

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.W.P. No.2682 of 2018 (O&M)
DATE OF DECISION : 26.4.2018

M/s Satish Kumar Garg & Company

PETITIONER

VERSUS

State of Haryana and others

RESPONDENTS

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJBIR SEHRAWAT

Present:- Shri Girish Agnihotri, Senior Advocate with Shri Bhuvan Vats,
Advocate for the petitioner.

Ms.Kirti Singh, D.A.G. Haryana.

MAHESH GROVER, J. (Oral)

The petitioner impugns the demand notice dated 31.5.2017 (Annexure P-13) whereby dead rent has been claimed from 29.4.2002 to 9.2.2015 against extraction of major minerals and from 10.2.2015 to 31.5.2017 against minor minerals.

The petitioner is a partnership firm and was granted mining lease for an area measuring 79.32 hectares comprised in Khasra Nos.599,600,601,626,627, 628, 648 and 649 in Village Musnota, Tehsil Narnaul, District Mahendergarh for extraction of quartz, feldspar and barites, all major minerals. This areas was already subjected to mining since 1977 and the petitioner was given access to these

mines after the lease in favour of the erstwhile operators had either expired or prematurely terminated.

The lease was granted when the petitioner responded to a notification dated 25.6.2000 under Rule 59 of the Mineral Concession Rules, 1960 (hereinafter referred to as the MCR Rules) read with Section 13 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the Act).

The letter of intent dated 16.1.2001 was issued pursuant to which the petitioner was required to submit a mining plan duly approved by Indian Bureau of Mines, Ministry of Mines, Government of India within a period of six months from the issuance of the letter of intent, which was submitted on 1.9.2001. An official mining lease was sanctioned in favour of the petitioner on 5.4.2002 subject to the condition that that he would obtain an environmental management plan after approval from the Ministry of Environment, Forest and Climate, Government of India.

After completing all the formalities, a mining lease dated 29.4.2002 was executed between the State Government and the petitioner for a period of 20 years. The possession of the leased out area was handed over on 6.6.2002. A No Objection Certificate was an essentiality for preparing the environmental plan which would indicate that the leased area did not fall in any of the forest area and was covered under the general notification under Section 4 of the Punjab Land Preservation Act, 1900. The petitioner was issued a No Objection Certificate to this effect on 16.9.2002, the content of which is extracted here below :-

“In this connection it is intimated that the land of Khasra No.599,600,601 and 626,627,628,648 and 649 in Village Musnota is not in a forest land. Vide Haryana Government Notification No.S.O.113/P.A2/1900/S4/3/97 dated 17.11.1997 proposed mining area Musnota village falls in the purview of

Section 4 of Punjab Land Preservations Act. The young crop of mesquite & Alianthus etc. exists in this area and the density of the is 0.1 to 0.2 No objection certificate is granted subject to the following conditions :-

1. The path for transporting the ore will be near the adjoining forest area.
2. The mining will be done only in areas where the trees are not growing.
3. Lease-holder will have to get Environment Management Plan approved from the competent authority.”

The petitioner then submitted all the supporting documents along with draft and environmental management plan for approval which remained pending with the Ministry of Environment, Government of India and during this pendency, a fresh notification under Section 3 of the Environmental Protection Act, 1986 was issued on 14.9.2006 mandating environmental clearance for all mining projects of major minerals having more than 5 hectares area. The petitioner submitted environmental impact assessment report to the authorities which was considered by the Expert Appraisal Committee in its meeting dated 21.8.2013 and the petitioner was called upon to obtain a fresh NOC from the Forest Department and the petitioner accordingly approached the Department to obtain the same.

