

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

CWP No.13068 of 2018

Date of Decision : 24.08.2018

M/s Ghaggar Royalty Company

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr.Girish Agnihotri, Sr. Advocate with
Mr.Bhuvan Vats, Advocate
for the petitioner.

Mr. Lokesh Sinhal, Addl.AG, Haryana.

MAHESH GROVER, J. (Oral)

The petitioner by invoking the jurisdiction of this court under Articles 226/227 of the Constitution of India prays for quashing of order dated 10.04.2018 revoking the Letter of Intent dated 06.10.2016 earlier granted to it for the mining contract of ManakTabra Block/PKL-B 20. He has further made a prayer for surrendering the mining contract w.e.f. 15.09.2017 with refund of his security amount.

Pursuant to an e-auction held on 02.08.2016 and 03.08.2016 the petitioner applied and gave the highest bid of Rs.04,06,00,000/- per annum for Manak Tabra Block/PKL-B 20 (hereinafter known as 'the mining area' falling in Tehsil and District Panchkula spreading over an area of 15.28 hectares of land.

As per the terms of the auction, the petitioner deposited 10

per cent of the bid i.e. Rs.40,60,000/- as initial bid as security. Letter of Intent was granted to it on 06.10.2016 so as to enable it to get environmental clearance from the Ministry of Environment, Forest and Climate Change, Government of India and after grant of Letter of Intent on 06.10.2016 the petitioner started formalizing the process of working the mine which he was required to be done within a period of one year from the grant of LOI. During the course of preparation of mining plan as well as environment impact assessment report, which are essential for the environmental clearances, a survey of the area intended for the mining contract was carried out by the petitioner which revealed that no mining operation could be undertaken because of thick afforestation, constructed commercial establishments, cultivation, tube well installations, cremation grounds as also the land in utilisation for grazing animals which in totality consumed 50% of the area offered for mining. In these circumstances, the petitioner after submitting representation has desired to surrender the contract which he now prays that it be accepted.

According to the petitioner, the survey revealed extensive afforestation and commercial establishment besides other obstructions such as tube wells and cremation ground. The details of the area consumed by various activities such as afforestation etc. are as below :-

Sr.No	Element	Area
1.	Thick Forest	69-13
2.	Commercial establishment (shops)	17-04
3.	Standing Crops (Land Fit for cultivation	46-00
4.	Tube Well	01-05

Sr.No	Element	Area
5.	Cremation Ground	08-00
6.	Land earmarked for grazing of animals (Gau Charand)	08-00
	Total	150-02 or 7.51 Hectares

In support of his plea that the area is under extensive tree plantation which would impede rather make the mining virtually impossible the petitioner has referred to the jamabandi for the year 2015-2016 which describes the land as 'Zakhira Darataktan' and similarly describes the land as Chahi (cultivable). Annexure P-4 are the jamabandies describing various portions of land which indeed bear out the claim of the petitioner of the area having extensive tree plantation.

The respondents while considering the prayer of the petitioner dated 08.09.2017 for surrender of the mining contract have passed the impugned order declining the prayer and ordering forfeiture. The operative part of the impugned order is as below :-

“11. In view of submissions made by the department and applicant contractor/Lol holder, I am of the considered view that M/s Ghaggar Royalty Company violated terms of auction/Lol dated 06.10.2016 in respect of Boulder, Gravel and Sand of 'Manak Tabra Block/PKL B-20' by not executing contract agreement, therefore, the Lol is hereby revoked along with following penal actions :

- (i) The amount of Rs.40,60,000/- (Rs.Forty lakh sixty thousand only) deposited at the time of auction by M/s Ghaggar Royalty Company, towards the initial bid security is forfeited;
- (ii) The un-paid 15% of security amount of Rs.60,90,000/- (Rs.Sixty lakhs ninety thousand only) shall be recovered from

M/s Ghaggar Royalty Company as arrears of land revenue;

- (iii) M/s Ghaggar Royalty Company, # 1217, Sector-33-C, Chandigarh, the highest bidder/Lol holder is debarred from participation in any subsequent bidding process to be held in the State under the provisions of Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules-2012 for a period of 5 years.”

