

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C). No. 3640 of 2003

Smt. Shanti Naik

..... Petitioner

Mr. P.K. Rath, Advocate

-versus-

Collector, Sambalpur & Others

..... Opp. Parties

Mr.P.K.Muduli, AGA

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K.PATTANAİK

ORDER

05.01.2022

Order No.

7.

1. The challenge in the present petition is to the order dated 1st November, 2002 issued by the Tahasildar, Sambalpur requiring the Petitioner to pay royalty in respect of minerals (sand) used for construction of a building on her own plot.

2. While directing notice to issue in this petition way back on 10th October, 2003 the operation of the order dated 1st November, 2002 followed by the notice of the same date by the State .

3. In the counter affidavit it is pointed in para 4 as under:

“4. That in reply to the averments made in Para-1 of the writ petition, the deponent most respectfully begs to submit that the petitioner has constructed a four floor commercial building over Plot No.1215/1935 of Khata No.220/57 of Unit No.4, Sambalpur Town. She

has used minor minerals without paying any royalty to the Revenue Inspector. She has not procured the minerals from the persons having valid transit permit. It has been decided in the District Revenue Meeting held on May, 2002 under the Chairmanship of Collector,, Sambalpur that royalty @ Rs.3/- per sft. Should be realized from the person who is using the minor minerals for construction of private building to augment the Government revenue. The proceeding of the meeting was communicated to Tahasildar, Sambalpur vide Memo No.1290/Rev. dt03.06.2022 of District Office, Sambalpur, copy of which is annexed herewith as Annexure-A/1. As the floor area of the flat including all the floors is 46825 sft., notice was issued to the petitioner for payment of Rs.1,40,475/- towards royalty amount, giving an opportunity to the petitioner on 12.11.2002. Therefore, there is no illegality or irregularity in the action of the Opp.Parties and the petitioner is liable to pay the royalty fixed on her for the reasons mentioned above and the writ petition is also liable to be dismissed in limine.”

4. Learned counsel for the Petitioner Mr. P.K.Rath contends that the impugned order only refers to a building constructed by the Petitioner and not that it is a commercial building. Further, he states that private land owners were not required to enquire into the source of the minerals they were procuring for the purposes construction, in terms of the relevant Rules.

5. The menace of illegal mining cannot possibly be controlled unless the authorities are able to trace the

transactions which end up with the illegally mines quantity being used by the public. Here the burden was on the Petitioner to show that she had purchased the minerals from a valid source when questioned. She was unable to do so.

6. Also on equities, the Court finds that there has been stay of the collection of Rs.1,40,475/- for over 18 years now. At any reasonable rate of bank interest applied thereon, the Petitioner has ended up actually earning much more than the said amount in the last 18 years. Therefore, no prejudice absolutely would be caused to the Petitioner, if she were asked to pay the disputed royalty amount now.

7. For the aforementioned reasons, this Court is not inclined to interfere with the impugned order and notice. The interim order is vacated.

8. The writ petition is dismissed.

9. It is made clear that this order has been passed in the peculiar facts and circumstances of the case.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge