

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1318 OF 2019

M/s. Thakur Stone Quarries through its Partner
Munesh Hotilal Thakur ... Petitioner
Vs.
State of Maharashtra and others ... Respondents

Mr. N. V. Walawalkar, Senior Advocate with Mr. Y. S. Jahagirdar, Senior Advocate, Mr. S. M. Sabrad and Mr. Amey C. Sawant for Petitioner.
Mr. S. L. Babar, AGP for Respondent Nos.1 to 3-State.
Mr. Vineet B. Naik, Senior Advocate with Ms. Priyanka Bhadrashete i/b. Mr. N. N. Bhadrashete for Respondent Nos.4(a) and 4(b).

CORAM : UJJAL BHUYAN, J.
Reserved on : JANUARY 08, 2020
Pronounced on : JUNE 09, 2020

ORDER:

Heard Mr. Walawalkar, learned senior counsel with Mr. S. M. Sabrad and Mr. Amey Sawant, learned counsel for the petitioner; Mr. S. L. Babar, learned AGP for respondent Nos.1 to 3-State; and Mr. Vineet B. Naik, learned senior counsel with Ms. Priyanka Badrashete instructed by Mr. N. N. Bhadrashete, learned counsel for respondent Nos.4(a) and 4(b).

2. By filing this petition under Articles 226 and 227 of the Constitution of India, petitioner seeks quashing of order dated 27.12.2018 passed by the Additional Commissioner, Konkan Division, Mumbai i.e. respondent No.3 in Appeal/Desk/MNL/756/2018 and further to dismiss the said appeal filed by respondent No.4.

3. Be it stated that by the said order dated 27.12.2018, respondent No.3 as the appellate authority had allowed the appeal filed by respondent No.4 as the appellant under Section 247 of the Maharashtra Land Revenue Code, 1966 read

with Rule 82 of the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013 setting aside the order dated 21.10.2016 passed by the Collector, Thane i.e. respondent No.2 granting mining lease to the petitioner.

4. Facts presented before the Court by both petitioner and respondent No.4 have become extremely unwieldy owing to repeated rounds of objections, appeals and further appeals by and between the parties. Therefore, endeavour of the Court would be to refer to only those facts which are considered to be relevant in the opinion of the Court for adjudication of the *lis*.

5. Case of the petitioner is that it had purchased land bearing Survey No.208 (part) (new Survey No.4) admeasuring 20 acres from the original owners sometime in the year 1987. Since then petitioner is carrying on quarrying activities of extraction of minor minerals from the said land after obtaining necessary permission from the concerned authorities.

6. It is stated that respondent No.4 was also carrying on quarrying activities of extraction of minor minerals.

7. Dispute started when petitioner lodged complaint before Collector, Thane i.e. Respondent No.2 alleging that respondent No.4 had encroached into the land of the petitioner and had illegally extracted minor mineral therefrom without permission of respondent No.2. On such complaint, respondent No.2 had directed the Sub-Divisional Officer, Thane Division, Thane to fix the boundary between the two parties as per provisions of Section 135 of the Maharashtra Land Revenue Code, 1966 (briefly the 'Land Revenue Code' hereinafter) and to file report. Thereafter, the Sub-Divisional Officer after carrying out the necessary exercise, fixed the boundary by passing order dated 17.05.2006.

8. The aforesaid order dated 17.05.2006 was set aside by the Additional

Collector (Appeal), Thane on appeal preferred by respondent No.4 vide order dated 08.12.2006 whereby direction was issued for carrying out 'pot hissa' measurement of the disputed site. Following the same, 'pot hissa' measurement of the land was carried out and the boundary came to be fixed. Superintendent of Land Records, Thane thereafter passed order dated 18.05.2007 fixing the boundary of the lands belonging to the petitioner and respondent No.4. Though respondent No.4 filed application for review of the said order, the same came to be dismissed. Thus, order dated 18.05.2007 attained finality.