The respondents have filed their reply. The primary thrust of their stand is the terms and conditions of the Letter of Intent and a plea that the petitioner was alive to the existing conditions of the proposed mining area and therefore, he cannot resile from his responsibility to carry out further process. Condition No.16 of the Letter of Intent dated 06.10.2016 read with Rule 26 forms the basis of their argument that the contract agreement on Form MC-1 had to be executed within a period of 90 days from the issuance of LoI and failure to do so would imply a deemed revocation along with penal action. For the purpose of reference condition No.16 is extracted herebelow :

“Condition No.16

In case of failure to execute the agreement, after issuance of acceptance of bid/Lol within prescribed period, the acceptance/Lol shall be deemed to have been revoked and 10% amount deposited towards initial bid security shall stand forfeited and un-paid 15% amount towards security shall be recovered as arrears of land revenue and such bidder, shall debarred from participation in any future auction/Tenders/competitive bidding process in respect of any area for obtaining mineral concession in the State for a period of 5 years;”

Rule 26 of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 (in short 'State Rules 2012') is also extracted herebelow :

“Rule 26. Execution of Contract Agreement within ninety days.

- (1) Where a mining contract is granted or renewed, the agreement deed shall be executed in Form 'MC-I' within a period of 90 days of the date of order of grant/renewal of the contract and shall be duly registered;
- (2) If the contract agreement is not executed within the aforesaid period, the order sanctioning the contract shall be deemed to have been revoked and the 'advance contract money' and the 'security amount' deposited at the time of auction shall be forfeited to the Government:

Provided that where the Director is satisfied that the Loi holder/contractor is not responsible for the delay in the execution of the contract agreement, the Director may, for the reasons to be recorded in writing, permit the execution of the contract agreement deed beyond a period of 90 days but not exceeding 120 days of the expiry of the aforesaid period.”

The factual position about the area being covered by the trees etc. is not denied, rather it is stated that it was for the petitioner to negotiate with the landowners regarding compensation of the trees or use of land and it is only in the event of the dispute that the State functionaries would get involved in determination of the compensation.

During the course of hearing of the matter, we inquired of the State as to how they could give the land of a private individual for

mining without his permission and leave the mining concessionaire to uncertainties of settling the matter regarding use of land and compensation while at the same time binding him to the strict regimen of the mining contract.

Learned counsel for the respondents would then refer to Rule 62 under Chapter 9 of the State Rules 2012. It was vehemently contended with reference to Rule 62 that all minerals would vest in the State and the rights of a landowner shall be subordinate to that of the State for extraction of the mineral, access to the quarry/mine, stacking of minerals and other subsidiary purposes and the landowner is entitled to a fair rent and compensation for such use of the land and damage and injury caused to such land.

Rules 62, 64 and 65 of State Rules 2012 read as under :-

“62. (1) Where a mineral concession is granted under these rules over any land in respect of which minor mineral rights vest in the state government, the rights of the landowner shall be subordinate to that of the State Government for extraction of the mineral, access to the quarry/mine, stacking of minerals and other subsidiary purposes. The landowner is entitled to a fair rent and compensation for such use of the land and any damage or injury caused to such land.

(2) A mineral concession holder, who is granted the mineral concession under these rules, is entitled to use the land/ area for extraction of mineral in respect of which the said concession is granted. The mineral concession holder shall be liable to pay (a) the annual rent in respect of the land area blocked under the concession but not being operated, and (b) the rent plus compensation in respect of the area used for actual mining operations.

(3) In case the landowner is allowed to use part of the area granted under the mineral concession for his normal operations for which it was being used prior to the grant of mineral concession, concurrent with the concession grant, no rent shall be payable in respect of such portion of land which is not being used for actual mining operations for such period as it remains available to the landowner for his normal use. In cases where the mineral concession holder blocks the entire concession area as a result of which the landowner is not able to use such land or part thereof for his normal operations, the rent shall be payable in respect of the entire blocked area.

63.

64. (1) Where no agreement is reached by way of mutual settlement between the landowner and the mineral concession holder regarding the rate of rent, the mineral concession holder shall offer to pay rent equal to the amount of Annuity, as applicable from time to time, as payable under the R & R Policy of the government in cases of land acquisition.

(2) Where the land owner is not agreeable for a mutual settlement under rule 63 and is also not satisfied with the rent offered to be paid under sub-rule (1) above, the landowner or the concession holder may apply to the officer-in-charge of the concerned district to make a reference to the District Collector for determination of the fair rent payable in respect of such land.

(3) Where either of the parties prefer a reference to the District Collector under sub-rule (2) above, the officer-in-charge of the concerned district shall forward the reference to the District Collector for determination of the fair market rent in respect of such land. The mining officer-in-charge of the district shall also require the mineral concession holder to deposit the rent for one year as prescribed under sub-rule (1) above as a tentative compensation

with the Collector. Upon so doing, the mineral concession holder shall be entitled to commence mining operations over the said land area.

