
(2002) 01 AHC CK 0095
In the Allahabad High Court
Case No : Writ Petition No. 22332 of 1998

Khairati

APPELLANT

Vs

Divisional Commissioner, Meerut Division, Meerut & Ors.

RESPONDENT

Date of Decision : 24-01-2002

Acts Referred:

Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 17, 35

Citation : (2002) 01 AHC CK 0095

Hon'ble Judges : R.H.Zaidi, J

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—Heard learned Counsel for the petitioner and learned Standing Counsel.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the orders dated 1571997, 491997 passed by the District Magistrate, Meerut and the order dated 3031998 passed by the Commissioner, Meerut Division, Meerut acting as the appellate authority under the U.P. Minor Minerals (Concession) Rules, 1963, for short 'the Rules'. Prayers for a direction in the nature of mandamus commanding the respondents not to realize the amount in question in pursuance of the order dated 1571997 passed by the District Magistrate, to refund the amount deposited by the petitioner in excess what was actually due with interest or alternatively to demarcate and survey the land in dispute and permit the petitioner to excavate sand from the land in dispute for a further period of three years at 15% to 20% enhanced royalty (vide application dated 1122001), have also been made.

3. The relevant facts of the case giving rise to the present petition, in brief, are that in reply to a notice issued from the office of the District Magistrate/District Officer, Meerut, published on 2891994 in the newspapers, the petitioner after completing the formalities for the same applied for grant of mining lease in respect of the minor minerals (sand) in the eight villages, namely, Sakrod

Khadar, Mawi Kalan, Jagos Khadar, Chhaprauli Khadar, Gauripur, Sishana Khadar, Khandwari and Baghpat Khadar for an area measuring 249.862 hectares, for short the land in dispute. By his order dated 23/11/1994, the then acting District Magistrate accepted the application of the petitioner on the terms and conditions mentioned in the said letter which has been filed as Annexure 1 to the writ petition for a period of three years commencing from 1/12/1994 and ending on 31/11/1997. It was on the same date that the work order was also issued by the District Magistrate to the petitioner. The petitioner deposited an amount of Rs. 25,000 on 31/11/1995 as survey and demarcation charges through treasury challan duly passed by the competent authority. Since neither the land in dispute was surveyed nor demarcated as required under the aforesaid Rules, the petitioner requested the competent authorities vide letters dated 5/11/1995, 12/11/1995 and 13/3/1995 for survey and demarcation of the land in dispute and for delivery of actual possession over the land allotted to him; but neither the land was demarcated nor actual possession was ever delivered to him. In the meanwhile, it is stated that on account of fluvial action of the river Yamuna, major portion of the land, which was leased out to the petitioner, except 10 hectares, gone to the side of Haryana and Delhi. The petitioner with difficulty could start working in villages Khadar Sakrod and Gauripur in an area measuring about 10 hectares without survey and demarcation as time of lease was passing and the authorities were not paying any heed to his requests and were not performing their statutory duty. It may also be stated here that in the meanwhile, the authority concerned obtained the thumbimpression of the petitioner on a draft lease deed in which only plot numbers and their areas were mentioned. Boundary, description of which conspicuously scored out, as it is evident from Annexure 1 to the counteraffidavit. The said lease deed was not read out to the petitioner, who is an illiterate man, before his thumbimpression was obtained on it at the office of the District Magistrate, Meerut. It was only a paper transaction. In the said lease deed, it is stated that the terms and conditions of the lease were also mentioned, which were also not read out to the petitioner.

4. It was on 20/3/1995 that the District Magistrate directed the SubDivisional Magistrate, Baghpat to survey, demarcate and to prepare a map. The said order passed by the District Magistrate was not obeyed, therefore, the petitioner had to file Writ Petition No. 10095 of 1995 before this Court which was disposed of vide order dated 18/4/1995 with the direction to the District Magistrate to get his order obeyed. The operative portion of the said order is quoted below :

On these facts, the petition is disposed of finally with the observation that petitioner may make a representation referring to the direction given by the District Magistrate (respondent No. 2) which has not been carried out by the subordinate authority, within ten days from today and then the same shall be disposed of by production of a certified copy of this order alongwith the representation before him by the petitioner. If respondent No. 2 find that the contention of the petitioner is correct then he will see that his direction is duly complied with by subordinate authority to enable the petitioner to operate the

lease and to get the leasedeed executed.

