

**(1995) 05 AHC CK 0114**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 16453 of 1992**

Ayodhya Prasad Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision :** 02-05-1995

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Forest Act, 1927 — Section 82  
Forest Rules, 1927 — Rule 14(4)

**Citation :** (1996) AWC 378 Supp

**Hon'ble Judges :** V.N. Khare, J; R.H. Zaidi, J

**Bench :** Division Bench

**Advocate :** V.K. Singh, for the Appellant;

**Final Decision :** Dismissed

## Judgement

V.N. Khare, J.—By means of this writ petition under Article 226 of the Constitution of India, the Petitioner challenges the notice of demand dated 8 April, 1992, whereby the Petitioner has been directed to deposit a sum of Rs. 1,14,000/--towards the balance amount in respect of mining rights given to him.

2. The Petitioner was offered right to excavate sand from area measuring 114 acres in the district Allahabad for the period of two years subject to payment fee calculated at the rate of Rs. 1,000 per acre. The Petitioner accepted terms of the agreement and deposited 50% of the rent for the first year and commenced the mining operation in the area" without any kind of protest. Subsequently, the Petitioner wrote to the Respondents that he does not desire to continue with the mining operation and as such the agreement may be cancelled. The Respondents did not accept the request of the Petitioner. After completion of two years, the Respondents issued the Impugned notice of demand.

3. The only argument raised on behalf of the Petitioner is that the dues against the Petitioner cannot be recovered as arrears of land revenue. Learned Counsel for the Petitioner in support of his argument relied upon the decisions in the

cases of *State of Uttar Pradesh v. Deewan Chand* 1973 ALJ 509; *Indraj Sarup v. U.P. Electricity Board, Moradabad* 1980 ALJ 231 and *Virendra Kumar Vs. State of U.P. and Others*, . In a nutshell, the argument is that the amount due against the Petitioner is in the nature of damages and as such, the same cannot be recovered as arrears of land revenue. We do not find any merit in this contention.

4. Admittedly, the Petitioner was given a contract for excavation of sand on payment of royalty for a period of two years. The contract having not been terminated by the Respondents, Petitioner was liable to pay the royalty even if the Petitioner could not excavate the sand fully as alleged. In view of this, it cannot be said what is being realised from the Petitioner is not royalty but the damages. Since it is royalty for excavating sand and is being realised and as such the said royalty can be realised as arrears of land revenue. In this connection. It was urged by the learned Counsel for the Petitioner that since there was no registered agreement and as such, the alleged royalty cannot be realised as arrears of land revenue. Sub-rule (4) of Rule 14 of the Rules framed under the Act runs as follows:

In case of lease of sand, the date of commencement of mining lease shall be the date on which the deed is executed under Sub-rule (3) or the date of actual commencement of mining operation whichever is earlier.

A perusal of the rules show that in the case of sand, the mining operation can be resorted to before the agreement is entered into. Thus, there is no bar that mining operation cannot commence till any registered agreement is entered into between the State and the lessee. Since there was a contract between the Petitioner and the State Government for mining operation for a period of two years, the State was right to realise the royalty as arrears of land revenue. It has come in the counter-affidavit that the Petitioner was asked several times to execute lease deed but he did not come forward for execution of the lease deed, and continued with the mining operation. Under such circumstances, it cannot be said that unless the lease deed is executed, the royalty cannot be recovered as arrears of land revenue.

5. In the case of *State of U.P. v. Deewan Chand* (supra), the forest contract was granted to the contractor which was cancelled by the department and subsequently, the entire sum under the contract was sought to be realised as arrears of land revenue. In that context, It was held that the amount sought to be realised was damages and the damages cannot be recovered u/s 82 of the Forest Act. Similarly, the decisions in the cases of *Indraj Swarup v. U.P. State Electricity Board* (supra) and *Virendra Kumar v. State of U.P. and Ors.* (supra) are not applicable to the present set of facts and as such are distinguishable. In the present case, the right of excavation granted to the Petitioner having not been cancelled by the Respondents and the royalty due against the Petitioner can be legally realised as arrears of land revenue. In view of this, we do not find any merit in the petition.

6. The writ petition is dismissed and the interim order, if any, is hereby vacated.