(4) Upon a reference from the mining officer-in-charge of the district concerned, the District Collector may call upon the parties to furnish the details of their claims and counter claims, inter alia, containing information on the parameters prescribed under sub-rule (5) of this rule and afford an opportunity of hearing to the parties.

(5) (I) Pursuant to the hearing granted to the parties to the reference, the District Collector shall determine the fair market rent of the land keeping in view the following:-

- (i) nature/ character of the land i.e. arable (single crop or multiple crop) or barani or banjar;
- (ii) use to which such land was being put immediately before the grant of mineral concession;
- (iii) annual net income that the landowner was able to derive/ earn from such land use;
- (iv) normal increase in the income level that would have taken place in such net income during the intervening period;
- (v) amount so worked out shall be added an amount equal to thirty percent in lieu of compulsory use of the land;

(II) While determining the fair market rent, the collector shall also decide the rate at which such rent would be increased on year-to-year basis during the currency of the mineral concession.

(6) Notwithstanding the parameters prescribed for determining the fair market rent under sub-rule (5) above, Collector shall not determine the rent at a rate lesser than the amount of annuity payable under the R&R Policy.

(7) The District Collector shall order parties and the mineral concession holder to pay such rent to the landowner from time to time, as determined by him.

(8) Any appeal against the order of the District Collector shall lie

with the Government.

65. (1) In addition to the rent settled between the parties under rule 63 or determined and payable under rule 64, the landowner would also be entitled to payment of a fair and reasonable compensation for any damage caused to such land in respect of the area under actual mining operations.

(2) In cases where the amount of compensation is not mutually settled between the parties under rule 63, the tentative amount of compensation shall be equal to 10% of the annual contract money, dead rent/ royalty actually paid by the mineral concession holder to the government, less the amount of rent settled or determined.

(3) Where the landowner or the mineral concession holder is not agreeable to accept the amount of compensation prescribed under sub-rule (2) above, either of them may seek a reference through mining officer-in-charge to the District Collector for determination of fair and reasonable compensation with reference to the damage or injury caused to such land. Pending a decision by the District Collector on such reference by either of the parties, the mineral concession holder shall deposit the tentative compensation amount for one year with the District Collector in accordance with sub-rule (2) above, where after the concession holder shall be entitled to operate the area.

(4) Upon a reference from the officer-in-charge, of the district concerned, the District Collector shall proceed to determine the fair compensation amount on account of any damage likely to be caused to such land on account of the mining operations. The Collector shall invite claims and counter claims and afford an opportunity of hearing to the parties before determining the compensation amount.

(5) (I) The Collector shall determine the fair compensation for the damage or injury caused to such land keeping in view the following:

(i) nature or character of the land i.e. arable (single crop or

multiple crop) or barani or banjar;

- (ii) economic activity for which such land was being used immediately before the grant of mineral concession;
- (iii) nature and extent of damage caused and as to whether such land is fully or partially reclaimable after closure of the mining operations or the damage is irreversible;
- (iv) economic activity for which such land can be used after mine closure, with or without any investment, and the kind of returns it is capable of yielding after such restoration.
- (v) extent of efforts and expenditure proposed to be made by the mineral concession holder for restoration or reclamation or rehabilitation of the land as per the mine closure plan for its eventual use by the landowner;

(II) While determining the compensation amount, the Collector shall keep in view the total rent and the estimated compensation amount payable to the landowner throughout the concession period. In case the sum total of the rent and the compensation amount assessed is more than the prevailing market value of land, the mineral concession holder may be given an option to buy the land at such rates subject to the landowner agreeing to the same. Alternatively, the Collector may determine the compensation amount keeping in view that the landowner would continue to retain the ownership of land after the closure of mining operations.

(III) In case the mineral concession holder and the landowner(s) are able to settle the compensation mutually in respect of a portion of the land required for actual mining operations, compensation for such portion of the land shall not be a subject for settlement. However, the amount of compensation already settled in respect of part of the operating area shall be kept in view while settling the compensation for the disputed area.

(6) Notwithstanding the determination of compensation on the considerations stated under sub-rule (5) above, the annual rent and

the compensation amount put together shall not be less than 10% of the amount of contract money/ dead rent/ royalty actually paid by the mineral concession holder to the government with reference to such portion of land in accordance with sub-rule (2) above.

