

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

CWP No.21499 of 2020 (O&M)

Reserved on 29.03.2022

Date of Decision:06.04.2022

Sanjeev Gupta

.....Petitioners

Versus

State of Punjab & Ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO.
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rajiv Dhawan, Advocate for the petitioners

Mr. Pankaj Gupta, Addl. AG Punjab

M.S. RAMACHANDRA RAO, J.

The Department of Industries and Commerce, State of Punjab issued e-auction notice dt. 03.05.2017 for auction of right to mine in village Bounkar Gujran, along with several other mines of District Ludhiana for extracting minor mineral i.e., sand for 5 years. The said auction was conducted on 20.05.2017 and the petitioner became the highest bidder quoting ₹1,53,91,320/-.

2. On 21.05.2017, the second respondent issued provisional acceptance of the bid vide Annexure P2 and directed the petitioner to deposit an amount towards the first instalment and security in accordance with the condition No.21 of the e-auction notification within 2 days from the date of issuance of provisional acceptance of the bid i.e. 21.05.2017. The petitioner was also directed to obtain environmental clearance transferred to his name and also to obtain consent from the Punjab Pollution Control Board to operate the mine and to install weighbridge at the pit head along with electronically generated slip system.

3. The land where the mining of the Bounkar Gujran village was to be done was an extent of 7.5 hectares (approximately 18 acres) comprising in Khasra Nos.6//19, 20, 21, 22, 23, 7//16, 14//4, 5, 17/1, 23/1, 24/1, 22/2, 23/2, 24/2, 15//1, 2, 3, 4/1, 9, 10, 12, 13 Hadbast No.39 of the said village.

CWP-13811-2017

4. One Gagan Jeet Singh claiming to be a co-sharer of the said land along with some other co-sharers filed CWP No.13811 of 2017 in this Court to set aside the auction held on 20.05.2017 with respect to the said land contending that the said land was agricultural land which is highly cultivable and was thus unfit for mining, that the petitioner and other co-sharers have no other land of their own, that the consent of all the co-sharers was not obtained by the second respondent for putting it to auction for mining purpose, and himself and other co-sharers cannot be deprived of the said land by the respondents.

5. Notice of motion was issued in the said Writ Petition on 12.07.2017 for 20.07.2017 on which date, the respondents were directed to file a specific affidavit of an Officer not below the rank of Joint Secretary explaining as to '*whether or not the land in question was agricultural land?*' and '*whether it was used in the past for agricultural purposes or not?*'

6. Subsequently, the written statement was filed by the State in the said Writ Petition.

7. On 03.08.2018, this Court granted an interim direction that the said land of which the petitioner in the said Writ Petition was a co-sharer be not interfered with after recording a *prima facie* opinion that there was no lawful exercise by the State to mine the agricultural land of the petitioner in the absence of any *consent* or *process of acquisition* of the same; and on the basis

of a letter submitted by one other co-sharer proclaiming himself to be the eldest in the family and claiming that he had verbal authority of other co-sharers, the State could not have proceeded to auction the mine.

8. The said order was however vacated on 01.10.2018 on the ground that the petitioner in that Writ Petition was not represented before this Court.

9. Thereafter in a hearing held on 02.07.2019, an order of *status quo* as on that date was passed which was continued on 17.10.2019, 07.11.2019, 21.01.2020, 24.02.2022.

10. Ultimately on 03.03.2020, it was recorded in it's final order by this Court that the writ petitioner alleged that he was carrying out agricultural activity on the land in question; that the State counsel, on instruction from Mr. HS Walia, Mining Officer, Ludhiana stated that no illegal mining can be allowed in the area and that the land of the petitioner shall be excluded from mining; and so the cause of action does not survive in the Writ Petition. It was accordingly disposed of.

11. The petitioner in the instant Writ Petition was also arrayed as third respondent in the above Writ Petition and he filed a short reply therein stating that he was a *bona fide* successful bidder and had deposited ₹86,57,917/- against the bid amount of ₹1,53,41,320/- as per the directions of the second respondent therein and he has also spent ₹16,85,000/- for procurement of work. He also contended that as per the letter dt. 21.05.2017 whatever directions were issued to him by respondent No.2 therein, he fulfilled them since there was no interim order granted in favour of Sh. Gagan Jeet Singh in CWP-13811-2017 in the year 2017. But without adverting to the contentions of the petitioner herein CWP-13811-2017 was disposed of.

Events after disposal of CWP-13811-2017

12. After the disposal of CWP-13811-2017 on 03.03.2020, the petitioner in the instant Writ Petition wrote a letter dt. 18.07.2020 (P15) to all the respondents requesting them to consider his predicament in view of the judgment dt. CWP-13811-2017. He stated that he has suffered heavy financial loss and waited three years without working and had spent considerable amounts in anticipation of mining the said land. He claimed that he had incurred ₹1,04,71,117/- under various heads and sought necessary directions from the Executive Engineer/Drainage-cum-District Mining Officer, Ludhiana.

13. When there was no reply to the same, the petitioner gave another representation on 28.08.2020 (P16) to the second respondent seeking refund of the earnest money/security etc. deposited by him with the Department enclosing the documentary evidence in support of the expenditure incurred by him.

The instant Writ Petition

14. The petitioner then filed the instant Writ Petition for disposal of the above-said representations dt. 18.07.2020 and 28.08.2020.

Events after filing this Wit Petition

15. On 25.12.2020, this Court issued notice and State Counsel assured the Court that necessary action would be taken to ensure that the grievance of the petitioner is redressed within 15 days. So, the matter was adjourned to 07.01.2021.

16. On 07.01.2021, the Executive Engineer/Drainage-cum-District Mining Officer, Ludhiana sent a letter to the petitioner asking him to appear in his office on 08.01.2021.

17. When the matter was listed on 08.01.2021, this Court was informed by Mr. Harjot Singh Walia, Executive Engineer/Drainage-cum-District Mining Officer, Ludhiana, through an affidavit, that 4 weeks' time is required to redress the petitioner's grievance and refund the amount and that he would decide the petitioner's claim on merits and after hearing the petitioner. So, the Court adjourned the matter for 21.01.2021.

18. A short reply was filed by the said Executive Engineer/Drainage-cum-District Mining Officer, Ludhiana on 18.01.2021 in this Writ Petition asserting that the respondents would take corrective steps, that the claim of the petitioner for refund is pending before the Head Office for final approval and non-compliance of the order dt. 15.12.2020 was not intentional or willful but on account of the miscommunication between the office of the Advocate General and the answering respondents.

19. Thereafter the Chief Engineer, Drainage-cum-Mines & Geology-I, Water Resources Department, Punjab – respondent No.4 passed an order on 01.04.2021 (P18) rejecting the claim of the petitioner even for the refund of amount deposited with the respondent-Department by the petitioner.

20. The petitioner then filed an application for amendment of the Writ Petition challenging the order dt. 01.04.2021. The said amendment was allowed on 07.10.2021.

21. On 10.11.2021, the respondents filed a reply to the amended Writ Petition and informed the Court that they would re-examine the issue of refund of security deposited through the Secretary, Department of Mines and Geology after affording personal hearing to the petitioner.

The subsequent order dt. 26.11.2021

22. Thereafter on 15.11.2021, the petitioner along with counsel appeared before the Secretary, Department of Mines and Geology – respondent No.1 and also filed written submissions and a speaking order dt.26.11.2021 was passed by the respondent No.1.

23. In the speaking order passed, it was stated:-

(a) The final approval was granted to the petitioner on 30.01.2018 and thereafter the petitioner had written letters to the Department that he has not got possession of land and requested the Department to hand over possession of the land for mining activity and the land was handed over to him on 02.07.2018 as per the report of the said date signed by the Mining Officer, Ludhiana, Station House Officer, Police Station Koom Kalan and the petitioner; and therefore the petitioner is exempted from contract payment for the period 30.01.2018 to 01.07.2018, the period during which the petitioner did not have possession of the land.

