

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

Sr. No.206

**CWP No.17290 of 2016 (O&M)
Date of decision : 24.07.2017**

Karnail Singh and another

..... Petitioners

VERSUS

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Rajeev Anand, Advocate, for the petitioners.

Ms. Rameeza Hakeem, Addl. A.G., Punjab.

Mr. Ramandeep Singh Pandher, Advocate, for respondent No.5.

Mr. G.S. Salana, Advocate, for respondent No.6.

SUDHIR MITTAL, J.

The petitioners have allegedly extracted sand illegally from village Daulewala, Sub Tehsil Dharamkot, District Moga, because of which various assessment orders were passed by the concerned Mining Officer and recovery notices were issued. Based upon these recovery notices, recovery certificates have also been issued. Appeal and review filed by the petitioners have been rejected.

The petitioners claim that they are small land-holders and are engaged in the occupation of agriculture. They state that they have marginal land holdings only sufficient to take care of their basic necessities of life. It is further their case that they are illiterate persons and did not own any land in village Daulewala at the relevant time. Land has been purchased by them

in the said village only a short while ago and that they have not extracted any sand therefrom. At the time of the purchase the land was uneven as mining activity had been carried out earlier in point of time and before the purchase made by the petitioners. They have only levelled the area and have not carried out any mining activity. Notices issued to them under Rule 54-C (5) of the Punjab Minor Mineral Concession Rules, 1964 (hereinafter referred to as “the Rules”), are illegal and so are the assessment orders passed by the concerned Mining Officer. Consequently, the recovery certificates issued under Rule 53 of the Rules are also illegal.

The recovery certificates were challenged by way of appeal, but the same was rejected vide order dated 15.09.2011 (Annexure P-24). Review sought vide petition dated 14.01.2015 was also rejected vide order dated 14.07.2016 (Annexure P-30).

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

Learned counsel for the petitioners has submitted that rejection of the review application is illegal as an error of jurisdiction has been committed by the Director, Mining by refusing to exercise the jurisdiction vested in him under the Rules. It is his submission that the Punjab Minor Mineral Rules, 2013 are not applicable in this case as the assessment orders are all prior thereto and that the present case would fall under “the Rules.” He has made reference to Rule 47 and 49 of the Rules. The same are being reproduced below:-

“47. Appeal when allowed –(1) Any person aggrieved by an order of the Director-

- (i) *Cancelling or terminating of a mining lease or forfeiting any deposit thereunder in whole or in part or,*
- (ii) *refusing to permit transfer of a mining lease may appeal to the Government against such order within two months of the date of the order:*

Provided that any such application may be entertained after the said period of two months, if the applicant satisfies the Government that he had sufficient cause for not making the application within time.

(2) Where the functions of the Director have been delegated to any other officer subordinate to him under Rule 46, any person aggrieved by any order of any such officer of the nature described in sub-rule (1) may appeal to the Director.

49. Review – *Upon receipt of such application the Government or the Director, as the case may be, may call for the relevant records and other information and after considering his explanation and giving the appellant an opportunity of hearing and considering any comments that might be offered by the officer, may cancel or review the order against which the appeal has been preferred. The order of the Government or the Director as the case may be, under this rule shall be final.”*

Learned counsel for the petitioners has further contended that the petitioners have not carried out any mining activity. The petitioners are stated to be marginal farmers and not possessed of any resources to mine thousands of tonnes of sand. It is stated to be a case of victimization of illiterate farmers and therefore, the demands raised against the petitioners should be quashed.

Learned counsel for the respondents supports the various notices, assessment orders and recovery certificates. He states that illegal mining is becoming rampant in the State of Punjab and needs to be crushed with an iron hand.

A perusal of Rule 47 reproduced hereinabove would show that an appeal against the assessment order is not maintainable. Appeal can be filed only if:-

- (i) an order of cancellation or termination of a mining lease or forfeiture of deposit thereunder is passed and,
- (ii) against an order refusing to permit transfer of mining lease.

Neither of these circumstances exist in the present case. Thus, the appeal itself was not maintainable. Since the appeal was not maintainable, there is no question of seeking a review. Thus, review was rightly refused, may be for different reasons.

The contention of the learned counsel for the petitioners that the petitioners have been victimized on account of their illiteracy cannot also be accepted. This Court in exercise of jurisdiction of under Article 226 of the Constitution of India cannot decide disputed questions of fact. We need not decide the various questions of facts raised by learned counsel for the petitioners such as, whether the petitioners were owners of land in village Daulewala, Sub Tehsil Dharamkot, District Moga; whether the petitioners did not indulge in illegal mining and whether the petitioners did not possess the means to extract sand etc..

For the reasons stated above, we do not find any merit in this writ petition and the same is dismissed, accordingly. The petitioners, if so, advised may seek recourse to any other remedy available to them in law.

(SUDHIR MITTAL)
JUDGE

(SURYA KANT)
JUDGE

July 24, 2017
Ramandeep Singh

Whether speaking / reasoned	Yes / No
Whether Reportable	Yes/ No