9. Following the same petitioner filed application before the Taluka Inspector of Land Records, Thane for cancellation of the measurement map which was allowed vide order dated 27.05.2008. This led to filing of appeal by respondent No.4 before Deputy Director of Land Records. Ultimately, the appeal of respondent No.4 was rejected with the observation that contention of respondent No.4 that it was in possession of more land than what was on paper was required to be dealt with by the civil court, giving liberty to respondent No.4 to approach the civil court of competent jurisdiction.

10. It is stated that respondent No.4 continued to prefer appeals and applications before various authorities raising grievance against alleged fixation of boundary between petitioner and respondent No.4. Ultimately, Deputy Director of Land Records by order dated 19.04.2017 rejected objection of respondent No.4 holding that contention of respondent No.4 that he was in possession of more land than what was mentioned on paper was required to be dealt with by the civil court, giving liberty to respondent No.4 to approach the civil court of competent jurisdiction.

11. Undeterred respondent No.4 continued to raise its grievance by filing appeals before various authorities but without any success.

12. Petitioner has stated that measurement of the lands of petitioner and respondent No.4 was carried out whereafter the boundary was fixed not once but thrice.

13. It is further stated that respondent No.4 had instituted regular Civil Suit No.61 of 2008 in the Court of learned Civil Judge, Senior Division, Thane for injunction against the petitioner which is pending. In the suit, respondent No.4 had filed interim application under exhibit-5 which was dismissed vide order dated 18.03.2008. Against such dismissal, respondent No.4 filed Miscellaneous Civil Appeal No.53 of 2008 in the court of learned Ad-hoc District Judge-3, Pune which was however dismissed with cost vide order dated 17.11.2011.

14. It is alleged by the petitioner that respondent No.4 was illegally extracting minor mineral (sand) from the land of the petitioner and in order to cover up the same had raised the boundary dispute. Even the so called boundary dispute was settled by the authorities by fixing the boundary.

15. In this regard respondent No.2 has initiated proceeding for imposition of penalty on respondent No.4 for illegal extraction of minor mineral which has also led to a round of appeal and revision.

16. In the meanwhile, in view of order passed by this Court in Public Interest Litigation, petitioner and several other lessees were directed to stop quarrying activities leading the petitioner to approach this Court firstly in the Public Interest Litigation and thereafter by filing independent writ petition being Writ Petition No.8380 of 2009 wherein interim order was passed on 04.11.2009 allowing the petitioner to carry on quarrying activities.

17. Thereafter lease of the petitioner was extended from time to time. It may be mentioned that the said writ petition was disposed of by this Court by giving

liberty to the petitioner to file appeal before the Government. The ad-interim order was directed to be continued till disposal of the appeal.

18. After expiry of the lease on 31.12.2015, respondent No.2 passed order dated 21.10.2016 renewing the lease of the petitioner for extraction of minor mineral from 21.10.2016 to 20.10.2021.

19. It may be mentioned that in the meanwhile, respondent No.2 had passed an order dated 28.07.2011 as per which direction was issued for re-measurement of the land bearing Survey No.208 (new Survey No.4). Respondent No.2 had further directed not to carry out quarrying activity in the portion of the land which was disputed by respondent No.4.

20. Pursuant thereto, District Mining Officer visited the site on 05.08.2011 and marked the disputed portion with white colour oil paint and directed petitioner as well as respondent No.4 not to carry out any quarrying activity in the said area. This position continued to be maintained thereafter.

21. Against the renewal / grant of lease dated 21.10.2016, respondent No.4 preferred appeal before respondent No.3 along with an application for condonation of delay. The appeal was registered as Appeal No.297 of 2017. The application for condonation of delay was heard on 08.08.2017. However, neither the counsel for the petitioner nor the petitioner was informed about the outcome of such hearing.

22. Subsequently, petitioner got the information that an order was passed by respondent No.3 on 01.09.2017 whereby the delay in filing the appeal was condoned, further directing that the appeal would be heard on 27.09.2017.

23. Since petitioner had no knowledge about the aforesaid order and

consequential hearing of the appeal, the hearing proceeded *ex-parte* whereafter *ex-parte* order dated 30.05.2018 was passed by respondent No.3 allowing the appeal filed by respondent No.4 thus setting aside the order dated 21.10.2016 whereby the mining lease of the petitioner was renewed / granted.

