

(2013) 05 P&H CK 0180
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 8159 of 2011

Eros City Developers Private Ltd. and Others	APPELLANT
Vs	
State of Haryana and Others	RESPONDENT

Date of Decision : 31-05-2013

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 21, 21(5), 3(d), 4, 4(1)
Penal Code, 1860 (IPC) — Section 188, 379

Citation : (2013) 171 PLR 532

Hon'ble Judges : Rekha Mittal, J; Rajive Bhalla, J

Bench : Division Bench

Advocate : Harish Malhotra and Mr. Ashu Mohan Punchhi, for the Appellant; D. Khanna, Addl. A.G., Punjab for Respondents No. 1 to 4 and Mr. M.S. Sindhu, for the Respondent

Final Decision : Partly Allowed

Judgement

Rajive Bhalla, J.—The petitioners pray for issuance of a writ of certiorari, quashing order dated 24.03.2011, passed by the Financial Commissioner and Principal Secretary to Government of Haryana, Mines and Geology Department, Haryana. Counsel for the petitioners submits that the impugned order is illegal and void as it is contrary to provisions of the Mines and Mineral (Development and Regulation) Act, 1957 (hereinafter referred to as the "1957 Act"), the Punjab Minor Minerals Concession Rules, 1964 (as applicable to the State of Haryana) (hereinafter referred to as the "1964 Rules") and the Mineral Conservation and Development Rules, 1988 (hereinafter referred to as the "1988 Rules"). The impugned order has been passed in gross and blatant violation of statutory provisions and in disregard to directions issued and orders passed by the High Court. The finding that the petitioners are guilty of excavating minor minerals without legal authority, is not based upon any evidence much less evidence that would stand the test of the judicial scrutiny.

2. The petitioners-Companies were granted licences in December, 1995 to develop a colony but vide order dated 10.05.1996, passed in Writ Petition (Civil) No. 4677 of 1985, in I.A. No. 29, the Hon"ble Supreme Court prohibited mining activity within two kilometers" radius of the tourist resorts of Badkhal Lake and Suraj Kund and construction activity, within five kilometers radius. The order dated 10.05.1996 was modified, on 13.05.1998, by ordering that urbanisation would take place in accordance with law, rules & regulations, as applicable to the area, as provided by Municipal Corporation, Faridabad.

3. Before the petitioners purchased the land, minor minerals were being excavated by the Haryana Minerals Limited (respondent No. 5). During the process of mining, the Haryana Minerals Ltd. excavated large pits and craters but while abandoning the land, did not restore the land to its original state. The petitioners, therefore, had to level the land for internal development. The petitioners applied, to the Deputy Commissioner, Faridabad, for grant of a licence to use explosives so as to blast rocks. The Deputy Commissioner, referred the matter to the Assistant Mining Engineer, Faridabad, who granted a "No Objection Certificate" for grant of a licence to use explosives but with a direction that no commercial mining activity shall be carried out. The licence was granted to the petitioners on 08.10.1999. The petitioners were not informed that they were required to obtain formal permission or were required to pay royalty etc. to the State of Haryana, to level their own land. The petitioners began levelling the land and filling up pits and craters without objection from the Town and Country Planning Department and the Mining Officer etc. The petitioners engaged M/s. Dushad Construction Company for internal development of the colony, vide agreement dated 01.11.1999. The land was levelled and pits and craters were filled. The rocks and stones excavated from the site were utilised for levelling the land and were not sold to any third person.

4. The Assistant Mining Engineer, Faridabad got FIR No. 156 dated 28.02.2001 registered at Police Station N.I.T., Faridabad, under Sections 379 and 188 of the IPC by naming three companies, which are predecessors of the petitioner-companies. The FIR records that these three companies are indulging in illegal mining in village Lakkarpur, by excavating stones and carting them away to other adjoining areas. The petitioners, therefore, addressed a representation dated 17.03.2001 to the Director, Town & Country Planning, Government of Haryana, with respect to hurdles in the development of the colony. The Assistant Mining Engineer, Department of Mines & Geology, Faridabad, addressed a letter dated 21.03.2001, purportedly being a notice u/s 21(5) of the 1957 Act, informing the petitioners that as per a report prepared by the field staff and inspection of the area, the petitioners are found to have indulged in unauthorised mining and removal of stones and allied minerals with the help of machinery and use of explosives. The petitioners were called upon to disclose the quantity of minor minerals excavated though it is alleged that officers have also made their own estimate of the quantity of minerals excavated. The petitioners filed a reply dated 29.03.2001 and informed the Assistant Mining Engineer, Department of Mines &

Geology, Faridabad, respondent No. 3, that as they have not carried out any mining activity, the provisions of Section 21(5) of the 1957 Act, are not attracted and the notice may be withdrawn. The alleged estimate of quantity of minor minerals said to have been made by the Assistant Mining Engineer was, however, not made available to the petitioners. In the meanwhile, the Director, Town & Country Planning, Haryana, addressed a letter dated 20.04.2001 to the Director, Mines & Geology Department, Haryana, informing him that as topography of the site is rocky and uneven, it cannot be developed without blasting, cutting and filling from the site itself. It is also mentioned that development work alone is being carried out at the site for setting up a housing colony.

5. The Mining Department, however, did not allow the petitioners to carry on development work, compelling the petitioners to file CWP No. 6699 of 2001, wherein by way of an interim order dated 09.05.2001, the petitioners were allowed to carry on with the development work. The petitioners thereafter filed a representation dated 10.05.2001, before the Director, Mines and Geology Department, whereafter they were served with a show cause notice dated 18.05.2001 calling upon them to pay Rs. 4,44,00,000/- (Rs. Four crore and forty four lacs) as penalty and royalty. The notice is based upon alleged inspection reports prepared by the Mining Officer and the Mining Inspector, dated 13.02.2001 and 27.02.2008, respectively, the statement of one Sh. Nanda, r/o V & PO Anangpur owner of Truck Nos. HR-38B-3557 and HR-38A-8657 dated 16.02.2001 and further investigation on 27.02.2001 with relevant proof of photographs. Upon receipt of the notice, the petitioners filed CWP No. 7809 of 2001 which was tagged with the earlier writ petition and was disposed of on 10.09.2002 by directing the Secretary, Mines and Geology Department, to pass a final order on the show cause notice after granting an opportunity to the petitioners to file a reply to the show cause notice and to lead evidence.

6. The petitioners appeared before the Financial Commissioner and Principal Secretary to Government of Haryana, submitted a preliminary reply dated 10.01.2003 and made a request that documentary evidence relied by the Department in the show cause notice, be provided to them. The petitioners were provided an assessment report prepared by the Mining Officers on 30.04.2001 and relevant statements.

7. The petitioners submitted an application on 21.04.2003, seeking the summoning of the four persons, for cross-examination, whose statements formed the basis of the show cause notice. The application was rejected compelling the petitioners to file CWP No. 7636 of 2003. The writ petition was disposed of on 17.05.2003 by holding that as the matter is pending consideration, before the authority, the petitioners have a right to file a petition challenging the order if the matter is decided against them. The petitioners were, however, not granted an opportunity to cross-examine these persons.

8. While the matter was pending consideration the Government of Haryana was itself confused about the legal obligations of persons who undertake development

to level and excavate earth for constructing their houses and, therefore, sought legal advice and thereafter issued memorandum dated 15.10.2008, pointing out that for development activities, the developer would have a right to use minerals which vest in the State by obtaining permission from the Assistant Mining Engineer, but on payment of royalty. The memorandum was followed by instructions dated 17.10.2008. The show cause notice was decided on 24.03.2011, rejecting the petitioners' contention and directing them to pay Rs. 4,44,00,000/- on account of royalty and the price of minor minerals excavated and consumed illegally.

