

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6216 OF 2022

Abhijeet Annasaheb Pawar ...petitioner.

Versus

The State of Maharashtra & Ors. ..Respondents.

Mr. Manoj Patil, Advocate for the Petitioner.

Mr. S.L. Babar, AGP for Respondent-State.

CORAM : PRASANNA B. VARALE &
SHRIKANT D. KULKARNI, JJ.

Date : June 10, 2022.

P. C. :

1. Heard learned counsel appearing on behalf of the Petitioner. The Petitioner who belongs to the social community known as “Vadar” community and carrying on traditional activity of extracting the minerals from a quarry, approached the authorities for grant of license under the Maharashtra Minor Mineral Extraction Rules, 1955 as well as the Maharashtra Minor Mineral (Development and Regulation) Rules, 2013. The copy of the form/application is placed on record at Exhibit- “B” (page no. 28) to the petition. The requisite license fee was also paid by the Petitioner. The competent authority allowed the application in the nature of an order (copy placed on record at page no.31) under the caption “*Form of Quarrying Lease*” . The leasing period is referred to on page no.32 and it reads that the premises hereby granted and demised unto the lessee/lessees from 1st January 2009 for the term of five years. The Petitioner before expiry of the

lease period, by way of abundant caution for extension submitted an application dated 1st October, 2013. The same was received by the office of Additional Collector on 3rd October, 2013. Copy of the same is placed on record at Exhibit- “B” (page no. 28) to the petition. The request for extension was, however, turned down by the competent authority by way of communication dated 12th February, 2018, copy of the same is placed on record at Exhibit- “D” (page no.52) to the petition. The reason assigned for the rejection is a policy framed by the State Government vide a notification dated 23rd September, 2016 of the allotment of lease license under a auction process. The Petitioner submitted representation to the District Mining Officer, Kolhapur on 22nd February, 2018 relying on the notification of the State Government dated 12th January, 2018. The District Mining Officer vide a communication dated 5th April, 2018 turned down the representation assigning another reason that the permission for extracting minerals sought for by the Petitioner is on the government land and as there are no clear directions, the authority was unable to allow the request of Petitioner. Being aggrieved by the communication, the Petitioner preferred an appeal before the Divisional Commissioner, Pune. The Petitioner under *bona fide* belief that as the rejection is recorded by the District Mining Officer, the First Appellate Authority referred to in the Rules is the District Collector or the Additional Collector may not entertain the appeal, submitted an appeal directly before the Divisional Commissioner, Pune, bearing Appeal No. 355/2018. The appeal was filed by invoking the provisions of Rule 82 of the Maharashtra Minor Mineral (Development and Regulation) Rules, 2013. The copy of appeal memo is placed on record at page no. 67.

2. Learned counsel Mr. Manoj Patil appearing on behalf of the Petitioner submitted that though the appellate authority records its initial findings in favour of Petitioner, only by misreading the Central Government Notification dated 10th February, 2015 ultimately dismissed the said appeal.

3. Learned counsel Mr. Manoj Patil appearing on behalf of the Petitioner invited our attention to the Maharashtra Government Gazette dated 12th January, 2018 placed on record at Exhibit- "G" (page no. 55) to the petition. A detailed procedure is carved out for grant of the lease / permit under Rule-9 of the Maharashtra Minor Mineral (Development and Regulation) Rules, 2013. The relevant provision read thus :

"9. Mode of granting quarry lease :- (1) Subject to the provisions of these rules, mineral concessions for quarry lease on any land vested in the Government or any public authority may be granted by the Competent Authority by way of public auction :

Provided that, grant of quarry lease on a private land in the name of the occupant or holder of such private land shall be exempted from auction process and may be granted to such occupant or holder upon his application. However where the occupant or holder of a private land is desirous of leasing his land to another person for quarrying, such occupant or holder shall give his written consent in that regard to the Collector who shall then put quarrying rights in such land to auction for specified period in which case, the amount realized in auction shall be credited to the Government and the amount of surface rent as decided by the Government from time to time, will be given to the land holder :

