
(2018) 07 MP CK 0145
In the Madhya Pradesh High Court
Case No : Writ Petition No.3056 Of 2017

Dinesh Jain	Vs	APPELLANT
State Of M.P. & Others		RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Constitution of India, 1950 — Article 32, 226
Madhya Pradesh Land Revenue Code, 1959 — Section 44, 44(2), 247, 247(7)

Citation : (2018) 07 MP CK 0145

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : A.K. Sethi, Harish Joshi, H.Y. Mehta

Final Decision : Allowed

Judgement

The petitioner has filed the present petition being aggrieved by order dated 19.2.2016 (Annexure P/9) passed by Sub Divisional Officer (SDO),

Mahidpur, District Ujjain (respondent No.4); order dated 18.11.2016 (Annexure P/11) passed by Additional Commissioner, Ujjain; and order dated

25.4.2017 (Annexure P/16) passed by the Board of Revenue.

2. Petitioner is engaged in the mining operation in respect of land bearing Survey No.993/1 area 1.000 Hect. situated in Village Bapaiya, Tehsil

Mahidpur, District Ujjain. A lease to the said effect was awarded to the petitioner for the period from 5.8.2010 to 4.8.2020 i.e. for a period of ten

years for mining operations in respect of the aforesaid land. A registered lease-deed was also executed between the petitioner and the respondents on

29.4.2010. Petitioner was having lease of the said land prior to 5.10.2010.

3. Respondent No.4 issued a show-cause notice dated 10.6.2014 to the petitioner alleging that as per report of Mining Officer dated 31.5.2014, he has

illegally extracted 47,812 Cu.mtr. quantity of Muram and 2,56,676 Cu.mtr. quantity of Boulders (Gitti) from the area other than leased out to him . By the said show-cause notice, 4 times penalty of Rs.4,62,49,600/- and 25,66,76,000/- was proposed against the petitioner and to show cause as to why the said amount should not be recovered from u/s. 247(7) of the M.P. Land Revenue Code (MPLRC). Along with the show-cause notice, the petitioner was also served with the report of the Mining Officer dated 31.5.2014 and Panchnama dated 29.5.2014. The petitioner was directed to appear before the SDO on 20.6.2014.

4. In pursuant to the aforesaid show-cause notice, the petitioner submitted his detailed reply to respondent No.4 on 11.7.2014 followed by additional reply dated 18.7.2014 and 21.8.2014. The respondent No.3 recorded the statement of Dharmendra Chouhan (Mining Officer) on 21.8.2014, Sunil Verma (Patwari) on 2.9.2014, Bhagirath Chouhan (Patwari) on 2.8.2014, Mangilal Chouhan (Revenue Inspector) on 6.9.2014. These witnesses were cross-examined by the counsel engaged by the petitioner. Thereafter, the petitioner recorded his statement on 30.9.2014 and has also got recorded the statement of Mangilal, Thavarlal, Shiv and Manoj. These witnesses were cross-examined by the respondent No.4, SDO himself and not by the counsel engaged by the Mining Officer. Thereafter, the SDO who issued the notice and was hearing the case has been transferred on 2.7.2015 and new SDO joined the post on 27.8.2015, who passed the final order dated 19.2.2016 while exercising the powers u/s. 247(7) of the MPLRC and imposed the fine upon the petitioner to the tune of Rs.30,29,25,600/-.

5. Being aggrieved by the aforesaid order of respondent No.4, the petitioner preferred an appeal u/s.44 of the MPLRC before the Additional Commissioner, Ujjain. Vide order dated 14.3.2016, the Additional Commissioner stayed the operation of the order dated 19.2.2016. Thereafter, vide order dated 18.11.2016, he dismissed the appeal of the petitioner and upheld the order of respondent No.4, SDO.

6. Being aggrieved by the aforesaid two orders, the petitioner preferred second appeal u/s. 44(2) of the MPLRC before the Board of Revenue. Vide order dated 23.11.2016, interim relief was granted to the petitioner. Vide order dated 25.4.2017, the second appeal preferred by the petitioner has been dismissed, hence the present writ petition before this Court.

