

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 14.12.2023
Pronounced on: 22.12.2023

1. CWP-6456-2020

M/s United Mining CorporationPetitioner

Versus

State of Haryana and OthersRespondents

2. CWP-6971-2021

M/s Keyden Investments Pvt. Ltd.Petitioner

Versus

State of Haryana and OthersRespondents

3. CWP-13839-2020

M/s ASD-RKC J.V.Petitioner

Versus

State of Haryana and OthersRespondents

4. CWP-16709-2022

M/s Kayden Infra Engineering Pvt. Ltd.Petitioner

Versus

State of Haryana and OthersRespondents

5. CWP-16103-2022

M/s Jai Dada Dohla Stone MinesPetitioner

Versus

State of Haryana and OthersRespondents

6. CWP-12472-2022

M/s Sainik Mining and Allied Services Ltd.

.....Petitioner

Versus

State of Haryana and Others

....Respondents

7. CWP-23273-2019

Gram Panchayat Kaliyana

.....Petitioner

Versus

State of Haryana and Others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Puneet Bali, Sr. Advocate with
Mr. Tejeshwar Singh, Advocate,
Mr. Uday Agnihotri, Advocate
for the petitioner
(in CWP-6456-2020 and CWP-16709-2022).

Mr. Puneet Bali, Sr. Advocate with
Mr. Surjeet Bhadu, Advocate,
Mr. Agam Bansal, Advocate
for the petitioner (in CWP-12472-2022).

Mr. Akshay Bhan, Sr. Advocate with
Mr. Tejeshwar Singh, Advocate and
Mr. Shantanu Bansal, Advocate
for the petitioner (in CWP-13839-2020).

Mr. Rajat Choudhary, Advocate for
Mr. V.P.Sangwan, Advocate
for the petitioner (in CWP-23273-2019).

Mr. Vijay Pal, Advocate and
Mr. Ishaan Bhardwaj, Advocate
for the petitioner (in CWP-16103-2022).

Mr. Ankur Mittal, Addl. A.G. Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. R.A.Sheoran, Advocate
for respondent No. 3 – Gram Panchayat
(in CWP-6456-2020),
for the respondent-Gram Panchayat (in CWP-6971-2021).
for respondent No. 4 – Gram Panchayat

(in CWP-13839-2020).

Mr. Ajay Vijorania, Advocate
for respondent No. 7 (in CWP-16709-2022),
for respondent No. 5 (in CWP-12472-2022) and
for respondent No. 5 (in CWP-16103-2022).

Mr. Tejeshwar Singh, Advocate
for respondent No. 5 (in CWP-23273-2019).

SURESHWAR THAKUR, J.

1. Through all the writ petitions (supra) except CWP-23273-2019, a challenge is made to a common thereto Annexure, issued by the Principal Secretary to Government, Haryana, Development and Panchayats Department, Chandigarh, to all the Deputy Commissioners, in the State of Haryana. The said Annexure, bears memo No. SBA-4-2019/36764-775 dated 10.06.2019. Therefore, all the writ petition(s) are liable to be decided through a common verdict.

2. Moreover, since Gram Panchayat Kaliyana has instituted CWP-23273-2019, seeking the hereinafter extracted relief.

“.... for issuance of a writ in nature of mandamus or any other appropriate writ, order of direction directing the official respondents to recover the arrears of compensation from the respondent No. 5 as land revenue, as provided in The Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 framed under the Mines Regulation Act and same be paid to the petitioner.”

3. Therefore, the writ petition (supra) is also required to be decided alongwith the other connected writ petition(s), as it also relates to questions of law which are similar to the ones which are to be decided in connected writ petition(s) (supra).

4. Succinctly, through the Annexure (supra), a direction has been made, through the Deputy Commissioners concerned, thus to all

the Gram Panchayats concerned, within the territorial jurisdiction of State of Haryana, that the mutually settled rent and compensation payable by the mineral concessionaire concerned, to the land owners concerned, thus being ensured to be not less than 10 per cent of the contract money. The said omnibus direction(s), for the reasons, to be assigned hereinafter, are infected with a vice of *coram-non-judician* and/or are made with complete lack of jurisdictional competence, rather vesting in the author of the impugned annexure.

5. Though the statutory liability fastenable, upon, the mineral concessionaire concerned, is both in respect of annual rent, as well as, in respect of compensation. However, the determination(s) of mutually settled rent between the mineral concessionaire and the land owner, is made, in terms of Rule 63 of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 (hereinafter for short called as the 'Mining Rules, 2012').

6. However, when no rent is mutually settled amongst the land owner, and, the mineral concessionaire concerned, thereupon, the mineral concessionaire becomes liable to offer to pay, thus to the land owner concerned, hence, rent equal to the amount of annuity, as applicable from time to time, as payable under the R & R policy of the Government, in cases of land acquisition.

7. Moreover, in terms of Sub Rule (2) of Rule 64 of the Mining Rules, 2012, if yet the land owner is not agreeable for a mutual settlement, nor is satisfied with the rent offered to be paid, to him, under Sub Rule (1) of Rule 64 (supra), thus by the mineral concessionaire concerned, thereupon, the land owner or the mineral

concessionaire, becomes bestowed with a statutory right, to access the

mining officer-in-charge of the District concerned, so as to enable the latter to make a reference to the District Collector, for determination of fair rent payable in respect of the apposite lands.

8. Nonetheless, yet the Mining Officer in charge of the District, but as a pre-condition for his making the apposite reference, to the District Collector concerned, becomes entailed with the statutory obligation, to ensure that the mineral concessionaire, thus deposits the rent for one year, as prescribed in Sub Rule (1) of Rule 64 (supra), rather as tentative compensation with the Collector.

