

IN THE HIGH COURT OF BOMBAY AT GOA.***WRIT PETITION NO.1138 OF 2017.***

Shri Ulhas Dessai,
Son of late Vaikunth S. Dessai,
Age 61 years, Residing at House
No. Danddora, Cuncolim,
Salcete, Goa.

..... Petitioner.

V/s

1. Director of Mines and Geology,
Government of Goa, Directorate
of Mines & Geology,
Ground Floor, Institute Menezes
Braganza Building,
Panaji, Goa 403 001.
 2. Secretary (Mines & Geology)
Government of Goa,
Secretariat, Porvorim, Goa 403 521.
 - 3, State of Goa, Through Chief
Secretary, Having Office at Secretariat,
Porvorim, Goa, 403 521.
- Respondents.

Mr. Carlos A. Ferreira and Mr. Shane Gomes Pereira, Advocates for the
Petitioners.

Mr. P. Dangui, Government Advocate for the Respondents.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.
Date : 31 July 2018.***

ORAL JUDGMENT (Per N. M. Jamdar, J.)

Rule. Rule made returnable forthwith. The learned Counsel for the Respondents waive service. Taken up for final disposal.

2. The Petitioner has challenged the orders passed in Revision Petition by the Secretary (Mines), Government of Goa, dated 6 December 2016. It is the contention of the Petitioner that inspite of coming to the conclusion that the order passed by Respondent no.1- Director of Mines and Geology, was in a hurriedly manner and arbitrary. The Secretary has proceeded to impose a penalty of ten times of the royalty.

3. It is the case of the Petitioner that he had entered into an agreement with the owner of the property bearing survey no.99/0 at Barcem village, Quepem Taluka. The Petitioner had entered into an lease agreement with Respondent no.1 for stone quarrying, According to the Petitioner, the lease was renewed till the year 2012. The Director of Mines and Geology issued a show cause notice to the Petitioner on 26 March 2014. The show cause notice stated that, though the Petitioner was granted a quarrying lease for extraction of Basalt stones over an area of 1.46 hectares under Survey no.99/0, during the course of the inspection conducted by the Officials on 21 August 2013, the extraction

was found to be carried out/outside the said lease area. It was stated that the extraction was done in contravention of Rule 3 of the Goa Minor Mineral Concession Rules, 1985, which is an offence punishable under Rules 62 (1) and (2) of the Rules. The Petitioner filed his response on 5 April 2014 taking up various contentions. The Petitioner contended that the extraction was confined to the area which were earmarked and asserted that he had entered into a contract between the owner and there being no complaint about the extraction from any one.

4. On 7 July 2014, Respondent no.1 issued a demand order. The orders only reproduced the contents of the show cause notice and thereafter Respondent no.1 directly ordered the Petitioner to pay an amount of Rs.11,10,09,600/- within seven days.

5. The Petitioner again made a request to the Respondent no.1 on 15 July 2014 to drop the proceedings. Since this was not acceded to, the Petitioner filed a revision under Rule 49 of the Rule of 1985 to the State Government. In the revision, the Revisional Authority, the Secretary Mines and Geology, substituted the penalty of 10 times of the market value to 10 times to the Royalty paid. Accordingly, revision was disposed of by order dated 6 December 2016. This order has been challenged before us in this Writ Petition.

6. We have heard Mr. Carlos A. Ferreira, the learned Counsel for the Petitioners and Mr. P. Dangui, learned Government Advocate for the Respondents.

7. Mr. Ferreira, submitted that the orders passed by Respondent no.1– the Director and the Secretary are not correct in law. He submitted that the order passed by the Respondent no.1 was blatantly in breach of principles of the natural justice and the order passed by the Secretary is not legal in as much as the Secretary, after recording that the order passed by the Director was arbitrary, proceeded to impose a penalty. Mr. P. Dangui, supported the impugned order submitting that there is enough material on record to justify the outcome.

