

(2019) 12 RAJ CK 0108

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10477 Of 2016, 14915 Of 2017

Mishri Khan And Ors

APPELLANT

Vs

State of Rajasthan And Ors

RESPONDENT

Date of Decision : 17-12-2019

Acts Referred:

Mines and Minerals (Development & Regulation) Act, 1957 — Section 4(1), 4(1)(1A), 15, 15(1), 15(1A), 18(2)(p), 21, 21(1), 21(2), 21(5)
Rajasthan Land Revenue Act, 1956 — Section 256, 257
Rajasthan Minor Mineral Concession Rules, 1986 — Rule 15(1), 47, 48, 48(1), 48(2), 48(2A), 48(3), 48(4), 48(5)

Citation : (2019) 12 RAJ CK 0108

Hon'ble Judges : Sangeet Lodha, J; Vinit Kumar Mathur, J

Bench : Division Bench

Advocate : T.S. Champawat, Paramveer Singh Champawat, Sandeep Shah, Akshiti Singhvi

Final Decision : Dismissed

Judgement

Sangeet Lodha, J

1. By way of these writ petitions, the petitioners have challenged the vires of Rule 48 of Rajasthan Minor Mineral Concession Rules, 1986 (for short "the Rules of 1986"), which inter alia provides for penalties for unauthorised mining operation. The petitioners have also questioned the demand notices issued by the Mining Engineer for recovery of cost of the mineral unauthorisedly excavated computed as ten times the royalty payable at the prevalent rates as provided for under first proviso to sub-rule (5) of Rule 48 of the Rules of 1986.

2. These two petitions involving the common issues, were heard together and are being decided by this common judgment.

3. To appreciate the issues raised, the facts relevant may be summarised thus:

D.B.C.WRIT PETITION NO.14915/17

Shri Fateh Khan, the father of petitioner no. 1 and 2 and father-in-law of petitioner no.3 was the khatedar tenant of the land comprising khasra no.703 situated in village Phalodi, District Jodhpur, which is adjacent to the Government land comprising khasra no.705. On 15.6.07, technical team of Department of Mines inspected the lands comprising khasra no.703 and 705 and noticed unauthorised excavation of mineral masonry stone. Accordingly, the site inspection report and panchnama was prepared. A notice dated 10.7.07 under Section 4(1)(1A) of Mines and Minerals (Development & Regulation) Act, 1957 (for short "the Act of 1957") read with Rule 48 of the Rules of 1986 and Rajasthan Mineral (Preventing Illegal Mining, Transportation & Storage) Rules, 2006, was issued by the Assistant Mining Engineer to Shri Fateh Khan and petitioner no.1 and 2 herein, Mishri Khan and Latif Khan. The mineral excavated unauthorisedly was quantified at 6,840 tonnes and accordingly, the cost of the mineral was determined at Rs.5,47,200/- and the approval for recovery was sought by the Assistant Engineer (Mines), Balesar from Superintending Mining Engineer, Jodhpur vide communication dated 19.9.07. The Superintending Engineer issued the notice dated 23.10.07 to Shri Fateh Khan to make his submissions against the demand created, if any. Later, the approval was granted by the Superintending Engineer vide communication dated 17.7.13. It is not the case of the petitioners that any objections were raised against the demand created on their behalf at any stage of the proceedings. The demand created has thus attained finality. In the meantime, Shri Fateh Khan expired on 3.8.14. The Assistant Mining Engineer, Balesar made an application to the Assistant Mining Engineer (Recovery), Balesar for recovery of the outstanding demand as arrear of land revenue under the provisions of Section 256/257 of Rajasthan Land Revenue Act, 1956. The petitioners no.1 & 2 served a notice for demand of justice dated 26.11.15 through their counsel upon the Assistant Mining Engineer, Balesar, but to no avail.

