
(2004) 03 MP CK 0030

In the Madhya Pradesh High Court

Case No : Writ Petition No. 467 of 2004

Brijendra Singh Thakur

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

Madhya Pradesh Minor Minerals Rules, 1996 — Rule 68(1)

Citation : AIR 2005 MP 69 : (2004) 3 MPHT 534 : (2004) 1 MPJR 524 : (2004) 3 MPLJ 852 : (2004) 3 MPLJ 582

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : Vivek Rusia, for the Appellant; K.S. Thakur, for the Respondent Nos. 1 and 2 and R.K. Thakur, for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.

The petitioner is aggrieved by action of respondent No. 2, Mining Officer, Annexure P-3 (R-4/3), dated 23-12-2003 by which respondent No. 4 has been permitted to extract minor mineral from the area of mine which has been granted to the petitioner by respondent No. 3 (Annexure P-1).

Short facts of the case are that Janpad Panchayat - Patan granted a quarry lease of mooram to the petitioner for a period from 16-4-2003 to 31-3-2004. An agreement in this regard was executed by respondent No. 3, in favour of the petitioner Annexure P-1. The survey number and leased area is specified in Schedule A, of the agreement (Annexure P-1), which shows that the area 2.280 of Khasra Number 212 of Village Shahsan, Block Patan, Tehsil Patan was granted to the petitioner. The petitioner is duly operating the quarry as per agreement and has paid all the instalments within time. Respondent No. 2, Mining Officer, Jabalpur issued a temporary permit for extraction of mining of minor mineral to respondent No. 4 vide order dated 23-12-2003 and the area for this operation

has been shown S. No. 212 area 2.280 hectare of Village Shahsan. Petitioner when came to know about the aforesaid order, raised objection to respondent No. 4 and also to respondent No. 2 and prayed for immediate stoppage of the work of demarcation and mining by respondent No. 4. The petitioner also made a complaint to the Sub-Divisional Officer, Patan. No action was taken by the authorities on the complaint made by the petitioner. Thereafter, this petition has been filed by the petitioner on the ground that the mining area was transferred by the State Government to Gram Panchayat for grant of mining lease and the petitioner was duly granted mining lease and is operating the quarry, but the respondent No. 2 without considering the fact has granted mining lease to respondent No. 4. The main contention of the petitioner is that the Gram Panchayat has been divested with the rights, then the State Govt. or respondent No. 2 ought not to have granted mining lease to respondent No. 4.

Respondent Nos. 1, 2 and 4 have filed replies in this case. Contention of respondent Nos. 1 and 2 is that with effect from 24-6-2002, the State Government has amended the Rules and now the permission for extraction of Minor Mineral for Central and State Governments of their undertaking work, the concerning Collector/Additional Collector has been authorised under Rule 68 of Madhya Pradesh Minor Mineral Rules, 1996 (hereinafter referred to "the Rules"). The aforesaid provision provides grant of temporary quarry permit for public purpose. Respondent No. 4 is constructing public road from Shahpura to Pipariya, which is in the public interest and the scheme is assigned by the State Government which is an important work. As for the work involving public interest, mooram is required for the construction of the road, so respondent No. 2 has granted temporary permission to respondent No. 4 for extracting the minor mineral. The minor mineral shall be extracted adjoining to the road area and the area will be changed as per requirement. It will depend upon the length covered for the construction of the road work at a particular site.

Respondent No. 4 has also filed reply and contended that respondent No. 2 is within its jurisdiction in granting such permission under Rule 68 of the Rules. The work, is construction of public road from Shahpura to Pipariya and for this public purpose, the aforesaid permission has been granted by respondent No. 2. Relying on Rule 68 of the Rules, respondent No. 4 has also prayed for dismissal of the petition.

It is not in dispute that the petitioner is operating minor mineral quarry under the valid agreement of lease granted by respondent No. 3. Respondent No. 4 has been granted temporary permission to extract the minor mineral vide Annexure P-3 by respondent No. 2 invoking powers under Rule 68 of the Rules. To decide the controversy in this case, it is necessary to look into the provision of Rule 68 of the Rules which reads as under:--

"68. Permission for removal of minor minerals for State Government Works.-- (1) The concerning panchayat shall grant permission for extraction, removal and transport from any specified quarry or land any minor mineral which may be

required for the works of any Department of the State Government. Such permission shall only be granted to either the concerned Departmental Authority or its authorised contractor on furnishing proof of award of contract.

(2) Such permission shall not exceed a duration of 30 days and a quantity of 500 cubic metre at any one time.

(3) Such permission shall only be granted on payment in advance of royalty calculated at the rates specified in Schedule III. The transit pass in Form IX then shall be issued.

(4) The permit shall be governed by the following conditions:--

(i) The permit holder shall maintain complete and correct account of the mineral removed and transported from the area;

(ii) He shall allow any officer authorised by the Zila/Janpad/ Gram Panchayat to inspect quarrying operations and verify the accounts;

(iii) No sooner the permitted quantity is transported within the time period of thirty days or earlier, duplicates of all transit pass such unused transit passes together with a complete statement of the quantities duly certified by the authorised officer of the concerned Department shall be furnished to the Sanctioning Authority.

(5) Permission to other persons other than hereditary Kumhars and a member of Scheduled Castes or Scheduled Tribes to extract clay for preparing tiles, pots and bricks by traditional means, but not by the process of manufacturing in Kilns or by any mechanical means and permission to extract stone, murrum and sand available in private land in the panchayat area shall be granted by the Collector of the district only to the Bhumiswamies on advance payment of royalty for the fixed quantity and period :

Provided that the permission to extract the stone, murrum and sand shall not effect the receipt of revenue from the quarries of such minerals in the said area."

Sub-rule (1) of Rule 68 of the Rules, specifically empowers the Collector/ Additional Collector to grant permission for extraction, removal and transportation of any minor mineral from any specified quarry or land only from the areas of Corporation, Municipality, Nagar Panchayat and special area which may be required for the works of any Department or undertaking of the Central Government or State Government. Such permission shall be granted to either the concerned departmental authority or its authorised contractor on furnishing proof of award of contract. The aforesaid provision is very specific and empowers respondent No. 2 to grant permission for extract of minor mineral from any specified area. The aforesaid provision has been made to protect public interest and if for any public work such minor mineral is required, the Collector/Additional Collector may grant such permission. The minor mineral belongs to the State Government and the petitioner is operating under the lease agreement from

Janpad Panchayat. Ultimately, the property is of the Government and the petitioner is the lessee of the State. The Janpad Panchayat has permitted the petitioner to extract minor mineral on payment of royalty to the State Government. The aforesaid mining operation is under the lease. Rule 68 of the Rules empowers the Collector/Additional Collector to permit extraction of the minor mineral from any specified quarry or land which may be required for the work of any Department of the State Government. It is not in dispute that the construction of road is for public purpose and the construction work is being done by respondent No. 4 as an authorised contractor on behalf of the State Government. The minor mineral will be extracted only from the adjoining area of the road. Area of the petitioner is 2.280 hectare which is a quite big area and if any minor mineral is extracted from the area nearby the road for the construction of the road, then the petitioner can not raise any grievance. The petitioner has not been restricted to operate the quarry and only respondent No. 4 has been permitted to extract the minor mineral for the construction of the road with certain terms and conditions. In the circumstances, I do not find any jurisdictional error in granting such permission to respondent No. 4 by respondent No. 2, which is permissible under Rule 68 of the Rules. This petition has no merit warranting interference in the order (Annexure P-3) (Annexure R-4/3). Consequently, this petition is dismissed with no order as to costs.