24. Aggrieved by the above, petitioner preferred Writ Petition No.7060 of 2018 before this Court. An interim order was passed on 03.07.2018 directing the respondents not to take any coercive steps against the petitioner. Finally, the writ petition was disposed of on 12.09.2018 on consent terms. As per the minutes of the order dated 12.09.2018, the *ex-parte* order dated 30.05.2018 was set aside and the related appeal was restored to the file of respondent No.3. While the appeal was directed to be heard afresh and decided in accordance with law, all contentions of both the parties were kept open.

25. Thereafter, respondent No.4 filed written arguments in the appeal being the appellant to which petitioner filed reply. It was specifically contended by the petitioner that the appeal filed by respondent No.4 under Section 247 of the Land Revenue Code and Rule 82 of the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013 was not maintainable. Therefore, petitioner requested respondent No.3 to frame a preliminary issue regarding maintainability of the appeal. However, respondent No.3 proceeded to hear the appeal on merit. Finally the appeal was heard along with the preliminary objection of the petitioner whereafter the appeal was disposed of vide order dated 27.12.2018 whereby respondent No.3 allowed the appeal filed by respondent No.4. By the said order, the earlier order dated 30.05.2018 was confirmed and the order dated 21.10.2016 whereby lease of the petitioner for extraction of minor mineral was renewed / granted was set aside.

26. Aggrieved, present writ petition has been filed by the petitioner seeking the reliefs as indicated above.

27. This Court by order dated 30.01.2019 passed an ad-interim order staying the order dated 27.12.2018 which was thereafter extended by subsequent orders.

28. Petitioner has also filed an additional affidavit to bring on record certain additional documents produced by respondent No.4 before respondent No.3 in the appellate proceeding, which could be obtained subsequently.

29. Respondent No.4 has filed affidavit. Stand taken by respondent No.4 is that by a registered sale deed dated 10.01.1962, it had purchased a plot of land admeasuring 10H 62R 06P i.e., 26 acres 22.5 gunthas from one Smt. Premkumarbai Dwarkadas Thakkar bearing old Survey No.208 (new Survey No.4) situated at Village Ovala (Bhaindarpada), Thane whereafter respondent No.4 came into possession of the said land. It is stated that while handing over possession of the land she had handed over a total of 15H 7R 50P land i.e., excess land to respondent No.4 since the land is hilly. Respondent No.4 continued in possession over the excess land since purchase.

29.1. Neither Smt. Premkumarbai Dwarkadas Thakkar during her lifetime nor her legal heirs after her death objected to possession by respondent No.4 of the excess land which measured 4H 45R.

29.2. On the other hand, by a sale deed dated 10.03.1999 Smt. Shobha and the legal heirs of Late Yashomati sold land measuring 8H 4R 70P i.e., about 20 acres to the petitioner whereafter petitioner is in possession over the said purchased land.

29.3. It is categorically stated that the land purchased by respondent No.4 over which it is in possession including the excess 4H 45R of land do not in any way share common boundary with the land purchased by the petitioner. In other words,

petitioner's land and land belonging to respondent No.4 are located at different places and their lands do not have a common boundary. Though this got reflected in the government map following measurement carried out by the Taluka Inspector of Land Records, Thane on or about 17.12.2004, it was subsequently cancelled in the year 2007 / 2008.

29.4. It is alleged by respondent No.4 that partners of the petitioner came to learn about the possession of respondent No.4 in respect of the excess 4H 45R land in the year 2004 whereafter it adopted various proceedings claiming right over the said piece of land.

29.5. Details of various proceedings instituted by and complaints made by the petitioner have been described by respondent No.4. Reference has been made to order dated 17.05.2006 passed by the Sub-Divisional Officer, Thane Division, Thane whereby land of the petitioner was delineated which clearly indicated transgression of the petitioner into the land of respondent No.4. This order was passed on complaint made by the petitioner before the Collector, Thane raising boundary dispute. Against the order dated 17.05.2006, respondent No.4 preferred appeal before the Deputy Collector (Appeals), Thane who by order dated 08.12.2006 set aside the order dated 17.05.2006, further directing the parties to get 'pot hissa' measurement done which order respondent No.4 claims has attained finality.