D.B.CIVIL WRIT PETITION NO. 10477/16

The petitioner was granted mining lease under the provisions of Rules of 1986 of mining area (ML no. 349/89) measuring 100x60 sq. ft. situated near Village Jirawal, Tehsil Revdar, District Sirohi for excavation of mineral Granite. The mining lease initially granted for a period of 20 years w.e.f. 2.1.91 was further renewed for 20 years w.e.f. 1.1.11. The mining area leased out to the petitioner was inspected by the Mining Engineer, who noticed that the petitioner is indulged in unauthorized excavation of mineral granite from the area beyond the mining area covered by the mining lease granted in his favour and accordingly, panchnama was prepared. The Mining Engineer issued notice dated 8.8.11 to the petitioner to show cause as to why the proceedings may not be initiated against him under Rule 48 of the Rules of 1986. The mine was again inspected by the Mining Engineer in presence of representatives of the petitioner on 22.7.11. Vide yet another notice dated 13.1.12, he Mining Engineer proposed the inspection of the site to be made in presence of the petitioner on 23.1.12 and 24.1.12. According to the petitioner, he had made an application dated 23.1.12 stating

that on account of death of his near relative, he would be unable to remain present at the time of site inspection on 23.1.12 and 24.1.12. The site was inspected by the Mining Engineer on the date fixed and the site inspection report & Panchnama were prepared. The mineral illegally excavated by the petitioner was measured as 2496 sq. meters quantified as 7,488 metric tonne. Unauthorisedly excavated mineral blocks available on the site were taken possession of by the State. The petitioner made application for release of the blocks, but to no avail. The Superintending Mining Engineer, while noticing the discrepancies in the unauthorisedly excavated mineral quantified pursuant to two different inspections made, directed Mining Engineer, Sirohi to prepare the Panchnama afresh and submit the proposal for approval after obtaining reply from the leaseholder. Later, the cost of the mineral excavated unauthorisedly quantified at Rs.1,31,04000/- by the Mining Engineer, was approved and demand notice dated 13.8.12 was issued to the petitioner. Thereafter, taking into consideration the representation made by the petitioner complaining against prejudicial attitude of the Mining Engineer, the Superintending Mining Engineer vide order dated 24.8.12 constituted a team with Mining Engineer, Vigilance as its Chairman and directed to submit the inquiry report. At the same time, the Mining Engineer, Sirohi issued a notice dated 30.8.12 creating demand of Rs.1,31,04000 against the petitioner. Pursuant to the order dated 15.10.14 issued by the Superintending Mining Engineer, the Assistant Mining Engineer, Balesar and Foreman-II to verify the boundaries of the sanctioned ML no.349/90 (new ML No.20/10) and submit the report. The report was submitted on 5.12.14 quantifying the mineral illegally excavated as Rs.914.76 metric tonne and the cost of the mineral was quantified at Rs. 6,40,332/- by charging 10 times royalty. The Mining Engineer sought clarification regarding the amount recoverable quantified on the basis of three inspections made on 22.7.11, 23.1.12 & 19.9.13 and 5.12.14. It appears that ultimately, the demand created against the petitioner quantified at Rs. 1,31,04000/- was approved. The legality of the demand created is questioned by the petitioner by way of a revision petition before the revisional authority, which is alleged to be pending.

4. Mr. T.S.Champawat, learned counsel appearing for the petitioners contended that Section 15 of the Act of 1957 which confers power upon the State Government to make rules in respect of minor minerals does not empowers it to frame the rules providing for the punishment for contravention of the rules, if any, and thus, the Rule 48 of the Rules of 1986 as framed by the State Government in exercise of the rule making power providing for offences, penalties and prosecution for unauthorized excavation is beyond its legislative competence and thus deserves to be declared ultra vires. Learned counsel submitted that by virtue of clause (p) of sub-section (2) of Section 18 of the Act of 1957, only the Central Government is empowered to frame the rules providing for the procedure for and the manner of imposition of fines for contravention of the any of the rules framed in exercise of the power conferred under the said section and the authority who may impose such fine and thus, the State