9. In the above event, the mineral concessionaire becomes entitled to commence mining operations at the site concerned.

10. Be that as it may, irrespective of the statutory provisions, embodied in Rule 63 and Rule 64 of the Mining Rules, 2012, which but relate, to determination of rent payable by the mineral concessionaire, to the land owner concerned, yet in supplement thereto or in addition thereto, rather in terms of Rule 65, the land owner is also entitled to receive just and fair compensation, from the mineral concessionaire concerned, vis-à-vis the damage caused to the mining site, in pursuance to mining operations being made thereons.

11. Therefore, but obviously Rule 63 and Rule 64 (supra) relate respectively to the mutually agreed rent, as, payable by the mineral concessionaire to the land owner and/or to in case of failure of mutual settlement, thus upon, a reference being made, through the mining officer of the District concerned, to the District Collector concerned, the latter becoming empowered to, in terms of Rule 64 (supra), Sub Rules (4), (5), (6) and (7), thus determine the rent payable

in contradiction thereof, Rule 65 relates to assessment of compensation to the land owners concerned, in sequel to damage being caused by the mineral concessionaire vis-à-vis his land, as arising from excavation activities being made thereons.

12. As but a natural sequel thereto, the above Rules relate respectively to rent payable by the mineral concessionaire, to the land owner, and/or, relate to determination of compensation (supra), in situation (supra). Therefore, but naturally the Rules (supra) envisage contra-distinct stand points vis-à-vis rent payable to the land owners by the mineral concessionaire and/or compensation payable by the mineral concessionaire to the land owners.

13. Resultantly, prima facie, with the above inter-se contradiction, qua determination(s) of liabilities appertaining, respectively to rent and compensation, as, respectively payable by the mineral concessionaire, to the land owner, thus the jurisdiction, exercisable by the Collector concerned, is through, his recouring the different applicable thereto provisions, as, become rather carried, respectively in Rules 63, 64 and Rule 65 of the Mining Rules, 2012.

14. Consequently, there is a requirement of segregation being made qua liability of annual rent either settled mutually or qua rent determined under Rule 64 of the Mining Rules, 2012, thus from the liability of compensation payable to the land owners, thus by the mineral concessionaire. Naturally, thereby both cannot be combined, as has been untenably done through the impugned annexures, whereby even the jurisdiction exercisable under Rule (supra), has been inaptly conferred upon the Gram Panchayats concerned.

15. Though, the total of the above is required by the Rule(s) (Supra) to be not less than 10 per cent of the contract money. However, the direction(s), as made to the Gram Panchayats concerned, through the impugned annexure, through the Deputy Commissioners concerned, to thus ensure, that the mutually agreed rent amongst the Gram Panchayats and the mineral concessionaire concerned, being not less than 10 per cent of the contract money, besides when the said direction(s) also takes into account both the annual rent and the compensation amount, thus respectively payable by the mineral concessionaire, to the land owners. Reiteratedly thereby the said omnibus direction(s) are liable to be faulted.

16. The reason for making the above conclusion emanates from :-

a) Despite jurisdiction to determine compensation payable to the land owner by the mineral concessionaire, being solitarily exerciseable by the Collector, through the latter recouring the provisions of Rule 65 of the Mining Rules, 2012, obviously, the conferment of the jurisdiction in respect thereof, through the impugned annexure, rather upon the Gram Panchayats concerned, when rather is segregable, but yet without ensuring that the components of annual rent and compensation are segregated, rather the impugned annexure has been untenably passed. Therefore, the lack of segregation of the supra otherwise segregable components of annual rent and compensation, yet with both segregable components (supra), becoming mandated, by the impugned Annexure, to become ensured by the Gram Panchayats concerned, to become complied with, thus, in a percentum rather not

said mandate, is thus, clearly beyond the otherwise validly vested jurisdiction in the Collector concerned, to, but on failure of mutual agreed rent, amongst the contracting parties, to thereby fix the rent, on a reference being made, to him, but in terms of the provisions of Rule 64 (supra), and/or to assess compensation, but only through his recouring the mandate of Rule 65 (supra).

b) Even otherwise since the statute is silent with respect to the quantum of or the figure of the annual rent to be mutually settled amongst the contracting parties, yet through an untenable combination of the otherwise segregable components, rather the impugned Annexure, has untenably made direction(s) upon the Gram Panchayats concerned, to fix in respect of both segregable liabilities, thus 10 percentum of the contract money. Therefore, therebys too, the impugned annexure is liable to be faulted.

17. Be that as it may, during the course of hearing, being made upon the instant writ petition, this Court had, in terms of an intimation being made to this Court, by the learned State Counsel, that as of now in terms of paragraph No. 11 of the notification dated 03.05.2021, the maximum cap of the agreed rent is to be 2 per centum, of the contract money, thus, asked the counsels for the petitioner(s), to make a statement, that whether they shall make the said deposits, within two weeks from a decision being made by this Court, but alongwith all the accrued arrears thereof, since the commencement of the mining excavations, by each of the mineral concessionaires. In response thereto the counsels for the petitioners had accorded their acceptance theretos.

18. Therefore, reiteratedly in the wake of the said notification

also, the impugned annexure is liable to be faulted, as for all the above

stated reasons, it takes into account both the otherwise segregable components of rent and compensation, payable to the land owners, thus by the mineral concessionaire, whereas, valid determination(s) in respect of the latter, was required to be made, thus only by the Collector concerned, through his exercising jurisdiction under Rule 65 of the Mining Rules, 2012, and/or, also only the Collector was well enabled, to make the apposite valid adjudication, thus on the apposite reference, becoming received by him, from the mining officer in charge of the District concerned.