If respondent No. 2 comes to the conclusion that the owner of the land in respect of which the lease was granted to the petitioner, is entitled to compensation then he will take necessary steps to determine and pay the compensation to such land holder, so that he may not cause any interference in the operation of the lease by the petitioner.?

5. In pursuance of the order passed by this Court, the petitioner made a representation dated 2241995 but of no consequence, therefore, a reminder had to be filed on 1261995 by the petitioner for compliance of the order passed by this Court. The District Magistrate, however, for the first year reduced the amount of royalty from Rs. 37,02,000 to Rs. 32,02,380. The order passed by this Court, referred to above, dated 1841995 was not obeyed in spite of the representations and reminders filed by the petitioner on 1391995, 2291995 and 1661995. The petitioner had to approach this Court again and file Writ Petition No. 16815 of 1995. In the said writ petition, this Court by means of an interim order directed the District Magistrate to comply with the order dated 1841995 and to decide the representation made by the petitioner within two weeks. The said order was communicated to the District Magistrate but of no result. The said petition was ultimately disposed of finally by order dated 1751996 with the direction to the District Magistrate to decide the representation dated 2241995 within one month from the date the order of this Court was communicated to him. A certified copy of the aforesaid order was immediately thereafter communicated by the petitioner to the District Magistrate.

6. In spite of the aforesaid order passed by this Court having been communicated to the District Magistrate neither representations were decided nor survey or demarcation were done nor map was prepared. As stated above, on the other hand, a leasedeed was prepared and the petitioner was made to put his thumbimpression on the same in total defiance of the order passed by this Court as well as against the Rules. In compliance of the order passed by this Court dated 1751996, the Additional District Magistrate (City), Meerut again directed the Sub Divisional Magistrate, Baghpat for survey and demarcation of the land in dispute. The SubDivisional Magistrate in turn on 161 1997 asked the Revenue Inspector, Baghpat to comply with the order and to report to him and also gave detailed instructions. The aforesaid order was also not complied with. The petitioner, therefore, had to make fresh representations dated 751997 and 2761997. There was not an iota of evidence on the record to show that the survey or demarcation of the land in dispute was done or any map was prepared after the land in dispute was leased out in favour of the petitioner. The District Magistrate wholly arbitrarily rejected the representations of the petitioner by his order dated 1571997 and directed the petitioner to deposit an amount of Rs. 76,71,403 after adjusting Rs. 56,00,000 deposited by the petitioner without deciding the question of compliance of the rules regarding demarcation and survey of the land observing that the petitioner could not prove that under what

provision, the amount of Rs. 25,000 was deposited as demarcation fee. He has wholly arbitrarily assumed that the petitioner voluntarily and happily executed the leased deed which means that he was satisfied with the same. The validity of the said order again was challenged by the petitioner in this Court in Writ Petition No. 23671 of 1997 which was not entertained on the ground of availability of the statutory alternative remedy by way of appeal before the Commissioner against the order passed by the District Magistrate under Rule 77 of the Rules. The petitioner, therefore, had to file an appeal before the Commissioner, Meerut Division, Meerut on 16/8/1998. A certified copy of memo of appeal running over 64 pages has been filed along with the supplementary affidavit. On application made by the petitioner, realization of the aforesaid amount was stayed by Commissioner. The appeal filed by the petitioner was pending disposal before the Commissioner but the District Magistrate acting wholly illegally by means of order dated 4/9/1997 cancelled the mining lease granted in favour of the petitioner on the ground that he has failed to deposit the amount of royalty as indicated above without giving any notice to the petitioner as provided under the Rules. Ultimately, the Commissioner also dismissed the appeal filed by the petitioner arbitrarily without dealing with the questions involved in the appeal particularly the questions of survey, demarcation of the land and preparation of map observing that no case for interference in the orders dated 15/7/1997 and 4/9/1997 was at all made out, by his order dated 30/3/1998, hence, the present petition.