It is at this juncture that a somersault was taken by the Forest Department from its earlier stand to declare the leased land as “Aravali Area” to deny the N.O.C. Annexure P-4 was passed, the content of which is extracted here below :-

“With regards to the subject cited above vide application referred above (Online SRN No.YM3-UQ-LPXU) it was written for obtaining No Objection Certificate of the Forest Department for mining in Khasra No.599,600,601,626,628, 648 and 649 of Village Musnota. In this regard it is stated that the above Khasra Numbers are included in the list of Aravali Plantation. Therefore, the No Objection Certificate of the Forest Department cannot be granted to you for mining. This is for your kind information.”

It is with this grievance that the petitioner has approached this Court with reference to the pleadings where he has effectively brought out the fact that this area of 79.32 hectares has been subjected to mining since 1977 and is not covered under the Aravali Area or afforestation as claimed by the respondents. A detailed Chart has been given where this very area was given on lease for mining over a period of time which is extracted here below :-

.....		
Sr. No.	Period of contract	Name of contractor and address.
.....		
1.	30.9.1977 to 31.3.1980 (prematurely terminated)	Mohan Lal son of Shri Surja Ram, Railway Road, Narnaul.
2.	24.4.1978 to 31.3.1981	Ram Singh son of Shri Raghu Nath Singh, Narnaul.
3.	7.3.1980 to 31.3.1982	Ram Singh son of Shri Raghu Nath Singh, Narnaul.
4.	26.12.1985 to 31.3.1990	Bahadur Singh son of Shri Dhokal, Village Gawari.
5.	21.12.1987 to 31.3.1992	Om Parkash son of Shri Sunder Lal, Narnaul.
6.	8.4.1992 to 31.3.1995	Om Parkash son of Shri Sunder Lal, Narnaul.

7. 1.4.1995 to 31.3.1998 Om Parkash son of Shri Sunder Lal, Narnaul.
8. 1.5.1998 to 31.3.2001 Gopal Saran Garg son of Shri Ajudhia Parshad, Narnaul.
9. 1.5.2002 to 31.3.2007 Shiv Minerals, Faridabad.

.....

The ostensible reason for bringing out these details is to offset the claim of the State regarding afforestation in the leased area.

It has been argued by Shri Girish Agnihotri, learned senior counsel for the petitioner that had the leased area been included in the list of Aravali Plantation, there would be no question of mining till 2007. Our attention has been drawn to a specific pleading raised in the petition where the petitioner has asserted unequivocally that the plantation in the area was to be done in 785 hectares, whereas only 505 hectares of land was subjected to it with the remaining 280 hectares not covered under plantation of trees. For the purpose of reference, para-16 of the petition is extracted here below as it brings out succinctly the factual aspect :-

“16. That perusal of the relevant portion of the report referred to in para 14 above shows that complete khasra numbers have been mentioned and there is no mention of Min Khasra Numbers. It seems that plantation took place in some part Khasra Numbers whereas area of full Khasra Nos. were mentioned in the report of Inspection Committee referred to above, as a result of which mistaken mentioning, the area under plantation swelled to 785 whereas plantation was actually done in 505 hectares of land. In this way effectively plantation took place only in 505 hectares and in remaining

280 hectares no plantation was done and this area of 280 hectares was inclusive of 79.32 hectares given on mining lease to the petitioner. This is because of the fact that this area of 79.32 hectares remained on mining contracts for active extraction of road metal and masonry stone right from 1977 to 2007 rendering it unfit for plantation. The Aravali Plantation took place during the period from 1991 to 2000 whereas 79.32 hectares remained on mining contract from 1977 to 2007. In this way as has been stated in the preceding para no plantation could have been made in the mining lease hold area of the petitioner because of the fact it remained on mining contracts during the period Aravali Plantation was done. The stand of the petitioner stood vindicated from the above mentioned facts that the Aravali Plantation took place only in 505 hectares of land out of the total land of 785 hectares of village Musnota. In these circumstances, the case of the petitioner that no plantation was undertaken on 79.32 hectares leased out to the petitioner stand corroborated from the fact that Aravali Plantation was undertaken on the 505 hectares of land which was handed over back to the Gram Panchayat, Musnota after plantation. the figure of area under plantation increased to 785 hectares because of the reason that area of full khasra numbers were taken into consideration whereas plantation was done in part of the khasra numbers because of which the area where actual plantation was undertaken is 505 hectares.”