Provided further that, the practice of granting quarry lease or permit upon application shall be continued in case of Kumbhar and Vadar families which wish to do such mining for pursuing their traditional business:

Provided further that, the provisions of this rule, shall not apply to any case where prospecting license or mining lease had been granted but mining lease deed could not executed before the date of publication of the Government of India Gazette notification No. F. No. 5/1/2015-M.M, Dated 10th February 2015 declaring 31 major minerals as minor minerals.”

4. It is the submission of learned counsel Mr. Manoj Patil appearing on behalf of the Petitioner that firstly the Mining Officer misread Rule-9 to form an opinion that as the Petitioner is carrying out the extraction activity on the government land, the Petitioner is not entitled for extension of lease period. It is the submission of learned counsel Mr. Manoj Patil appearing on behalf of the Petitioner that the first proviso itself makes it clear that even if the land is a State Government land, members from the communities such as Kumbhar and Vadar following the practice of extracting the minerals, are to be protected by grant of lease or permit upon submitting their applications. Mr. Patil then submitted that even the appellate authority – the Divisional Commissioner, committed an error by misreading the Central Government Notification dated 10th February, 2015. It is the submission of Mr. Patil that rider in the nature of Notification dated 10th February, 2015 would come in play in those cases where the applications are submitted afresh for grant of lease. The Petitioner was already in receipt of grant of lease and he was seeking the extension. Thus, rider in the nature of Notification dated 10th February, 2015 could not have adversely affected the case of Petitioner is the submission of Mr. Patil.

5. Though the learned counsel Mr. Manoj Patil appearing on

behalf of the Petitioner made the above referred to detailed submissions, on perusal of Rules, we find that the Rules specifically provide a further remedy to the person aggrieved by the order passed by the Divisional Commissioner and this remedy is under Rule-84 in the form of revision before the State Government. Rule 84 read thus :

84. Power of Government to call for and examine records and proceedings. - *The Government may call for and examine the records of any enquiry or the proceedings of any Competent Officer or any other concerned officer for the purpose of satisfying itself, as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer:*

Provided that, the Government shall not revise or reverse any order affecting any question of right between private person without giving to the party or parties an opportunity of being heard.

(1) The Government or the Competent Officer may, either 'Suo-moto' or on the application of any party interested, review any order passed by itself or himself or any of its or his predecessors in-office and such orders in reference thereto as it or he thinks fit: Provided that,

(i) no order shall be revised or reversed without giving opportunity to the parties of being heard.

(ii) no order, from which an appeal has been preferred shall, so long as such appeal is pending, be reviewed.

(2) no order shall be reviewed except on the following grounds, namely:--

(i) discovery of new and important matter or evidence;

(ii) any mistake or error apparent on the face of the record; or

(iii) any other sufficient reason.

(3) an order which has been dealt within appeal shall in no case be reviewed by the Competent Officer or any concerned officer.

(4) Orders passed in review shall on no account be reviewed.

6. In view of these facts, as the efficacious remedy is available to the Petitioner and as there is no prescription of time-limit for preferring the revision, we dispose of the writ petition with liberty to the Petitioner to submit a representation before the State Government under Rule-84 of the Maharashtra Minor Mineral (Development and Regulation) Rules, 2013, within three weeks from today.

7. The Revisional Authority i.e. the State Government shall consider the aspect that the Petitioner had filed a writ petition before this Court and as such may not treat the revision is a belated revision. Needless to state that the Revisional Authority by giving an opportunity of hearing, which is explicitly made clear in Rule 84 itself, may pass appropriate orders on the revision, as expeditiously as possible.

8. Writ petition is disposed of with the aforesaid directions.

[Shrikant D. Kulkarni, J.]

[Prasanna B. Varale, J.]