7. The writ petition was admitted on 22/7/1998 and interim order was also granted in favour of the petitioner by this Court vide order of the same date. Notices were directed to be issued to the respondents which were served upon learned Standing Counsel. On behalf of the respondent, learned Standing Counsel filed a counter affidavit controverting the facts stated in the writ petition but it has nowhere been denied in the counter affidavit that as directed by this Court to the District Magistrate and as provided under the Rules survey and demarcation of the land in dispute was ever done or any map was prepared after the lease was granted in favour of the petitioner. Along with the counter affidavit, copy of the leased deed has been filed but no material has been placed on the record to show that the land in dispute was ever surveyed, demarcated or any map of the same was prepared. In reply of the counter affidavit, the petitioner has also filed the rejoinder affidavit denying the facts stated in the counter affidavit and reiterating and reasserting the facts stated in the writ petition. It was asserted that it was obligatory upon the authorities concerned to survey and demarcate the land in dispute after the mining lease was granted in favour of the petitioner and thereafter to deliver actual possession over the land in dispute.

8. During the course of arguments, the question arose as to whether the objection regarding survey and demarcation was raised and pressed before the Commissioner as the same was not noticed by him in his order. Learned Counsel for the petitioner was granted time to file supplementary affidavit annexing therewith the certified copy of the memo of appeal and the affidavit of the Counsel who argued the appeal before the Commissioner. The petitioner filed the

supplementary affidavit annexing therewith a certified copy of memo of appeal and the affidavit of Mr. V.K. Sharma, Advocate, who has, on his personal knowledge, stated that he has argued the appeal before the Commissioner and raised and pressed all the grounds particularly, the ground regarding survey and demarcation of the land in dispute in accordance with the rules but the same was not touched by appellate authority in its order. In reply to the said affidavit, a supplementary counter affidavit has been filed by learned Standing Counsel annexing therewith an affidavit of Mr. Padam Singh, who is the Tehsildar (Judicial), Baraut, Baghpat. In the said affidavit, the facts stated in the affidavit of Shri V.K. Sharma have not been denied. It has also not been stated that Shri Padam Singh was present in the Commissioner's Court when the appeal was argued or that he had personal knowledge of the facts stated in his affidavit. All paragraphs of the supplementary counter affidavit have been verified, except paragraph No. 1, either on the basis of record or on the basis of legal advice.

9. Learned Counsel for the petitioner vehemently urged that under the facts and circumstances of the present case, particularly when the rules provide for and this Court time and again passed orders and insisted upon the District Magistrate to get the land in dispute surveyed and demarcated, the respondent failed to obey the orders passed by this Court, to comply with the provisions of the rules and did not survey and demarcate the land in dispute deliberately and willfully. They are, therefore, in contempt and should not be heard in defence. It was urged that the orders passed by the authorities below, the District Magistrate and the Commissioner are wholly illegal and without jurisdiction. They are also contrary to the rules. It was also submitted that the District Magistrate acting in excess of his jurisdiction illegally, without giving any notice to the petitioner, cancelled the lease of the petitioner by his order dated 49/1997 before the term of the lease was over, therefore, the impugned orders were liable to be quashed. It was also urged that since the petitioner could not work and excavate the sand from the land in dispute except 10 hectares, he cannot be asked to make payment of money (the royalty) in terms of the order dated 15/7/1997. It was also urged that almost all the area except 10 hectares on account of fluvial action of the river Yamuna, went towards Haryana and Delhi. There was left only 10 hectares of land on Baghpat side. The petitioner, therefore, cannot be asked to pay the royalty in respect of the entire land. Learned Counsel for the petitioner submitted that under the facts and circumstances of the present case, the respondents are liable to be directed to survey and demarcate the land in dispute, to deliver actual possession to the petitioner and to permit him to excavate the sand for further period of three years on the same terms and conditions as contained in the leased deed after adjusting the amount already paid by the petitioner over the entire area except 10 hectares. He has also stated that the petitioner was willing to pay 15% to 20% more royalty than the same was agreed to be paid for the three years commencing from 1994.