It would also be necessary to refer to the corresponding reply to this

para of the Forest Department which is totally ambiguous and vague rather evasive in spirit. The assertion made by the petitioner is neither accepted nor denied and the whole controversy is wished away by saying that the Forest Department never officially sought nor was handed over the information regarding cumulative area identified by the Committee under the chairmanship of the Deputy Commissioner, Mahendergarh nor did it look into the matter as to whether the recommendation included the whole khasra or min thereof and in the absence of any such authenticated official information, the area stipulated as 785 hectares is neither accepted, nor denied. Para-16b of the reply is extracted here below :-

“16. That in reply to para No.16, it is submitted that, as stated elsewhere in this reply, the plantations in Village Musnota were done on Panchayat lands after obtaining resolutions from Village Panchayat which did not include the mention of specific khasra numbers. Further, in the handing over report post plantation as well khasra numbers of land handed over by the Forest Department were not mentioned. It is a matter of record that a total of 505.67 hectares of plantation were handed over to village panchayat in 2000 (with overall survival of 75%) without mentioning the exact numbers of khasra (Annexure R-5). Further, this department never sought officially nor was handed over officially the information regarding the cumulative area identified by the committee under the chairmanship of the Deputy Commissioner, Mahendergarh nor did it look into the matter as to whether the recommendation included the whole khasra or min thereof. Hence, in want of such authenticated official information, the cumulative such area stipulated as 785 hectares in this para is

neither accepted nor denied. About rest of the contents in this para, the answering respondents have no comments to offer.”

It is thus, a clear case where the facts reveal the area being subjected to mining since 1977 with no conclusive details of afforestation in the 'leased' area. A perusal of Annexure P-3 issued by the Deputy Conservator of Forests in the year 2002 reveals that while describing the details of the leased area by Khasra Nos., a specific mention has been made about the proposed mining area in Village Musnota being covered by the provisions of Section 4 of the Punjab Land Preservation Act and some young crop of trees existing in the area with a density of 01. to 0.2. After noticing this, N.O.C. was granted to the petitioner subject to the conditions mentioned therein.

The petitioner has now been asked to pay dead rent for the period stipulated in the notice which according to us, would be extremely harsh. In the absence of any available material to obstruct the mining rights of the petitioner by simply classifying it as 'Aravali Area' without even having any authenticated official record to identify it as such, annexure P-4 would clearly be sans any foundation and hence unsustainable. We thus set it aside and consequentially as a direct corollary the denial of mining rights on this ambiguous ground would also have to be deprecated. In the reply, it has been brought out specifically that more than 280 hectares was not subjected to plantation. It was easy for the Forest Department to identify whether the leased area of 79 hectares formed a part of 280 hectares left out of the afforestation or it was a part of 500 hectares subjected to afforestation. Without ascertaining this fact, no demand can be raised against the petitioner who has been denied his mining rights unjustly.

Even before us, as noticed above, reply of the Forest Department is completely evasive and vague. It may also be noticed that during the course of

hearing, learned counsel for the State on instructions from Shri Neeraj, Mining Officer, contended that they would have no objection if the dead rent is paid by the petitioner now to which the petitioner has readily agreed, subject to his mining rights being made operational. We find this offer to be fair and therefore, accept the petition and set aside the impugned notice, while also negating Anneuxre P-4, the foundation for denying mining rights to the petitioner but with a direction that the petitioner shall pay the dead rent as has been agreed upon by it, but be it shall be permitted mining in the leased area of 79.32 hectares, governed by the terms of the lease and other necessary essentials.

(MAHESH GROVER)
JUDGE

April 26, 2018
GD

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No