

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3200 of 2017

Date of Decision: 01.08.2017

Amrik Singh

...Appellant

Vs.

State of Punjab & others

...Respondents

CORAM:-HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vineet Sehgal, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J. (Oral)

1. The plaintiff appellant is in second appeal with two Courts against him and against two administrative layers of decision-making concluding in an administrative appellate order dated September 14, 2011 passed by the Secretary to Government of Punjab, Department of Industries and Commerce, where he was held guilty of illegal mining of minor minerals in his own land by ordering recovery of money, digging his own soil for sale which invites penalties as per law excavating boundaries below the permissible surface without without any permit/*theka*/lease from the Government or a sanctioned mining plan.

2. The recovery of royalty proceedings for illegal mining had started by issue of a demand notice dated April 21, 2008 served by the General Manager-cum-Mining Officer, District Industries Centre, SBS Nagar, Nawanshahr and the recovery order dated June 18, 2009 as arrears of land revenue by the Collector upon the plaintiff-appellant under the Punjab Minor Mineral Concession Rules, 1964.

3. Against the final administrative order passed in appeal, the plaintiff-appellant carried a writ petition to this Court which was dismissed

Neeraj on February 1, 2013 in CWP No. 2211 of 2013 on finding that disputed
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questions of fact were involved and accordingly the petitioner was relegated to his remedy in the civil court, if so advised.

4. This led to the filing of Civil Suit RBT No. 12/15 dated February 21, 2013 titled 'Amrik Singh v. State of Punjab etc.' challenging the demand notice/recovery orders of ₹4,50,000/- as well as the appellate orders confirming the royalty levied vide order dated April 08, 2011 passed by the Secretary, Department of Industries and Commerce, Punjab.

5. The suit has been dismissed by the Civil Judge (Junior Division), SBS Nagar, Nawanshahr on April 25, 2016 accepting the report made by the Local Revenue Administration of the District that complicity in illegal mining of minor minerals was detected at the hands of the plaintiff. Detailed description of the activities in committing violation of the law is enumerated in the trial Court judgment which need not be reiterated to avoid bulk. But the sum total of which is that plaintiff was guilty of illegal mining caught in the act. The excavation for making a ramp of the size 200' x 150' x 20' was not a small diversion or digging of land for alleged cropping. Sand and earth are minor minerals by definition, the right to which vest in the Government, irrespective of the fact that land belongs to a private owner.

6. The trial Court reasoned that even though khasra girdawaris or the report of the attorney which was initially in his favour are of no consequence and in the revenue record even if the property shown as cultivable land, it does not mean that plaintiff had not indulged in the accusation writ with *mala fides*. The version propounded by the plaintiff that he was merely levelling his land and not excavating it for purposes of selling earth has been disbelieved. Since no corroborative evidence was brought on record except for the self serving testimony of the plaintiff, it was not enough evidentiary and reliable material to prove his case for setting aside of

the impugned administrative orders especially when the burden of proof rested squarely on his shoulders and in this he failed to discharge the onus with sufficient acuity.

7. Similarly, the learned District Judge, SBS, Nawanshahr has condensed the reasoning very appropriately and summed up the case in para. 13 of the judgment dated December 05, 2016 to which, I can hardly be in divergence or exception. It is not in second appeal to enter upon findings of fact recorded in a fair and proper manner after appreciating the evidence on record.

8. The reasoning of the learned District Judge read in para.13 of the judgment, with which I find myself in agreement is as follows:

“Much emphasis has been laid for plaintiff/appellant on report Ex. P-2 made by PW-2 Tilak Raj in support of his plea that nothing was extracted from his lands. Report of DW-2 Ram Pal Jaiswal is with respect to an incident of 26.2.2008 whereas PW-2 Tilak Raj Patwari visited there, nearly five years thereafter on 15.1.2013 and therefore his observations of 15.1.2013 cannot be brought into play to negate observations of DW-2 Ram Pal pertaining to 27.02.2008. Inspection of Tilak Raj was virtually in the shape of demarcation and as demarcation is necessarily lies within the purview of a Kanungo, Tilak Raj could have proceeded with the exercise he undertook. Apparently orders of Deputy Commissioner kept on percolating down and down and rested upon shoulders PW-2 Tilak Raj as he has no subordinate of his otherwise he also would have relished in passing on the buck further. Without being possessed of revenue record, without being possessed of implements for

conducting demarcation, exercise undertaken by Tilak Raj is worthy only of being thrown into a dustbin. If he was accompanied by a Kanungo, as he tried to qualify during his cross examination, entire of the exercise ought to have been undertaken by Kanungo only. It has emerged as an established act that on 27.02.2008 plaintiff Amrik Singh was found extracting minor minerals at the spot by making ramp to the magnitude of 200 feet x 150 feet x 20 feet. All of the proceedings undertaken by defendant no.3 thereafter are in consonance with rule of procedure prescribed by Punjab Minor Mineral Concession Act and rules made thereunder, calling for no exception.”

9. The specific report of DW2 Ram Pal, Mining Officer dated February 27, 2008 reporting that plaintiff was found excavating earth the previous day without sanction of law has held ground to maintain the recovery order. The swoop was so sudden as to sweep the plaintiff off his feet. The report of the Tilak Raj, Patwari appearing as witness for the plaintiff PW-2 has been rightly brushed aside as he was not the competent person nor dependable to comment on the suit land and violation of the 1964 Rules.

10. No ground for interference is made out, and the appeal is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

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Whether speaking/reasoned Yes

Whether reportable No