Government cannot frame the rules transgressing the power vested in it by virtue of Section 15 of the Act of 1957. Learned counsel would submit that Section 21 of the Act of 1957 provides for the penalties for unauthorized mining operation and transport & storage of mineral otherwise than in accordance with the Act and the Rules made thereunder and therefore, the field being already occupied by the law enacted by the Parliament, the State Government in exercise of the delegated power to frame the rules, cannot make the substantive provision providing for offences and penalties for violation of the rules. In support of the contention, learned counsel has relied upon a decision of the Supreme Court in *M/s. Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra*: AIR 1975 SC 1549. Learned counsel submitted that the material on record manifestly shows that the site inspection was not carried out in presence of the petitioners and the site inspection reports also do not reveal that the same was prepared in presence of the witnesses and therefore, the same was not open to be relied upon. Learned counsel submitted that the demands have been created against the petitioners without giving an opportunity of hearing to them and therefore, the same are liable to be quashed for this reason alone. Drawing the attention of the Court to the various inspection reports and panchnamas placed on record, learned counsel submitted that there exists apparent discrepancies regarding the quantification of the mineral alleged to have been excavated by the petitioner Dashrath Singh (Writ Petition No.10477/16) and thus, the demand created without there being the clarification regarding actual unauthorized excavation is not sustainable in the eyes of law.

5. On the other hand, Mr. Sandeep Shah, learned Additional Advocate General submitted that the impugned demands have been raised against the petitioners to recover the cost of the mineral excavated unauthorisedly and no penal proceedings as such for the contravention of the provisions of the rules as such are initiated against the petitioners and thus, the entire edifice of the writ petition raised is misconceived. Learned counsel submitted that sub-section (1) of Section 15 of the Act of 1957 empowers the State Government for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of the minor minerals and for purposes connected therewith. Learned counsel submitted that the particular matters enumerated under sub-section (1A) of Section 15 in respect whereof the State Government may frame the rules, are without prejudice to the generality of the power conferred upon the State Government under sub-section (1) of Section 15 and thus, the contention of the petitioners that whether with regard to offences and penalties for violation of the rules or unauthorized excavation of the mineral being not specifically included under sub-section (1A) of Section 15, the State Government is precluded from framing any such rules, is devoid of any merit. Learned AAG submitted that sub-section (2) of Section 21 specifically provides that any rule made under any provisions of the Act of 1957 may provide that any contravention thereof shall be punishable with imprisonment which may extend to two years or with fine which may extend to five lakhs rupees or, with both, and in case of continuing

contravention with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for first such contravention. Learned AAG would submit that the conjoint reading of Section 15 and Section 21 of the Act of 1957 makes it abundantly clear that Rule 48 as framed by the State Government is well within its legislative competence. Learned counsel submitted that sub-section (5) of Section 21 provides that whenever any person raises, without any lawful authority, any mineral from any land, the State 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 and thus, independent of provisions of Rule 48, the recovery sought to be effected cannot be termed as without authority of law. Learned counsel submitted that if the petitioners had any grievance regarding the manner in which the quantity and cost of the mineral excavated unauthorisedly is quantified, nothing prevented them from availing the appropriate remedy available under the relevant statute. Learned counsel submitted that the petitioner Darshrath Singh has already availed the remedy of revision and thus, two simultaneous proceedings questioning the legality of the demand taken by the petitioner cannot be countenanced by this Court and the writ petition deserves to be dismissed. Learned counsel urged that the petitioners were extended the opportunity of hearing by issuing notices and if the same is not availed by them, the impugned demand created by the competent authority on the basis of the material on record cannot be faulted with.