29.6. Though further applications and appeals were filed, direction to the parties to carry out 'pot-hissa' measurement in terms of order dated 08.12.2006 was maintained vide the order dated 28.02.2011 passed by the Deputy Director of Land Records, Konkan Division, Mumbai.

29.7. Without carrying out 'pot-hissa' measurement, petitioner continued quarrying in the disputed land leading respondent No.4 to lodge complaint before

the Collector, Thane who passed order dated 28.07.2011 directing re-measurement of the land of both the parties, further directing both the parties not to carry out any mining activity in the disputed land. Despite such directions, petitioner continued mining activity in the disputed area leading respondent No.4 to lodge further complaints. Respondent No.4 has also mentioned about the various steps taken by it to get its land measured and demarcated.

29.8. In the above context, Collector, Thane granted quarrying permission to the petitioner vide order dated 21.10.2016 while not granting such permission to respondent No.4. Being aggrieved respondent No.4 preferred appeal before the Additional Commissioner, Konkan Division, Mumbai which was registered as Appeal No.Desk-MNL-297/2017. By the order dated 30.05.2018, the appellate authority allowed the said appeal and set aside the order dated 21.10.2016 further directing that steps be taken in terms of order dated 08.12.2006.

29.9. Assailing the above order dated 30.05.2018, petitioner preferred Writ Petition No.7060 of 2018 before this Court. The writ petition was disposed of by this Court in terms of the minutes of order dated 12.09.2018. While order dated 30.05.2018 was set aside, the appeal was restored back to the file of Additional Commissioner, Konkan Division, Mumbai for hearing afresh keeping all contentions open.

29.10. Thereafter, both the parties filed affidavits and written submissions including application filed by the petitioner questioning maintainability of the appeal.

29.11. By order dated 27.12.2018, the appellate authority allowed the appeal of respondent No.4.

29.12. It is this order which has been impugned by the petitioner in the present writ

proceeding.

29.13. While supporting the order dated 27.12.2018, basic contention of respondent No.4 is that the respective sale deeds of the parties would clearly show that lands of the petitioner and respondent No.4 do not share common boundary. That apart, between both the plots of land there is land belonging to another person. By raking up a boundary dispute petitioner is carrying on mining operation in the land of respondent No.4. Contentions raised by the petitioner have all been denied. In such circumstances respondent No.4 seeks dismissal of the writ petition.

30. Petitioner has filed rejoinder affidavit to the reply affidavit of respondent No.4. Petitioner has reiterated the contentions made in the writ petition. While denying the claim and contentions of respondent No.4, it is stated that in the affidavit in reply respondent No.4 has made out a completely new case besides bringing on record documents which were not produced before the appellate authority. In this connection, reference has been made to the claim of respondent No.4 of being in possession of excess land and carrying on quarrying activities therein. This has been disputed and denied by the petitioner as being totally untenable and unbelievable. According to the petitioner, 'pot-hissa' measurement of the land was carried out. Therefore, both the orders dated 08.12.2006 and 28.02.2011 have been complied with. Petitioner has alleged that respondent No.4 had extracted huge quantity of minor mineral from the land in possession of the petitioner in a most illegal and unauthorized manner without obtaining any permission from the authorities concerned. It is stated that there is no boundary dispute between petitioner and respondent No.4. Rather, respondent No.4 had extracted minor minerals from the land belonging to the petitioner. Finally petitioner has also raised the question of maintainability of the appeal filed by respondent No.4 before respondent No.3. Therefore petitioner contends that the impugned order being without jurisdiction besides being wholly unsustainable on

merit is liable to be set aside and quashed.

31. Respondent No.4 has filed affidavit in sur-rejoinder wherein it has refuted the contention of the petitioner that respondent No.3 had no jurisdiction to entertain the appeal of respondent No.4. It is asserted that respondent No.3 as the appellate authority had rightly exercised the appellate powers while dealing with the appeal of respondent No.4. It is further stated that granting quarrying permission dated 21.10.2016 to the petitioner amounted to implied denial of quarrying permission to respondent No.4.