10. On the other hand, learned Standing Counsel supported the validity of the orders passed by the authorities below. It was urged that the District Magistrate

and the Commissioner have passed the orders in accordance with law after hearing the Counsel for the parties and that the petitioner has failed to pay the amount of royalty in terms of leased deed, therefore, his leased deed was rightly cancelled and that he was not entitled to any concession in the present case. The writ petition has got no merit and was liable to be dismissed. It was also urged that the period of lease has already expired in the year 1997. The petitioner was, therefore, not entitled to any relief.

11. I have considered the submissions made by the learned Counsel for the parties and carefully perused the record.

12. It is not disputed that mining lease in respect of 8 villages, named above (for excavation of sand), was granted in favour of the petitioner in respect of area measuring 249.862 hectares. Leased deed was also executed and work order was also issued after taking thumb impression of the petitioner on the papers by the District Magistrate, on the basis of which, the petitioner, according to him, started working in an area measuring 10 hectares only as he was not being permitted by anti social elements and the owners/Bhumidhars of the land to excavate the sand. His case is that in the meanwhile, river Yamuna changed its course and on account of fluvial action almost all land, except 10 hectares went towards Haryana and Delhi. Further, the petitioner has proceeded under the rules, on 31/1/1995 deposited an amount of Rs. 25,000 and applied for survey, demarcation and preparation of the map and delivery of actual possession over the land in dispute as provided under the rules but in spite of the orders passed by this Court time and again, the authorities below failed to comply with the orders, survey, demarcate and prepare the map. The questions of survey, demarcation and preparation of map were the only relevant questions to be considered by the authorities below. The District Magistrate simply observed that the petitioner could not show that under what provision of law he deposited the demarcation fee. Alongwith, the counter affidavit filed by the learned Standing Counsel, no necessary documentary evidence has been filed to show that the land in dispute was ever demarcated or surveyed. The District Magistrate without deciding the said questions, rejected the representations made by the petitioner by his order dated 15/7/1997 and directed him to pay an amount of Rs. 76,71,403 within four days of the order passed. It was also threatened that in case the petitioner failed to deposit the said amount, his Patta will be cancelled and work will be stopped at once. Thereafter, the petitioner challenged the validity of the said order before this Court in Writ Petition No. 23671 of 1997, but the said writ petition was not entertained on the ground of availability of statutory alternative remedy by way of appeal under Rule 77 of the Rules. However, it was observed that the petitioner shall file the appeal which shall be decided within one month by the Appellate Authority by order dated 30/7/1997 passed by this Court. The petitioner, thereafter, filed an appeal running over 64 pages before the Commissioner, the Appellate Authority. The Appellate Authority on application made by the petitioner, stayed the recovery of the amount in question. However, the District Magistrate without giving any show cause notice to the petitioner

cancelled the Patta granted in favour of the petitioner by order dated 491997 and directed for forfeiture of the amount deposited by the petitioner in favour of the State. Before the Commissioner, as stated above, the questions of survey, demarcation and preparation of map were not only taken in the grounds as it is evident from the memo of appeal but were also raised and pressed as it is evident by the affidavit filed by Shri Vijai Kumar Sharma, Advocate, who argued the appeal before the Commissioner. The said facts have not been denied by the respondents in the counteraffidavit filed on their behalf. The Commissioner also insisted upon the payment of amount of royalty and without going into the relevant questions of demarcation, survey and preparation of map, dismissed the appeal and observed that no case for interference in the impugned orders was made out by his order dated 3031998. Thus, it is evident that the authorities below failed to discharge their statutory duties and have decided the representation of the petitioner and dismissed the appeal wholly arbitrarily. The questions which arise for determination in this case are as to whether it was necessary to survey, demarcate and prepare the map of the land in dispute and to deliver actual possession to the petitioner after it was demarcated and surveyed. It is necessary to see as to whether the Patta of the petitioner could be cancelled without affording him an opportunity of hearing/showcause. It is also to be seen as to whether the demarcation fee was required to be deposited by the petitioner under the Rules. The question as to whether after expiry of the period of lease, any relief could be granted to the petitioner, is also to be seen.

13. For determination of the aforesaid questions, Rules 17 and 35 of the Rules are relevant, which provide as under :

?17. Survey of the area leased. (1) When a mining lease is granted, arrangement shall be made by the Director for survey and demarcation of the area granted under the lease for which lessee shall be charged at the following rates :

(a) in the plains

(i) for areas upto 10 hectares Rs. 1000.00.

