

(2015) 10 MP CK 0008
In the Madhya Pradesh High Court
Case No : W.P. No. 444 of 2007

Netaji Grih Nirman Sahkari Samiti Maryadit	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Land Revenue Code, 1959 — Section 247(7)

Citation : (2015) 4 MPLJ 690

Hon'ble Judges : A.M. Khanwilkar, C.J. and Sanjay Yadav, J.

Bench : Division Bench

Advocate : Ashok Lalwani, for the Appellant; Amit Seth, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Shri Ashok Lalwani, Advocate for the petitioner.

Shri Amit Seth, Govt. Advocate for the respondents. Heard counsel for the parties on admission.

1. This writ petition under Article 226 of the Constitution of India takes exception to the order passed by the State Government dated 27-9-2006 (Annexure P-14) and dated 28-1-2005 (Annexure P-11) passed by the Additional Collector, Bhopal. The petitioner is a registered Co-operative Society. The petitioner made an application to the Gram Panchayat, Akbarpur on 13-11-2000 for removing Murom (Kopra) and Soil. The Gram Panchayat responded vide communication dated 13-11-2000 (Annexure P-1) as under:--

2. The Mining Officer vide order dated 23-11-2000 permitted petitioner-Society to level the land by removing Murom (Kopra) and Soil in land Patwari Halka No. 39, Khasra No. 18/1/2/2/1, area 10.86 acres and to use it for filling the pits in the same land and in case of surplus, to transport it for specified use with prior permission. The said communication Annexure P-2 reads thus:--

3. The Chief Executive Officer, Janpad Panchayat, Fanda, Bhopal vide order dated 23-12-2000 permitted the petitioner to remove the additional Murom (Kopra) and to transport the same. The said order, Annexure P-3, reads thus:--

4. The petitioner asserts that the permission was valid till September, 2004. At the end of the term of permission, Panchnama was drawn by the local officials on 27-9-2004 which reads thus:--

5. With reference to this Panchnama, report was submitted to the Collector by the Mining Officer on 27-9-2004, Annexure P-6, which reads thus:--

6. On receipt of the said report, the Additional Collector issued show cause notice to the petitioner on 15-10-2004, which reads thus:--

7. The petitioner submitted his response, which, however, did not find favour with the Additional Collector and the Additional Collector concluded on the basis of the Panchnama and other record that the petitioner had extracted 7200 cubic metres of Murom (Kopra) and pit created due to such extraction was to the extent of 120 metres wide and 15 metres deep. The Additional Collector, therefore, concluded that such extraction was unauthorized and contrary to the restricted permission granted for levelling of the said land; and also transportation of such illegally extracted Murom (Kopra) was unauthorized, for which he invoked provisions of section 247(7) of the Madhya Pradesh Land Revenue Code and Rule 53 of the Mines and Minerals Rules, 1996 - to impose fine twice the amount of the value of the illegally extracted Murom (Kopra). This decision, Annexure P-11, was carried in appeal before the State Government, which has reiterated the view taken by the Additional Collector and dismissed the revision application vide order dated 27-9-2006, Annexure P-14.

8. The first contention canvassed before us is that the Collector misdirected himself in invoking the powers under section 247(7) of the Code as well as Rule 53 of the Rules of 1996. The two actions pertaining to the same act of commission and omission was not permissible. The argument though attractive, at the first blush, deserves to be stated to be rejected. Indeed, the order passed by the Additional Collector refers to the two provisions as mentioned above. However, it is not open to the petitioner to contend that the Additional Collector is not the Competent Authority to pass order under the respective provisions. In other words, the Additional Collector was fully competent to pass order under section 247(7) of the Code as also under Rule 53 of the Rules of 1996. No provision has been brought to our notice which provides to the contrary.

9. On the other hand, section 247(7) of the Code empowers the Collector so as the Rule 53 of the Rules of 1996, to pass order in cases where situation so warrants. For the purposes of the Code as well as the Rules of 1996, Additional Collector is deemed to be discharging the duties of the Collector and is authorized to do so by the State Government. Thus, it would make no difference if the Additional Collector has referred to the relevant provisions in the impugned order.

10. It is not in dispute that the show cause notice issued to the petitioner expressly refers to the action to be initiated against the petitioner under section 247(7) of the Code. It is not the case of the petitioner that the order as passed by the Additional Collector could not have been passed under the aforesaid provision. It is also not the case of the petitioner that the order makes no reference to section 247(7) of the Code. Thus, it makes no difference if the show cause notice refers to section 247(7) of the Code, which power in any case has been exercised by the Additional Collector while passing the impugned order dated 28-1-2005 (Annexure P-11).

11. The core question is : whether the Additional Collector in the facts of the present case could have passed the impugned order, for the reasons stated in the impugned order. The argument of the petitioner is that the petitioner had a valid permission for extraction. This argument, however, does not commend to us. The permission as was sought and granted by the Gram Panchayat was only for the restricted purpose. Primarily, the permission was for levelling the land in question. In that, the Mining Officer granted permission for the limited purpose of levelling of land and filling of pits in the said land, out of the Murom (Kopra) and Soil to become available from the same land. It was not a permission for extraction of minor minerals and for commercial use as such, at all. It was for the limited purpose of captive use and for levelling of the land. The Panchnama, however, prepared at the end of the license period, clearly indicates that the extraction was done to the extent of 120 metres wide and 15 metres deep, which means that the petitioner had extracted minor mineral to the extent of 7200 cubic metres for some other purpose than for levelling the land in question. The Panchnama, in no way, supports the case of the petitioner. The argument of the petitioner that the Panchnama does not mention that the extraction was in progress on the relevant date, also cannot be countenanced because the permission to the petitioner was only for levelling of land by cutting the corners and taking soil for levelling of the pits for captive use.

12. Counsel for the petitioner faintly suggested that the 120 metres wide and 15 metres deep pit was created for providing a septic tank. No such plea was taken earlier, nor can be countenanced. We fail to understand as to why petitioner society would require such a large pit for a septic tank.

13. Suffice it to observe that the Panchnama clearly establishes that extraction of minor mineral has been done not limited for the purpose of levelling of land and filling of the pits in the land for captive use but for other purposes not permitted. That finding of the Appropriate Authority does not merit interference. The Appropriate Authority has also determined the quantum of extraction done by the petitioner and has imposed fine on that basis.

14. In our opinion, the show cause notice gives clear indication of the proposed action to be taken against the petitioner. Neither any observation in the Panchnama will be of any avail to the petitioner nor the report submitted by the Mining Inspector, Annexure P-6, which mentions that the extraction work was not

in progress for the past week. None of that would make any difference to the finding recorded by the Appropriate Authority. The factual position has been ascertained by the Appropriate Authority and the conclusion reached on that basis, being his subjective satisfaction and upon appreciation of the record - no interference in exercise of writ jurisdiction qua that finding is possible.

15. The last question is : whether the fine amount of double the value of the mineral, imposed by the Appropriate Authority is just and proper. Even on this count, we have no difficulty in rejecting the argument of the petitioner. Inasmuch as, the provisions of the concerned enactment and in particular section 247(7) of the Code providing for fine as applicable at the relevant time, was for double the amount, till amended. Hence, no fault can be found even with that order passed by the Authority. Taking any view of the matter, this petition is devoid of merits and is dismissed.