

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 6306 of 2017

Dhirendra Mohan Panda

.....

Petitioner

Mr. P.K. Parhi, Advocate

Vs.

State of Odisha and others

.....

Opposite Party

Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

22.06.2022

Order No.

03.

This matter is taken up through hybrid mode.

2. Heard Mr. P.K. Parhi, learned counsel for the petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate.

3. The petitioner has filed this writ petition seeking to quash the demand letter/ notice dated 21.03.2017 and the show cause notice dated 22.03.2017 under Annexures-6 and 7 respectively and to direct the Tahasildar, Baripada to allow the petitioner to lift sand from Balipal sand bed as per the lease deed. The petitioner has also prayed to direct opposite party no.3 to make joint field verification in presence of the petitioner.

4. Mr. P.K. Parhi, learned counsel for the petitioner contended that pursuant to the auction for Balipal sand bed on lease for the year 2015-16 to 2019-20 made by the opposite parties, the petitioner participated in the said auction and he has been called upon to produce the mining plan under Rule-27 (A) (B) of OMMC Amendment Rules, 2014. Pursuant to which, the petitioner produced the mining plan and also executed lease deed vide Annexure-2 on 23.05.2016. But after execution of the agreement he was unable to operate the quarry which has been brought to the notice of the

Tahasildar, Baripada by filing grievance under Annexure-3 series and also lodged an FIR before the Police Station against the prevention made by land mafia to operate the quarry. But in Annexure-4 dated 15.03.2017, the Tahasildar, Baripada communicated to the Mining Officer, Baripada requesting him to make a field visit on 16.07.2017 to the area to find out if the lifting of minor minerals has been done as per Mining Plan or it has been deviated. Thereafter the order dated 21.03.2017 in Annexure-6 was passed by the Tahasildar, Baripada making a demand of Rs.4,41,000.00 towards royalty @ Rs.315.00 per Cum for 1400 Cum. It was directed that the excess amount of Royalty of Rs.59,34,600.00 @ Rs.315.00 per Cum for excess lifting of 18,840 Cum be deposited by 27.03.2017 positively. Thereafter the petitioner has been called upon on 22.03.2017 in Annexure-7 to file the show cause. The entire action has been taken without complying the principle of natural justice and without giving opportunity of hearing to the petitioner.

5. Mr. P.P. Mohanty, learned Additional Government Advocate argued with vehemence contending that the measurement of the sand bed was conducted in the presence of Tahasildar, Baripada, Mining Officer, Revenue Supervisor, RQP of Mining and Mining Inspector. Since there was excess removal of minerals, the demand has been raised by the opposite parties under Annexure-6 and 7 to the writ petition. Therefore, there is no illegality or irregularity committed by the authorities while passing such order.

6. Having heard learned counsel for the parties and after going through the records, it appears that Tahasildar vide letter dated 15.03.2017 called upon the mining officer to make a field visit on 16.07.2017 to the area to find out if the lifting of minor minerals has been done as per Mining Plan or it has been deviated. Request was

also made to assess whether the quantum of sand lifted is more than what is stipulated in the Mining Plan. When the date was fixed to 16.07.2017 to make a verification, on 21.03.2017 a demand was made to deposit the excess amount of royalty of Rs.59,34,600.00 @ Rs.315.00 per Cum for excess lifting of 18,840 Cum by 27.03.2017 positively, failing which action will be taken against the petitioner as per the OMMC Amendment Rules, 2014. Interestingly after the demand was raised in respect of Lease of Balanga River Sand Source at Balipal, a show cause notice was issued on 22.03.2017 under Annexure-4, just one day after the demand was raised under Annexure-6. On perusal of the counter affidavit filed by the opposite parties no.2 and 3, it reveals from the order dated 16.03.2017 under Annexure-B/3 that the Tahasildar has passed an order for measurement of the Sand Bed in presence of the Tahasildar, Baripada, Mining Officer, Revenue Supervisor, RQP of Mining and Mining Inspector at 10.00 am. But the letter dated 15.03.2017 indicates that the field visit was to be made on 16.07.2017. More so, no notice was given to the petitioner and the order dated 21.03.2017 passed in Touzi Misc. Case No. 06/2017-18 makes it clear that notice was returned without service. On perusal of the report of the process server, it was found that the lessee Sri Panda was out of Head quarter for his illness and the representative of lessee Sri Upendra Singh also denied to receive the same. Therefore, the notice was issued through Registered Post. If such order had been passed on 21.03.2017 and measurement was done on 16.03.2017, it is apparently clear that no notice was served on the petitioner and the measurement was done behind the back without giving opportunity to him. More so, the letter dated 15.03.2017 indicates that the field visit was to be done on 16.07.2017. Thereby the Tahasildar has acted arbitrarily and unreasonably and in

gross violation of principle of natural justice. Therefore demand letter/ notice dated 21.03.2017 and the show cause notice dated 22.03.2017 under Annexures-6 and 7 respectively cannot sustain in the eye of law and the same are liable to be quashed and are hereby quashed. The matter is remitted back to the Tahasildar, Baripada to take the follow up action, if he is so advised as per the rules by giving opportunity of hearing to the petitioner.

7. With the above observation and direction, the writ petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

Arun/Banita

(S.K. MISHRA)
JUDGE