9. Counsel for the petitioners further submits that Section 21(5) of the 1957 Act, can be invoked against a person who occupies land without any lawful authority and thereafter illegally raises minerals from such land. Admittedly, the petitioners are owners of the land, in dispute, and, therefore, cannot be said to have illegally occupied the land or illegally raised minor minerals. The next argument is that Section 3(d) of the 1957 Act defines a mining operation to mean any operation undertaken for the purpose of mining any mineral i.e. to bore, dig and search for minerals and carry away any mineral. The petitioners have not indulged in any act that may fall within the words used in Section 3(d) of the 1957 Act. The petitioners have merely levelled the land, shifted material from one part of the land to another for internal development, in accordance with licences granted by the Director, Town & Country Planning, Haryana. The petitioners are also entitled to the benefit of Rule 3 of the 1964 Rules, as filling up of land is a bonafide personal activity and the mere fact that the petitioners have developed a colony, would not exclude them from the benefit of "bonafide personal use". The sale of plots from this land, at a later point of time, cannot exclude the petitioners from the benefit of Rule 3 of 1964 Rules. The petitioners applied for a licence to use explosives and were granted a licence after a "No Objection Certificate" was issued by the Mining Department, thereby clearly proving that requisite permission was granted by the Mining Department. A stray incident, of a truck belonging to a transporter or the petitioners' contractor, being apprehended with minor minerals, cannot fasten liability upon the petitioners or raise an inference of illegal mining. The assessment report, furnished to the petitioners was prepared by the Mining Officer in April, 2001 but the letter issued on 21.03.2001, refers to an estimate that has already been prepared, thereby, clearly indicating manipulation on the part of the respondents. It is further submitted that the assessment, on the face of it is absurd and without any basis. The respondents have not disclosed any basis, criteria or formula for calculating such a huge liability. The estimate of 6 lacs metric tones is irrational as a truck has a maximum capacity of 3 metric tones and even if an assessment is made for material excavated in one year, the petitioners would require 1000 trucks per day to meet the figure calculated by the respondents. The respondents have not adduced any clear and cogent evidence in support of their calculations and have apparently based their calculations on the statement of a driver and a contractor, who were not offered for cross-examination and whose statements have no value

in the eyes of law much less could they form the basis of concluding that the petitioners carried out such a huge operation of illegal mining and sold minor minerals outside. The finding of sale of minor minerals "outside" is not based upon legal evidence and as no opportunity was granted to cross-examine the persons who made statements, the said finding is not sustainable in law.

10. The lack of an opportunity to the petitioners to cross-examine the witnesses in accordance with the directions issued in CWP No. 7809 of 2001 decided on 10.09.2002 and any opportunity to lead evidence despite a specific application, serious prejudice has been caused to the petitioners.

11. It is further submitted that the FIR registered against the petitioners has been cancelled and the cancellation report has been accepted by the Magistrate, concerned. The minor minerals have been used for bonafide personal use and as there is no tangible evidence much less evidence of any sale by the petitioners, the assessments are clearly illegal and arbitrary, therefore, the impugned order may be set aside.

12. Counsel for the State of Haryana submits on the basis of averments in the reply that there is no dispute that minor minerals vest in the State. No person, even the owner of a piece of land may excavate minor minerals without obtaining a licence/permission and then also shall be required to pay royalty and the price of minerals. The only exception to this obligation is contained in Rule 3(d) of the 1964 Rules. Even if it is accepted, for the sake of argument, that the petitioners have used minor minerals for levelling land, filling pits and craters, in their own land, the excavation of minor minerals cannot be said to be for "bonafide personal use" as provided by Rule 3(d) of the 1964 Rules. The petitioners are a commercial venture and have admittedly used minor minerals to enhance the value of their project for development of infrastructure in their colony. The use of minor minerals, on private land, requires the landlord to obtain a licence/permit which the petitioners have, admittedly, not obtained. The liability of the petitioners is squarely covered by a judgment of the Hon"ble Supreme Court in State of Orissa and Others Vs. Union of India and Others, The petitioners" plea that they had obtained a licence from the Director, Town and Country Planning, Haryana, to develop a colony and a licence to use explosives for levelling the land, does not absolve them of their liability u/s 21(5) of the 1957 Act and their obligation to pay royalty and the price of minor minerals excavated. The petitioners were repeatedly asked by way of show cause notices as well as during proceedings before the Financial Commissioner, to disclose the amount of minor minerals excavated, or used for filling up pits and craters etc. but their silence reveals that minor minerals were sold in the open market and the plea of levelling the land is a mere ruse to avoid liability for misappropriation of minor minerals. It is further submitted that the findings recorded by Financial Commissioner and Principal Secretary to Government of Haryana, Mines and Geology Department, Haryana, are neither perverse nor arbitrary as the same have been passed after due consideration of the entire record including

