

Sr.No.113

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

CRR-3442-2019

Date of decision:19.12.2019

Amit

... Petitioner(s)

versus

State of Haryana

... Respondent (s)

Coram: Hon'ble Mr. Justice Jasgurpreet Singh Puri

Present: Mr. Inderjit Sharma, Advocate
for the petitioner.

Jasgurpreet Singh Puri, J.(Oral)

Present petition has been filed against order dated 08.11.2019 passed by the learned Judicial Magistrate, Ist Class, Palwal whereby the application filed by the petitioner for releasing the vehicle Tractor on Superdari has been rejected.

The brief facts of the case which can be seen from the file would be that vide Annexure P-1, the vehicle belonging to the petitioner was seized under Sub-rule 104 of The Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 (hereinafter, referred to as 'the Rules'). Learned counsel for the petitioner thereafter, moved an application before the learned Illaqa Magistrate, Palwal (Annexure P-5) for releasing the vehicle Tractor on Superdari to the petitioner who is stated to be the owner of the vehicle. Learned Illaqa Magistrate, Palwal vide impugned order has dismissed the application on the ground that as per Rule 104 of the Rules; the consequences of illegal or un-authorised mining have been specifically provided the provisions of Rules 104 which is reproduced as under:-

“104. Consequences of illegal or unauthorised mining---Any act of illegal or unauthorised mining shall be liable to the following:

(i) for a first time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than Ten Thousand rupees;

(ii) for a second time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation for a minimum period of seven days, which may released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than fifteen thousand rupees;

(iii) wherever a person is found to the indulging in such offence for the third time or more, the officer concerned shall register an FIR

and handover all such tools, equipment, vehicles or any other things used for such unauthorised operation to the Police. Any such offence shall entail (a) confiscation of all such tools, equipment, vehicles or any other thing used for such unauthorised operation for a period of minimum thirty days or more, and (b) pecuniary penalty and punishment for the offence as provided under Section 21 of the Mines & Minerals (Development & Regulation) Act, 1957.”

Learned Illaqa Magistrate, Palwal has further observed that against the action taken by the Mining Officer (Officer Incharge), an appeal lies to the Director under Rule 109 of the Rules is reproduced as under:-

“109. Appeals:- (1) Unless otherwise provided, an appeal against an order passed by the Officer-in-Charge [District Level Environmental Committee] shall lie with the Director;

(2) An appeal against the order passed by the Director shall lie before the Administrative Secretary of the Department;

(3) No order under these rules shall be passed by the competent authority against any person unless he has been issued a show cause and given a reasonable opportunity to make a

representation.”

Learned counsel for the petitioner has contended that action has been taken under Section 21 (4) and (4-A) of The Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act') and therefore, an application for seeking Superdari would lie in the Court of the Magistrate under the Act itself and even if there are Rules providing an alternate remedy, that remedy will not apply in view of the proposition of law that Rules can not over ride the provisions of an Act.

I have heard learned counsel for the petitioner and perused the case file.

Section 21 (4) of the Act is a provision provided for penalties with regard to situation where a person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to the **seized** by an officer of authority specially empowered in this behalf. Section 21 (4-A) of the Act which was interpreted by way of Act of 38 of 1999 w.e.f. 18.12.1999 provides that any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be **confiscated** by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court. The above two provisions are reproduced as under:-

“21.Penalties:-- (1) xxx

(2) xxx

(3) xxx

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to the **seized** by an officer of authority specially empowered in this behalf.

(4-A) any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be **confiscated** by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.”

The Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 has been made in exercise of the powers conferred under Section 15 (1) and Section 23 (c) of The Mines and Minerals (Development and Regulation) Act, 1957 in which vide Rule 104 of the Rules, consequences of illegal or unauthorised mining has been provided. Under Rule 104(i) it is specifically provided that for a first time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation, which may be released only upon realisation of the payment of price of the mineral and the

applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than Ten Thousand rupees shall be paid.

Learned counsel for the petitioner has argued that it was his first time violation, therefore, Rule 104 (i) would apply in the present case. The rationale and objective of Rule 104 is apparent. In case of violation by any person using his vehicle or tool etc; the release of the same can be made only after realisation on the payment of the price of the mineral and the applicable royalty for the mineral extracted apart from fine of Rs.10,000/-. Such kind of provision seems to be a deterrent provision which has been made by the Rules in pursuance of powers derived from the Act. That is why statutory appeal has been provided under Rule 109 which would lie to the Director. Therefore, a defined procedure has been prescribed under the Rules in order to not only safe guard the interest of the State but also to safe guard the interest of the person from whom the vehicle and the minerals are confiscated by providing the remedy of appeal.

Argument raised by learned counsel for the petitioner that the provisions of Rules 104 and 109 can not apply because there is a statutory remedy available to him under the Act itself; seems to be an attractive but does not cut any ice. The Rules which have been framed under the provisions of the Act are in operation and are presumed to be valid in law. Not only this, even a perusal of Section 21 (4) & (4-A) of the Act would show that Section 21 (4) of the Act deals with seizure of the vehicle and Section 4-A of the Act deals with the confiscation of the vehicle. This is a case where vehicle has been seized and has not been confiscated at this stage by any order of the Court. Therefore, the remedy, if any for the

petitioner would be before the Director as envisaged under Rule 109 of the Rules.

Consequently, the present petition is devoid of any merits and the same is hereby dismissed.

19th December, 2019
Shivani Kaushik

[JASGURPREET SINGH PURI]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*