7. By order dated 9.5.2017, while issuing the notices to the respondents, this Court directed the respondents not to take coercive action against the petitioner. Thereafter, the respondents filed an application for vacating stay. By order dated 15.3.2018, this Court has disposed of I.A. No.4404/2017

by restraining the respondents from making recovery in pursuant to the impugned orders subject to deposit of 50% of the amount quantified by the SDO in order dated 19.2.2016.

8. Being aggrieved by the said order dated 15.3.2018, the petitioner preferred W.A. No.819/2018 and the Division Bench of this Court vide order

dated 27.6.2018 has modified the order and directed the petitioner to deposit total 20% of the amount in question within a period of four weeks from

the date of the order i.e. 27.6.2018 and in case, such an amount is deposited by the petitioner, then no coercive action against him shall be taken by the

respondents till final disposal of the writ petition. By the said order, the Division Bench also requested the writ court to decide the writ petition on

merits within a period of four weeks.

9. In view of the directions of the Division Bench of this Court, this petition is heard finally.

10. After notice, the respondents have filed the affidavit of respondent No.3 as well as detailed return in support of the orders passed by the SDO,

Additional Commissioner and Board of Revenue.

11. Shri A.K. Sethi, learned senior counsel appearing for the petitioner, argued that the entire proceedings u/s. 247 of the MPLRC were initiated

against the petitioner at the instance of local MLA who has political rivalry with the petitioner. The petitioner is having mining lease since last so many

years and vide lease dated 29.4.2010 it has been renewed for a period of ten years. Every six months, there used to be the inspection by Mining

Officer and no such report of illegal mining activities was ever reported . In fact, the petitioner himself has made a complaint to the Mining Officer on

11.3.2014 that M/s. L.N. Agrawal, Road Contractor is extracting Muram daily by 8 to 10 dumpers.

There after, the petitioner obtained information under the Right to Information Act about the illegal mining for the period from 2010 to 2014. The SDO

vide letter dated 29.9.2014 informed that no such case of illegal mining has been registered during the period from 2010 to 2014 in Survey No.993/1.

Mr Sethi drawn attention of this Court towards Panchnama report filed as Annexure P/4, in which, it is mentioned that there are 3 pits over other than leased out area in which illegal mining activities are going on since last 10 years. He further submitted that there is no equipment available in the Mining Department to assess the life of the pits. Without any material on record, the finding has been recorded in the Panchnama that the life of pits is ten years. He also submitted that the SDO who was a member of the inspection team, has himself acted as adjudicating authority under section 247(7) of the MPLR Code, to decide the case against the petitioner. There was no enquiry officer or counsel on behalf of the Mining Department to cross examine the witnesses and the SDO himself has crossexamined the witnesses, which vitiates the entire proceedings and the final orders passed therein. He further submitted that the SDO has failed to appreciate the grounds raised by the petitioner and concluded the final order in a slip shot manner. The impugned orders are perverse and not liable to be sustained. The Additional Commissioner as well as the Board of Revenue being appellate authorities ought to have re-appreciated the evidence came on record. It was incumbent upon them to record independent finding after appreciating the evidence, therefore, the orders passed by them are also liable to be set aside. In support of his contention, he has placed reliance over the judgment of this Court in the case of Kailash Auto Builders Co. Pvt. Ltd. V/s. State of M.P. : 2003(1) MPLJ 610.

12. Per contra, Shri H.Y. Mehta, learned Govt. Advocate appearing for the respondents, submitted that the scope of interference by the High Court in a writ petition filed under Article 226 of the Constitution of India against the order of statutory authorities are very limited. The Writ Court cannot re-appreciate the evidence recorded by the authorities while exercising quasi judicial function. A complaint was received against the petitioner that he is indulging in the illegal mining activities over the land other than leased out to him. A team headed by SDO including Patwaris, Mining Officer two Sarpanchs, etc. reached at the spot on 29.5.2014 and prepared Panchnama. On the basis of material collected on the spot, it was found that 57,812 Cu.mtr. Muram and 2,56,676 Cu.mtr. Boulders (Gitti) were extracted illegally having market value of Rs.1,15,62,400/-. Accordingly, four times penalty was imposed. The petitioner supplied huge quantity of minerals to the Railway Department and the necessary information and

