

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

118

**Civil Writ Petition No.13763 of 2022
Decided on : 07.07.2022**

Antheia Properties Pvt. Ltd.

... Petitioner

Versus

State of Haryana and others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Tejeshwar Singh, Advocate for the petitioner.

Mr. Lokesh Sinhal, Addl. AG, Haryana.

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Article 226 of the Constitution of India is to the termination order dated 01.07.2020 (Annexure P-25) wherein the mining contract granted to the petitioner for a period of 8 years was ordered to be terminated with forfeiture of the security amount of Rs.20,50,00,000/- (Rupees Twenty Crores and Fifty Lakhs only) by respondent No.1-Director General, Mines & Geology, Haryana. The petitioner-company was directed to deliver the possession of Ambala Unit-1 mine to the Mining Officer, Ambala and deposit the outstanding Government dues.

Challenge has also been raised to the subsequent auction notice dated 31.05.2022 (Annexure P-28), wherein the general public was notified that grant of the mining contract/mineral rights for excavation of minor mineral for District Ambala was to be done. In such circumstances, the subsequent action of the State, which has been taken almost after a period of

2 years is sought to be challenged by filing the present writ petition.

During the course of arguments it transpires that an application for rectification/review of the termination order was also filed under Rule 112 of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 (hereinafter referred to as '2012 Rules') seeking review of the termination order. Apparently, this was only done on 03.12.2021 (Annexure P-29) after 1½ years. The period for filing an appeal or a review application under Rule 110 of the 2012 Rules is 60 days after the passing of the impugned order and the delay of 30 days beyond the permissible appeal period cannot even be condoned by the competent authority and thus apparently the same was time barred.

The grouse of the petitioner as such was that while hearing another appeal, the respondent No.1 vide order dated 01.02.2022 (Annexure P-3) had issued directions to the DGMG/respondent No.2 to ensure that rectification/review is limited to the modification of the inadvertent mistake/error and not about substantial issue of termination of the contract, since the matter was also pending before the Government under Rule 109 (2) of the 2012 rules. It is, however, the case of the petitioner that the appeal was filed subsequently on 18.02.2022 (Annexure P-31).

A perusal of the said appeal would go on to show that these facts have been mentioned regarding the earlier order passed by respondent No.1 on 01.02.2021 and that the appeal was being filed under

Rule 109 of the 2012 Rules. Apparently, thereafter on a request made on 31.05.2022 (Annexure P-32) the liberty was sought to permit to withdraw the appeal subject to the liberties as available in law. The formal order passed by the authority on the said request, however, has not been placed on record.

As noticed the period of limitation is upto a maximum of 90 days and apparently both the review and the appeal are patently time barred. The petitioner had a right to challenge the orders in accordance with law under the statute. Having not filed the same within the prescribed period of limitation at the first instance and then having withdrawn, the appeal would not give it a right to invoke the extra-jurisdiction of the writ Court. This Court is not the Court of first instance which has to examine the issues as to whether the termination order was justified or not in the facts and circumstances, once a remedy is provided under the statute.

Admittedly, even under Rule 110 (2) of the 2012 Rules a second appeal would also lie against the order of the Director after the application for review is filed. If the petitioner has chosen not to avail the remedy in accordance with law within the time prescribed, it cannot be allowed to invoke the extra-ordinary jurisdiction of the writ Court. It was upto the petitioner to file the appeal/review within prescribed period, so that the order passed by respondent No.2 could have been examined on merits to see whether it suffered from any lack of jurisdiction and whether it was legally sustainable. Having chosen to withdraw the appeal

at the first instance, we are of the considered opinion that the termination order has become final *inter se* the parties and the present writ petition would not be maintainable in the facts and circumstances.

Accordingly, we do not feel that it is a fit case to call upon the respondents to file response and the same is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

July 07, 2022
Naveen

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No