IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 440 OF 2021

M/s. Krushnarpan Stone Crusher,
A Proprietorship Concern of
Shri Sunil S/o. Wamanrao Dahane,
Aged 51 years, Occ.: Business,
R/o. Pimpalkuta, Armal,
District : Amravati.

.... **PETITIONER.**

// **VERSUS //**

1. State of Maharashtra,
   In the Ministry of Revenue & Forest,
   Mantralaya, Mumbai-32, Through
   its Secretary.

2. District Collector, Amravati.

3. Tehsildar, Amravati
   Tah. Amravati, District : Amravati.

.... RESPONDENTS.

Ms Ramaa V. Kukday, Advocate for Petitioner.
Shri A.A.Madiwale, A.G.P. for Respondent Nos. 1 to 3.

CORAM : SUNIL B. SHUKRE AND ANIL S. KILOR, JJ.

DATED : SEPTEMBER 28, 2021

ORAL JUDGMENT : (Per : Sunil B. Shukre, J.)

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. This petition challenges legality and correctness of the recovery notice dated 28/10/2020 issued by respondent No.3 to the petitioner.

4. By the recovery notice dated 28/10/2020, the petitioner was informed that for the alleged excavation of minor minerals in excess of the quantity permitted to be excavated as per mining lease granted to the petitioner, which is valid for a period of 5 years from 05/05/2014, the petitioner would have to pay an amount of Rs.36,51,200/- as the royalty of the minor minerals excavated in excess of the mining lease by the petitioner.

5. It is the case of the petitioner that he has not excavated any additional minerals as claimed in the recovery notice. The learned counsel for the petitioner contends that if the respondent Nos.2 and 3 were of the opinion that the petitioner had done something which was not permissible under the mining lease or in other words had excavated some excess minor minerals, the respondent Nos. 2 and 3 ought to have given an opportunity to the petitioner to explain his stand in the matter. It is further submitted that the respondent Nos.2 and 3, who issued the recovery notice, have not given the details regarding the quantity of the

minerals excavated allegedly in excess. It is further submitted that if such details were given in the recovery notice and opportunity of hearing was granted to the petitioner, the petitioner would have been able to satisfy the respondent Nos. 2 and 3 about the legality of the excavation made by him.

6. The learned A.G.P. submits that the recovery notice has been issued by respondent Nos. 2 and 3 after a committee was appointed to take inspection of the various stone quarries in order to find out if any excess excavation was being carried out at these quarries and after the report was submitted regarding the excess excavation being carried out at some of the stone quarries that the recovery notice was issued to the respective holders of mining lease and that there is no requirement of law which would have made respondent Nos. 2 and 3 to issue show cause notice to the petitioner in the matter. The learned A.G.P. further submits that the impugned notice have been issued under the provisions of the Maharashtra Minor Minerals Extraction (Development and Regulation) Rules, 2013 (hereinafter referred to as "Rule of 2013"), although, the reply filed by the respondent Nos. 2 and 3 does not specify the Rule under which the impugned action has been taken. However, the learned A.G.P. points out that the impugned action, in his

opinion, has been taken in pursuance of the power given under Rule 80 of the Rules of 2013.

7. We have gone through Rule 80 of the Rules of 2013 to which reference has been made by learned A.G.P. It only confers power upon respondent No.2 to enter and inspect any mine and examine whether the mine is being operated in accordance with the terms and conditions on which the mining lease has been granted. It does not refer to any power to fix a certain amount as the royalty due and payable by the lease holder to the Government for excavating the minor minerals in excess of the quantity permitted under the mining lease. There is also a provision made in Rule 81 which lays down that whenever any rent, royalty, tax, fee or any other sum is found to be due to the Government under these rules and under the terms and conditions of quarry lease, permit or auction, same may be recovered in the same manner as arrears of land revenue, provided that a Certificate to that effect is issued by the Competent Officer.

8. The reply of the respondent Nos. 2 and 3, as stated earlier, does not refer to any particular Rule of the Rules of 2013, under which the action impugned herein has been taken. Also, we have already

found that Rule 80 which has been relied upon by the learned A.G.P. does not confer any such power upon respondent Nos. 2 and 3 as would enable them to take the action which has been taken in the present case and which is impugned by the petitioner. Although, no reliance has been placed upon Rule 81 of the Rules of 2013, even if it is presumed that the impugned action has been taken in pursuance of this Rule, still, the impugned action, in our considered opinion, cannot be sustained in the eye of law for the reason that no certificate issued by the Competent Officer specifying the royalty payable by the petitioner has been placed on record. The impugned notice also does not refer to any such certificate having been issued by the Competent Officer. This would mean that, in the present case, the action that has been taken is vulnerably in law for the reason that it does not receive any support from the powers expressly conferred upon respondent Nos. 2 and 3 on one hand and on the other, the action has been taken in a unilateral way without giving any opportunity of hearing to the petitioner. In fact, such an opportunity of hearing before the proposed action was taken against the petitioner was necessary as the petitioner is disputing the charge that the minor minerals excavated by him while working the mine as per the lease granted to him were in excess of the permissible quantity.

9. In this view of the matter, we are of the opinion that the impugned action, comprising the impugned notice, cannot be sustained in the eye of law and it deserves to be quashed and set aside. Hence, we pass the following order:

i) The petition is allowed.

ii) The impugned notice is hereby quashed and set aside.

iii) The matter is remanded back to the respondent Nos. 2 and 3 for fresh consideration and decision in accordance with law after giving due opportunity of hearing to the petitioner, within two weeks from the date of appearance of the petitioner before respondent No.2.

iv) The petitioner to appear before respondent No.2-District Collector, Amravati on 4th October 2021.

Rule accordingly. No costs.

(ANIL S. KILOR, J) (SUNIL B. SHUKRE, J.)

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