32. Mr. Walawalkar, learned senior counsel for the petitioner at the outset submits that the impugned order dated 27.12.2018 passed by respondent No.3 is without jurisdiction in as much as the appeal filed by respondent No.4 before respondent No.3 was thoroughly misconceived and not at all maintainable. He has referred to Section 247 of the Land Revenue Code and submits that when the Collector or Additional Collector exercises power under the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013, their actions cannot be challenged in appeal under Section 247 of the Land Revenue Code. Referring to Rule 82 of the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013, he contends that the appeal as filed by respondent No.4 and seeking the reliefs therein are not contemplated under the said provision. Appeal being a creature of the statute, appellate power has to be strictly exercised and construed as per the statute. He further submits that there is clear abuse of the process of law by respondent No.4. In support of his contention, learned senior counsel for the petitioner has placed reliance on the decisions of the Supreme Court in *Fulchand Bhagwandas Gugale Vs. State of Maharashtra*, **2005 (2) Mh.L.J. 502** and in *Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board*, **(2010) 13 SCC 216**. On merit also he submits that there was no justification at all for respondent No.3 to interfere with the order dated 21.10.2016 granting mining lease to the petitioner. He therefore submits that the impugned

order being wholly without jurisdiction and being untenable in law as well as on facts is liable to be set aside and quashed.

33. *Per contra*, Mr. Naik, learned senior counsel for respondent No.4 submits that the related appeal is maintainable. As a matter of fact, the appeal was finally heard and decided by respondent No.3 on remand by this Court in the earlier round of litigation where the petitioner had complained that it was not heard and that respondent No.3 had decided the appeal *ex-parte*. He has also referred to paragraphs 6 and 12(k) of the appeal to highlight the reasons as to why the appeal was filed. Therefore, it is not open to the petitioner to contend that the appeal is not maintainable. On the other hand, the writ petition itself is not maintainable for failure of the petitioner to avail the alternative remedy of revision provided under Rule 84 of the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013 as well as under Section 257 of the Land Revenue Code. Supporting the appellate order dated 27.12.2018 which has been impugned by the petitioner, he submits that the order dated 08.12.2006 passed by the Deputy Collector, Thane directing measurement of the land which order was reiterated by the Deputy Director of Land Record on 28.02.2011 has attained finality but the disputed land is yet to be measured. Without carrying out the measurement as directed, respondent No.2 could not have granted quarrying permission to the petitioner vide the order dated 21.10.2016. As such respondent No.3 rightly interfered with the said order. He therefore seeks dismissal of the writ petition with cost.

34. Learned AGP submits that since it is a dispute between the petitioner and respondent No.4 regarding mining lease granted to the former, he has very limited role save and except supporting the order impugned.

35. Submissions made by learned counsel for the parties have been duly considered. Also perused the materials on record and considered the decisions

cited at the bar.

36. In exercise of powers conferred by Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 and such other enabling powers, Government of Maharashtra has framed a set of rules called the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013 for regulating the extraction of minor minerals. It may be mentioned that quarry permits for extraction of minor minerals are granted under these rules specifically dealt with in Chapter IV which also provides for preparation of a mining plan by a committee headed by the District Collector. The competent authority or officer empowered to grant permit under Chapter IV are defined in Rule 2(h) which includes Tahsildar, Sub-Divisional Officer, Collector or Additional Collector. Rule 82 provides for filing of appeal. Since Rule 82 is relevant, the same is extracted hereunder:

“82. Appeal.-(1) Any person aggrieved by an order of the Competent Officer-

- (1) refusing to grant a quarry lease,
- (2) cancellation or determination of lease,
- (3) refusing quarry permit,
- (4) sand block auction or
- (5) dealer's license,

may appeal within a period of sixty days of the date of such order to the;

- (i) Collector or Additional Collector in case of order passed by Sub-Divisional Officer,
- (ii) to the Divisional Commissioner in case of order passed by the Collector,

(2) In case of any order passed by the Divisional Commissioner, the appellate authority will be the Government or any Officer appointed by Government in this behalf.

(3) The orders passed by the Government under appeal shall be final.”