6. We have considered the rival submissions and perused the material on record.

7. Indubitably, Rule 48 of the Rules of 1986 deals with unauthorized mining operations. A perusal of the demand notices and other documents on record reveal that the demands are created against the petitioners, towards the cost of the mineral excavated unauthorizedly, in terms of first proviso to sub-rule (5) of Rule 48 of the Rules of 1986, which provides that where the mineral excavated unauthorizedly has already been dispatched or consumed, the authorities mentioned in sub-rule (4) may recover cost of the mineral alongwith the rent, royalty or tax chargeable on the land occupied or mineral excavated which shall be computed as ten times the royalty payable at prevalent rates.

8. It is not the case of the petitioners that the penal proceedings have been initiated against them under sub-rule (3) of Rule 48 of the Rules of 1986 for contravention of sub-rule (1), (2) or (2A) of Rule 48 and thus, the challenge of the petitioners to the vires of Rule 48 of the Rules of 1986 on the ground that the said rule framed by the State Government in exercise of the rule making power providing for offences, penalties and prosecution for unauthorized occupation is beyond its legislative competence and thus, deserves to be declared ultra vires, as a matter of fact, travel beyond the scope of the dispute raised in the petitions questioning the impugned demand notices. The recovery

of the price of the mineral has no element of penalty involved and the recovery of the mineral or its price is not a penal action but is merely compensatory, stands settled by the Apex Court and in Karnataka Rare Earth and Another Vs. Senior Geologist, Department of Mines and Geology and Another: (2004) 2 SCC 783.

9. In any case, since the petitioners have questioned the vires of Rule 48 of the Rules of 1986 as such, we consider it appropriate to deal with the same.

10. The Rules of 1986 have been framed by the State Government in exercise of the power conferred under Rule 15 of the Act of 1957, for regulating the grant of quarry licenses, mining leases and other mineral concessions in respect of the minor mineral and for purposes connected therewith. It is true that sub-rule (1A) of Rule 15, specifies the matters in respect whereof the State Government may frame the Rules but then, the matters specified under sub-rule (1A) are not exhaustive rather, without prejudice to the generality of the power conferred upon the State Government under sub-rule (1) of Rule 15 of the Rules of 1986, which empowers the State Government to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of the minor mineral and purposes connected therewith. Obviously, the measures to be adopted to curb the unauthorized mining operations and the realisation of the cost of the mineral excavated unauthorizedly, directly relate to regulation of grant of quarry leases, mining leases or other mineral concessions in respect of the minor minerals and thus, the contention sought to be raised by the petitioners that Rule 48 of the Rules which deals with unauthorized mining operation travels beyond the legislative competence of the State Government, is absolutely devoid of any merit.

11. It is true that clause (p) of sub-section (2) of Section 18 of the Act of 1957 empowers the Central Government to prescribe the procedure for and the manner of imposition of fines for the contravention of any of the Rules framed under the said section and the authority who may impose such fines but then, the said provision in no manner takes away, restricts or abridges the wide power conferred upon the State Government to frame the rules for regulating the grant of quarry leases, mining leases or other minor concessions in respect of the minor mineral and for the purposes connected therewith, which as explained hereinabove, includes even the power to curb the illegal mining operation and provide for the penalty for violation of any of the rules framed in this regard.

12. Coming to the contention of the learned counsel that Section 21 of the Act of 1957, provides for penalties for unauthorized mining operation, transport and storage of mineral otherwise than in accordance with the Act and the Rules made thereunder and therefore, the field being already occupied by the law enacted by Parliament, the State Government in exercise of the delegated power to frame the rules cannot make substantive provision providing for offences and penalties for violation of rules, it is noticed that sub-section (1) of Section 21, makes contravention of sub-section (1) or sub-section (1A) of Section 4, punishable

