

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.982 of 2016

Sri Sudhir Kumar Sendha ***Petitioner***
Mr.Pradip Ku.Ray, Advocate
-versus-
State of Odisha & Others ***Opp. Parties***
Mr.D.K.Mohanty, AGA

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

Order No.

ORDER
14.07.2022

10. 1. The Petitioner has questioned an order dated 13th January, 2016 passed by the Sub-Collector, Sadar Dhenkanal rejecting his prayer for permission to extract laterite stone from his own land in terms of the first proviso to Rule 3 of the Orissa Minor Minerals Concession Rules, 2016 ('OMMC Rules').
2. It must be noted that the ground on which the Petitioner's prayer has been rejected is that in terms of the para 9 of the OMMC (Amendment) (Rules) 2014 'no quarry permits shall be granted to anybody other than State agencies or project proponents'.
3. Notice was issued in the present petition way back on 23rd February, 2016 and till date no reply has been filed. On the previous date i.e. 25th April, 2022 the State had sought two weeks' time to file a reply. Even today Mr. Mohanty learned

AGA only states that he has the para-wise comments but no reply has been filed.

4. It appears to the Court that the Sub-Collector has failed to appreciate the factual context of the matter. In para 4 of the petition it is averred that land admeasuring two and half acres belonging to the Petitioner situated in Mouza- Sankhua, Dhenkanal Sadar 'could not be utilized properly throughout the year for agricultural purpose due to want of irrigation' and for that purpose the Petitioner 'proposed to dig a pond under the 'Mo Pokhari Scheme' on the said land'. It is stated that he was permitted to do so by the Block Development Officer, (BDO) Dhenkanal Sadar. Documents to this effect have been enclosed with the petition as Annexure-2 series. After the Petitioner had started digging the tank to a depth of 3 mtrs he could not reach the water level due to the presence of a laterite stone layer.

5. It is in this context that on 23rd April, 2012 he approached the Tahasildar, Dhenkanal Sadar for permission to extract the laterite stone. A report was called from the Revenue Inspector who also gave a report (Annexure-4) suggesting that the laterite stone be extracted. On that basis the Tahasildar granted permit in Form 'O' in favour of the Petitioner subject to payment of royalty to the tune of Rs. 79,858/- for extraction of 800 cm. of laterite stone. This was for valid for a period of 90 days.

6. However, the Petitioner states that he only heard of the above grant of permit when he got a letter dated 23rd June, 2012

cancelling the permit on the ground that he did not deposit the government dues within the stipulated period. The Petitioner He made two representations thereafter, but to no avail. He thereafter approached the Sub-Collector who has passed the impugned order rejecting the Petitioner's request.

7. The Court finds that the first proviso to Rule 3 (1) of the OMMC Rules, 2016 states that 'extraction collection and/or removal of minor minerals by a person from his own land or normal agricultural operations or other bonafide domestic consumptions shall not be construed as mining or quarrying operations.' Consequently, since the Petitioner is digging the land for a pond for irrigation purposes and not as any quarrying or mining operation, the rejection of his request on the ground that quarrying or mining can be carried can only by State or State agencies appears not to be correct.

8. Counsel for the Petitioner states that the Petitioner is still interested in digging a pond in his own land for irrigation and for removal of the laterite stone for that limited purpose and not as a mining or quarrying operation.

9. In the circumstances while setting aside the impugned order dated 13th January, 2016 Sub-Collector, Sadar Dhenkanal this Court directs the Collector, Sadar Dhenkanal who is the controlling authority under the OMMC Rules, to again examine the aforementioned request of the Petitioner and after giving him a hearing take a decision on permitting him to remove the

laterite stone for the purposes of digging a pond for irrigation purposes. Specifically, the context of the first proviso to Rule 3 (1) of the OMMC Rules shall be kept in view. For this purpose, the Petitioner will appear before the Collector on 10th August, 2022 along with a downloaded copy of this order. The above exercise be completed by the Collector within a period of two months from that date.

10. The writ petition is disposed of in the above terms.



Kabita