(b) The High Court in its interim order dt. 03.08.2018 in CWP-13811-2017 filed by the landowner Gagan Jeet Singh had stated that the said land should not be interfered with and so the petitioner was liable to pay contract instalments for the period from 02.07.2018 to 02.08.2018 as there was no hindrance reported by the petitioner to the Department for carrying out mining activity.

(c) Thereafter the order dt. 03.08.2018 was vacated on 01.10.2018. After obtaining legal opinion from the office of Advocate General, Punjab regarding starting of mining operation, the Executive Engineer/Drainage-cum-District Mining Officer, Ludhiana wrote a

letter on 09.05.2019 to the petitioner to start mining operation in the mine as per the Punjab Minor Mineral Rules, 2013 and so the petitioner is exempted from making contract payment for the period 03.08.2018 to 09.05.2019.

(d) On 02.07.2019, the High Court directed to maintain *status quo* in CWP-13811-2017 and so the petitioner was liable to pay contract instalment for the period 10.05.2019 to 01.07.2019 as there was no hindrance reported by the petitioner to the Department.

(e) That CWP-13811-2017 was disposed of on 03.03.2020 holding that no illegal mining can be allowed in the area as per the statement of Executive Engineer/Drainage-cum-District Mining Officer, Ludhiana and the land of the petitioner in the said Writ Petition would be excluded from mining; and so the petitioner is exempted from making any contract payment for the period 02.07.2019 to 02.03.2020.

(f) that the petitioner, being party in CWP No.13811 of 2017, was well aware of the case proceedings and the order passed by the High Court on 03.03.2020 that "*Land of the petitioner shall be excluded from mining*". So, after excluding the land of the petitioner (Gagan Jeet Singh) comprising of 3.2 Ha. from the total area of the mine of 7.5 Ha., 4.3 Ha. was still available with the petitioner for carrying out mining operation, but he didn't put any effort to start the mining operation after the case was disposed of. Thereafter, the petitioner vide letter dt. 28.08.2020 applied for refund of the Earnest/Security amount etc. deposited by him with the Department. Therefore, the

petitioner was liable to pay the contract instalment for the period from 03.03.2020 to 28.08.2020 for the area of 4.3 Ha.

Thus , the petitioner was held liable to pay the contract instalments for the period from (i) 02.07.2018 to 02.08.2018 (ii) from 10.05.2019 to 01.07.2019 and (iii) from 03.03.2020 to 28.08.2020.

The details of the instalments to be paid by the petitioner and the payments already deposited to the department was mentioned as under:-

Instalments to be paid for the period from	02.07.2018 to 02.08.2018	13,51,245/-
	10.05.2019 to 01.07.2019	24,65,148/-
	03.03.2020 to 28.08.2020	52,41,169/-
	Total	90,57,562/-
1st Instalment deposited		34,67,050 (Royalty as per challan) 8790 (EMF as per ledger) 2,93,100 (DMF as per ledger)
25% Security deposited		38,48,080 (As per challan)
Landowner compensation Security deposited		8,79,300 (As per challan)
Total		84,96,320/-

The Secretary then held that the petitioner shall pay ₹5,61,242/- to the Department.

24. The petitioner then again amended the Writ Petition challenging this order dt. 26.11.2021 passed by the Secretary, Department of Mines & Geology, Punjab.

Contentions of the petitioner

25. Counsel for the petitioner contended that:-

(a) the petitioner is entitled to refund ₹1,04,71,117/- along with penal interest of 18% for the loss incurred by the petitioner on account of

cancellation of the mining lease granted to him, that he is also entitled to compensation of ₹15 lakhs for causing financial as well as mental agony to him by setting aside the order dt.01.04.2021 and 26.11.2021 passed by the respondents.

(b) the petitioner has been a poor victim of irony of fate as on one hand he incurred huge amount of financial losses on account of the careless attitude of the respondents in allotting him a land for sand mining at Bounkar Gujar, Ludhiana, which it couldn't have given for mining, and thus believing the correctness and bonafide of respondent's action, the petitioner complied with all the conditions as instructed; while on the other hand, respondents gave undertaking in CWP No.13811 of 2017 that the land allotted to the petitioner shall be excluded from mining; thereby destroying the apple cart of the petitioner by a single stroke. To add fuel to the fire, when the petitioner came on the road completely and looked upto the respondents for succor, he was left in lurch on account of the ignorant attitude of the respondents who are not even ready to take responsibility of the wrong caused to the petitioner, solely on account of their misdeeds.

