Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 361 OF 2019
WITH
MISC. CIVIL APPLICATIONS NO. 542 & 543 OF 2023 (F)

Manikrao Krishnarao Desai,
son of Krishnarao Desai, major in age,
businessman, Indian National,
Resident of D-4, Kapila Housing Society, Khadpabandh, Ponda, Goa. …. Petitioner.

Versus

1. State of Goa,
through Secretary (Mines), Office of Secretariat, Alto Porvorim, Porvorim, Goa.

2. Director of Mines & Geology,
Directorate of Mines & Geology,
Ground Floor, Institute Menezes Braganza Bldg., Panaji, Goa. …. Respondents.

Mr Shivan Desai, Advocate *for the Petitioner.*

Mr Deep D. Shirodkar, Addl. Govt. Advocate *for the Respondents.*

CORAM : M. S. SONAK, J.

DATE : 16th March 2023

ORAL ORDER :

1. Heard Mr Shivan Desai for the Petitioner and Mr Deep

Shirodkar, learned Additional Govt. Advocate for the Respondents.

2. The challenge in this Petition is to the orders dated 10/3/2015, 21/10/2016, and 29/11/2017, requiring the Petitioner to pay an amount of ₹44,42,755/- for illegally extracting the minor mineral from the property surveyed under No. 28/1 of Village Dongurli, Sattari, Goa

3. This demand was made by Order dated 10/3/2015, and against this, the Petitioner instituted a revision under Rule 49 of the Goa Minor Mineral Concession Rules, 1985 (said Rules). This revision was dismissed by an Order dated 21/10/2016. After that, the Petitioner filed a representation, which was ultimately rejected by a communication dated 29/11/2017.

4. Mr Desai, learned Counsel for the Petitioner, raised two contentions supporting this Petition. Firstly, he contended that the quarrying activity was lawful and permissions backed the same. Secondly, and in the alternate, he submitted that initially, the quarrying licence was applied for by the Petitioner as proprietor of M/s. D.K. Industries. However, by communication dated 12/3/2012, the Petitioner informed the Directorate of Mines that he had entered into a partnership with some other partners. The details of such partners and the partnership deed were submitted to the Directorate of Mines. He pointed out that this letter dated 12/3/2012 is not on record. But by accompanying Misc. Civil Applications leave is sought to produce the same on record of this Petition.

5. Mr Desai submitted that the alleged unlawful quarrying was, therefore, undertaken by the firm M/s. D.K. Industries. He pointed out that the Petitioner retired from this firm on 02/05/2012. Therefore, post-retirement, the Petitioner was neither responsible for the unlawful quarrying nor for paying any penalty, fine, royalty, etc. Mr Desai submits that since these aspects have not been adequately considered, the impugned orders warrant interference.

6. Mr Desai submitted that leave should be granted to amend the Petition to bring the documents relating to the partnership on record. Further, the partnership firm should be impleaded as Respondent to this Petition. Accordingly, he urged that the Misc. Civil Applications should be allowed.

7. Mr Shirodkar learned Additional Govt. Advocate contested the arguments of Mr Desai. He submitted that no permissions were obtained for undertaking quarrying operations by the

Petitioner as a proprietor or the so-called partnership firm. He submitted that the retirement notice dated 2/5/2012 was never intimated to the Respondents nor the Registrar of Cooperative Societies. The intimation, if at all, to the Registrar of Firms was only on 5/7/2018. He, therefore, submits that even if the Petitioner's contentions were to be accepted, the Petitioner would remain liable until 5/7/2018. He relies on the provisions of Sections 32 and 63 of the Partnership Act 1932.

8. Mr Shirodkar submits that this case of the partnership was clearly an afterthought. He presents that this partnership is a sham, mainly because even after reconstitution, the Petitioner's son continues to be a partner, and even the firm's address corresponds to the Petitioner's address. He submits that this is a gross case where the Petitioner undertook illegal quarrying, and valuable minor minerals were extracted without making any payments like royalty. He submitted that the demand is in accord with the law, and looking at the conduct of the Petitioner, the Writ Court should not interfere.

9. Rival contentions now fall for my determination.

10. Based on the rival contentions and the material on record, the following points arise for determination in this Petition :

(I) Were the quarrying operations undertaken in the property surveyed under No.28/1 of Village Dongurli, Sattari, Goa lawful?

(II) If unlawful, whether the quarrying operations were undertaken by the partnership firm M/s. D.K. Industries post-retirement of the Petitioner from the said firm with effect from 02/05/2012 and, therefore, the Petitioner was not liable for payment of the amount of ₹44,42,755/- for such unlawful quarrying?