(7) The compensation amount determined by the District Collector shall be final and binding on the parties and the mineral concession holder shall be liable to pay such compensation amount to the landowner annually during the currency of the mineral concession.

(8) An appeal against the order of the Collector shall lie with the Government.”

To our minds, at first blush, reading of these rules reveals it to be a frozen embryo of disputes that can spring to life the moment conditions are conducive for them.

Learned counsel for the respondents on our persistent questioning candidly conceded that the State Rules 2012 are silent regarding the identification of any private land for quarrying/mining purposes, but stated on instructions that the land is identified by a proper survey by a Geologist.

This does not seem to have happened in this case and the facts bear it out. What sort of potentiality would land with forestry, commercial establishment and a cremation ground offer, we wonder.

The reply is absolutely silent as to whether the land in question was surveyed in this regard or not. This assumes significance because of the nature of the controversy raised by the petitioner where he while having an impact assessment of the mining area discovered that most of the land allocated for mining was incapable of mining operations on account of standing trees, commercial

establishments and a cremation ground. If one were to see the representation made by the petitioner with a prayer that annual dead rent be reduced, considering the reduced area offered for mining than the one given out in the auction notice, then it transpires that entire details of the land have been given which rendered at least 50% of the area incapable of being mined. For the purpose of reference, the relevant extract from the request made by the petitioner is reproduced as under :-

<u>“S.No. Detail of Land</u>	<u>Area (in Kanals & Marlas)</u>
1. Thick Forest	69-13
2. Commercial establishment (shops)	17-04
3. Standing Crops (Land Fit for cultivation	46-00
4. Cremation Ground	08-00
5. Tube well	01-05
6. Land earmarked for grazing of animals (Gau Charand)	08-00
.....	
Total	150-02 or 7.51 Hectares
.....	

Khasra's No.of Thick Forest Area

<u>Khasra No.</u>	<u>Area</u>	
	<u>Kanal</u>	<u>Marla</u>
67//6	8	10
67//7min	8	"00
67//15	6	12
69//4	8	"00
69//5	2	"04
33//13min	6	"00
39//18	3	"04
39//23	3	"07
47//17	7	12
48//23min	8	"04
53//14/2	4	"00
53//17	4	"00
.....		
Total	69	13
.....		

Khasra's No.of Commercial Establishment(shops)

<u>Khasrs No.</u>	<u>Area</u>	
	<u>Kanal</u>	<u>Marla</u>
67//16	4	"04
67//24min	7	12
67//7	5	"08
.....		
Total	17	"04
.....		

Khasra's No.of Cultivation Land

<u>Khasra No.</u>	<u>Area</u>	
	<u>Kanal</u>	<u>Marla</u>
38//11/1	4	"00
38//11/2	4	"00
38//12min	8	"00
38//20/1	1	"10
38//20/2	6	"08
39//22min	8	"00
47//2min	2	"02
47//9min	4	"00
53//4min	8	"00
.....		
Total	46	"00
.....		

Khasra's No.of Cremation Ground Land

<u>Khasra No.</u>	<u>Area</u>	
	<u>Kanal</u>	<u>Marla</u>
66//8	8	"00
.....		
Total	8	"00
.....		

Khasra's No.of Tube Wells

<u>Khasra No.</u>	<u>Area</u>	
	<u>Kanal</u>	<u>Marla</u>
47//2min	1	"05
.....		
Total	1	"05
.....		

Khasra's No.of Grazing Land for Animal

<u>Khasra No.</u>	<u>Area</u>	
	<u>Kanal</u>	<u>Marla</u>
25//18/1	4	"00
25//18/2	4	"00
.....		
Total	8	"00"
.....		

We have heard the parties and have perused the record and

what has raised our concern are Rules 62 to 65 of the State Rules 2012, which as we observed has immense potentiality of disputes.

It raises innumerable questions such as whether a private individual's land can be usurped without even a notice to him on the premise that mining of minerals vests in the State Government with the rights of the landowner subordinate to it. Assuming so, even then it will be obligatory on the State to carry out a proper survey to identify the minerals or quarry and upon discovering a land with potential for mining follow the procedure of compensating the landowner for the use and occupation and damage to his land. Even in such a situation could the State straightway usurp the land without any procedure. Even in a case of compulsory acquisition it has to follow a procedure prescribed to divest the landowner of his rights.