(c) That the auction dt. 20.05.2017 for contract of mining was conducted by respondents and it was the implied responsibility of all the respondents jointly that the land of the auctioned site is free from any encumbrances and the possession of the same is free and transferable. The respondent failed to earmark the vacant site for

auction and without verifying the claim of the land owners, the respondents auctioned the said land for mining.

(d) This highhandedness of the respondents has made petitioner suffer huge financial loss as well as wasted three valuable years of the petitioner.

(e) That the petitioner was not at fault at any point of time, rather the petitioner complied with all the conditions laid down by the respondents under the bonafide belief of correctness of the State's actions.

(f) That the respondents kept on assuring the petitioner that the possession of the land will be given to him for the work of mining. The petitioner, under the assurance of the respondents complied with all the terms and conditions fastened upon him from time to time, but despite that, the petitioner was not able to do mining at all, resulting in tremendous financial as well as mental pressure.

(g) The respondents have utterly failed to discharge their duty and petitioner has paid heavy cost, financially and mentally as a result of the failure of the respondents. Therefore, the respondents are liable to not only refund the amount deposited by the petitioner but also for the losses suffered by the petitioner along with upto date interest and cost.

(h) No alternative site for mining was granted to the petitioner.

(i) That the auction was conducted in the year 2017 and till the final disposal of the CWP-13811-2017, the petitioner could not even start any other project, as a result of which three years of the petitioner

had been a complete waste due to the carelessness of the respondents.

- (j) Due to Covid-19 pandemic, the petitioner has already suffered huge losses in his other business and the respondents are not even returning the capital deposited by the petitioner as a result of which the petitioner is facing huge financial crisis and is at brink of bankruptcy.

Counsel for the petitioner reiterated the above contentions in his oral submissions. He further contended that the petitioner is not entitled to make any payments to respondents as mentioned in the order dt. 26.11.2021, because the petitioner did not do any mining activity during the periods 02.07.2018 to 02.08.2018, 10.05.2019 to 01.07.2019 and 03.03.2020 to 28.08.2020.

Stand of the State

26. Mr. Pankaj Gupta, Addl. AG Punjab refuted the said contentions.

27. He justified the order dt. 26.11.2021 passed by the Secretary, Department of Mines and contended that cogent reasons have been given for holding the petitioner liable to pay contract instalments for the above mentioned periods and the said order passed by the Secretary does not suffer from any infirmity.

28. He alleged that the petitioner had given lame excuses for not running the mining and has caused huge losses to the State Exchequer.

29. While admitting that there was a dispute with regard to the land raised by the co-owner Gagan Jeet Singh, it was stated that the petitioner has also

remedy of filing of appeal under Section 44 of the 2013 Rules against the order passed by the Secretary.

30. The other contentions raised by the petitioner are also denied.

Consideration by Court

31. We have noted the contentions of both the sides.

32. The plea raised by the respondents about the remedy of appeal under Rule 44 of the Punjab Minor Mineral Rules, 2013 to challenge the order dt.26.1.2021 of the Secretary to the Government, Mining Department, Punjab, is not tenable. This is because under the said rule, such appeal lies only against the order passed by the Director of Mining to the Government, and in the instant case the impugned order dt. 26.11.2021 is not passed by the Director of Mines but by the Secretary to the Government, Mining Department, Punjab i.e. the Government itself.

33. Undoubtedly, the admission by the respondents before this Court in CWP-13811-2017 that no illegal mining can be allowed in the land for which mining lease was granted to the petitioner therein and that such land be excluded from mining, is an important *circumstance* and on the said basis, it has to be held that the petitioner in the instant Writ Petition was an innocent victim who was induced to participate in e-auction held on 20.05.2017 for the subject land though the same could not have been auctioned.

