against him for illegal extraction of the laterite rubble stones. The petitioner filed his reply on 2/4/2013 contending that the Comunidade of Kodar has granted a lease of 1000 sq.mtrs of land to the petitioner for a period of one year from 1/6/2011 to 31/5/2012, which was in respect of land survey no.62/2 of village Codar, Tisk Ponda. It was contended that the extraction of minerals was not commenced as the DMC had failed to issue necessary licence. It was contended that it was the

complainant Bala Goankar who was carrying out illegal extraction of rubble stones during the night time, from survey no.62/2 and 62/3 of village Codar and no illegal extraction of rubble stones was ever done by the petitioner.

4. The DMG by the Demand Notice dated 24/3/2014 noted that during the course of the investigation conducted by the officials of the Directorate on 25/5/2012 extraction of rubble stones was found to be carried out in survey no.63/2 without obtaining necessary permission from the Directorate. In short, the DMG found that the petitioner had illegally extracted laterite rubble stones without a licence which is in contravention of Rule 3 of the Rules and was an offence punishable under rule 62(1) and 62(2) of the said Rules. The DMG accordingly levied the amount of Rs.30,60,480/-. The Revisional Authority found it appropriate to reduce the penalty to 5 times (instead of 10 times as imposed by the DMG). In other words, the amount of penalty was reduced by half. It is this order which is subject matter of challenge in this petition.

5. I have heard Shri Rivankar, the learned counsel for the petitioner and Ms. Linhares, the learned Additional Government Advocate for the Respondent no.1. With the assistance of the learned counsel for the parties, I have gone through the record.

6. It is submitted by the learned counsel for the petitioner that the lease agreement dated 20/5/2011 was for a period of one year from 1/6/2011. That was an agreement in respect of survey no.62/2 and not survey no.63/2. It is thus submitted that the petitioner could not have been found responsible for illegal quarrying in survey no.63/2. The learned counsel for the petitioner submits that there was no agreement in respect of the land survey no.63/2. He, therefore, submits that the entire exercise is without proper inquiry and the impugned order, therefore, cannot be sustained.

7. The learned Additional Government Advocate has referred to the application dated 18/4/2012 filed by the petitioner in which he had sought licence for quarrying of the minerals in land survey no.63/2. The learned Addl. Government Advocate also points out that the amount of Rs.500/- towards fees is also paid in respect of survey no.63/2. She, therefore, submits that the contention on behalf of the petitioner cannot be accepted.

8. I have carefully considered the rival circumstances and the submissions made.

9. The show cause notice issued to the petitioner on 19/3/2013 was specifically in respect of the alleged illegal quarrying in survey no.63/2. Not only that, the petitioner also filed an

application on 18/4/2012 seeking licence for quarrying in respect of survey no.63/2 of Codar and paid the necessary fees of Rs.500/-. The application along with the receipt which are produced at page 40 and 41 of the compilation, clearly show that they are in respect of land survey no.63/2. The learned counsel for the petitioner made an attempt to suggest that in the lease agreement produced along with the Affidavit-in-Reply at pages 42 and 43 there is a interpolation made in respect of the survey number from 62/2 to 63/2. However, the contention in this regard cannot be accepted for the simple reason that the application filed by the petitioner for licence for quarrying was in respect of land survey no. 63/2. Admittedly the petitioner is not having any licence ever issued either in respect of land survey no.63/2 or survey no.62/3.

10. I have carefully gone through the impugned order passed by the Revisional Authority and I do not find that it suffers from any infirmity. The petitioner was issued a show cause notice to which he filed a reply. The Revisional Authority after considering the report of inspection dated 25/5/2012 has come to the conclusion that there was illegal quarrying by the petitioner and the Revisional Authority in its discretion has reduced the penalty to 50% of what was levied by the DMG. In such circumstances, I do not find that a case for interference is made out in the supervisory jurisdiction of this Court under Article 227 of the

Constitution of India. The petition is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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