37. From a perusal of the above, it is seen that an appeal can be filed by a person who is aggrieved by an order of the competent officer under the five circumstances enumerated thereunder. Such person should be aggrieved by an

order refusing to grant a quarry lease; he must be aggrieved by cancellation or determination of lease; refusing quarry permit; he must be aggrieved by sand block auction or dealer's license. It is only under these five circumstances that a person aggrieved may file appeal before the authority mentioned in Rule 82 itself. If the order is passed by Sub-Divisional Officer then appeal would lie to Collector or Additional Collector; if the order is passed by the Collector then appeal would lie to the Divisional Commissioner. However, if the order is passed by the Divisional Commissioner, the appellate authority would be the State Government.

38. Before facts of the present case are adverted to, it would be appropriate to examine the appellate provision under the Land Revenue Code. Section 247 is the appellate provision. It reads thus:-

“247. Appeal and appellate authorities

(1) In the absence of any express provisions of the Code, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a Revenue or Survey Officer specified in column I of the Schedule E under this Code or any other law for the time being in force to the officer specified in column 2 of that Schedule whether or not such decision or order may itself have been passed on appeal from the decision or order of the officer specified in column I of the said Schedule:

Provided that, in no case the number of appeals shall exceed two.

(2) When on account of promotion or change of designation, an appeal against any decision or order lies under this Section to the same officer who has passed the decision or order appealed against, the appeal shall lie to such other officer competent to decide the appeal to whom it may be transferred under the provisions of this Code.”

39. As per this provision, in the absence of any express provision in the Land Revenue Code or in any law for the time being in force, an appeal shall lie from any decision or order passed by a Revenue or Survey Officer specified in Column 1 of Schedule E under the Code or any other law for the time being in force to the officer specified in Column 2 of that Schedule. Sub-section (2) deals with a situation when the officer who had passed the original order becomes the appellate authority on promotion or change of designation.

40. Thus from the above, it is quite evident that the appellate provision contained in Section 247 of the Code is a general provision which is buttressed by use of the expression “in the absence of any express provisions of the Code, or of any law for the time being in force to the contrary”. In other words, remedy of appeal under Section 247 would be available only in the absence of any express provision in the Land Revenue Code or in any law for the time being in force to the contrary. In contra-distinction, Rule 82 of the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013 specifically deals with appeals relating to quarrying lease for extraction of minor minerals, which is an express provision providing for appeals in respect of grant of quarrying lease / permit. It is trite that when there is a special provision of law dealing with a subject as also a general provision, it is the special provision of law which will prevail and hold the field. The appeal dealt with extraction of minor minerals. Respondent No.4 is aggrieved by grant of quarrying lease / permit to the petitioner for extraction of minor minerals. Therefore, it is Rule 82 of the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013 which would be the relevant provision for filing of appeal and not Section 247 of the Land Revenue Code.

41. It has already been noticed above as to who can file an appeal under the five circumstances mentioned in Rule 82. Having noticed the above, the appeal filed by respondent No.4 before respondent No.3 may now be examined. The appeal was filed under Section 247 of the Land Revenue Code read with Rule 82 of the aforesaid Rules. The prayer made in the appeal was to set aside the order dated 21.10.2016 passed by respondent No.2 granting quarrying permission to the petitioner. There was no other substantive prayer. As stated earlier, respondent No.2 had passed the order dated 21.10.2016 granting mining lease / permission to the petitioner for extraction of minor mineral i.e., sand. Rule 82 does not provide for filing of appeal against grant of quarrying lease or permit. Only a person

aggrieved by the five circumstances mentioned in Rule 82 can prefer appeal. No appeal can be filed against an order granting quarrying lease or permit. There is no averment in the appeal as well as in the affidavits filed by respondent No.4 in the present proceeding that it had filed application for grant of quarrying lease or permit and by such and such order it was refused and against such order of refusal the related appeal was filed. In the absence thereof, the related appeal could not have been filed by respondent No.4 before respondent No.3 assailing only the order dated 21.10.2016 granting quarrying lease or permit to the petitioner. Though this point was specifically raised by the petitioner before respondent No.3 during the appellate proceedings, the same was not addressed and decided by respondent No.3 in the impugned order dated 27.12.2018.