34. Though the petitioner in fact requested for refund of the earnest/security amount etc. deposited by him with the mining activity through letter dt. 28.08.2020, the Secretary in the order dt. 26.11.2021 held that the petitioner was liable to pay the contract instalments for the periods 02.07.2018 to 02.08.2018, 10.05.2019 to 01.07.2019 and 03.03.2020 to 28.08.2020.

35. However, since even the petitioner does not dispute that pursuant to the report dt. 02.07.2018 (which was signed by the petitioner) that the possession of the entire 7.5 hectares of land was delivered to him with the assistance of the police, the petitioner, in our opinion, is liable to pay to the Department, the contract instalment for the period 02.07.2018 to 02.08.2018 (the day before 03.08.2018 when the interim order was granted in CWP-13811-2017 by this Court directing that the land of the petitioner in CWP-13811-2017 be not interfered with).

36. However, for the period 10.05.2019 to 01.07.2019, the petitioner is not liable to pay the contract instalment of ₹24,65,148/- arrived at in the order dt. 26.11.2021 by the Secretary because there is nothing to show that possession of the 7.5 hectares of land was again given to the petitioner by the Department. The fact that Executive Engineer/Drainage-cum-District Mining Officer, Ludhiana on 09.05.2019 directed the petitioner to start mining operation in the land from 10.05.2019 cannot come to the aid of the respondents because he will not be in position to do so unless possession of the land was again restored to him by dispossessing the landowner, for which there is no evidence.

37. We are further of the opinion that even for the period 03.03.2020 to 28.08.2020, the petitioner herein is not liable to pay ₹52,41,169/- determined by the respondents because Gagan Jeet Singh and his co-sharers were still joint owners of the said land and there was no partition by metes and bounds among them.

Therefore, the statement made by the State before this Court on 03.03.2020 in CWP-13811-2017 that 'the land of Gagan Jeet Singh would be

excluded from mining' does not automatically entitle the Department to take a stand that the notified share of 3.2 hectares of Gagan Jeet Singh can be excluded, and the petitioner had an opportunity to do mining in the balance 4.3 hectares of the other co-sharers.

This is because the location of 4.3 hectares out of the total area of 7.5 hectares was never demarcated by the Department and shown to the petitioner to carry out mining operations for the period 03.05.2020 to 28.08.2020; and the petitioner has not been shown to be put in possession of the said 4.3 hectares.

Therefore, to the extent the order dt. 26.11.2021 passed by Secretary, Department of Mines and Geology makes the petitioner liable to pay contractual payments for the period 10.05.2019 to 01.07.2019 and for the period 03.03.2020 to 28.08.2020, the said order is set aside.

38. Therefore the respondents are directed to pay to the petitioner ₹71,45,075 (₹ 84,96,320 less ₹13,51,245/-) with interest at 7% p.a from the last date of the various payments made by the petitioner till date of payment within 4 weeks from the date of receipt of certified copy of this order.

39. As regards the claim of the petitioner for losses suffered by him in business on account of wrongful auction of subject land for mining is concerned, or for any other losses, we leave it open to the petitioner to approach the competent Civil Court for seeking appropriate relief since the adjudication of the said issue involves taking of evidence and such exercise is not conveniently done in the extraordinary writ jurisdiction being exercised by this Court under Article 226 of the Constitution.

40. The Writ Petition is allowed accordingly. The petitioner is also entitled to costs of ₹30,000/- from the respondents which shall be paid within 4 weeks from the date of receipt of a copy of this order.

COCP-688-2021

This Contempt Petition is filed by the petitioner alleging willful disobedience of the order passed by this Court as well as the willful breach of undertakings given by the respondents before this Court on 15.12.2022 and in the affidavit filed on 07.01.2021 on behalf of respondents.

Having regard to the order passed in CWP-21499-2020, we are not inclined to punish the respondents for Contempt of Court as sought by the petitioner.

Therefore, this Contempt Petition is dismissed.

(M.S. Ramachandra Rao)
Judge

06.04.2022
V. Vishal

(Jasjit Singh Bedi)
Judge

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No