

(1978) 07 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Petition No. 417 of 1978

M.R. Palkhivala

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-07-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Mines and Minerals (Development and Regulation) Act, 1957 — Section 27, 30

Citation : (1978) WLN 257

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—The contention of the learned Counsel for the petitioner is that the Mining lease of the petitioner could not have been cancelled by the State Government on account of discontinuance in the working of the mining operations by him for a period of one year or more and that the order passed by the State Government in this respect is without jurisdiction. Learned Additional Government Advocate contends that the mining lease of the petitioner has been determined in accordance with the provisions of law and the petitioner has an alternative remedy open to him of approaching the Central Government by way of revision u/s 30 of the Mines and Mineral (Regulation and Development) Act, 1957 (hereinafter referred to as "the Act") read with rule 54 of the Mineral Concession Rules 1960 (hereinafter called "the Rules").

2. Rule 27 of the Rules prescribes certain conditions to which every mining lease shall be subjected to and which shall be deemed to have been incorporated in every mining lease. Sub-clause (f) of Sub-rule (1) of Rule 27 provides that the lessee shall begin such mining operations within one year of the dates of the execution of the lease and shall thereafter continue such operations in a proper skillful and workman manner unless the state operations in a proper skillful and works like manner unless the state government permitted otherwise according to

the learned Counsel for the state, the petitioner committed a breach of the aforesaid Sub-clause (f) of Rule 27(1) of the Rules. While learned Counsel for the petitioner contends that a subset discontinuance of the mining operations by the lessee does not amount to a breach of the aforesaid provision Sub-section (5) of Section 27 Authorizes the State Government to forfeit a mining lease and forfeit the whole or part of the security deposited of a lessee committed a breach of any of the conditions of the lease and did not remedy such breach within a period of 60 days from the date on the receipt of notice in that respect from the State Government. In the present case, the State Government gave a notice to the petitioner on June 18, 1975, drawing his attention to the fact that no mining work was being carried out by him for a period of more than one year. It is not despite by the learned Counsel for the petitioner that in case the State Government proceeds to determine the lease under Sub-rule (5) of Rule 27 of the Rule then the lessee has a remedy open to him by way of preferring a revision petition before the central Government u/s 30 of the Act, read with Rule 54 of the Rules.

3. In view of the fact that a remedy by way of revision is open to the petitioner refrain from expressing any final opinion at this stage in respect of the question as to whether a subsequent discontinuance of the mining operations for a period of one year during the currency of the lease would amount to a breach of the conditions contained in Sub-clause (f) of sub Rule (1) of Rule 27 or not also on remedy the breach by again resuming the mining operations after his committed discontinuance of mining operations it is proper for this court to express any final opinion in respect thereof at this stage there is no doubt by its order dated April 28, 1978 (Annexure 6), the state Government has not cancelled the lease of the petitioner but has proceeded to determine the said lease in accordance with the provisions of Sub-rule (5) of Rule 27 of the Rule and that an alternative remedy by way of revision is available to the petitioner in respect of the impugned order passed by the state Government on April 28, 1978.

4. As an alternative remedy by way of revision prescribed by the same law under which the lease was granted to the petitioner is open to him against the impugned order of the state Government dated April 28, 1978 the writ petition is not maintainable in view of the provisions of Clause (3) of Article 226 of the constitution of India the writ petition is accordingly dismissed as not maintainable.