

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-16395-2021 (O&M)

Date of decision : 06.09.2021

M/s Haryana Mining Company

.....Petitioner

versus

State of Haryana & Others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MRS. JUSTICE ALKA SARIN**

Present: Mr. Amit Jhanji, Senior Advocate with
Mr. S. S. Sharma, Advocate for the petitioner.

ALKA SARIN, J.

Heard through video conferencing.

By way of the present Civil Writ Petition under Article 226 of the Constitution of India the petitioner has inter-alia challenged the order dated 10.1.2020 (Annexure P-19) whereby the mining lease granted to it has been terminated and has also challenged the order dated 13.8.2021 (Annexure P-25) whereby its appeal against the said termination order has been dismissed and the order of termination of the mining lease has been upheld.

Brief facts relevant to the present *lis* are that the petitioner participated in an e-auction held by the Haryana State Government on their web portal for obtaining mining lease of minor mineral in Village Garhi, District Mahendergarh. The petitioner is stated to have given the highest bid of ₹7,92,50,000/- per annum against the reserve price of ₹7,90,00,000/- per annum in respect of minor mineral mine in Village Garhi, District

Mahendergarh. The bid of the petitioner was accepted and on 24.7.2015 a Letter of Intent (Annexure P-1) was issued to the petitioner in respect of minor mineral mine of Garhi for a period of 10 years for extraction of “stone along with associated minor minerals” in area of 6.70 hectares falling in Khasra No.7, Village Garhi, District Mahendergarh. On 24.11.2015 and 5.4.2016 (Annexures P-2 and P-3) the petitioner is alleged to have informed respondent No.3 about illegal mining going on in the Garhi mining area allotted to it and in the Aravali area adjoining to it. The lease deed for mining was executed between the petitioner and the State Government on 11.4.2016. On an application submitted by the petitioner, the mining area was demarcated on 11.5.2016 (Annexure P-8). After obtaining the relevant permissions the petitioner commenced mining operations on 15.6.2016. Thereafter, one of the partners of the petitioner firm submitted a representation to the Tehsildar, Mahendergarh for demarcation of the mining area leased to the petitioner and on 5.4.2017 a demarcation is stated to have been carried out (Annexure P-9). On 21.8.2018 the mining area was got demarcated on the basis of some complaint alleging mining outside the mining area (Annexure P-10). On 17.12.2018 the mining area was again got demarcated on the basis of another complaint alleging mining outside the mining area (Annexure P-11).

Thereafter, the Sarpanch of Village Khudana, which adjoins Village Garhi, submitted a complaint vide Resolution dated 8.1.2019 to the Additional Deputy Commissioner, Narnaul alleging that the petitioner was carrying out illegal mining in Khasra Nos.366-367 measuring 49 Kanals 16 Marlas of Village Khudana which area abutted the mining area leased to the petitioner in Khasra No.7 of Village Garhi. A month later, on 8.2.2019, the

Gram Panchayat of Village Garhi passed a Resolution (Annexure P-12) stating that the mining work was being carried out within the area allotted to the lessee. The Additional Deputy Commissioner-cum-Nodal Officer, District Illegal Mining Observation Team, Narnaul conducted an enquiry and prepared a report dated 25.2.2019 (Annexure P-13) observing that *“illegal mining is found having taken place in Khasra No.366-367 in Aravali Forest area, however, it is not proved as to who committed said excavation”*.

The petition reveals that on the basis of the complaint received against the petitioner of carrying out mining outside the leased area, the Mining Officer, Narnaul vide his memo dated 4.2.2019 reported that as per the demarcation report it had been found that the petitioner had undertaken mining in the adjoining area of Khasra No.366-367 of Village Khudana which was outside its leased area. This report has not been attached with the writ petition. Taking up this report by the Mining Officer, Narnaul, the Director, Mines and Geology, Haryana issued a notice dated 13.3.2019 (Annexure P-14) to the petitioner calling upon it to show cause why the mining lease be not terminated prematurely for having breached the terms and conditions by undertaking illegal mining outside the leased area. On 27.3.2019 the petitioner submitted a reply to the notice dated 13.3.2019 denying any illegal mining by it. This reply has not been attached with the writ petition. On 15.4.2019 the Director General, Mines and Geology, Haryana asked the Mining Officer, Narnaul to send a factual report with regard to the allegations of illegal mining in Village Khudana by the petitioner. The Mining Officer, Narnaul got a fresh demarcation done and observed in the report (Annexure P-17) that though there was mining outside

the leased area, the villagers and the petitioner had submitted that the same was done by the earlier contractors and that no fresh mining was found beyond the pillar. A map was also enclosed with this report.

While the matter relating to the notice dated 13.3.2019 (Annexure P-14) was pending before the Director General, Mines and Geology, Haryana, vide order dated 13.12.2019 (Annexure P-18) the Assistant Mining Engineer, Narnaul suspended mining operations by the petitioner for having failed to pay Government dues towards Dead Rent, R&R Fund, Dead Rent and Interest.