11. Regarding the first point, as held by the Director of Mines and Geology and the Secretary (Mines) – Revisional Authority, it is apparent that there was nothing lawful about the quarrying undertaken in the property surveyed under No.28/1 of Village Dongurli, Sattari, Goa. This quarrying was brazenly unlawful and launched without permission or a lease from the Directorate of Mines and Geology.

12. The material on record shows that the Petitioner only applied for permission to undertake quarrying operations. However, even before such permissions could be issued, the Petitioner commenced the illegal quarrying operations. Ultimately, no permission was obtained from any authority. Therefore, it is quite surprising that any contention should be raised about the lawfulness of the patently unlawful quarrying operations when the valuable minor minerals belonging to the State were virtually extracted and sold without the authority of law.

13. The Petitioner was prosecuted under the MMDR and the Minor Mineral Concession Rules penal provisions. In such prosecution, the Petitioner nowhere contended that the quarrying operations were lawful. Instead, the Petitioner sought and secured compounding of the offences alleged against him. Ultimately, the offences were compounded. After all this, the Petitioner cannot urge that the quarrying operations had even the hint of lawfulness.

14. At this stage, it is necessary to note that unlawful quarrying is rising in the State of Goa. Therefore, it is high time that the authorities consider whether compounding such offences should be permitted. In ***State (NCT of Delhi) vs Sanjay*** (2014) 9 SCC 772, the Hon'ble Supreme Court has held that where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and removes or clandestinely transports those minerals with an intent to remove dishonestly those minerals from the possession of the State, such person is liable to be punished for committing such offences under Sections 378 and 379 of the Indian Penal Code (IPC).

15. In ***Kanwar Pal Singh vs State of Uttar Pradesh and another*** (2020) 14 SCC 33, the contention that theft of sand is not punishable under Section 379, read with Section 378 of the IPC as sand is an immovable property as per Section 3(26) of the General Clauses Act, was rejected. The Hon'ble Supreme Court held that once sand is excavated, it would no longer be an immovable property. The sand, on being excavated, would lose its attachment to the earth; ergo, it would be a movable property or goods capable of being stolen. The decision in the case of *State (NCT of Delhi) vs Sanjay* (supra) was reiterated and followed.

16. Thus, excavation of laterite stones by quarrying, without any mining lease or licence, or authority from the State would amount to an offence under Sections 378 and 379 of the IPC. However, the State rarely launches prosecution for the offences under the IPC in such matters. Instead, the State and its officials launch prosecution under the MMDR or MCR and ultimately are happy to accept compounding of such offences. As noted earlier, it is high time it is stopped, and some serious action is taken against those who unlawfully extract or excavate minor minerals belonging to the State without any lawful authority.

17. In Order dated 17/8/2022 made in Writ Petition No. 312/2022 ***(Budho Arjun Gaonkar vs The State of Goa Thr. Chief Secretary and ors)***, the Division Bench of this Court has held that action is necessary to prevent illegal and unauthorised quarrying. It was held that such illegal and unauthorised quarrying is a source of pollution, apart from the brazen theft of people's wealth. It was held that the Government and its officials are merely trustees of this wealth and, therefore, are duty-bound to ensure that the same is not squandered. Moreover, the excavation pits severely danger humans, cattle, and wildlife. Consequently, it is high time that the mining department and the police authorities crack down on such a large-scale illegal and unauthorised quarrying in the State of Goa.

18. Accordingly, the first point for determination is liable to be decided against the Petitioner. The quarrying, in this case, was wholly illegal and unauthorised.

19. Regards the second point for determination, the record bears out that in 2014, some villagers filed a complaint about illegal quarrying by using blasting methods in the property surveyed under No.28/1 of Village Dongurli, Sattari, Goa. This complaint was made to the Directorate of Mines and Industries and the Police authorities.

20. Based on such a complaint, the Director of Mines and Geology issued a show-cause notice to the Petitioner on 19/8/2014, requiring him to show cause. As a result, the prosecution was also launched. In response, the Petitioner applied under Rule 63 seeking "compounding of offences". In addition, the Petitioner also filed a reply on 23/8/2014 to such show cause notice.

21. Significantly, neither in response to the prosecution, which the Petitioner sought to compound, nor in the reply dated 23/8/2014 to the show cause notice dated 19/8/2014, did the Petitioner contend that such unlawful quarrying was not undertaken by him, but by the partnership firm from which he had already retired. If the illegal quarrying operations were indeed undertaken by some firm from which the Petitioner had already retired, then this would have been the first defence of the Petitioner, which the Petitioner would have raised in response to the prosecution and the show cause notice. The fact that such a defence was not raised establishes the hollowness of such a defence if at all this could be called a defence.