(ii) for areas beyond 10 hectares at the rate of Rs. 100.00 per hectare subject to the minimum of Rs. 1200.00

(b) in the hills

(i) for areas upto 10 hectares, Rs. 1600.00;

(ii) for areas beyond 10 hectares, at the rate of Rs. 160.00 per hectares subject to the minimum of Rs. 2000.00.

(2) The lessee shall, after the lease is granted to him, pay the demarcation charges through treasury challan and submit a map of the area granted under the lease certified by the District Officer, to the concerned Mines Officer or to such other officer as may be authorised by the Director in this behalf. The Mines Officer or the officer so authorised shall, on receipt of the certified map and

satisfying that demarcation charges have been deposited, survey and demarcate the area within thirty days from the date of such receipt.

(3) The Mines Officer or the Officer so authorised may, for the purposes of survey and demarcation of the area, take the help of such officer of the revenue and forest department of the district as he may consider necessary.

(4) If any dispute arises in respect of demarcation of the area the matter shall be referred to the Director, who shall, after giving the parties a reasonable opportunity of being heard decide the matter.

(5) The decision of the Director under subrule (4) shall be final.?

?35. Erection and maintenance of boundary marks. The lessee shall, after the survey and demarcation of the area granted under the lease and before executing the leasedeed, at his own expenses, erect and at all times maintain and keep in good repair boundary marks and pillars necessary to indicate the demarcation shown in the plan annexed as to the leasedeed.?

14. Rule 17, noted above, clearly shows that after the mining lease is granted, the Director shall make arrangement for survey and demarcation of the area granted under the lease for which lessee shall be charged the demarcation fee, the rates of which have been prescribed in the said Rule. The demarcation fee is to be paid by treasury challan alongwith map prepared by the authorities. The said fee was paid by the treasury challan by the petitioner on 311995 after getting it passed from the competent authority but without the map as the same was never prepared. The observations made by the District Magistrate that there was no provision of payment of demarcation fee is, thus, manifestly erroneous and illegal. Rule 35, referred to above, clearly provides that the lessee shall after survey and demarcation of the area granted under the lease before executing the lease had at his own expense, erect and at all times maintain and keep in good repair, boundary marks and pillars necessary to indicate the demarcation shown in the plan annexed to the leasedeed. In the present case, as the land in dispute was never demarcated, there arose no question of preparation of any map and erection and maintenance of the boundary marks. The view taken, to the contrary, by the District Magistrate is manifestly erroneous and illegal. As stated above, in spite of the fact that the questions of demarcation, survey and preparation of map were taken in the memo of appeal and were raised and pressed, the appellate authority did not touch the said questions in his order. He has simply insisted upon the compliance of the order passed by the District Magistrate and payment of the royalty, as directed by him. He was refused to interfere with the order passed by the District Magistrate wholly illegal and dismissed the appeal by his order dated 3031998 by passing a sketchy order. The lease of the petitioner could be cancelled in accordance with and after following the provisions of Rule 58, which provides as under :

?58. Consequences of nonpayment of royalty, rent or other dues. (1) The State Government or any officer authorised by it in this behalf may determine the

mining or auction lease after serving a notice on the lessee to pay within thirty days of the receipt of the notice any amount due or dead rent under the lease including the royalty due to the State Government if it was not paid within fifteen days next after the date fixed for such payment. This right shall be in addition to and without prejudice to the right of the State Government to realise such dues from the lessee as arrears of land revenue.

(2) Without prejudice to the provisions of these rules, simple interest at the rate of 24 per cent per annum may be charged on any rent, royalty, demarcation fee and any other dues under these rules, due to the State Government after the expiry of the period of the notice under subrule (1).?

15. Admittedly, in the present case, no notice was ever issued to the petitioner before passing the order of cancellation of lease by the District Magistrate. The petitioner was, thus, deprived of an opportunity of being heard. The direction given by the District Magistrate in his order dated 15/7/1997 to pay the amount in question within four days failing which the Patta of the petitioner was directed to be cancelled, was contrary to the provisions of the aforesaid rule. Thus, the order dated 4/9/1997 is wholly illegal, against the principles of natural justice and without jurisdiction.