documents were collected by the Mining Officer and produced the same before the SDO. After elaborate discussion, the SDO came to the

conclusion that the petitioner is indulged in illegal mining activities since last 10 years and the said fact has been proved by way of evidence, hence no

interference is called for. In support of his contention, he has placed reliance over the judgment of this Court as well as of the apex Court in the case

of Chandravarkar Sita Ratna Rao V/s. Ashalata S. Guram : AIR 1987 SC 117; Roshanlal (Dead) by LRs. V/s. State of Rajasthan : (2004) 13 SCC

559; and Netaji Grih Nirman Sahkari Samiti Maryadit V/s. State of M.P. : 2015 (4) MPLJ 690.

13. Shri Sethi, learned senior counsel appearing for the petitioner, raised an objection that the SDO is not competent authority to initiate proceedings

u/s. 247(7) of the MPLRC as the Collector is the competent authority under the MPLRC. The respondents have filed the affidavit along with

Notification dated 20.9.2001 by which the power of Collector has been delegated to SDO to exercise u/s. 247 of the MPLRC. In view of this, Shri

Sethi did not give much stress on the aforesaid objection.

14. I have heard the learned counsel appearing for the parties and perused the record.

15. Before entering into the merit of the case it is necessary to examine the argument raised by Mr Sethi that the SDO ought not to have heard the

case as he himself was a member of the inspection team who prepared the Panchnama on 29.5.2014 . From the original record, it is revealed that the

Panchnama was prepared on 29.5.2014 at 12.30 pm on the basis of complaint made by Shri Bahadursingh Chouhan, MLA, Mahidpur. The

Panchnama was signed by SDM, Mahidpur; Mining Officer; Revenue Inspector; Patwaris and Supervisor and 8 other independent witnesses. On

the basis of said Panchnama, the Mining Officer, Ujjain proposed the penalty of Rs.25,66,76,000/- and requested the same SDO (Revenue) to register

a case u/s. 247(7) of the MPLRC. The SDO (R) vide order dated 10.6.2014 has registered the case No.30/A/67/30/2014 and issued a show-cause

notice to the petitioner. It is obvious from the signature of the SDO in the ordersheets as well as in the Panchnama that the same officer was present

at the time of inspection and who has initiated the proceedings against the petitioner. The SDO has conducted the proceedings up to 2.7.2015 and

thereafter he has been transferred, the new incumbent joined on 27.8.2015. Therefore, it can safely be held that the SDO Mahidpur was judging the cause in which he was connected. The Mining Officer and the Patwaris who entered into the witness box, have admitted that they reached to the spot on 29.5.2014 as per the direction given by the SDO Mahidpur, therefore, the SDO himself constituted a team to conduct inspection, signed the Panchnama and thereafter registered the case. Therefore, the SDO was directly connected with the case and passed the order to justify his own Panchnama, which means, he was judging his own cause in which he is directly connected.

16. The apex Court, in the case of Delhi Financial Corporation V/s. Rajiv Anand : (2004) 11 SCC 625, has held that the doctrine "no man can be a judge in his own cause" can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. The aforesaid view has been followed by the apex Court in the case of M/s. Crawford Bayley & Co. V/s.

Union of India : (2006) 6 SCC 25. Relevant paragraphs of the aforesaid judgment are reproduced below :-

"In this connection, a reference was made to a case of Delhi Financial Corpn. and another Vs. Rajiv Anand And Ors. Reported in 2004(11)

SCC 625 with regard to personal bias i.e. an officer of the Statutory Authority has been appointed as an Estate Officer, therefore, they will carry their

personal bias. However, this Court in the aforesaid case held that a doctrine "no man can be a judge in his own cause" can be applied only to

cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. Merely

because an officer of a corporation is named to be the authority, does not by itself bring into operation the doctrine, "no man can be a judge in his

own cause". For that doctrine to come into play it must be shown that the officer concerned has a personal bias or connection or a personal interest

or has personally acted in the matter concerned and/or has already taken a decision one way or the other which he may be interested in supporting.

