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**(2011) 07 P&H CK 0078**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 13673 of 1999 (O and M)

Gurnam Singh Undal

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision :** 25-07-2011

**Acts Referred:**

Contract Act, 1872 — Section 56

**Citation :** (2011) 164 PLR 450

**Hon'ble Judges :** K. Kannan, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

K. Kannan, J.—The petitioner challenges the notices issued on 29.07.1999 and-20.09.1999 (An-nexures P-9, P-10 and P-11) by the Mining Officer for the installments allegedly payable by the petitioner under the contract of extracting minor minerals. The, petitioner was a successful bidder in a public auction for mining sand at two villages, Bahora and Rampur Kalan for the only licence fee of Rs. 13,32,000/- and Rs. 6,15,000/- respectively. The licence period was from 1st April, 1998 to 31st March, 2001.

2. The dispute to the demand is on the ground that the Government, which had granted the licence, was unable to protect the petitioner to secure an access to the mining area, namely, the river bed from where sand was allowed to be extracted and the contract stood frustrated by the inability of the petitioner to carry out the mining during the period of licence. The petitioner would contend that the inability to extract was conveyed to the authorities upon which, the Mining Officer himself carried out personal inspection and submitted a report to higher authorities. In the report, it was specifically noticed that, to approach the Bahora mine, trucks were passing through lands of private landowners, but this had been stopped by the landowners, who had obtained injunction (referred to as "taken stay") and that the intervening landowners had stopped the trucks from passing through their lands. As regards the access to the Rampur Kalan,

the report makes an "observation that to reach the place, there were two kacha portions and to reach on this passage, a truck had to cross two small bridges. The Mining Officer had gathered information that the local landowners would not allow the passage of the vehicles on these passages, because the passages had been damaged and the contractors did not care for the small bridges (sic) and the walls of the small bridges were broken from both sides.

3. The report further makes an observation that as per local knowledge, there was no revenue passage available for the mines of Rampur Kalan and Bahora from Rampur Kalan to Bahora. The report further reads as follows:-

... As per revenue record which passages available to Bahora mine that from the left side of the Ghaggar River from the village Bahora comes to the river. If we have to go lifting the sand of Bahora mine then we have to get the passage from the land of private land owners of Rampur Kalan and if applicant wanted to go through this passage then it can only be verified after demarcation through patwari of revenue department that which passage goes from the land of private owners and in this regard there is some stay of court or not this can be done only when the strike of patwaris will be open....

4. It is a matter of record that when the petitioner could not secure access to go to the mining areas and could not also obtain police support to ward off any obstructions from the members of public, the petitioner had filed a writ petition before this Court in CWP No. 6711 of 1998, dated 13.05.1998, when this Court had passed an order stating that the Mining Officer should consider the request contained in the representation for providing a passage to the mines allotted to him. The Court had directed that he would pass a speaking order in that regard. In response to the directions, the Mining Officer passed an order that there was a Government passage for going to Rampur Kalan and further asserted that the work of extracting had been made regularly after taking passage from private persons.

5. The learned counsel for the State brings before the copies of receipts which had been issued at the site of the mines during the period from August to December, 1998 for Bahora and for October to December for Rampur Kalan to show that mining had been actually carried out by, the petitioner during the year, 1998. Although the assertion is made by the State through the Mining Officer's proceedings, dated 25.06.1998, that it was still carrying on with the mining operation, I would take that this report must be taken as valid only for a period of 5 months in the year, 1998 for Bahora village and for a period of 3 months in 1998 for Rampur Village.

6. There is a sure method of knowing whether mining operations could be carried out during that period or not. The procedure required that on every day, when mining had been done, receipts would be issued for the trucks, which had gone to the spot for mining and the number of trips were also to be recorded in the presence of the Government officials themselves. It is in this context that the

production of receipts for 5 months by the Government for Bahora and for 3 months for Rampur establish that the petitioner was not completely deprived of mining during the entire lease period. If this facility had been availed by the petitioner without any objections, it should have been certainly possible for the State to produce documents for the other months as well to show that the trucks had been going to the sites of mining and that the receipts had been periodically issued in evidence of the mining operations. I do not find such proof as available and I do not also see any explanation given in the statement of the State as to how access was provided, although the Mining Officer's report evidenced through Annexure P-4 itself revealed that on account of the orders of stay from the Civil Court by landowners of intervening villages, the petitioner could not do the mining operations.

7. A purely contractual obligation shall not be a matter of enforcement normally in jurisdiction under Article 226. However, if undisputed facts revealed that the contract itself stood frustrated, the State shall not be permitted to gain undue advantage over a citizen, who had attempted to take a State largesse with a quid pro quo to pay royalty charges to the State for mining rights. In this case, the petitioner has paid Rs. 3,33,000/- being 25% of the lease period per year and made a like sum of 25% as security for prompt payments in future. This constitutes 50% of the annual licence fee payable for mining rights for both the villages at Bahora and Rampur Kalan. We have already observed that the petitioner's bid was for Rs. 13,32,000/- per year and the petitioner has paid Rs. 6,66,000/- by way of initial deposit and surety for Bahora and against Rs. 6,15,000/- payable per year for Rampur Kalan, the petitioner had paid 50% of the same, namely, Rs. 3,07,500/-. This apart, the petitioner has admittedly remitted Rs. 11,48,378/- for Bahora and Rs. 7,78,645/- for Rampur village. The learned counsel for the State would contend that the payment of these amounts would show that the petitioner had no impediment to his mining rights. It was further his contention that there was no agreement that the petitioner shall not become liable if he was unable to do the mining for any reason. I will reject both these contentions, for, the amount paid over and above the amount paid as security could only be taken as evidence of the petitioner's duty to pay the licence fee under the terms of the contract. The issue has to be still examined whether the petitioner shall be legally bound to pay for the entire period of the licence even if he was not extracting the sand during the licence period.

8. If the petitioner had omitted to extract the minerals by his own laxity or any circumstance attributable to the petitioner's own conduct, then the fact that he did not extract could not be stated against the State's entitlement to collect the licence fee secured under the contract. This is another way of recognizing that the party, who is guilty of wrong, cannot take advantage of his own wrong. The same principle cannot apply in a situation where the contract cannot be performed due to supervening circumstances of which neither party had a control. This would be covered by a concept of frustration recognized statutorily u/s 56 of the Indian Contract Act, 1872. Section 56 reads as follows:-

56. Agreement to do impossible act.- An agreement to do an act impossible in itself is void. Contract to do act afterwards becoming impossible or unlawful.-A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.- Where one person has promised to do something which he know, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the nonperformance of the promise.

9. In this case, the frustration occasioned by the lack of access to the property to do the mining extractions. To make an access inspite of "order of stay" of Civil Court would have become unlawful. It will not avail to the State to contend that there was no provision under the contract for making an abatement of liability during the time when the petitioner was not able to make the extractions. What the contracts specifically did not provide for, the statute expressly interdicts through Section 56 of the Contract Act. Consequently, the liability for the petitioner shall be only for 5 months out of whole year which shall be Rs. 5,55,000/- ( $5/12 \times 13,32,000 = 5,55,000$ ), for Bahora village. As regards Rampur village, the liability shall be only for 3 months which shall mean Rs. 1,53,750/- ( $3/12 \times 6,15,000 = 1,53,750$ ). The total liability for both the villages would, therefore, be Rs. 7,08,750/- ( $5,55,000 + 1,53,750 = 7,08,750$ ). Any amount paid in excess including the initial deposit and the surety amounts shall become liable for re-fund to the petitioner. The same shall be refunded with 7.5% interest from the date of filing of the writ petition till date of payment. The amount shall be calculated and paid to the petitioner within a period of 8 weeks from the date of receipt of copy of this order. Notices of demand in the writ petition are quashed and the writ petition is allowed to the above extent.