42. Contention of respondent No.4 that grant of quarrying lease or permit to the petitioner would imply refusal of quarrying lease or permit to respondent No.4, thus making respondent No.4 'a person aggrieved' within the meaning of Rule 82 thereby enabling it to file appeal under the said provision besides being far-fetched, is also wholly untenable and cannot be accepted. There must be a specific claim for grant of quarrying lease or permit and refusal by the competent officer. It is against such order of refusal that an appeal would be maintainable under Rule 82. This, respondent No.4 is unable to point out.

43. The further contention of respondent No.4 that after the appeal was restored to the file of respondent No.3 by this Court in the earlier round of litigation, it is not open to the petitioner to argue that respondent No.3 had no jurisdiction to entertain the appeal is again wholly untenable and unacceptable. In the earlier round of litigation i.e., in Writ Petition No.7060 of 2018 petitioner had challenged the order dated 30.05.2018 passed by respondent No.3 allowing the appeal of respondent No.4. The said writ petition was disposed of on 12.09.2018 on consent terms. As per the minutes of order, the order dated 30.05.2018 was set aside as it was passed *ex-parte*. While restoring the appeal to the file of respondent No.3 it

was made clear that all contentions of both the parties were kept expressly open. On remand petitioner had specifically raised the issue of maintainability of the appeal which, as noticed above, was not dealt with by respondent No.3.

44. In **Fulchand Bhagwandas Gugale** (*supra*), Supreme Court held that though the Sub-Divisional Officer and Collector are Revenue Officers within the meaning of the Land Revenue Code and though the Sub-Divisional Officer acting as Land Acquisition Officer under the Land Acquisition Act, 1894 exercises the power of a Collector under Section 5A of the said Act, but when they act under the provisions of the Land Acquisition Act they are not acting as Revenue Officers under the Land Revenue Code but as designated authorities under the Land Acquisition Act, 1894. When they function under the provisions of the said Act, their powers are determined by the provisions of the said Act and not by the provisions of the Land Revenue Code. Therefore, an order passed by the Sub-Divisional Officer or Collector under the Land Acquisition Act would not be appealable under Section 247 of the Land Revenue Code.

45. Applying the above principle, the Collector, Additional Collector, Sub-Divisional Officer and Tahsildar acting under the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013 would be the competent authorities or officers for the purpose of Chapter IV of the said Rules dealing with grant of quarrying permits for extraction of minor minerals. In fact, they are so defined under Rule 2(h) of the aforesaid Rules. Though these authorities are certainly Revenue Officers under the Land Revenue Code, they become the competent authority or officer while acting under the aforesaid Rules. When they act under the aforesaid Rules, their orders cannot be put to challenge in appeal under Section 247 of the Land Revenue Code but would be amenable to the appellate jurisdiction under Rule 82. Therefore, any appeal filed in respect of order passed by the above authorities relating to extraction of minor mineral would have to be examined and decided within the four corners of Rule 82.

46. Supreme Court in **Municipal Committee, Hoshiarpur** (*supra*), while reiterating the proposition that right of appeal is a creation of statute, further held that being a substantive statutory right it has to be regulated in accordance with the law in force ensuring full compliance with the conditions mentioned in the provision that creates it.

47. Thus, viewed in the above context and considering the discussions made above, Court has no hesitation to hold that respondent No.3 acted without jurisdiction while entertaining and allowing the related appeal of respondent No.4. Impugned order dated 27.12.2018 is therefore without jurisdiction and on this count itself the same is liable to be set aside and quashed which I hereby do.

48. When the order impugned is without jurisdiction, the fact that there is an alternative remedy by way of revision under Rule 84 would not detract the writ court from exercising the power of judicial review to interdict the decision making process. That apart, in the circumstances the remedy of revision may not at all be efficacious.

49. Though the impugned order is also highly questionable on merit as well, it is not necessary to delve further into this aspect in view of the fact that the said order dated 27.12.2018 was passed without jurisdiction rendering the same *nonest* in the eye of law.

50. In the light of the above, the writ petition is allowed. However there shall be no order as to costs.

(UJJAL BHUYAN, J.)

Minal Parab