8. The grant of lease was governed by the Rules of 1985. Rules 62(1), (2) and (3) of the Goa Daman and Diu Minor Mineral Concession Rules of 1985 which deal with contraventions read thus:-

62 Penalty:- (1) Whoever contravenes the provision of rule 3 of sub-rule(1) of rule 26 shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to rupees(Five thousand) or with both.

(2) Whoever is found extracting or transporting or using or storing minor minerals or on whose behalf extraction or transport or use or storage is

made, other than in accordance with the provisions of these rules, shall be punishable with simple imprisonment which may extend to one year or with a fine which may extend to five thousand rupees or with both and in case of continuing contravention, with additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

- (3) *Whenever any person is found extracting or removing or transporting or storing minor minerals in contravention of the provisions of these rules, the Competent Officer/Inspecting Officer may seize the minor minerals together with all tools, equipment, vehicles, etc. used in committing such offences.*

Therefore, the Rules, mandate against extraction of minerals from the unauthorised area and for unauthorised quantity. Two consequences are provided for such unauthorised activity. Firstly imposition of fine. Secondly penal consequences.

9. Against an order passed imposing penalty, Rule 49 provides for a Revision to the State Government. Since the demand notice was issued by Respondent no.1 under Rules 62(1), (2) and 3 as aforesaid, the Petitioner had invoked the power of the State Government of revision.

10. We have gone through the order passed by the Revisional Authority. In our opinion, the petition can be disposed of based on the finding of the Revisional Authority itself. After recording the rival contentions, the Revisional Authority concluded as under:-

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Further, the Demand Notice dated 07 July 2014 issued by the Director of Mines and Geology was calculated on the basis of the Amendment to Rule 63 of the Goa Minor Mineral Concession Rules' 1985 dated 07 February 2013, which in my considered opinion, was arbitrary. As the petitioner being the lessee of the Survey No.99 of Barcem village of Quepem Taluka, was extracting minerals prior to the Amendment dated 07 February 2013 as well as the inspection report did not reveal anything about the timing when this extraction outside the lease area was carried out as well as disposed off, I am compelled to conclude that the Show Cause Notice and the Demand Notice issued to the petitioner was done in a hurried manner, without verifying the details as well as calling the land owner for recording his statement about the alleged extraction by the Petitioner/lessee outside the leased area.

Therefore, I modify the Demand notice passed by the Director of Mines and Geology imposing a penalty of 10 times of the market value of the mineral extracted by the Petitioner and order that a penalty of 10 times the royalty at the time shall

meet the end of justice. The Directorate is hereby directed to delineate the boundary of the lease in question on the ground and ensure that lease conditions are properly adhered to by the Petitioner.”

(Emphasis supplied)

Thus the Revisional Authority came to the conclusion that the order passed by the original Authority-Respondent no.1 was arbitrary and the show cause, and the demand notice were given in hurried manner, without verifying the details as well as calling the land owner for recording his statement about the alleged extraction by the Petitioner.

11. Once the Secretary, Revisional Authority, came to the conclusion that the exercise carried out by the original Authority was without following the principles of natural justice and proper investigation was not conducted so as to establish the correct factual position, the Secretary could not have based the conclusion on the same incomplete material. It is not the Secretary carried out a fresh exercise, even assuming it was permissible in a revision. The approach adopted by the Secretary was entirely incorrect.

12. Therefore, the order passed by the Revisional Authority and the order passed by original authority will have to be quashed and set aside and the proceedings will have to be restored to the stage of show

cause notice dated 26 March 2014. Respondent no.1, therefore, will have to carry out further exercise as per law and keeping in mind the observations of the Revisional Authority, which we have reproduced above.

13. In the result, Writ petition is allowed. Order passed by the Secretary, the Revisional Authority dated 6 December 2016 and the order passed by Respondent no.1, Director of Mines dated 7 July 2014, are quashed and set aside and the proceedings are restored before the Respondent no.1, at the stage of show cause notice dated 26 March 2014. Respondent no.1 will accordingly conclude the proceedings pursuant to the show cause notice dated 26 March 2014, as per law and as expeditiously as possible.

14. Rule is made absolute in the above terms. No order as to costs.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.