22. After considering the cause shown, the Directorate of Mines made the Order dated 10/3/2015 requiring the Petitioner to pay the amount of ₹44,42,755/- for the brazenly illegal and unauthorised quarrying undertaken by him.

23. As against the Order dated 10/3/2015, the Petitioner instituted a revision before the Secretary (Mines). This was dismissed by the Secretary (Mines) by passing a detailed order on the points raised by the Petitioner. But, even before the Revisional Authority, no plea was raised about illegal quarrying undertaken by the partnership firm, from which the Petitioner had already retired. Again, this is a vital factor indicating the hollowness of such a plea.

24. After the dismissal of the Revision Petition by a detailed order dated 21/10/2016, the Petitioner filed a representation dated 01/11/2016 to the Director of Mines. This representation was entirely misconceived and not even maintainable. The Director's Order dated 10/03/2015 was already upheld by the Secretary (Mines) -Revisional Authority. After this, there was no question of the Petitioner addressing a representation and the Director of Mines entertaining any representation from the Petitioner. In this representation, for the first time, the Petitioner attempted to raise the plea about the partnership firm undertaking the quarrying operations after the Petitioner had retired from the firm.

25. By a detailed communication dated 29/11/2017, the Director of Mines considered the Petitioner's belated plea but rejected the same. The Director of Mines has given cogent reasons for rejecting this non-statutory representation and the plea raised therein.

26. Therefore, there is no clear evidence of illegal quarrying operations undertaken by the partnership firm and not the Petitioner, as claimed by the Petitioner. Secondly, no material suggests that the Petitioner had retired from such firm on 02/05/2012, as claimed by the Petitioner. Admittedly, the retirement notice dated 02/05/2012 was never communicated to the Director of Mines or, for that matter, the Registrar of Firms. Additionally, there was no public notice issued about such retirement.

27. Sections 32 and 63 of the Partnership Act contemplate a public notice upon the retirement of a partner. Further, as pointed out by Mr Shirodkar, in terms of Section 63 of the Partnership Act, a notice of retirement and reconstitution should have been given within 90 days from the date of retirement/reconstitution. The Petitioner did not do this. Instead, such notice of retirement was given only in the year 2018.

28. Therefore, for the illegal quarrying operations that had taken place between 2012 and 2014, the Petitioner, even based upon his belated and hollow plea, was squarely liable. Based on such a plea, the Petitioner cannot avoid the liability. If at all the Petitioner has any claim against the firm or its partners, it is for the Petitioner to pursue such claims independently. However, based upon such a plea, the Petitioner cannot avoid the payment of the impugned demand.

29. Section 32(3) of The Partnership Act provides that notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement until public notice is given of the retirement. In terms of Section 63, a notice of retirement and reconstitution should have been given within 90 days from the date of retirement/reconstitution.

30. In this case, though the retirement is claimed from 2012, such a notice was given only in 2018. Therefore, no useful purpose will be served by allowing the Misc. Civil Applications now filed by the Petitioner. In any case, the proposed amendment and the documents the Petitioner proposes to produce have already been considered. This amendment or the documents do not assist the Petitioner in avoiding the impugned demand or the liability under the impugned demand. The documents only refer to the reconstitution of the firm. However, no document has been produced informing the Director of Mines or, for that matter, any other authorities about the retirement until the year 2018.

31. Impleading the firm or its partners will also serve no purpose because the dispute between the Petitioner and the firm or its partners cannot be adjudicated in the present Petition. Incidentally, it is pointed out by Mr Shirodkar that one of the partners of the reconstituted firm is the Petitioner's son. Mr Shirodkar also pointed out that the address of the firm is the residential address of the Petitioner. All these circumstances support the Respondents' case that this plea about the partnership undertaking the illegal quarrying operations was a false plea, belatedly raised only to avoid liability under the impugned demand.

32. Mr Shirodkar also pointed out that the firm is not an independent entity but is only a collection of partners coming together and undertaking the partnership business. In terms of Section 25 of The Partnership Act, every partner is liable jointly with all the other partners and also severally for all acts of the firm done while he is a partner. Therefore, even assuming any credence should be given to the Petitioner's belated plea, the Petitioner cannot avoid the liability based upon this plea.

33. For all the above reasons, this Petition is dismissed. Accordingly, there shall be no order for costs.

34. However, the Respondents must take all steps to recover the amount under the impugned demand as expeditiously as possible. A compliance report must be filed with the Secretary (Mines) within three months from today.

35. Misc. Civil Applications are also disposed of.

M. S. SONAK, J.

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