IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

220 **CWP-15610-2020(O&M)**
Date of Decision : 16.10.2020

Joginder Singh and others **....Petitioners**

vs.

State of Haryana and others **....Respondents**

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G, Haryana.

Mr. Anuj Balian, Advocate
for respondent No.5.

Mr. Sanjeev Bawa, Advocate
for respondent No.6.

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AJAY TEWARI, J. (Oral)

At the very outset, learned counsel for the petitioners states that in view of the short reply filed by respondent No.6, he seeks no relief against respondent No.6 and therefore, he prays for deletion of the name of respondent No.6 from array of parties and seeks time to implead the effected person. Registry is directed to make necessary correction in the Memo of Parties.

Short reply dated 9.10.2020 by way of affidavit of Om Dutt, Mining Officer, Department of Mines and Geology, Panchkula, Haryana, has been filed on behalf of respondent No.4, the same is taken on record.

This petition has been filed by the petitioners claiming that the land in dispute is owned by them and the same is being claimed by respondent No.5-Gram Panchayat of Village Shamtoo. It is further averred that the proceedings under Section 13 A of the Punjab Village Common Lands Act are pending wherein the petitioners and others land owners have agitated this claim and those cases are still not decided. It has further averred that during the pendency of the said cases the Government-respondents No.1 to 4 have proceeded to open the land in dispute for mining and the prayer made is that the mining should be restrained till such time the title suits are decided. Further, the petitioners are in cultivating possession of the land and it had been so their forefather.

On the other hand, the stand of the respondents No. 1 to 4 is that regardless of who the owner of the land is, the Government have the sovereign and pre-emptory right to extract minerals and the only benefit which any land owner can seek is to get the compensation which may be determined under Rules 65 of Haryana Minor Mineral Concession, Stocking, Transportation of Mineral and Prevention of Illegal Mining Rules, 2012.

> *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.*
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> *(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.

Learned counsel for the petitioners is not in a position to deny this legal position.

Consequently, we deem it appropriate to direct the respondents No. 1 to 4 to first take recourse to the procedure under Rule 65 (supra). Just so that none of the rival claimants are prejudiced, let the petitioners and other similarly situated persons on the one side and the respondents No. 5 on the other side, as well as the contractor, participate in the price fixation procedure and whatever price is fixed would be put in a fixed deposit in any nationalized bank and would enure to the benefit of the party which may be found successful in title suit.

Petition stands disposed of in the above terms.

Since the main case has been decided, the pending miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(RAJESH BHARDWAJ)
JUDGE

16.10.2020
anuradha

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No