arguments addressed by counsel appearing on behalf of the petitioners. The impugned order does not suffer from any error or an arbitrary exercise of discretion so as to invite interference. It is further submitted that the Mining Officers noticed, during a field inspection that a large number of labourers have been deployed for excavation of stones etc. despite orders passed by the Hon''ble Supreme Court prohibiting such excavation. The minor minerals were being excavated, by using heavy drill machines, and were mechanically being loaded into trucks. The photographs attached with the petition as Annexure R-1 (Colly), clearly prove the factum of illegal mining and transportation of minor minerals. The petitioners'' plea that they have merely filled up the pits and craters, is false. The show cause notice issued to the petitioners was followed by another notice calling upon them to disclose the quantity of minor minerals excavated but the petitioners have till date failed to respond to this part of the notice. The petitioners'' allegations that they were not allowed to lead any additional evidence, is incorrect as there was no necessity, particularly, when the petitioners have themselves failed to disclose the quantity of minor minerals extracted. It is further submitted that the statement of one Sh. Nanda, made u/s 21(5) of the 1957 Act, implicates the petitioners and proves that minor minerals were excavated from the land owned by the petitioners and sold after being taken away from the land, in dispute.

13. We have heard counsel for the parties and perused the impugned order. The petitioners have been held liable for illegally raising minor minerals from their private land and for selling it outside.

14. Admittedly, minor minerals including the minor minerals, in dispute, came to vest in the State of Haryana, under the Haryana Minor Minerals Vesting of Rights Act, 1973 (hereinafter referred to as the "1973 Act"). The petitioners do not deny that they have excavated minor minerals but allege that they have done so for filling pits, craters and levelling of their own land. The petitioners, in essence, assert that Section 21(5) of the 1957 Act, applies to an illegal or unauthorised occupant of land, who then proceeds to raise minerals but as the petitioners are, admittedly, owners and, therefore, lawful occupants, cannot be said to be occupying land "without any lawful authority" and, therefore, liable u/s 21(5) of the 1957 Act. The petitioners assert that as they have merely used minor minerals for levelling the land and filling craters, they cannot be said to have carried out any mining activity.

15. Admittedly, minor minerals vest in the State of Haryana, under the 1973 Act. Section 4 of the 1957 Act, prohibits a person from raising minerals without a mining lease granted under the 1957 Act or the Rules framed thereunder. Section 4(1) of the 1957 Act reads as follows:-

4. Prospecting or mining operations to be under license or lease.

[(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and

conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder.]

16. Section 21(5) of the 1957 Act, empowers the State, to recover minerals that have been raised from any land, by any person "without lawful authority" and where the minerals have been disposed of, the price of the minerals so raised, alongwith rent, royalty and tax etc. The 1964 Rules also enact similar provisions. Section 21(5) of the 1957 Act, reads as follows:-

Section 21: Penalties-

(1) to (4) xx xx xx

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the States Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

17. The key to the exercise of power u/s 21(5), of the 1957 Act, are the words "raising minor minerals" by "any person", "without lawful authority". The words "any person" are used in their ordinary grammatical meaning and would include a company. The expression "any land" is wide enough in its ambit to obliterate the distinct between land held privately or other land and would, thus, apply even where minor minerals have been excavated from private land. The expression "without any lawful authority", denotes the absence of permission to raise minor minerals by way of a lease, licence, contract or permit. A person, may proceed to raise minor minerals, from his private land but only after obtaining permission by obtaining a mining licence, lease or permit under the 1964 Rules and if a person has raised minor minerals without permission in the shape of a lease, licence or a permit etc., he shall be said to have raised the minor minerals "without lawful authority". The mere fact that the petitioners" claim that they have used minor minerals only to level pits and craters, would make no difference to the petitioners" liability as they have, admittedly, raised minor minerals from private land but are unable to refer to any licence, lease or a permit that empowers them to raise minor minerals.