19. In other words, there was in respect of two segregable components of liabilities fastenable, upon, the mineral concessionaire, rather no requirement for the impugned annexure, making an untenable omnibus direction(s), through the District Collectors concerned, upon the Panchayats concerned, to yet in departure from the jurisdictional competence otherwise vested in the statutory authorities, thus include both, in the mutually agreed settlements amongst the mineral concessionaire, and, the Gram Panchayats concerned, and/or the land owners concerned.

20. In CWP No. 3085 of 2023 titled as 'Gram Panchayat Kheri Battar Vs. State of Haryana and Others, upon, this Court becoming seized with the said petition, thus was asked to make an adjudication with respect to the makings, upon, respondent No. 5 therein, the hereinafter extracted mandamus.

“(a) A mandamus being made, upon respondent No. 5 to make payment of royalty to Gram Panchayat, Kheri Battar in terms of the agreements upto 1.5.2020, and, from 1.5.2020 till date with interest.

(b) A direction being issued, upon respondent No. 5 to enter and execute the agreement with Gram Panchayat, Kheri Battar, and, make the payment of royalty with interest with effect from 10.2.2022 till date.

(c) A mandamus being made, upon co-respondent No. 4 to send reference to respondent No. 3 to fix the fair market rent in respect of the land of the Gram Panchayat concerned, as per Rules 63, 63-A and 64(3) of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 (for short 'the Rules of 2012').

(d) A direction being issued, upon respondents No. 1 to 4 to take corrective action against respondent No. 5, till the payment by respondent No. 5 with interest."

21. However, this Court in paragraphs No. 3 to 6, paras whereof become extracted hereinafter, concluded that, since there is no actionable coercive jurisdiction vested in the statutory authorities, to enforce the mutually agreed rent agreement amongst the mineral concessionaire and the land owners concerned, thereby thus had directed the aggrieved Gram Panchayat concerned, to, on breach being done to the mutually agreed rent agreement, to thus enforce the said agreement through instituting a civil suit.

3. Since the above agreements become breached at the instance of co-respondent No. 5, therefore, a mandamus is asked to be made, upon the said respondent, to comply with the said agreements.

4. At the outset, the relief (supra) relating to the making of the said mandamus, is outside the scope of the writ jurisdiction, as any privately entered into agreement inter se the Gram Panchayat concerned, and, co-respondent No. 5, unless on an evident breach thereof emerging besides the same being actionable through enforcing a relevant statutory provision against respondent No. 5, rather thus

cannot become enforced through the aegis of the writ Court. Though in the said situation, thus this Court may have proceeded to make the above asked for mandamus, upon, the enforcing authority, to ensure the releases being made by co-respondent No. 5, vis-a-vis, the amount mentioned in the above annexure, rather vis-a-vis respondent No. 5.

5. However, in the wake of the above lack of provision(s), in the Rules (supra), thus thereby the enforcement of the above agreements rather can be made only through the institution of a civil suit, at the instance of the present petitioner against the derelict respondent No. 5.

6. In addition, since the prayer asked for in the instant petition, relating to corrective coercive action, being drawn by the official respondent concerned, against respondent No. 5, has also arisen from breach, being made, to the said agreements, thus the same also cannot be rendered by this Court. The reason is but simple, that no statutory provision(s) exists, thus in the Rules (supra) whereby, a pre-emptory duty becomes cast, upon the official respondent concerned, that in the wake of non-realizations of amount, as mentioned in the agreements (supra), thereby the excavation of minor minerals from the mining block by co-respondent No. 5, thus being illegal, and, that thereby the said respondent be restrained from excavating the minor minerals concerned, from the mining block concerned. In the above situation too, the remedy is through the institution of a suit for injunction before the Civil Court of competent jurisdiction.”

22. Moreover, through a discussion occurring in paragraphs No.7 and 8, as relates to the jurisdictional incompetence, of the Assistant Collector concerned, to through recouring the provisions of Section 10 A of the Punjab Village Common Lands (Regulation) Act, 1961, to order the mineral concessionaire concerned, to deposit an

annual rent and compensation amount at the rate of 10 per cent of the contract money in one month, rather had set aside the said made order by the Assistant Collector concerned. The relevant paras No. 7 and 8, as carried in the verdict (supra) become extracted hereafter.

7. In reply on affidavit, furnished to the instant writ petition by official respondents concerned, it is contended, that vide order dated 28.5.2020, as became passed under Section 10-A of the Punjab Village Common Lands (Regulation) Act, 1961, the Assistant Collector Ist Grade, Charkhi Dadri, after examining the record, and, after hearing the parties, made a conclusion, that co-respondent No. 5, had in collusion with the then Sarpanch of the Gram Panchayat concerned, made agreements of contract amounts rather lesser than the prescribed minimum thereof. Moreover, it is also mentioned therein, that the dead rent royalty actually paid by the concessionaire concerned, to the government was less than the one which was required to be paid, and, thereby huge financial loss accrued to the Gram Panchayat, Kheri Battar.

8. Though, the Assistant Collector, Ist Grade, Charkhi Dadri, vide order (supra), had also directed respondent No. 5 to deposit the annual rent, and, compensation amount at the rate of 10% of the contract money, within one month from the passing of the order, besides in case of non-deposit of the said amount, it was declared therein, that departmental action be taken against the mining company concerned. The said order is attached to the reply, as Annexure R-1. Though, the reply on affidavit, furnished to the instant petition, on behalf of respondents No. 1 and 3, does display, that some action has become drawn, at the instance of the said replying respondent, but unless statutory provisions, also did occur, in the Rules (supra), whereby the said order can become enforced, and/or, unless the said authority became bestowed with the

jurisdictional competence to make them, and, to enforce them, thereupon this Court would relent from making the asked for mandamus, upon, the respondent concerned. The relevant statute, however, does not confer the jurisdiction, as becomes exercised by the authority, who made Annexure R-1. Therefore too, yet the ill acts of respondent No. 5, were actionable or remediable only through the institution of an apposite suit but before the Civil Court of competent jurisdiction.”