16. So far as the prayer of learned Counsel for the petitioner with respect to a direction to the respondents to survey, demarcate and deliver actual possession over the land in dispute (minus 10 hectares over which the petitioner has already worked) is concerned, similar question arose in the case of Beg Raj Singh v. State of U.P. and others, 2003(1) JCLR 30 (SC) : JT 2002 (10) SC 417. The facts of the present case are comparatively better than the Beg Raj Singh's case (supra). In the said case, the lease was granted only for one year. Beg Raj Singh claimed that he was entitled to renewal for another period of two years. The Collector on 20/12/2000 granted extension. Meanwhile, Government decided to settle mining leases by public auction. Respondent No. 3 in the said case a competitor preferred a belated revision against the order of the Collector dated 20/12/2000 before the State Government. The delay was condoned. The State Government vide its order dated 22/4/2002 set aside the order of the Collector. The writ petition filed by Beg Raj against the order of the State Government also failed and was dismissed by this Court. The matter ultimately reached the apex Court. The apex Court after hearing the arguments of the learned Counsel for the parties pleased to rule as under :

?Having heard the learned Counsel for the petitioner as also the learned Counsel for the State and the private respondent, we are satisfied that the petition deserves to be allowed. The ordinary rule of litigations is that the rights of the parties stand crystallized on the date of commencement of litigation and right to relief should be decided by reference to the date on which the petitioner entered the portals of the Court. A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events, i.e., the events between the commencement of litigation and the date of decision. The

relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment. Third party interests may have been created or allowing relief to the claimant may result in unjust enrichment on account of events happening in between. Else the relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi judicial forum and for no fault of the petitioner. A plaintiff or petitioner having been found entitled to a right to relief, the Court would as an ordinary rule try to place the successful party in the same position in which he would have been if the wrong complained against would not have been done to him. The present one is such a case. The delay in final decision cannot, in any manner, be attributed to the petitioner. No auction has taken place. No third party interest has been created. The sand mine has remained unoperated for the period for which the period of operation fails short of three years. The operation had to be stopped because of the order of the State Government intervening which order has been found unsustainable in accordance with stipulations contained in the mining lease consistently with the G.O. issued by the State of Uttar Pradesh. Merely, because a little higher revenue can be earned by the State Government that cannot be a ground for not enforcing the obligation of the State Government which it has incurred in accordance with its own policy decision.?

17. In the present case, admittedly, survey, demarcation and preparation of map was not done and actual possession over the land in dispute was not delivered to the petitioner by the authorities concerned, thus, on account of the failure on the part of the authorities to perform their statutory duties and in view of the law laid down by the apex Court in Beg Raj Singh's case (supra) [2003(1) JCLR 30 (SC)], the petitioner cannot be made to suffer loss for the reason that the period for which the lease was granted in his favour, has come to an end. Admittedly, at present, the land in dispute is lying vacant and the petitioner is also ready any willing to pay 15% to 20% more royalty than the royalty which was agreed to be paid for the term ending on 3111997. The petitioner is, thus, legally entitled to work on the land in dispute for further period of three years under the terms and conditions of the lease executed by the parties as he could not work during the period for which the lease was granted in his favour in spite of his best effort on 15% to 20% enhanced royalty fixed for the said term. The enhancement of the royalty has been offered by the petitioner himself vide application dated 1122001.

18. In view of the aforesaid facts, the writ petition deserves to be allowed.

19. The writ petition succeeds and is allowed. Impugned orders dated 1571997, 491997 passed by the District Magistrate, Meerut and the order dated 3031998 passed by the Commissioner, Meerut Division, Meerut are hereby quashed. The respondents are restrained from realizing the amount in question alleged to be

outstanding against the petitioner and they are directed to survey, demarcate and prepare the map of the land and deliver actual possession to the petitioner, permit him to work on the said land for a further period of three years from the date of possession is delivered to him except in respect of 10 hectares land over which he has already worked on 15% to 20% enhanced royalty fixed for the last term ending on 3111997. The amount already deposited by the petitioner, if any, shall be adjusted.

20. It is further directed that the petitioner shall deposit the amount of royalty as and when the same becomes due after adjusting the amount which has already been paid by him. No order as to costs.