18. The licence granted by the Town Planning Department, put-forth as their "lawful authority" to raise minor minerals, was granted to develop a colony and, therefore, cannot be equated with a licence/lease or permit granted or issued under the 1964 Rules. The licence granted to use explosives, is in fact evidence of excavation of minor minerals but as required by the 1964 Rules, cannot be construed to be a permit, lease or licence to excavate minor minerals.

19. The petitioners further urge that as they have used minor minerals for filling craters and levelling pits, for their bonafide personal use, they are exempted

from payment of royalty etc. under Rule 3(ii) of the 1964 Rules.

20. Rule 3 of the 1964 Rules, reads as follows:-

Rule 3 Exemption-Notwithstanding anything contained in these rules no rent, royalty, or permit fee shall be charged for-

(i) extraction of ordinary clay or ordinary sand by hereditary kumhars who prepare earthen pots on cottage industry basis, whose turnover during a year does not exceed five thousand rupees.

(ii) excavation of masonry stones and ordinary clay from areas which are not occupied by lessee or contractor, for bonafide personal requirements of the inhabitants of the area.

Provided that excavation of limestone or kankar from the areas which are not occupied by a contractor or lessee may be made by the members of Scheduled Castes, Scheduled Tribes and Backward Classes whose monthly income does not exceed Rs. 3000/- per month and also the persons who want to build Dharamsala, piao or other building for charitable or philanthropic purposes, under a permit, valid for two months issued by the Director or any person authorised by him in this behalf on payment of hundred rupees.

21. Rule 3(ii) of the 1964 Rules, exempts excavation of masonry stones and ordinary clay if they are used for a bonafide "personal" requirement, by "inhabitants of the area" and, therefore, applies to a situation where a person excavates minor minerals for his "personal" use. The word "personal", read with the word "inhabitant", used in Rule 3(ii) of the 1964 Rules, in our considered opinion, indicates a user of minor minerals for a private purpose and would not apply where minor minerals are used to develop land for commercial exploitation. Rule 3(ii) of the 1964 Rules would not exempt excavation of minor minerals to level land for enhancing the commercial potential of land to carve out plots to be sold to the public at large. A person excavating minor minerals from personal land for enhancing the commercial prospects of his project, would not be entitled to the benefit of the words "bonafide personal use", appearing in Rule 3(ii) of the 1964 Rules. The petitioners, therefore, cannot invoke the exemption contained in Rule 3(ii) of the 1964 Rules. The petitioners have, admittedly, raised minor minerals and even if we accept, for a moment, that the petitioners have not sold minor minerals and have merely used them for levelling their land, the petitioners are not exempted by Rule 3(ii) of the 1964 Rules or from liability u/s 21(5) of the 1957 Act.

22. The next argument relates to the finding that the petitioners have sold minor minerals and to the legality of assessment of the price of minor minerals and royalty etc. The respondents have raised a demand of Rs. 4,44,00,000/-. The petitioners contend that assessments of the price etc. of minor minerals raised, made by the department, as referred to in notices dated 21.03.2001 and 19.04.2001 form the foundation of the final demand. These assessments have

not been disclosed to the petitioners much less made available. To substantiate this argument, the petitioners point out that the first notice/letter dated 21.03.2001, asking the petitioners to disclose the quantity of minor minerals raised, clearly records that officers of the department have also made their estimate. A similar estimate is also referred to in letter dated 09.04.2001. The petitioners, therefore, urge that failure to furnish these assessments, while furnishing copies of inspection reports and the failure to disclose any criteria for calculating the price of minor minerals raised, renders the impugned order null and void. The petitioners also contend that they have been denied an opportunity to cross-examine witnesses, who have deposed with respect to sale of minor minerals.

23. As we have already held that the petitioners are liable u/s 21(5) of the 1957 Act, for excavation of minor minerals without lawful authority, it would make no difference to their liability whether minor minerals were consumed to level the land and fill craters, or sold outside, the petitioners' plea that they have not been allowed to cross-examine witnesses, is, therefore, irrelevant.

24. The only question that remains is the validity of the assessment and the amount demanded. Admittedly, the Assistant Mining Engineer, Department of Mines & Geology, Faridabad, addressed a letter dated 21.03.2001, as a notice u/s 21(5) of the 1957 Act, calling upon the petitioners to show cause. A relevant extract from the letter, reads as follows:-

As per report of field staff and inspection of your area conducted in Village Lakkarpur, you were found indulged in unauthorised mining of stone and allied minerals from the said area. As per enquiry and from the site evidence, it is found that you did mining with the help of heavy machinery and by use of explosive and removed the mineral.

2. You are asked to give/submit the detail of removal of mineral by way of mining in this area. The quantity of removal of mineral may also be mentioned. However, this office has also made estimates in this regard. If no reply is received from your end, this office shall initiate further proceedings u/s 21(5) of Mines & Mineral (Regulation & Development) Act, 1957. Meanwhile, no mining take place in this prohibited area without getting permission from the competent authority.

25. A perusal of the letter reveals that the petitioners were informed, that as per inspection of the area a report has been prepared by the field staff, proving that they have indulged in unauthorised mining by removing stones and allied minor minerals with the help of machinery and the use of explosives. The petitioners were called upon to disclose the quantity of the minor minerals excavated. The notice also contains a positive assertion, that officers have prepared their "estimate" of the quantity of minor minerals excavated.

26. The petitioners were served with another notice dated 09.04.2001, issued u/s 21(5) of the 1957 Act. The notice once again refers to an "estimate" that has

already been prepared by the office. A relevant extract from the final show cause notice dated 18.05.2001, reads as follows:-

(i) On the basis of inspection report of Mining Officer and Mining Inspectors dated 13.2.2001 and 27.2.2001.

(ii) Statement of Shri Nanda R/o V & PO Anangpur, owner of Truck Nos. HR-38-B-3557 and HR-38A-8657 dated 16.2.2001.

(iii) Further investigation by Mining Officer, Mining Inspector and Mining Guards on 27.2.2001 with relevant proof of photographs showing working of drill machines for the use of heavy explosive to explode the rocks, trippers used for the removal of mineral (Stone Quartzite) from the sites, dumpers etc.

(iv) The final assessment of mineral raised by you/your companies made by the officer/officials of the department.

27. A perusal of the above extract reveals that the demand is based upon inspection reports prepared by the Mining Officer and the Mining Inspector, on 13.02.2001 and 27.02.2001 with reference to reports referred to in show cause notices dated 21.03.2001 and 09.04.2001. The assessments of royalty and price of minor minerals made by the respondents, as referred to in the show cause notice, are as follows:-

28. A perusal of the show cause notice reveals that it does not indicate the method adopted for calculating the quantity of minor minerals raised or the price thereof. The documents appended with the show cause notice and proceedings before the Secretary also do not make a reference to assessments referred to in letters dated 13.02.2001 and 27.02.2001 or to any method adopted by the respondents while arriving at these figures.

29. The petitioners in their reply to the show cause notice, denied their liability and prayed that "estimates" prepared and statements of the contractor and the truck driver, recorded by the mining Staff, be furnished and an opportunity to cross examine these witnesses be granted. The petitioners were provided an assessment report dated 30.04.2001 but, admittedly, assessments referred to in notices dated 21.03.2001 and 19.04.2001 have not been furnished.

30. The petitioners, thereafter, filed an application to summon and cross-examine the persons who had allegedly made statements against them and to disclose the basis for assessment of the quantity of stone extracted. The application reads as follows:-

i) Inspection report made by the Assistant Mining Engineer, Faridabad, on 13.02.2001 and if necessary, an opportunity to cross-examine the said Assistant Mining Engineer may be sought by us after examination of the report.

ii) Statement, if any, recorded of the workers who allegedly informed regarding quarrying of stone.

iii) Detention/seizure memo of the trucks allegedly bearing Nos. HR-38-B-3557 and HR-38A-8657 on dated 13.02.2001.

iv) Statement of Shri Khandelwal allegedly recorded on 23.02.2000 (it should be 23.02.2001). We reserve the right to cross-examine Shri Khandelwal after perusing the said statement.

v) The basis for the assessment regarding alleged quantity of stone extracted unauthorisedly as mentioned in para 4 of the show cause notice.

vi) Inspection report of the Mining Inspector dated 27.02.2001. We also reserve the right to cross-examine the person, who has made the said report.

vii) Statement of Shri Nanda, R/o V & PO Anangpur, alleged owner of Truck Nos. HR-38-B-3557 and HR-38A-8657 dated 16.02.2001. We reserve the right to cross-examine Shri Nanda after perusing the said statement.

viii) Further inspection by the Mining Officer, Mining Inspector and Mining Guards, on 27.02.2001 alongwith the photographs etc. relied upon in the said notice.

31. Instead of furnishing the estimates prepared by the department, referred to in letters dated 21.03.2001 and 19.04.2001, or providing the mode and manner of calculating the price etc. of minor minerals, the application was rejected on the ground that the petitioners have not disclosed the quantity of minor minerals extracted. The petitioners' failure to disclose the quantity of minor minerals excavated, may raise an adverse inference against them but this alone does not absolve the department from disclosing the methodology used while calculating the price and the quantity of minor minerals raised, as per their "estimates". It would be necessary to recapitulate that letters, dated 13.02.2001 and 27.02.2001 clearly state that officers have already prepared their estimates.

32. The question that arises is whether failure to furnish "estimates" referred to in notices dated 21.03.2001 and 19.04.2001, failure to disclose the method for arriving at the quantity of minor minerals excavated and the price thereof, is such an illegality as would render the impugned order null and void.

33. The "estimates" of minor minerals excavated were prepared by the department and are referred to in letter dated 21.03.2001 and 19.04.2001 but admittedly, have not been furnished to the petitioners whether alongwith the show cause notice, or while furnishing inspection reports dated 13.02.2001 and 27.02.2001. It is not denied that these estimates have not been produced before the Secretary. The fact that the petitioners have not furnished the estimate of minor minerals excavated, may raise an adverse inference against them but does not absolve the respondents of their obligation to prove the mode and manner of preparing estimates of the quantum of minor minerals, raised by the petitioners. The "estimates" prepared by the department are the foundation of the department's claim and are germane to the petitioners' liability. The final estimate dated 30.04.2001, referred to in the show cause notice and furnished to

the petitioners, in every likelihood, was prepared on the basis of these "estimates". The petitioners, in our considered opinion, were entitled to a copy of the estimates prepared by the Assistant Mining Officer, quantifying the minor minerals excavated, and an opportunity to rebut these estimates. This apart, the nature of jurisdiction exercised u/s 21(5) of the 1957 Act, whatever be the nature of the offence and howsoever grave the default, requires the respondents to furnish to the petitioners "estimates" referred to in the letter/memo issued before the final show cause notice and grant of an opportunity to rebut these estimates. The reports, admittedly, have not been produced much less made available to the petitioners, thereby, vitiating the impugned order in so far as the estimate prepared by the department has been accepted.

34. In view of our discussion in the preceding paragraphs, the petitioners' contention that they are entitled to exemption for bonafide use of the minor minerals or that they have not extracted/excavated the minor minerals, without lawful authority, is rejected. The impugned order is, however, partly set aside in so far as the Financial Commissioner has confirmed the quantity and price of minor minerals raised. The matter is remitted to the Financial Commissioner and Principal Secretary to Government of Haryana, Mines and Geology Department, Haryana, to decide this aspect afresh, after affording a full and complete opportunity to the petitioners by furnishing copies of the assessment/inspection report prepared by the Mining Officer and the Mining Inspector, referred to in letters dated 21.03.2001, 20.04.2001 and in the show cause notice. However, as the question to be decided is one of quantum of liability, the petitioners shall deposit half the amount demanded by the respondents, in the show cause notice, with the Financial Commissioner and Principal Secretary to Government of Haryana, Mines and Geology Department, Haryana, within one month. Parties are directed to appear before the Financial Commissioner and Principal Secretary to Government of Haryana, Mines and Geology Department, Haryana, on 15.07.2013, for decision afresh within three months.