

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 3064 OF 2021

Rajkumar S/o. Nathuji Tate vs. The Revenue Commissioner and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. P. P. Kothari, Advocate for petitioner.
Mr. D. P. Thakare, Addl. GP for respondent No.1.
Mr. S. A. Thakkar, Advocate for respondent No.2.

CORAM : MANISH PITALE J.

DATE : 14/03/2022

By this writ petition, the petitioner has challenged order dated 07/01/2020, whereby the respondent No.1 i.e. the Divisional Commissioner, Nagpur Division has rejected an application for intervention filed by the petitioner in an appeal filed by respondent No.2.

2. The facts leading upto filing the present writ petition are that the respondent No.2 was granted license for extraction of minor mineral (*Gitti*) under The Maharashtra Minor Mineral Extraction (Vidarbha Region) Rules, 1966.

3. It is the case of the petitioner that he had entered into an agreement with respondent No.2, whereby the payment of royalty and other such

charges in the context of extraction of the minor mineral pursuant to the aforesaid license was paid by the petitioner and it was the petitioner who was to collect the extracted minor mineral and to dispose of the same in the market. But, according to the petitioner, since the respondent No.2 did not make such payment to the concerned authorities, the license of the respondent No.2 stood cancelled by order dated 16/08/2019.

4. A perusal of the order passed by the Collector dated 16/08/2019, shows that there is reference to the complaint filed by the petitioner against respondent No.2. The said complaint was taken into consideration in the context of documents placed on record by the petitioner, including a memorandum of understanding executed between the petitioner and respondent No.2. After considering the aforesaid material, the Collector passed the aforesaid order, cancelling the license of respondent No.2. Aggrieved by the same, the respondent No.2 filed an appeal under the Maharashtra Land Revenue Code before the respondent No.1 Divisional Commissioner. In the said appeal, the respondent No.2 did not join the petitioner as party. Therefore, the petitioner filed an application for intervention, contending that it was

on his complaint that the Collector had proceeded against the respondent No.2 and that therefore, he ought to be heard before the appeal is decided on merits. But, by the impugned order dated 07/01/2020, the respondent No.1 rejected the application for intervention.

5. Mr. Kothari, learned counsel for the petitioner submits that since the action of cancellation of license was initiated by the Collector on the application filed by the petitioner, he was obviously a necessary party to be added in the appeal pending before the Commissioner, so that the entire factual matrix was brought before the Commissioner while deciding the appeal on merits. It was submitted that Collector had referred the documents available on the record along with the complaint on behalf of the petitioner and this was another reason why the application for intervention ought to have been granted by the respondent No.1 Commissioner.

6. On the other hand, Mr. Thakkar, learned counsel appearing for the respondent No.2 submitted that the controversy in the present case is a matter between the respondent No.2 and the licensing authority and that therefore, there was no substance in the contentions raised on behalf of the petitioner.

7. Mr. Thakare, learned Additional Government Pleader has appeared on behalf of respondent No.1 and defended the order passed by the respondent No.1 Commissioner.

8. In the present case, there is no dispute about the fact that it was the complaint filed by the petitioner that led to initiation of action against the respondent No.2 in the context of the license issued for extraction of minor mineral. A perusal of the order dated 16/08/2019, shows that in the column pertaining to the documents, at Sr.No.1 is the complaint dated 22/04/2019, submitted by the petitioner. The order makes copious references to the complaint and applications, as well as documents submitted by the petitioner before the Collector. While passing the said order dated 16/08/2019, cancelling license of respondent No.2, the Collector referred to and relied upon the complaint and other documents filed by the petitioner.

9. In these circumstances, it was expected that the petitioner would be made party before respondent No.1 Commissioner, but, the respondent No.2 chose to array only the Collector as a party respondent before the respondent No.1 Commissioner in the appeal.

10. This Court is of the opinion that for the entirety of the factual matrix to be placed before the respondent No.1 in the pending appeal, the presence of the petitioner would assist the said respondent in deciding the appeal on merits and in a comprehensive manner.

11. The contention raised on behalf of the respondent No.2 that the matter is between him and the licensing authority cannot be accepted in the facts of the present case.

12. Accordingly, the Writ Petition is allowed. The impugned order is quashed and set aside and the application for intervention filed by the petitioner in the appeal before the respondent No.1 Commissioner is allowed.

13. Consequently, the respondent No.1 Commissioner shall now hear the respondent No.2 as well as the petitioner before deciding the appeal on its own merits.

14. The Writ Petition stands disposed of.

JUDGE