23. Nonetheless, this Court in verdict (supra), also made an incisive analysis of the statutory provisions, and, had discerned therefrom, that in the relevant Rules, there becomes conferred, no able jurisdiction in the statutory authorities, thus to enforce mutual agreement(s) qua rent, as became drawn amongst the concerned, besides there occurring no contemplations in the Rules (supra), whereby empowerment is conferred upon the Competent Authorities, thus either to cancel the lease deed, as a measure for enforcing the apposite agreement(s), nor there occurring any speaking in the Rule (supra), that in the event of breach being made to the apposite agreement(s), thereby an empowerment being bestowed upon the authorities, to draw punitive action against the errant mineral concessionaire. The said paragraph No. 9 also becomes extracted hereinafter.

“9. After making detailed study of the relevant provisions, as relate to the vestment of the able jurisdiction in the statutory authority, contemplated in the Rules (supra), thus to enforce the agreements, as drawn amongst the concerned. Moreover, after making a detailed/incisive study of the relevant provisions, it does emerge, that in the Rules (supra), there apparently occurs rather no mandate upon the authority, contemplated in the Rules (supra), thus

to either cancel the lease deed, as a measure of enforcing the above agreements, nor there occurs any rule that, in the event of breach being made of the agreements (supra), thereby the authority under the Rules (supra), becoming empowered to draw punitive action against the errant mineral concessionaire concerned. Therefore, also this Court relents from making the asked for mandamus, upon, the respondent concerned.”

24. Nonetheless, in paragraph No. 10, of the verdict (supra), this Court, in respect of undoing the above, rather had ad nauseum dealt with remedial/corrective legislations, being made by the State of Haryana, as therebys the aggrieved from the breached mutually settled agreement(s), are not driven to the otherwise cumbersome ordeal of instituting a civil suit, thus for enforcing the apposite agreement(s). Resultantly after making detailed discussions in paragraphs No. 14 to 28 thereof, paras whereof become extracted hereinafter, this Court had proceeded to propose certain amendment(s), to be made to the relevant rules, for thereby making the errant mineral concessionaire concerned, rather amenable to face either punitive action or the authority concerned, becoming empowered to rescind the apposite lease, but on breach being made of the relevant mutually settled agreement(s), inter-se, the mineral concessionaire and the land owner, besides had proposed the makings of amendment(s), rather for a time bound manner of decisions being made by the District Collector concerned, through his recouring the mandate of Rule 64 and Rule 65 of the 'Mining Rules, 2012'.

14. In the instant case, we are concerned with a lis engaging the Gram Panchayat concerned, and, co-respondent No. 5. Therefore, since the Gram Panchayat concerned, is the owner of the leased lands, resultantly, the petitioner-Gram Panchayat concerned, became well

enabled to, in terms of Chapter 9 of the Rules of 2012, seek determination or settlement of rent, and, compensation for the land used for mining. It is in the wake of the petitioner-Gram Panchayat concerned, executing the above agreements with co-respondent No. 5, and, the said agreements becoming breached, that thereby the mandate borne in Chapter 9 of the Rules of 2012, specifically appertaining to the rights of the land owners against the mineral concessionaire concerned, thus become sparked into action.

15. The earlier thereto Chapter 9, relates to the liabilities encumbered, upon the mineral concessionaire concerned, vis-a-vis the Government department concerned. Moreover, the said Chapter 8 relates to, in the event of breach being made vis-a-vis financial encumbrances, as, made upon the mineral concessionaire concerned, thus requiring action takings, as mentioned therein, becoming embarked upon by the authority concerned.

16. Therefore, as stated (supra), there is a contradiction inter se Chapter 8, and, Chapter 9. Moreover, as stated (supra), Chapter 9 is specific insofar as the land owner, is concerned, who is the petitioner herein, and, who seeks the enforcement of the agreements (supra), besides seeks a reference being made to the authority concerned, thus to fix a fair compensation. Thus, this Court would proceed to make deep deliberations of the provisions, carried in Rules 62, 63, 64 and 65 of the Rules of 2012, provisions whereof respectively, relate to mining over the land falling to the ownership of the third parties, to mutual settlement of rent, to compensation for the land used for mining, to determination of fair market rent, if not mutually settled between the parties, to determination of compensation, and, to recovery of government dues, as arrears of land revenue. The said provisions become extracted hereinafter.

62. Mining over land in the ownership of third parties.-

(1) Where a mineral concession is granted under these rules over any land in respect of which minor mineral rights vest in the State Government, the rights of the landowner shall be subordinate to that of the State Government for extraction of the mineral, access to the quarry/mine, stacking of minerals and other subsidiary purposes. The landowner is entitled to a fair rent and compensation for such use of the land and any damage or injury caused to such land.

(2) A mineral concession holder, who is granted the mineral concession under these rules, is entitled to use the land/ area for extraction of mineral in respect of which the said concession is granted. The mineral concession holder shall be liable to pay-

(a) the annual rent in respect of the land area blocked under the concession but not being operated, and

(b) the rent plus compensation in respect of the area used for actual mining operations.

(3) In case the landowner is allowed to use part of the area granted under the mineral concession for his normal operations for which it was being used prior to the grant of mineral concession, concurrent with the concession grant, no rent shall be payable in respect of such portion of land which is not being used for actual mining operations for such period as it remains available to the landowner for his normal use. In cases where the mineral concession holder blocks the entire concession area as a result of which the landowner is not able to use such land or part thereof for his normal operations, the rent shall be payable in respect of the entire blocked area.