Secondly, leaving the issue of settlement of rent/compensation to the concessionaire, while binding him to the rigours of the contract and a time frame would have serious consequences for the landowner as also for the concessionaire particularly when it would consume time for a settlement while in the contract time is of essence as is also the payment schedule. The procedure prescribed for settlement of rent/compensation and determination of fair market value reveals itself from the State Rules 2012 as a cumbersome process involving time with the State stepping in only when a settlement seems impossible and after a reference is claimed in this regard.

This hardly seems to be in the interest of commerce. Be

that as it may, the fact remains that there is no challenge to the State Rules 2012 as they exist at least in the present petition and therefore, we while leaving these few questions to be determined as and when the situation offers itself, for the present, confine ourselves to the limited claim made by the petitioner regarding surrendering of his mining rights in the given circumstances.

In view of the fact that the respondents do not deny the factual position of most of the land being unavailable for mining, we are of the opinion that the stand of the respondents is totally unacceptable.

It is the duty of the State to identify the land which they offer for mining and ensure that it is not only conducive for the purpose intended but also ensure that the area conforms to the measurements offered for mining. A survey preceding the e-auction is, therefore, of essence if the State is to ensure the smooth sailing of a contract. It is the ambiguity that the State offers in identifying the land and the extent of area which opens up a room for dispute.

There is thus no justification for the State for having set up and offer land belonging to a private individual covered with trees with commercial establishments as also a cremation ground.

Learned counsel for the State then refers to Clause 16 to argue that it was obligatory upon the petitioner to execute the document of contract within a period of 90 days which expired on 05.01.2017 inviting a deemed revocation along with penal action.

A perusal of the impugned order shows that in fact the

respondents themselves kept the issue alive and they have stated so in the order that “the LOI was to be revoked along with penal action but in the interest of natural justice they were affording an opportunity of hearing on 20th September, 2017”. Evidently the contract was alive. Rather, the impugned order itself reveals the stand taken by the respondents for the first time when the prayer for surrender has been made, without even remotely referring to the factual aspect of the mining area being incapable of being put to use. We also find that one of the persuasive grounds that formed the basis of the impugned order is a decision rendered by this Court in **CWP No.19549/2015** *M/s Planet Steel Pvt.Ltd. v. The State of Haryana and ors.* which was not approved by the Hon'ble Supreme Court in **SLP(c) No(s).19619-19620/2017** and while accepting the challenge to the said order directed refund of the deposit amount to the aggrieved concessionaire. What was particularly deprecated was Clause 5 of the terms and conditions which according to the State cast a duty on the bidder to survey the area to assess its potential. The Hon'ble Supreme Court made it clear that there is no requirement placed on the prospective bidder to survey the area for the purpose of measurement as it can make an assessment for the potential alone. The relevant extract of the order of Hon'ble Supreme Court is reproduced as under :-

“On a plain reading of Clause 5, it is quite clear that there is no requirement on the prospective bidder to survey the area for the purpose of measurement. The prospective bidder can make an assessment for the potential of the area for which bids are to be

offered.

It is the duty and responsibility of the State to ensure that the area sought to be auctioned for mining purposes is as per the advertisement.

This view has also been taken by the Punjab and Haryana High Court in the case of M/s. Haryana Royalty Company Vs. State of Haryana & Anr. [CWP No.15431 of 2014] decided on 15th January, 2015. The admitted position is that this decision of the Punjab and Haryana High Court has attained finality.

It is, therefore, incorrect to contend by the State that the sole responsibility for measuring the area sought to be auctioned for mining purposes was that of the petitioner.

Consequently, we are of the view that the decision of the High Court is required to be set aside and the petitioner is entitled to the refund of the deposited amount. This amount may be refunded to the petitioner within a period of four weeks from today along with interest at 9% per annum from the date of deposit till the date of payment in view of the vast discrepancy of the area of the land mentioned in the advertisement and the area made available.

The special leave petitions are disposed of.

Pending application, if any, stands disposed of.”

In view of the above, we are of the opinion that the State in actual effect offered area much less than given out, as at least 50% was incapable of mining and being in the wrong was obliged to accept the prayer for surrender which seems justified in the circumstance.

We, therefore, accept the petition and set aside the impugned order. As a consequence, the petitioner's claim for surrendering the mining contract is accepted and the respondents are

directed to refund the security amount to the petitioner.

Petition allowed.

(MAHESH GROVER)
JUDGE

August 24, 2018
dss

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes