

(2015) 05 RAJ CK 0130
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2893 of 2008

Jabir Hussain

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 40 Rule 1, Order 41 Rule 1, Order 41 Rule 2
Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 35
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2016) 1 WLN 468

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Kamalakar Sharma, Senior Advocate, Madhu Sudan Rajpurohit and Madhav Mitra, for the Appellant; Anurag Sharma, R.N. Mathur, Prateek Mathur, A.K. Sharma, Vishnu Sharma, Ashwani Chobisa and Mahesh Gupta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Alok Sharma, J.—Impugned in this writ petition is the order of cancellation of the petitioner's quarry licence on 3.3.2008 duly transferred to him by respondent No. 4-Abdul Jabbar and endorsed at the relevant time by the Mining Department on 3.12.1988 as also renewed from time to time till 30.9.2007. A further renewal application was then pending with the Mining Department. Also under challenge is the letter dated 18.2.2008 by the Dy. Secretary, Government of Rajasthan to the Director, Mines to cancel the transfer of the quarry licence to the petitioner and the consequent letter of the Director to the Mining Engineer sent on 21.2.2008-which in turn culminated in the impugned order dated 3.3.2008 referred to above.

2. The order under-challenge is straight-forward and cryptic but the background facts labyrinthine which need narration for a complete and clear comprehension

of the grounds of challenge and the defences thereto.

3. The facts of the case are that enjoying a Rent-cum- Royalty lease since 1968, following the commencement of the Minor Mineral Concession Rules, 1986 (hereinafter "the Rules of 1986"), the respondent No. 4- Abdul Jabbar sought its conversion to a quarry licence. This was so done on 5.10.1988 (No. 70/2002 situate at Uladi (Makrana) measuring 40"x 200"). Soon after, on an application stated to have been made on 7.10.1988 under Rule 31 of the Rules of 1986 at his instance, the quarry licence was transferred on 3.12.1988 after approval of the Assistant Mining Engineer and the department's endorsement to the petitioner. All dues including rent was thereafter continued to be deposited by the petitioner alone in respect of quarry licence now standing to his name. The quarry licence was renewed at the instance of the petitioner from time to time on yearly basis and thereafter following the amendment in the Rules of 1986 on five yearly basis till 30.9.2007. The petitioner thereafter moved an application for further renewal on deposit of the requisite renewal fee for the period 1.10.2007 to 30.9.2012.

4. Suit No. 5/2006 was laid by the respondent No. 4- Abdul Jabbar on 24.2.2006 before the ACJM, Makrana seeking cancellation of the transfer of quarry licence in favour of the petitioner on 3.12.1988. The transfer in issue was sought to be got declared illegal and void and it was prayed that the name of the plaintiff in the suit i.e Abdul Jabbar be substituted in place of Jabir Hussain in the said quarry licence. In accompaniment to the suit, an application under Order 40 Rule 1 CPC was also filed by Abdul Jabbar. On contest the said application was dismissed by the trial court vide order dated 5.5.2006. The suit remains pending. It is however, important to note that in the written statement by the State in suit No. 5/2006 it was specifically stated that the quarry licence was transferred in favour of the petitioner (co-defendant in the suit) in accordance with law after consideration of documents in support of the transfer. It was specifically stated that a notice was sent by the State Government to the respondent No. 4- Abdul Jabbar on his application for quarry licence and was duly served on him. No objection was filed to the transfer resulting in transfer of 3.12.1998. Since then the petitioner Jabir Hussain was carrying on mining operations under the quarry licence peacefully in accordance with law for the last about 18 years. And it was submitted that the suit was without substance and liable to be dismissed.

5. Quite obviously co-defendant in suit No. 5/2005 Jabir Hussain, now the petitioner before this Court set up a similar case and sought dismissal of the suit.

6. Be as it may, even while the suit for declaration and permanent injunction (5/2006) filed by Abdul Jabbar was pending and the application for appointment of Receiver dismissed on 5.5.2006, the Mining Engineer, Makrana vide order dated 28.10.2006 required the petitioner to show cause as to why owing to suspicious signatures of Abdul Jabbar on the application for transfer of quarry licence as advised, the transfer dated 3.12.1988 not be cancelled. The petitioner apprehensive of, what he perceived as developing mischief, filed a suit for

permanent injunction (11/2006) before the Civil Judge, Makrana against the respondent No. 4- Abdul Jabbar along-with an application for temporary injunction under Order 39 Rules 1 and 2 CPC seeking protection of his possession of the quarry licence area and obstruction free mining therein. This was opposed by the respondent No. 4- Abdul Jabbar- as defendant in the aforesaid suit. A counter claim at his instance was also filed in suit No. 11/2006.

7. However, the Court on having considered the competing versions of the contesting parties and documents on record before it prima-facie found that the dispute as to the legality and validity of the transfer of the quarry licence on 3.12.1988 in favour of the petitioner could only be adjudicated after taking of evidence- both oral and documentary during the trial. However the petitioner as the plaintiff in the aforesaid suit was prima facie found in lawful possession on the basis of a subsisting transfer dated 3.12.1988 and as he had since paid rent for the quarry licence in his own name and continued to carry out mining operations for the last 18 years, the Court held that the petitioner's possession as the plaintiff in the suit was therefore required to be protected. It was so directed vide order dated 20.1.2007 and the application under Order 39 Rules 1 & 2 CPC accordingly allowed. An appeal against the interim order dated 20.1.2007 was filed by the respondent No. 4- Abdul Jabbar before the Addl. District Judge, Parbatsar. The appeal was however dismissed on 11.11.2010. S.B. Civil Writ Petition No. 655/2011 under Article 227 of the Constitution of India followed by the aggrieved Abdul Jabbar before the Principal Seat at Jodhpur which was also dismissed vide order dated 18.2.2011. The Hon"ble High Court in its order dated 18.2.2011 held that the possession of the Jabir Hussain over the disputed mine at the time when the order granting temporary injunction was passed by the court below (20.1.2007) was not even disputed. The Hon"ble High Court also noted that after due consideration of the material on record, the trial court had arrived at a finding that as per the record of the Department of Mining, the licence to operate the mine was existing in the name of the Jabir Hussain and was valid upto 30.9.2007.

8. Litigation before the Civil Court 18 years after the event of transfer of the quarry licence on 3.12.1988 was just one battle field. The civil disputes between the transferor and transferee aside, the respondent- Mining Department on 30.3.2007 sought to exercise its powers under the Rules of 1986 apparently in terms of the liberty granted in the order dated 20.1.1997 and alleged that the petitioner was guilty of deficiencies in the operation of mines under the quarry licence standing to his name. A notice dated 30.3.2007 ensued to the petitioner requiring him to show cause as to why his quarry licence should not be cancelled. Reply was filed by the petitioner on 17.4.2007. Yet vide order dated 21.4.2007 the petitioner's quarry licence was peremptorily cancelled and possession allegedly, rather hastily within two days, is stated to have been taken on 23.4.2007. Though it is disputed by the petitioner who claims to be in possession stating that the possession taken, if any, must be paper possession.

9. Aggrieved of the order of cancellation dated 21.4.2007 the petitioner filed a statutory appeal No. 209/2007 before the Addl. Director Mines, Jaipur. The respondent No. 4- Abdul Jabbar's application for impleadment therein was dismissed on 23.5.2007. The respondent No. 4- Abdul Jabbar however, on his part claiming rights in the quarry licence also filed a separate appeal challenging the order dated 21.4.2007 passed by the Mining Engineer, Makarana (No. 213/2008). The Addl. Director Mines entertained the appeal of the respondent No. 4- Abdul Jabbar. Vide order dated 30.12.2008 the Addl. Director, Mines set-aside the order of cancellation of quarry licence dated 21.4.2007 passed by the Mining Engineer but proceeded to direct the Mining Engineer, Makarana to give possession of the quarry licence to either of the party after taking into consideration "various orders passed by the Court below" and the order dated 3.3.2008 passed by the Mining Engineer, Makrana cancelling the transfer of the quarry licence to the petitioner on 3.12.2008 albeit subject to the outcome of suit Nos. 5/2006 and 11/2006 before the Civil Judge (Sr. Division), Makrana. Both- the petitioner and the respondent No. 4- Abdul Jabbar filed revision petitions against the order dated 30.12.2008- the petitioner aggrieved of the directions to the Mining Engineer to determine as to which of the party was to be handed over possession of the quarry licence area and the respondent No. 4- Abdul Jabbar aggrieved of the appeal of the petitioner having been allowed by the Addl. Director, Mines setting aside the order cancellation of the petitioner's quarry licence vide order dated 21.4.2007. Both the revisions were dismissed on 20.3.2009. They are under challenge before this Court in connected petition, i.e. SBCW P. No. 3789/2009 by the petitioner and 6012/2009 by Abdul Jabbar and are being disposed of today by a separate order.

10. Even while (i) the petitioner had the interim protection under the order dated 20.1.2007 on his Order 39 Rules 1 & 2 CPC application in his suit for permanent injunction (11/2006) before the Civil Judge, Makrana directing status quo with regard to the quarry licence area finding him prima-facie in possession and (ii) even while proceedings against the cancellation of the quarry licence vide order dated 21.4.2007 were pending before the Addl. Director, Mines, Makrana acting contrary to the written statement filed in the respondent No. 4- Abdul Jabbar's suit No. 5/2006 before the ACJM, Makrana and despite opposing the respondent No. 4- Abdul Jabbar's application under Order 40 Rule 1 CPC stating that the quarry licence was transferred in favour of the petitioner in accordance with law and after due consideration of the documents subsequent to non-receipt of objections from the respondent No. 4- Abdul Jabbar despite service of notice on him (consequent where to the petitioner was peacefully carrying out the mining operations in the quarry licence area for the last 18 years), the Mining Engineer, Makrana proceeded to peremptorily cancel the transfer of the quarry licence to the petitioner vide order dated 3.3.2008 on the purported directions of the Director, Mines and Geology vide his letter dated 21.2.2008 resulting from another letter dated 18.2.2008 issued to him by the Dy. Director, Mines. The purported reason for the cancellation was that at the time of the transfer of the

quarry licence the petitioner was allegedly a minor as seemingly evident from his Secondary School Examination certificate and scholar register before the Deputy Secretary (Mines), Government of Rajasthan. The cancellation of the quarry licence was however made subject to the outcome of the pending civil litigation (suit Nos. 5/22006 and 11/2006) before the Civil Judge, Makrana.

11. Hence this writ petition.

12. Mr. K.K. Sharma, Sr. Counsel with Mr. Madhu Sudan Rajpurohit appearing for the petitioner submits that the order dated 3.3.2008 is liable to be set aside solely on the ground of violation of principles of natural justice.

13. Sr. Counsel also submitted that the petitioner had a vested right in the quarry licence in view of it having been lawfully transferred to him and so endorsed by the Mining Department on 3.12.1988. It has been submitted that following the transfer, the petitioner had been in peaceful and uninterrupted possession of the quarry licence for 18 years having been first allowed year to year renewals and thereafter five year renewals under the Rules of 1986 on payment of the requisite fee in his own name. It has been submitted that the civil consequences of the licence being peremptorily cancelled could not have been visited upon the petitioner, if at all by the Mining Engineer without compliance with the principles of natural justice. It has been also submitted that even otherwise the impugned order dated 3.3.2008 is vitiated for having overreached the judicial process. Senior Counsel points out that in the petitioner's suit (No. 11/2006) for permanent injunction on an accompanying application under Order 39 Rules 1 and 2 CPC, the Civil Judge (Sr. Division) Makrana had held vide order dated 20.1.2007 that the dispute with regard to the purported nullity and invalidity of the transfer of quarry licence on 3.12.1988 for reason of the petitioner allegedly being minor at the relevant time was only determinable on the basis of oral and documentary evidence of the parties on the basis of appreciation of competing evidence by the contesting parties in the course of the proceedings in the suit before it. It was further held that however, from the record/material before the Court the uninterrupted peaceful possession of the petitioner as the plaintiff in suit No. 5/2006 was prima facie made out on the basis of the transfer/endorsement of the quarry licence on 3.12.1988 by the Mining Department rendering the transfer prima facie valid. It was held:

14. The Court further held on evaluating the material before it that:

15. It has been submitted that consequently the trial court directed that the parties maintain status quo with regard to the quarry licence in issue till the disposal of the main suit. Sr. Counsel was quick to point out that although the fundamental issue between the parties with regard to the nullity of the transfer of the quarry licence dated 3.12.1988 on the ground of the petitioner allegedly being a minor at the relevant time was not adjudicated by the trial court, it was clearly seized of it and recorded that the issue could not be decided at the interlocutory stage. But prima facie found for the petitioner and protected him. It

has been submitted that the dispute between the transferor and the transferee thus obtaining in that state, the Mining Department ought to have paid due regard to the prima facie determination of the trial court in its interlocutory order dated 20.1.2007 and not seek to become an instrument of manipulation by the respondent No. 4- Abdul Jabbar and pass the impugned order of cancellation on 3.3.2008 upholding so to say the allegation of the respondent No. 4 that the petitioner at the time of the transfer/endorsement dated 3.12.1988 was a minor. Sr. Counsel empathetically submitted that this Court cannot, in the constitutional scheme of separation of powers where the right to adjudicate civil disputes or any dispute for that matter ordinarily lies with the Civil Court under section 9 CPC, countenance the executive undercutting that authority as has been done by the impugned order of cancellation of the petitioner's quarry licence dated 3.3.2008. A judicial protection at the interlocutory stage as made under the interim order dated 20.1.2007 passed by the Civil Judge (Sr. Division) Makrana upheld upto the Hon"ble Supreme Court cannot be superimposed upon by the Mining Engineer. It has been further submitted that it is extremely odd that even while the Civil Court thought it prudent to determine the dispute between the parties in suit No. 5/2006 at the instance of the respondent No. 4 regarding the age of the petitioner at the time of the transfer of quarry licence on 3.12.1988, on the basis of competing evidence, the Mining Engineer arrogated to himself the power to perfunctorily determine the issue ex-parte without as much as a notice to show cause and hold that the petitioner was a minor on 3.12.1988 rendering the transfer of quarry licence in his favour illegal. It has been submitted that merely because it has been stated in the impugned order dated 3.3.2008 that it would be subject to the final determination of the civil suits between the parties, it is no succor to the petitioner as he has to suffer the consequences of cancellation without good cause in the facts detailed here-in-above. Sr. Counsel submits that the over-reaching of the judicial process by undercutting a judicial order protecting the petitioner's possession of the quarry licence has thus been made out for which reason also the cancellation of the quarry licence vide order dated 3.3.2008 is liable to be set aside.

16. Per-contra Mr. A.K. Sharma, Sr. Counsel with Mr. Vishnu Sharma appearing for the respondent No. 4, submitted that the alleged transfer of the quarry licence on 3.12.1988 by the respondent No. 4 to the petitioner was wholly fraudulent based on forged documents and even otherwise in the cross-hair of the Rules of 1986 where-under the quarry licence issued to the respondent No. 4 Abdul Jabbar on 6.10.1988 could not have been transferred at all, to the petitioner or otherwise, before expiry of two years therefrom. It has been submitted that no notice of transfer of quarry licence was ever issued to the respondent No. 4- Abdul Jabbar by the Mining Department and the transfer was made without verification of facts alleged asserted in the application attributed to the respondent No. 4. It has been submitted that the purported application for transfer was under the forged signatures of the respondent No. 4. FIR No. 121/2006 at Police Station Makrana under sections 420, 467, 468, 471 and 120B

IPC was lodged by the petitioner. Sr. Counsel submitted that however, acting on the influence of the petitioner (its kind and manner undisclosed, notwithstanding) the police submitted a final/negative report before the concerned Magistrate. A protest petition is stated to have been filed by the respondent No. 4. Nothing has been stated as to what happened on the protest petition filed. It has been submitted in these circumstances the alleged transfer of the quarry licence in favour of the petitioner and its endorsement by the Mining Department on 3.12.1988 is void, ab initio and no right accrues therefrom to the petitioner. The Mining Department on the petitioner's own documents has found the petitioner a minor on the date of the transfer i.e. 3.12.1988 and hence rightly cancelled the transfer of the licence on 3.3.2008. It has been submitted that the order dated 20.1.2007 passed by the Civil Judge (Sr. Division) Makrana allowed the Mining Department to cancel the quarry licence in the event of breaches of conditions for its operation. The jurisdiction of the Mining Department to address the invalidity of the transfer of quarry licence during the petitioner's minority was not restrained by the Court. Prima facie illegality in the transfer for reason of the petitioner being ex-facie a minor on 3.12.1988, the purported date of transfer of the quarry licence on the basis of the petitioner's own Secondary School examination certificate showing the date of birth as 14.11.1971 being made out, the department was under a duty to rectify its mistake, as it did. And the writ petition challenging the cancellation of the transfer of quarry licence on 3.12.1988 is therefore, misdirected. The petitioner has no cause of action nor any locus in the circumstances. He is also not in possession as the possession of quarry licence area was taken on 23.4.1997 after the cancellation of 21.4.1997 and so remains even though the petitioner's appeal there-against was allowed on 30.12.2008. It has been finally submitted that the impugned cancellation order dated 3.3.2008 is even otherwise not prejudicial to the petitioner for it records the cancellation being subject to the outcome of the civil suits pending before the trial Judge (Sr. Division) Makrana between the parties. Therefore the writ petition be dismissed, submitted Sr. Counsel Mr. A.K. Sharma.

17. The Mining Department has also filed its reply to the petition and admitted to the chronology of events earlier recorded. The Department has admitted to the order dated 20.1.2007 passed by the Civil Judge (Sr. Division) Makrana in favour of the petitioner but submitted that it did not insure the petitioner against legal consequences of the invalidity of the transfer of quarry licence on 3.12.1988 contrary to the requirement of MMCR, 1986 that a licence should be a major competent to contract. It has been submitted that the petitioner's scholar register and the Board of Secondary School Examination certificate evidence his date of birth as 14.11.1971 and hence he was a minor on the date of transfer of the quarry licence on 3.12.1988. It has been submitted that the order of cancellation of quarry licence is legal and valid as at the time relevant to the transfer on 3.12.1988 the petitioner was 16 years 10 months and 22 days and incompetent to contract.

18. It has been submitted that in the circumstances, mere non-service of notices to show cause before cancellation or opportunity of hearing prior to the cancellation of the transfer of quarry licence dated 3.12.1988 was of no consequence and did not cause any prejudice to the petitioner. He had no defence. It has been finally submitted that in the event the order of cancellation of transfer of quarry licence on 3.12.1988 is set aside, it would entail perpetuation of the illegality of a void contract by a incompetent person and upholding a transfer of the licence contrary to MMCR, 1986. It was also submitted that the order of transfer of quarry licence was an administrative order and the Competent Authority in any point of time was entitled in law to rectify its mistake/illegality on it being noticed. It has been submitted that subsequent renewals of the quarry licence in favour of the petitioner on payment of requisite fee was only a renewal and not a new quarry licence and no question of ratification of contract can in the circumstances arise. Counsel submitted that no attempt to over-reach the judicial process can be attributed to the Mining Department which has only acted in terms of its statutory powers and under orders of Superior Authority.

19. Heard. Considered.

20. The case at hand is one of misuse of the statutory/executive powers and the maladministration in the Mining Department. After having itself transferred the quarry licence in favour of the petitioner on 3.12.1988, after having renewed it on receipt of requisite fee from time to time under the Extant Rules till 2007, after having opposed the case of the respondent No. 4 in his suit No. 5/2006 in the Court of ACJM, Makrana categorically stating that the quarry licence had been lawfully transferred as per the obtaining rules after due notice to the respondent No. 4 following receipt of his application duly accompanied by requisite documents and after the Civil Judge (Sr. Division), Makrana vide his order dated 5.5.2006 having held that a prima facie case had not been made out by the respondent No. 4 and dismissing the application under Order 41 Rules 1 and 2 CPC and after the civil Judge (Sr. Division) Makrana having protected the petitioner in his suit No. 11/2006 for permanent injunction by allowing his application under Order 39 Rules 1 and 2 CPC by its order dated 20.1.2007, the Mining Department took upon itself to invoke the liberty granted to it for breach of quarry licence conditions under order dated 20.1.2007 peremptorily act against the petitioner against whom for the last 18 years since the transfer of 3.12.1988 no allegation of violation of conditions of quarry licence had been made, to cancel vide order dated 21.4.2007, the petitioner's quarry licence for purported deficiencies allegedly not removed despite notice. The order dated 21.4.2007 was set aside in appeal by the Addl. Director, Mines vide order dated 30.12.2008 although the issue of possession of the quarry licence area was left in a limbo. But that is an aspect of the matter being addressed in S.B. Civil Writ Petition No. 3789/2009 and S.B. Civil Writ Petition No. 6012/2009 being decided today by a separate order.

21. The facts of the aforesaid case my mind make it clear that the order dated 3.3.2008 cancelling the transfer of the quarry licence No. 70/2002 to the petitioner on 3.12.1988 was in apparent breach of natural justice. Admittedly no show cause notice was issued to the petitioner nor was he heard. Yet he was made to suffer civil consequences of being denied mining operations. The order dated 3.3.2008 is also vitiated by a very evident attempt to over-reach the judicial process under suit Nos. 5/2006 and 11/2006 pending before the Civil Judge (Jr. Division), Makrana and interim orders dated 5.5.2006 and 20.1.2007 passed therein.

22. The Hon''ble Apex Court in Union of India (UOI) and Another Vs. Raja Mohammed Amir Mohammad Khan, AIR 2005 SC 4383 : (2005) 9 JT 25 : (2005) 8 SCALE 523 : (2005) 8 SCC 696 : (2006) 1 UJ 44 : (2005) AIRSCW 5303 : (2005) 7 Supreme 399 observed that unfortunately a dangerous attitude in developing that justice is required to be done by the courts alone. The sequitur is that justice is also to be done by the other arm of the government i.e the executive. In the circumstances of the case as detailed here-in-above and the prima facie finding that the Civil Judge, Makrana both under its order dated 5.5.2006 in suit No. 5/2006 and 20.1.2007 in suit No. 11/2006 arrived at, that the petitioner was in lawful possession of the quarry licence area, there was no occasion whatsoever for the Mining Department to interfere in the matter as the order dated 20.1.2007 was upheld upto the Hon''ble Apex Court. The Dy. Secretary, Department of Mines vide his letter dated 18.2.2008 could not have circumvented the pending civil cases where the very same dispute as to the legality and validity of the transfer of the quarry licence on 3.12.1988 was pending to hold that the transfer of quarry licence to the petitioner on 3.12.1988 was null and void. It is rankling to notice that while the Civil Courts in its interim orders dated 5.5.2006 and 20.1.2007 in suit Nos. 5/2006 and 11/2006 held that the issue of the petitioner's age was determinable not on the basis of the school register and Secondary School Examination mark-sheet alone but on appreciation of competing evidence of the parties to be recorded in accordance with law, yet the Dy. Secretary peremptorily rushed into a conclusion to the prejudice of the petitioner without as much a notice to show cause.

23. Aside of the impropriety, the Dy. Secretary's order dated 3.3.2008 is also palpably wrong on legal principles. A school register or even a Secondary School Mark-sheet/certificate is by itself not conclusive of the age of a person. In the case of Sushil Kumar Vs. Rakesh Kumar, AIR 2004 SC 230 : (2003) 2 JT 575 Supp : (2003) 8 SCALE 659 : (2003) 8 SCC 673 : (2003) 4 SCR 802 Supp : (2003) AIRSCW 6005 the Hon''ble Apex Court has held that the date of birth in school admission register is not conclusive, as false age at time of admission of the wards is often given by the parents/guardians in the hope of future advantage. It has been similarly held by the Hon''ble Apex Court in the case of Birad Mal Singhvi Vs. Anand Purohit, AIR 1988 SC 1796 : (1988) 3 JT 389 : (1988) 2 SCALE 328 : (1988) 2 SCR 1 Supp : (1988) 2 UJ 442 that an entry relating to date of birth made in the school register though indeed relevant and

admissible under section 35 of the Indian Evidence Act, yet is not of much evidentiary value in the absence of primary proof on the basis of which the age was recorded in the school register. Reference in the said judgment was made with the approval to the Judgment of the Calcutta High Court in the case of Raja Janaki Nath Roy and Others Vs. Jyotish Chandra Acharya Chowdhury and Others, AIR 1941 Cal 41 where the Hon''ble Division Bench discarded the entry in the school register about the age of a party to the suit on the ground that there was no evidence to show on what material the entry in the register about the age of the plaintiff was made. It was finally observed by the Hon''ble Apex Court referring to other Judgments of the Punjab, Patna, Gujarat, Jammu and Kashmir, Allahabad, Madhya Pradesh and Bombay High Courts that the date of birth recorded in the scholar register or even the Secondary School Certificate had no probative value unless the parents are examined or the person on whose information the entry may have been made is examined.

24. It is thus evident that the Dy. Secretary, Mines erred in holding merely on the basis of entries in the Secondary School certificate and the scholar register that as on 3.12.1988 when the quarry licence was transferred to the petitioner, he was 16 years 10 months and 22 days. Without anything more the petitioner could not be conclusively held to be minor on the date of transfer of quarry licence to him. I would however hasten to add that the Civil Court seized of the dispute shall be entitled to come to its own finding on the issue on appreciation of evidence led by the parties before it as aside of the evidences of the respondent No. 4, the petitioner would be entitled to lead his evidences regarding attendant circumstances including his Nikahnama executed prior to the transfer of quarry licence area on 3.12.1988 showing him to be 22 years of age at the time of his marriage. On the basis of evidence on record- both documentary and oral subjected to due cross-examination, a conclusive determination as to the age of the petitioner on 3.12.1988 be arrived at by the Civil Court.

25. Section 9 CPC provides that the Civil Court has the jurisdiction to try all suits of a civil nature excepts suits of which their cognizance is either expressly or impliedly barred. In State of Tamil Nadu Vs. Ramalinga Samigal Madam, AIR 1986 SC 794 : (1985) 1 SCALE 1138 : (1985) 4 SCC 10 : (1985) 1 SCR 63 Supp : (1986) 1 UJ 489 the Hon''ble Apex Court held that except where rights were determinable in a different manner under a Statute, they are to be determined by the Civil Courts. In the case at hand the legality of the transfer of a quarry licence to the petitioner on the alleged ground of his being a minor is in issue. No provision under the MMCR 1986 has been brought to my notice to show that such an issue is expressly or even impliedly determinable by the Officers of the Mining Department. The Civil Court alone therefore, in my considered opinion would have jurisdiction to determine the dispute as it arises in the present case. In-fact in P.R. Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others, (2006) 102 CLT 52 : (2006) 3 JT 556 : (2006) 3 SCALE 361 : (2006) 4 SCC 501 , the Hon''ble Apex Court has held that even a writ court cannot usurp jurisdiction of the Civil Court to adjudicate contentions disputes about civil rights.

Quite evidently neither could have the Deputy Secretary (Mines), Director, Mines or the Mining Engineer, Makrana have done so in holding the petitioner to be a minor with the drastic consequence of cancellation of the transfer of quarry licence in his favour on 3.12.1988.

26. Also as held by the Hon"ble Apex Court in Indian Aluminium Co. etc. etc. Vs. State of Kerala and others, (1996) 2 AD 137 : AIR 1996 SC 1431 : (1996) 2 JT 85 : (1996) 1 SCALE 780 : (1996) 7 SCC 637 : (1996) 2 SCR 23 the adjudication of rights of the parties is an essential judicial function. Similarly in Prakash Narain Sharma Vs. Burmah Shell Cooperative Housing Society Ltd., AIR 2002 SC 3062 : (2002) 3 ARBLR 1 : (2002) 6 JT 209 : (2003) 134 PLR 396(2) : (2002) 6 SCALE 55 : (2002) 7 SCC 46 : (2002) 1 SCR 643 Supp : (2002) AIRSCW 3520 : (2002) 5 Supreme 461 , the Hon"ble Apex Court has held that it would be a dangerous preposition to lay down that any individual/authority can ignore the order of the Civil Court even by assuming that it alone had the authority to decide the dispute and the order of the Civil Court is one by coram non-judice. It was held relying upon the case of M/s. Pierce Leslie and Co. Ltd. Vs. V.O. Wapshare, AIR 1969 78 that the appropriate course is for a person aggrieved to approach the Civil Court with whose order it is aggrieved of and seek modification to his advantage and so long as this is not done, the order of the Civil Court must be obeyed and respected by "all concerned". In my considered opinion the dictum of the Hon"ble Apex Court in the aforesaid mentioned cases would apply equally to the facts of the present case. Hence in this case, in the context of the protection to the petitioner by the interim order dated 20.1.2007 passed by the Civil Judge (Sr. Division) Makrana and the finding of the Civil Judge, Makrana in its interim order dated 5.5.2006 in suit No. 5/2006, the Deputy Secretary, the Director, Mines and the Mining Engineer, Makrana ought to have restrained their hands and not rushed to adjudicate the issue of the petitioner's alleged minority on 3.12.1988 on the basis of one sided evidence in denial of principles of natural justice and hold that the petitioner on the date of transfer of the quarry licence on 3.12.1988 was a minor and the transfer hence void.