63. Mutual settlement of rent and compensation for the land used for mining.- *The amount of annual rent and the compensation shall be settled mutually between the landowner and the mineral concession holder.*

64. Determination of fair market rent, if not mutually settled between the parties.-

(1) Where no agreement is reached by way of mutual settlement between the landowner and the mineral concession holder regarding the rate of rent, the mineral concession holder shall offer to pay rent equal to the amount of Annuity, as applicable from time to time, as payable under the R & R Policy of the Government in cases of land acquisition.

(2) Where the land owner is not agreeable for a mutual settlement under rule 63 and is also not satisfied with the rent offered to be paid under sub-rule (1) above, the landowner or the concession holder may apply to the officer-in-charge of the concerned district to make a reference to the District Collector for determination of the fair rent payable in respect of such land.

(3) Where either of the parties prefer a reference to the District Collector under sub-rule (2) above, the officer-in-charge of the concerned district shall forward the reference to the District Collector for determination of the fair market rent in respect of such land. The mining officer-in-charge of the district shall also require the mineral concession holder to deposit the rent for one year as prescribed under sub-rule (1) above as a tentative compensation with the Collector. Upon so doing, the mineral concession holder shall be entitled to commence mining operations over the said land area.

(4) Upon a reference from the mining officer-in-charge of the district concerned, the District Collector may call upon the parties to furnish the details of their claims and counter claims, inter alia, containing information on the parameters prescribed under sub-rule (5) of this rule and afford an opportunity of hearing to the parties.

(5) (I) Pursuant to the hearing granted to the parties to the

reference, the District Collector shall determine the fair market rent of the land keeping in view the following:

(i) nature/ character of the land i.e. arable (single crop or multiple crop) or barani or banjar;

(ii) use to which such land was being put immediately before the grant of mineral concession;

(iii) annual net income that the landowner was able to derive/ earn from such land use;

(iv) normal increase in the income level that would have taken place in such net income during the intervening period;

(v) amount so worked out shall be added an amount equal to thirty percent in lieu of compulsory use of the land;

(II) While determining the fair market rent, the collector shall also decide the rate at which such rent would be increased on year-to-year basis during the currency of the mineral concession.

(6) Notwithstanding the parameters prescribed for determining the fair market rent under sub-rule (5) above, Collector shall not determine the rent at a rate lesser than the amount of annuity payable under the R&R Policy.

(7) The District Collector shall order parties and the mineral concession holder to pay such rent to the landowner from time to time, as determined by him.

(8) Any appeal against the order of the District Collector shall lie with the Government.

65. Determination of Compensation.-

(1) In addition to the rent settled between the parties under rule 63 or determined and payable under rule 64, the landowner would also be entitled to payment of a fair and reasonable compensation for any damage caused to such land in respect of the area under actual mining operations.

(2) In cases where the amount of compensation is not mutually settled between the parties under rule 63, the tentative amount of compensation shall be equal to 10% of the annual contract money, dead rent/ royalty actually paid by the mineral concession holder to the Government, less the amount of rent settled or determined.

(3) Where the landowner or the mineral concession holder is not agreeable to accept the amount of compensation prescribed under sub-rule (2) above, either of them may seek a reference through mining officer-in-charge to the District Collector for determination of fair and reasonable compensation with reference to the damage or injury caused to such land. Pending a decision by the District Collector on such reference by either of the parties, the mineral concession holder shall deposit the tentative compensation amount for one year with the District Collector in accordance with sub-rule (2) above, where after the concession holder shall be entitled to operate the area.

(4) Upon a reference from the officer-in-charge, of the district concerned, the District Collector shall proceed to determine the fair compensation amount on account of any damage likely to be caused to such land on account of the mining operations. The Collector shall invite claims and counter claims and afford an opportunity of hearing to the parties before determining the compensation amount.

(5) (I) The Collector shall determine the fair compensation for the damage or injury caused to such land keeping in view the following:

(i) nature or character of the land i.e. arable (single crop or multiple crop) or barani or banjar;

(ii) economic activity for which such land was being used immediately before the grant of mineral concession;

(iii) nature and extent of damage caused and as to whether such land is fully or partially reclaimable after closure of the mining operations or the damage is irreversible;

(iv) economic activity for which such land can be used after mine closure, with or without any investment, and the kind of returns it is capable of yielding after such restoration.

(v) extent of efforts and expenditure proposed to be made by the mineral concession holder for restoration or reclamation or rehabilitation of the land as per the mine closure plan for its eventual use by the landowner;

(II) While determining the compensation amount, the Collector shall keep in view the total rent and the estimated compensation amount payable to the landowner throughout the concession period. In case the sum total of the rent and the compensation amount assessed is more than the prevailing market value of land, the mineral concession holder may be given an option to buy the land at such rates subject to the landowner agreeing to the same. Alternatively, the Collector may determine the compensation amount keeping in view that the landowner would continue to retain the ownership of land after the closure of mining operations.

(III) In case the mineral concession holder and the landowner(s) are able to settle the compensation mutually in respect of a portion of the land required for actual mining operations, compensation for such portion of the land shall not be a subject for settlement. However, the amount of compensation already settled in respect of part of the operating area shall be kept in view while settling the compensation for the disputed area.

(6) Notwithstanding the determination of compensation on the considerations stated under sub-rule (5) above, the annual rent and the compensation amount put together shall not be less than 10% of the amount of contract money/ dead rent/ royalty actually paid by the mineral concession holder to the government with reference to such portion of land in accordance with sub-rule (2) above.

(7) The compensation amount determined by the District Collector shall be final and binding on the parties and the mineral concession holder shall be liable to pay such compensation amount to the landowner annually during the currency of the mineral concession.

(8) An appeal against the order of the Collector shall lie with the Government.”