with imprisonment for a term which may extend to five years and with fine, which may extend to five lac rupees per hectare of the area. Sub-section (1) of Section 4, mandates that no person shall undertake any reconnaissance, prospecting or mining operation in any area except under and in accordance with terms and conditions of a reconnaissance permit or prospecting license or as the case may be, of a mining lease granted under the Act or the Rules made thereunder. Similarly, sub-section (1A) provides that no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of the Act and the Rules made thereunder. Thus, undoubtedly inter alia the mining operation in contravention of terms and conditions of the mining lease granted and transportation or storage of the minerals otherwise in accordance with the provisions of Act of 1957 and the rules made thereunder, are offences punishable under sub-section (1) of Section 21 of the Act of 1957. But then, merely because the mining operation in contravention of the terms and conditions of the mining lease is made an offence punishable, the State Government shall not stand divested from exercising its rules making power to regulate the mining operations and provide for realization of the cost of mineral raised unauthorizedly and the penalties for contravention of the rules framed for regulating the mining operation. As a matter of fact, sub-section (2) of Section 21, specifically empowers the rule making authority to make rules providing for contravention thereof punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakhs rupees or with both and in case of continuing contravention with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first contravention. In this view of the matter, sub-section (3) of Section 48, which makes contravention of the provisions of sub-rule (1) (2) or (2A) punishable with a term which may extend to two years or with fine which may extend to twenty five thousand rupees or both, is in conformity with the provisions of sub-section (2) of Section 21 of the Act of 1957.

13. It is also pertinent to note that as per mandate of provisions of sub-section (5) of Section 21, whenever any person raises without any lawful authority, any mineral from any land, the State 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 lawful authority. Thus, the provisions of sub-rule (4) of Rule 48, which makes the provision for recovery of the cost alongwith rent, royalty or tax chargeable of the mineral raised without lawful authority, which has already been dispatched or consumed is also in conformity with the provisions of sub-section (5) of Section 21 of the Act of 1957.

14. In view of the discussion above, the challenge of the petitioners to the vires of Rule 48 of the Rules of 1986, falls through and the said Rule deserves to be declared constitutionally valid.

15. This takes us to consider the challenge of the petitioners to the demand created towards the cost of the mineral unauthorizedly excavated.

16. In Mishri Khan's case (Writ Petition No.14915/17), the petitioners have questioned only the legality of the proceedings initiated vide impugned notices dated 17.2.17 for recovery of the demand as arrear of land revenue under the provisions of Rajasthan Land Revenue Act, 1956. The demand created by the Mining Engineer, Balesar, approved by the Superintending Mining Engineer, Jodhpur towards the cost of mineral excavated unauthorizedly is not even impugned in the writ petition. It is not disputed before this court that against the impugned demand created by the Assistant Mining Engineer, affirmed by the Superintending Mining Engineer, the remedy of revision petition was available to the petitioners before the State Government under Rule 47 of the Rules of 1986. Thus, the petitioners having failed to avail the remedy available under the Rules of 1986, the demand created has attained finality and the petitioners cannot be permitted to question legality of the consequential proceedings initiated for recovery of the demand in accordance with the provisions of the Rajasthan Land Revenue Act, 1956 ('the Act of 1956').

17. Of course, the petitioner-Dashrath Singh (Writ Petition No.10477/16) has questioned the legality of the demand created by the Mining Engineer as also the recovery proceedings initiated under the provisions of the Act of 1956. But the fact remains that questioning the legality of the demand, the petitioner has preferred a revision petition before the State Government, which is pending consideration. In this view of the matter, the petitioner having already availed the remedy of revision available under the relevant statute questioning the legality of the demand, there is absolutely no reason as to why he should be permitted to invoke the extraordinary jurisdiction of this Court bypassing the statutory remedy already availed.

18. For the aforementioned reasons, the writ petitions lack merits and therefore, deserve to be dismissed.

19. In the result, Rule 48 of the Rules of 1986, is declared constitutionally valid. The writ petitions preferred by the petitioners are dismissed. Needless to say that the dismissal of the writ petitions shall not preclude the petitioners from availing the statutory remedy or from pursuing the remedy already availed against the impugned demand. No order as to costs.