On 27.12.2019 the representatives of the petitioner were afforded an opportunity of personal hearing by respondent no.2. Vide order dated 10.1.2020 (Annexure P-19) the respondent no.2 ordered premature termination of the mining lease which had been granted in favour of the petitioner for having undertaken mining operations outside the leased area. It was held that *“Whereas the demarcation report of the demarcation held on 17.12.2019 was shown to the representatives of the lessee firms. They denied the allegations of mining outside the lease. The mining outside the lease area was confirmed by the ADC Narnaul vide report dated 25.2.2019. A fresh survey by the Mining Officer, Narnaul along with revenue, forest and local representatives has also clearly established that the lessee has mined outside the lease hold area. The plotting of GPS Coordinates of the boundary pillars on the Google Pro application clearly shows mining outside the lease area towards the higher hillocks. Even trucks operating outside legal lease area can be seen in the Google Earth image. The benches created outside the lease area are also visible hearing”*. It was further held that *“Whereas the stand of the lessee firm is not tenable. The violation has*

been reported in three different reports and is clearly visible on Google Proapplication. The mining operations in the mine are already lying suspended on account of non-payment of government dues. In view of the above the reply dated 27.3.2019 and submissions made during hearing were not found satisfactory and there is clear evidence of lessee having undertaken mining operations outside the lease hold area as shown in the report of three different inspection reports and the Google Pro application image under the garb of mining lease granted in favour of M/s Haryana Mining Company over an area of 6.70 hectares of land comprising in Khasra No.7 of Village Garhi”.

The petitioner filed an appeal (Annexure P-21) against the order dated 10.1.2020 (Annexure P-19). However, this appeal was dismissed by respondent No.1 vide order dated 7.5.2021(Annexure P-22). On 9.7.2021 an auction notice (Annexure P-23) was issued by the State Government for auctioning the mining rights of the site in Village Garhi which had previously been allotted to the petitioner. The petitioner approached this Court by way of CWP No.13485 of 2021 challenging inter-alia the orders dated 10.1.2020 and 07.05.2021. Vide order dated 3.8.2021 (Annexure P-24) this Court set aside the order dated 7.5.2021 holding as follows:-

“CM-10046-CWP-2021

- 1. This application has been filed for placing on record the additional affidavit and exemption from filing the certified copies of Annexure P/24 to Annexure P/30.*
- 2. For the reasons recorded in the application, the same is allowed and above said documents are taken on record, subject to all just exceptions.*

Main case

- 3. By this petition the petitioner has challenged the*

cancellation of its mining licence on the ground that it had done illegal mining in an area of 0.056 hectare.

4. The precise contention of the learned Senior counsel is that there were two adjoining mines, one was of the petitioner and the other was of M/s Hari Har Mining Company and in both there were allegations of illegal mining but as per the petitioner, the illegal mining was being indulged in by the other company and not by the petitioner. Both the companies filed appeals against the finding that they were indulging in illegal mining and both the appeals were being proceeded with separately. As per the learned Senior counsel, the separation has led to a wrong finding with regard to the petitioner. We have gone through the order and find that it would have been more appropriate if the appellate authority in the present case had the benefit of the record available in the case of M/s Hari Har Mining Company to be able to determine whether the illegal mining complaints are of different areas or whether the illegal mining which was alleged against the aforesaid company has been tagged on to the petitioner also.

5. Notice of motion.

6. On advance notice, Mr. Lokesh Sinhal, Sr. Addl. A.G., Haryana appears and accepts notice on behalf of the respondents. He has stated that he has obtained instruction and he would have no objection if the impugned order (Annexure P-19) is set aside and the matter is remitted back to the appellate authority i.e. Additional Chief Secretary to Government of Haryana Mines & Geology Department who would summon the record of the case of M/s Hari Har Mining Company also and peruse the same while re-deciding the appeal of the petitioner. Learned State counsel further states that the appellate authority would give another opportunity of hearing to the petitioner and thereafter, decide the case within one week and till then the respondents will not finalize the auction of the mining areas which were under the licence of

the petitioner.

7. Learned Senior counsel for the petitioner states that he has no objection to this course of action but it would be more appropriate if some date is fixed for the petitioner to appear before the appellate authority. In consultation with learned State counsel, it is directed that the petitioner shall appear before appellate authority on 5.8.2021 at 10:00 am (on or any other date on which the appellate authority may require his presence) who shall decide the appeal afresh by passing a speaking order thereon after consulting the record of aforesaid appeal of M/s Hari Har Mining Company on or before 11.8.2021.

8. Petition stands disposed of in above terms and impugned order Annexure P-19 is set aside.

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

Vide order dated 13.8.2021 (Annexure P-25) the appeal of the petitioner was once again dismissed. Hence the present writ petition.