17. After making an incisive study of the above extracted provisions, it appears, that though in Rule 62 of the Rule of 2012, a privilege is bestowed, upon the mineral concessionaire concerned, to make excavation of the mines and minerals from the land, owned by the land owner concerned. However, the said privilege bestowed, upon the mineral concessionaire concerned, is subject to his paying (a) the annual rent in respect of the land area blocked under the concession but not being operated, (b) the rent plus compensation in respect of the area used for actual mining operations. However, the said imposed financial liabilities are not candidly spoken therein to be compulsorily dischargeable but at the inception of undertakings of mining operations, by the mineral concessionaire concerned, vis-a-vis, the mining block concerned. The above is an anomaly, and, is required to be rectified, thus through an amendment being made to the said Rule, to the extent that, the mineral concessionaire concerned, shall be liable to pay in advance the above financial encumbrance(s).

18. Moreover, though Rule 63 of the Rules of 2012, speaks about mutual settlement of rent and compensation for the land used for mining. It appears, that in terms of the said Rule, an agreement (supra) became drawn between the concerned. However, it may yet happen, that despite an affirmative recourse being made to the said statutory Rule, yet the discharging liability created, upon the mineral concessionaire concerned, may not become liquidated. Therefore, even the above is an anomaly, and, is required to be rectified in the hereinafter manner.

19. (a) That on commencement of the mining lease, the mineral concessionaire concerned, shall not be permitted to commence the mining activity, unless the settled amount of annual rent, and, compensation, as the case may be, is paid in advance to the land owner. (b) That the mineral concessionaire concerned, shall pay the annual rent, and, compensation, as the case may be in advance 30 days before the starting of each consecutive year, and, in the event of failure to make the advance payment, the mining operations shall be liable to be suspended.

20. Moreover, though apart from the above provision, relating to mutual settlement, Rule 64 of the Rules of 2012 also enshrines determination of fair market rent, in the event of Rule 63 of the Rules of 2012, rather becoming not affirmatively recoured. Though, there is a mandate therein about, in the wake of no agreement or mutual

settlement being arrived at, in terms of Rule 63 of the Rules of 2012, thereupon the land owner or the mineral concessionaire concerned, making an application to the officer-in-charge of the District Collector, thus for determination of fair rent hence payable in respect of the said land. In addition, though sub-Rule (3) of Rule 64 of the Rules of 2012, speaks about the District Collector becoming invested with the jurisdiction to make the relevant fixations. Furthermore, the mining officer concerned, becomes also encumbered with the duty, that the mineral concession holder, makes the deposit of the rent for one year as envisaged in sub-Rule (1) of the Rule 64 of the Rules of 2012. Moreover, on such tentative rent being liquidated before the Collector, seized with the relevant reference, thus it is spoken in sub-Rule (3) of the Rule (supra), that thereupon the mineral concession holder rather shall be entitled to commence mining operations over the said land.

21. However, it appears that neither there is any mandatory time bound stipulation(s) vis-a-vis the forwarding authority, thus forwarding the relevant reference, nor any pre-emptory mandate becomes cast upon the Collector concerned, to decide the forwarded to him reference, rather in a time bound manner. Therefore, in the wake of the above, the forwarding authority may omit to make the relevant reference to the District Collector concerned, thereby facilitating the mineral concessionaire concerned, to proceed to make excavations of minor minerals from the mining block, and, that too without his making any payment to the land owner concerned.

22. The above anomaly is required to be undone, through an amendment being made to the relevant Rules, whereby the officer-incharge of the District, thus becomes mandatorily injuncted to forward the reference to the District Collector concerned, rather within 10 days of his receiving the said reference. Moreover, a relevant amendment is to be also made to the Rule (supra) whereby the District Collector concerned, becomes enjoined to make a decision on the reference, but within 45 days of his receiving the said reference. The above is required to be done, as unless a statutorily prescribed period of time is earmarked rather for the District Collector, thus to decide the relevant reference, thereby the mineral concessionaire concerned, but only on his making deposit of the annual tentative rent in terms of sub-Rule (1), may thereafter choose to adopt dilatory tactics, and, thus may ensure, that without any final determination being made by the Collector concerned, that thereby he proceeds to engage himself in the mining activities, over the land owned by the land owners concerned, thereby causing loss to the land owners concerned.

23. Furthermore, the annual rent payable under sub-Rule (1), and, the annual tentative rent to be deposited under sub-Rule (3), may be deemed fit, through an amendment, thus being enjoined to be paid in advance, failing which the undertakings of mining operations, by the mineral concessionaire concerned, shall be forbidden. In addition, the amount appertaining to each consecutive year, may be through a suitable amendment, being made in the relevant rules, be contemplated to be paid not less than 30 days prior to the commencement of next year during the currency of mineral concession.

24. Be that as it may, a suitable amendment, be also made in the relevant rules, whereby in the event of non liquidation of the amount determined, shall entail penalty @ 10% of the agreed rate (mutually settled or otherwise) per annum, thus being imposed by the mining officer, for the period for which default continues, besides shall entail suspension of the mining operations. In addition, an amendment in the relevant rule be also made to the extent, that in case the default continues for three months, then the mining operations shall be terminated after giving show cause notice. Moreover, suitable amendment be also made in the relevant rules, that in case the mineral concession holder files an appeal, he/it shall deposit the amount determined by the authority concerned, thus before his/its commencing the mining operations or his/its continuing with mining operations, as the case may be, as an interim measure, subject to the final decision of the appellate authority, which will relate back to the date of initial determination. In addition, in case the land owner files an appeal, thereupon also the mineral concession holder shall be liable to pay the amount determined by the authority concerned, subject to final decision of the appellate authority, which will relate back to the date of initial determination.

