**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-20163-2022
Reserved on: 06.03.2024
Pronounced on: 12.03.2024

MOHAN SINGH AND ANR. .....Petitioners

Versus

STATE OF PUNJAB AND ORS. ....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. Bikramjit Singh Bajwa, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab.

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SURESHWAR THAKUR, J.

1. Through filing of the instant petition, the petitioners herein pray for a mandamus being made upon the respondents concerned, to release the royalty of the landlord i.e. the petitioners herein, on whose land rather excavation of minor minerals became approved by the Government. The relevant site is averred to become operationalized by respondent No. 4.

2. Moreover, a prayer has also been made for the issuance of directions to respondents No. 1 to 3, to release the amount of royalty to the petitioners, through deducting the same from advance payment/earnest amount given by respondent No. 4 to the Department, especially when despite a specific clause existing in the relevant

contract, yet nothing became paid to the owners of the land.

3. A further prayer is made, for issuance of direction(s) to the official respondents to include the mining quarry situated at village Rampur Hadbast No. 9, thus in the relevant auction.

Factual Background

4. After the Punjab Government approved 1027 sand mines and quarries located in 14 Districts across the State of Punjab, to bolster mining business, thus the petitioners being land owners in these quarries also gave their lands, which became approved by the Mining Department. Resultantly two quarries of the lands situated at Talwara and Rampur were enlisted as prospective successful mines. Subsequently, e-auction was done and these mines were allotted to the successful bidder i.e. respondent No. 4.

5. It has been averred that despite conditions being carried in the e-auction notice, inasmuch as, the successful bidder/contractor being obliged to deposit the royalty, which is to be paid to the land owners, rather nothing becoming paid to the land owners, therebys the respondent concerned has violated the terms and conditions of the agreement.

6. It has been further submitted that as per the Punjab Minor Mineral Rules, 2013, it is clear that royalty is to be paid to the land owners in whose land the excavation of the relevant minor mineral is allowed by the State of Punjab, and, in case the contractor does not pay the amount, in quarterly installments, thereupon, his contract is liable to be cancelled and his amount will be forfeited and the land owner will be paid royalty from the earnest money which is deposited by him to

the Department.

Reply of respondents No. 1 to 3 - State.

7. As per E-Auction notification dated 03.05.2017, the Auction of Rampur Mining Quarry was held on 19.05.2017 and as per clause No.1 of the notification, the Rampur Mining Quarry was allotted to respondent No.4, his being the highest bidder, and, a temporary sanction was granted to him. The respondent No.4 deposited Royalty Amount of Rs.21,87,355/-, Security Rs. 30,43,126/-, DMF Rs.26,33,140/- EMF 7,89,942/-, security for Compensation for land owners Rs. 19,74,855/- (Quarterly Compensation of land owner) and TCS Rs. 43,743/- in the account of General Manager Mining Officer, Batala, being maintained with AXIS Bank, thus as per letter dated 22/03/2017, and, after completion of all formalities, the General Manager-cum-Mining Officer District Industrial Centre Batala granted permanent sanction vide memo No. 1311 dated 07.07.2017, to respondent No.4.

8. The respondent No.4 was to deposit Rs. 2,32,40,110/- before starting mining from the quarry and he was directed to deposit Rs. 60 Lakhs immediately and the remaining amount within 15 days along with two post-dated cheques. The respondent No.4 issued two cheques of Rs. 30 Lakh each bearing No. 007462 dated 18.05.2019 and 007463 dated 22.05.2019 of Punjab National Bank Sector 26-D Chandigarh from his A/c No. 3249008700002063, but both the above-mentioned cheques were dishonored, when they were presented in the bank concerned. Thereafter, notice U/s 138 of the Negotiable Instrument Act was issued to the respondent No.4 for the payment of above-

mentioned cheques, but he failed to do so. As such complaint U/s 138 of Negotiable Instrument Act has been filed against the respondent No.4 which is pending in the Court of Ramneet Kaur, JMIC Gurdaspur. The contract of the respondent No.4 has also been cancelled vide letter dated 18.07.2019 for not entering into agreement and also not paying the dues as per E-Auction notice and recovery notice vide memo No. 2415- 17/Khad/Rampur dated 09.03.2020 was also issued to the respondent No.4 by the respondent No.3.