In view of the aforesaid observation made by this Court that "no man can be a judge in his own cause" certain parameters has to be observed

i.e. a personal bias of the person concerned or personal interest or person acted in the matter concerned and has already taken a decision which he

may be interested in supporting the same. These parameters have to be observed before coming to the conclusion that "no man can be a judge in his own cause". This is a matter of factual inquiry. Be that as it may. Mr. Gopal Subramanian learned Addl.

Solicitor General of India with his usual fairness has submitted that the officer who has been appointed as an Estate Officer though alleged to have been associated as an officer dealing with the eviction matters will not be presiding over as an Estate Officer. Therefore, in view of this submission made by Mr. Subramanian we do not think that the matter is required to be prosecuted further."

17. In view of the foregoing discussion , the entire proceedings cannot be sustained in the eye of law as the SDO Mahidpur who was himself a member of search team , signed the Panchnama and thereafter, he himself registered the case, issued the show-cause notice against the petitioner, cross-examined the witness A and concluded the case upto the stage of final hearing. That apart, one more glaring irregularity committed by the Presiding Officer is that he himself cross-examined the witnesses. No one was present on behalf of the Mining Department to cross-examine the petitioner's witnesses; therefore, the Presiding Officer himself has cross-examined the witnesses. The Court can put certainly clarificatory questions to the witnesses on its own, but cannot cross-examine the witnesses in absence of defence assistance or the defence counsel.

18. In *Kuldeep Singh v. The Commissioner of Police and Ors.*, JT1998(8)SC 603 : 1999(3) SLJ 111 (SC), the Apex Court has made following observations:

6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the Disciplinary Authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an

ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.

19. Normally the High Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of 'guilt' is based on no

evidence, it would be a perverse finding or defect in the decision making process hence it would be amenable to judicial scrutiny. That the procedure

adopted by the Sub Divisional Officer was in violation of accepted Principles of Natural Justice and fair procedure as he himself cross examined the

petitioner and his witness.

20. In view of the above, in the considered opinion of this Court, the impugned orders are liable to be quashed and the matter deserves to be remanded

back to the authority to decide the same afresh in accordance with law. The petitioner himself has admitted that the illegal mining activities were going

on the different part of Survey No.993/1 and not on the land leased out to him. He himself made a complaint in this regard in the month of March,

2014 to the Mining Officer, therefore, the same fact is required to be enquired as to who was indulging in the illegal mining activities.

21. Though the power of Collector u/s. 247(7) of the MPLRC had been delegated to the SDO by the State Government by way of notification, but it

does not mean that the Collector himself cannot exercise power conferred upon him under sec 247(7) of the MPLRC. Therefore, looking to the

seriousness and quantum of revenue involved in this case, this Court deem it proper to remand the case with a direction to the Collector, Ujjain to

conduct the proceedings u/s. 247(7) of the MPLRC and if he finds it proper, may direct the Additional Collector to conduct the proceedings u/s.

247(7) of the MPLRC because the SDO was the member of the inspection team and has signed the Panchnama.

22. The Division Bench of this Court vide order dated 27.6.2018 passed in W.A. No.819/2018 has directed the petitioner to deposit 20% of the amount

under recovery. The petitioner has not deposited the said amount till date. Since the petitioner did not challenge the aforesaid order, therefore, the

same has attained finality. Hence, the petitioner is required to comply with the said order. The petitioner is directed to deposit 20% of the amount, as

per direction given by the Division Bench.

23. With the aforesaid, this petition stands allowed and the impugned orders

dated 19.2.2016 passed by the SDO; 18.11.2016 passed by the Additional Commissioner, Ujjain and 25.4.2017 passed by the Board of Revenue are quashed subject to deposit of 20% of the amount under recovery as directed by the Division Bench of this Court. The matter is remanded back to the Collector; Ujjain to decide it afresh within a period of three months from the date of receipt of certified copy of this order.

Â No order as to cost.