25. In addition, Rule 65 of the Rules of 2012 speaks about the determination of compensation. In sub-Rule (3) thereof, it becomes spoken qua, upon, the land owner or the mineral concession holder, being not agreeable to accept the amount of compensation, as prescribed under sub- Rule (2), thereupon either of them, may seek a reference through the mining officer-in-charge, to the District Collector rather for determination of fair, and, reasonable compensation but with reference to the evident damage or evident injury caused to the such land(s). However, there is no time bound stipulation in the forwarding of the said reference to the District Collector concerned. Therefore, in sub-Rule (3) a suitable amendment is to be made to the extent, that the above reference, shall be forwarded within 10 days of the receipt of the same, besides qua on receipt thereof, the same shall be decided within two months thereafter.

26. In addition sub-Rule (6) of the Rule (supra) speaks, that in case the amount of final compensation, as determined by the Collector, works out to be more than the tentative amount of compensation, already deposited as per sub-Rule (2), thereupon the mineral concession holder shall deposit the additional amount of compensation within fifteen days. It is further detailed therein, that in case the amount of final compensation works out rather to be less than the amount already deposited by the contractor/lessee, thereupon the excess amount shall be refunded to him within fifteen days. However, an amendment be also made in the relevant rule, to the extent that the entire exercise by the District Collector shall be completed within a period of 45 days from the date of receipt of reference.

27. Moreover, a suitable amendment be also made in the relevant rule(s) to the extent, that the tentative amount of compensation, as determined under sub-Rule (2) and (3), would also be payable in advance failing which the mining operations on such land, would not be permitted to commence, thus by the mineral concession holder. Moreover, for each consecutive year, the amount of compensation shall be paid 30 days prior to the commencement of the next year.

28. In addition, an amendment be also made, that the non-payment of the determined amount, shall entail penalty @ 10% of the agreed rate (mutually settled or otherwise) per annum, thus being imposed by the mining officer for the period for which default continues, besides shall entail suspension of the mining operations. In addition, an amendment in the relevant rule be also made to the extent, that in case the default continues for three months, thereupon the mining operations shall be terminated after giving show cause notice.”

25. Though resultantly in the final order made by this Court in writ petition (supra), the hereinafter advisories were made upon the respondent concerned.

29. In consequence, Rules 62, 63, 64 and 65 of the Rules of 2012, are proposed to be amended as under:-

Rule 62 of the Rules of 2012

- (1) x x x x
- (2) Sub Rule (2) be amended to the extent that the mineral concession holder shall be liable to pay in advance the above financial encumbrance(s).
- (3) x x x x

Rule 63 of the Rules of 2012

- (1) x x x x
- (2) That on commencement of the mining lease, the mineral concessionaire concerned, shall not be permitted

to commence the mining activity unless the settled amount of annual rent, and, compensation, as the case may be, is paid in advance to the land owner.

(3) That the mineral concessionaire concerned, shall pay the annual rent, and, compensation, as the case may be in advance 30 days before the starting of each consecutive year, and, in the event of failure to make the advance payment, the mining operations shall be liable to be suspended.

Rule 64 of the Rules of 2012

(1) x x x x

(2) x x x x

(3) Sub-rule (3) of the Rule (supra) be amended to the extent that the officer-in-charge of the District becomes cast with a mandatory injunction to forward the reference to the District Collector concerned, rather within 10 days of his receiving the said reference.

(4) x x x x

(5) x x x x

(5A) The District Collector concerned, becomes enjoined to make a decision on the reference, but within 45 days of his receiving the said reference.

(6) x x x x

(7) x x x x

(8) x x x x

(9) The annual rent payable under sub-Rule (1), and, the annual tentative rent to be deposited under sub-Rule (3), may be deemed fit to be paid in advance failing which the undertakings of mining operations, by the mineral concessionaire concerned, shall be forbidden.

(10) The amount appertaining to each consecutive year shall be paid not less than 30 days prior to the commencement of next year during the currency of mineral concession.

(11) In the event of non liquidation of the amount determined, shall entail penalty @ 10% of the agreed rate (mutually settled or otherwise) per annum, thus being imposed by the mining officer, for the period for which default continues, besides shall entail suspension of the mining operations. In case, the default continues for three months, then the mining operations shall be terminated after giving show cause notice.

(12) In case the mineral concession holder files an appeal, he/it shall deposit the amount determined by the authority concerned, thus before his/its commencing the mining operations or his/its continuing with mining operations, as the case may be, as an interim measure, subject to the final decision of the appellate authority, which will relate back to the date of initial determination.

In case the land owner files an appeal, thereupon also the mineral concession holder shall be liable to pay the amount determined by the authority concerned, subject

to final decision of the appellate authority, which will relate back to the date of initial determination.

Rule 65 of the Rules of 2012

(1) x x x x

(2) x x x x

(3) In sub-Rule (3) a suitable amendment be made to the extent, that the reference, shall be forwarded within 10 days of the receipt of the same, besides qua on receipt thereof, the same shall be decided within two months thereafter.

(4) x x x x

(5) x x x x

(6) In addition sub-Rule (6) of the Rule (supra) speaks, that in case the amount of final compensation, as determined by the Collector, works out to be more than the tentative amount of compensation, already deposited as per sub-Rule (2), thereupon the mineral concession holder shall deposit the additional amount of compensation within fifteen days. It is further detailed therein, that in case the amount of final compensation works out rather to be less than the amount already deposited by the contractor/lessee, the excess amount shall be refunded to him within fifteen days. However, an amendment be also made in the relevant rule, to the extent that the entire exercise by the District Collector shall be completed within a period of 45 days from the date of receipt of reference.

(7) x x x x

(8) x x x x

(9) Moreover, a suitable amendment be also made in the relevant rule(s) to the extent, that the tentative amount of compensation, as determined under sub-Rule (2) and (3) would, also be payable in advance failing which the mining operations on such land, would not be permitted to commence, thus by the mineral concession holder. Moreover, for each consecutive year, the amount of compensation shall be paid 30 days prior to the commencement of the next year.