27. Various other arguments with regard to the validity of the transfer of the quarry licence in favour of the petitioner on 3.12.1988 have been urged but as the issue is pending before the Court of the Civil Judge (Sr. Division) Makrana it is not required and even desirable to address them.

28. For the aforesaid reasons, I am of the considered view that the impugned orders dated 18.2.2008, 21.2.2008 and 3.3.2008 are bad for (i) for denial of principles of natural justice; (ii) gross impropriety and excess of jurisdiction in seeking to adjudicate a civil dispute between the parties which is the sole function of the Civil Courts and was so pending and (iii) on the merits for reason of having wrongly determined the age of the petitioner and holding him to be a minor 16 years 10 months and 22 days on 3.12.1988 without requisite proof as required on such issues as detailed in Birad Mal Singhvi Vs. Anand Purohit, AIR

1988 SC 1796 : (1988) 3 JT 389 : (1988) 2 SCALE 328 : (1988) 2 SCR 1 Supp : (1988) 2 UJ 442 . The orders dated 3.3.2008, 21.2.2008 and 18.2.2008 are therefore quashed and set aside.

29. The writ petition is accordingly allowed.

30. This Court would however hasten to add that as the fundamental dispute with regard to the age of the petitioner and the rights of the parties to the quarry licence, is under consideration of the Civil Judge (Sr. Division), Makrana in suit No. 5/2006 at the instance of the respondent No. 4 and in suit No. 11/2006 at the instance of the petitioner. No observation/finding in this judgment shall prejudice either of the parties in the said suits. The Civil Court shall be free to adjudicate all the issues before it, including the age of the petitioner on 3.12.1988 strictly in accordance with admissible evidence on record both oral and documentary and the applicable law. The suits before the Civil Judge, Makrana pertains to the year 2006 and over eight years have lapsed. The Civil Judge (Sr. Division) Makrana is consequently directed to dispose of the suits aforesaid within one year from receipt of a certified copy of this order. On adjournments sought, the Civil Judge (Sr. Division) shall refer to the Judgment of the Hon"ble Supreme Court in the case of Shiv Cotex Vs. Tirgun Auto Plast P. Ltd. and Others, (2011) 4 BC 125 : (2011) 9 JT 552 : (2011) 4 RCR(Civil) 807 : (2011) 9 SCALE 500 : (2011) 10 SCR 787 . No adjournments except when applications are made in writing and unavoidable cause shown shall be granted. Where so warranted, adjournment shall be by a reasoned order only. Non-cooperation of the parties and/or their counsel shall entail consequences in law.

31. However, in the facts of the case, I would also visit the respondent Mining Department with costs of Rs. 1,00,000/- to be paid to the Rajasthan State Legal Services Authority, Jaipur in view of the stark breach of principles of natural justice and over-reaching of the judicial process in peremptorily deciding an issue quite apparently without jurisdiction while it was pending in the two suits (5/2006 and 11/2006) laid by the contesting parties before the Civil Judge (Sr. Division) Makrana and where the Civil Court had passed an interlocutory order dated 20.1.2007 in favour of the petitioner protecting his possession.