9. According to clause 35 of the E-auction Notice, the compensation to be paid to the land owner arises only when the mining operations are commenced, and, the compensation is paid by the concessionaire, but on his excavating the minor mineral concerned. Further the above said contention is emboldened by Rule 34 (6) as carried in the Punjab Minor Mineral Rules, 2013, rule whereof, is extracted hereinafter.

> *"(6) The contractor shall pay compensation at the rate of Rs 60 per tonne of the mineral excavated, to the land owner (i.e. an individual or Panchayat or the State Government or the Central Government, as the case may be), for the damage caused to the land under contract."*

10. Further, it is submitted that since no mining activity commenced at the instance of co-respondent no. 4, besides when the relevant dues remain un-deposited by respondent No. 4, besides when compensation is to be paid by co-respondents No. 4. Therefore, it is contended that the writ claims are liable to be rejected.

<u>Inference of this Court.</u>

11. It is but evident from a reading of reply furnished to the

writ petition by the official respondent that respondent No. 4 had deposited Royalty Amount of Rs.21,87,355/-, Security Rs. 30,43,126/-, DMF Rs. 26,33,140/- EMF 7,89,942/-, and security for Compensation for land owners comprised in a sum of Rs. 19,74,855/- (Quarterly Compensation of land owner) and besides TCS comprised in a sum of Rs. 43,743/- in the account of General Manager Mining Officer, Batala being maintained with AXIS Bank. Resultantly thereafters the General Manager-cum-Mining Officer, Batala granted permanent sanction to respondent No. 4 vide memo no. 1311 dated 07.07.2017.

12. The official respondents refuted the writ claims on the ground that in terms of clause 35 of the e-auction notice, rather compensation was to be paid to the land owner but only when the mining operations became commenced at the site concerned at the instance of the mineral concessionaire.

13. Moreover, the said claim is also refuted on the premise that the compensation is to be paid to the petitioners solitarily by the mineral concessionaire and is rather not to be paid by the official respondents.

14. Conspicuously, the concessionaire concerned has not asked for refund of the above deposits as became made by him nor also there is any contention raised in the reply furnished to the writ petition by the official respondents, that the said made deposits in terms of the relevant rules besides in terms of the relevant conditions, as carried in the e-auction notice, thus are respectively required to be forfeited or are required to be refunded to the mineral concessionaire concerned. Therefore, unless the relevant rules or the conditions as carried in the e-auction notice, invested an entitlement in the official respondents to

forfeit the above deposited sums of monies thereby, prima facie they are required to be returned to the mineral concessionaire concerned.

15. Be that as it may, if the official respondents contest the writ claims on the score that the above deposited sums of monies, do not leverage the petitioners to well canvass the writ claims, that the land owners become entitled for any compensation, besides also do not leverage them to well espouse qua their entitlement to other sums of monies, imperatively arising from the excavations of the minor mineral concerned becoming made from the site concerned. Resultantly thereby the deposited sums of monies, if are required to be forfeited to the official respondents and as such no fraction thereof is required to be released in terms of the relevant rules, to the present petitioners, thereby, the mining contract is required to be lawfully cancelled and thereafter alone the deposited sums of monies (supra), thus are required to be respectively forfeited or disbursed to the mineral concessionaire, and, if ordained by law to be disbursed even to the land owners concerned.

16. Consequently, the writ petition is disposed of with direction(s) to the official respondents concerned, to in terms of the relevant rules proceed to do so.

17. Further, the prayer as to issuance to direction(s) to the official respondents to include the mining quarry situated at village Rampur Hadbast No. 9, thus in the relevant auction cannot be acceded to, as this Court cannot make an inference as to which land is suitable to carry out the mining operations and which is not, as the same is done by the State Government in consultation with the experts hired for the relevant purpose.

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

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

12.03.2024
kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No