(10) In addition, an amendment be also made that the non-payment of the determined amount, shall entail penalty @ 10% of the agreed rate (mutually settled or otherwise) per annum, thus being imposed by the mining officer for the period for which default continues, besides shall entail suspension of the mining operations. In addition, an amendment in the relevant rule be also made to the extent, that in case the default continues for three months, thereupon the mining operations shall be terminated after giving show cause notice.”

26. Though but the above recommendation(s) are thus

advisorial in nature, but it is naturally expected from the State of

Haryana, that the advisories (supra) are fully actioned, as thereby neither the Gram Panchayats concerned, or the land owners concerned, rather would face the agony of the mineral concessionaire concerned, despite exploiting the mineral wealth, as occurs on the lands respectively owned by the Gram Panchayat concerned, and, by the private land owners, his/it yet breaching the relevant agreement(s), and/or in his/it derelicting in paying damages to the land owners concerned.

27. Moreover, the above proposed amendment(s), would ensure, that at least the relevant references, as made to the Collector concerned, for his thereons exercising jurisdiction, through his recouring, the mandate of Rules 64 and 65 of the Mining Rules, 2012, becomes so exercised, in a time bound manner, so that for any procrastinated delay, in the decisions, to be made on such references, thereby no financial loss becomes encumbered, upon, the panchayats concerned, or upon the private land owners concerned.

28. Necessarily, thereby this Court expects that the said advisories would become adhered to promptly by the State of Haryana, so that the consequential thereto amendment(s) are incorporated in the Rules (supra).

29. On a number of occasions, this Court became seized with a plethora of situations, where *e-rawangi* portals are misused or abused by the mineral concessionaires concerned, through the latter making fictitious entries, in the *e-rawangi* portals, inasmuch as, its despite not lifting the stock from the godowns maintained for the relevant purpose, nor after its making the excavations from the allotted sites, yet rather

than the sites allotted to him/it, besides his/its lifting the minor minerals concerned from unauthorized sellers.

30. The above menace is prolific and is ever spreading but remains uncurbed. The spreading of the above menace, and its remaining not fully controlled or overcome, speaks volumes about dereliction of duties on the part of the contesting respondent.

31. It appears that the said dereliction, may be as a sequel of deficiency of staff with the District Mining Officers concerned. Therefore, a direction is made, upon, the contesting respondent concerned, to within three months from today, equip all the District Mining Officers concerned, with an adequate number of mining officers, but in commensuration with the mining sites allotted to the mineral concessionaires concerned, so that thereby, a day to day inspections of the excavation(s) made at the allotted sites, thus is made by the mining officer concerned.

32. The Mining Officer(s) concerned, deployed at each site shall ensure that stock registers are maintained by the mineral concessionaires.

33. Furthermore, the stock registers shall be, on a day to day basis, thus audited by the Mining Officers concerned, so that, in commensuration thereof, reflections are made in the *e-rawangi* portals maintained by the mineral concessionaire concerned.

34. Apart from the above, to ensure that there are no illegal transportings, of illegally excavated minor minerals concerned, by the mineral concessionaires, thereby the contesting respondent concerned, is directed to within two weeks from today, establish sub-border posts

officers, so that at the said sub-border posts, the apposite minor mineral(s) transported in the trucks concerned, thus become inspected, and, thereafter the *rawangi pass* maintained by the driver rather is online tallied with the *e-rawangi* portal issued to the mineral concessionaire concerned.

35. Moreover, even at the border posts, the minor mineral transported in the trucks concerned, is required to be inspected, by the officer concerned, and, thereafter the *rawangi pass* maintained by the driver, is required to be online tallied with the *e-rawangi* portal.

36. In the wake of the above, for ensuring that the above, is done, the respondent concerned, is directed to even establish border posts, at the relevant sites, to be manned by an officer not less than the rank of a mining officer.

37. An intimation qua the above, be made to this Court within three weeks hereafter. **List on 31.01.2024**, after compliance of the above is made by the State of Haryana.

38. In the wake of the above, since as above stated the impugned Annexure (letter/order dated 10.06.2019), is made, without jurisdiction being vested in the Principal Secretary to Government, Haryana, Development and Panchayats Department, Chandigarh, as such, the impugned Annexure is quashed and set aside.

39. Nonetheless, in terms of the acceptance by the learned counsel, for the petitioners of paragraph no. 11 of the notification dated 03.05.2021, prescribing therein that the maximum cap of the agreed rent would be 2 per cent, thereupon, all the writ petitioner(s) (**except the writ petitioner in CWP-23273-2019**), shall within a period of one

Secretary of the Panchayat concerned, besides shall also within two weeks from today deposit all arrears thereof, before the Secretary concerned.

40. Furthermore, if any liabilities towards compensation amount are to be encumbered upon the mineral concessionaire concerned, thereupon, the said liabilities be assessed within one month from today by the District Collector concerned, and for facilitating the above decision makings, the District Mining Officer concerned, is directed to forward the relevant reference, if they are well made, thus to the District Collector concerned.

41. On such a decision being made by the Collector concerned, thereupon, the mineral concessionaires concerned, shall become obliged to within a week thereafter deposit the assessed compensation amounts, respectively with the Secretary of the Gram Panchayat concerned and/or with the land owners concerned.

42. All the writ petitions(s) (supra) are disposed of with direction(s) aforesaid except CWP-23273-2019, filed by the Gram Panchayat, Kaliyana, which is also accordingly disposed of.

43. Since the main case(s) itself have been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

44. **List on the date already fixed, for the purpose aforesaid.**

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

22.12.2023
kavneet singh