Learned senior counsel for the petitioner would contend that there are two adjoining mining sites, the lease for one of them was allotted to the petitioner and other was allotted to M/s Hari Har Mining Company and qua both the lessees there were allegations of illegal mining. It is contended that there was no illegal mining carried out by the petitioner and that it was M/s Hari Har Mining Company which was indulging in illegal mining. Learned senior counsel for the petitioner has further contended that as per report of the Additional Deputy Commissioner, Narnaul dated 25.2.2019 (Annexure P-13) there was no conclusive finding given with regard to the fact that the petitioner had carried out any illegal mining in the said area. It is further the contention that respondent no.1 has misread the

demarcation report dated 20.11.2019 (Annexure P-17), wherein the Mining Officer had reported that the mining was carried out beyond the boundary lines in some part of adjoining hillock of Khudana having average length of 0-40 mtrs, average width of 14 mtrs and average depth of 5 to 8 mtrs. Learned senior counsel for the petitioner would further contend that while reporting, the Mining Officer had also reported that there was no fresh mining found beyond the pillars. It is also the contention of learned Senior counsel that there is no evidence available with the Department to show that the alleged mining carried out outside the leased area was done by the petitioner as there is no conclusive finding qua the same. It was also submitted that a complaint against the petitioner was also made to the National Green Tribunal alleging illegal mining in the Aravali forest area and was enquired into by the Divisional Forest Officer, Mahendergarh and found to be not proved.

We have heard learned senior counsel and with his able assistance have also perused the record.

While dismissing the appeal of the petitioner vide order dated 13.8.2021 (Annexure P-25) respondent no.1 held that there was no access to the area where illegal mining was done except through the leased area of the petitioner. Respondent no.1 also held that during the period 1.5.2018 to 5.2.2019 the mine of the other firm M/s Hari Har Mining was lying closed since it's mining lease was initially suspended and thereafter also terminated so there was no possibility of that firm carrying out illegal mining in the area in question. It was further held that fresh mining was evident from the photographs sent by the Mining Officer along with his memo dated 4.2.2019 suggesting illegal mining even after the demarcation done on 17.12.2018.

Respondent no.1 also found that even as per the report by the Additional Deputy Commissioner, Narnaul illegal mining was found to have been undertaken in Khasra No.366-367 of Village Khudana though he could not ascertain as to who was involved in the illegal mining and observed that the Mining Office may trace the culprit and take action against the accused. The Mining Officer, Narnaul had already on 4.2.2019 reported that as per the demarcation report it had been found that the petitioner had undertaken mining in the adjoining area of Khasra No.366-367 of Village Khudana which was outside its leased area. A query was put to learned senior counsel appearing for the petitioner as to whether the area alleged to be under illegal mining had any other approach except from the area underlease with the petitioner. A very categorical reply has been given that there was no other approach except through the area underlease with the petitioner.

In the circumstances, the argument raised by the learned senior counsel that the illegal mining was being carried out by M/s Hari Har Mining company cannot be accepted.

The other argument raised by the learned senior counsel that there is no material on the record to show that the illegal mining is being carried out by the petitioner cannot be accepted inasmuch as there was material on the record, besides the statements of the officers concerned, to reach the conclusion that the illegal mining was being carried out by the petitioner.

Learned senior counsel appearing for the petitioner argued that the findings recorded by respondent nos.1 and 2 were contrary to the earlier demarcation reports and drew the attention of the Court to the demarcation reports dated 11.5.2016, 5.4.2017, 21.8.2018 and 17.12.2018 to contend that

the petitioner had not carried out any illegal mining. The arguments raised on behalf of the petitioner are all of the nature of fact-finding. The Authorities have already examined the facts and reached their conclusions which are against the petitioner. This Court while exercising its writ jurisdiction cannot re-appraise the facts as recorded by the Authorities and act as an appellate Forum. The jurisdiction of a writ Court is limited to questions of law and jurisdiction. In the matter of '**Syed Yakoob vs. K.S. Radhakrishnan**' [(1964) 5 SCR 64 : AIR 1964 SC 477] it was held by the Supreme Court :

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of

certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the

Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque [(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam[(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168].”

It is also well settled that in regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued only if in recording such a finding the tribunal or authority has acted on evidence which is legally inadmissible or has refused to admit admissible evidence or if the finding is not supported by any evidence at all because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts, tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. None of these pre-requisites are attracted in the present case for this Court to interfere in writ jurisdiction with the findings of fact recorded by respondent nos.1 and 2 that the petitioner had carried out illegal mining in an area beyond its leased area.

Respondent no.1, after remand of the case, has given an opportunity of hearing to the petitioner on 11.08.2021 and arrived at factual

findings which cannot be held to be without any material. The orders impugned in the present case are speaking and well-reasoned orders based on the material available on the record. We do not find any reason to take a contrary view.

In view of the discussion above, we do not find any merit in the present writ petition which is dismissed.

(AJAY TEWARI)
JUDGE

(ALKA SARIN)
JUDGE

06.09.2021

Yogesh Sharma

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO