

(2022) 05 UK CK 0030

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 859 Of 2022

Shaktivardhan Singh

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 09-05-2022

Acts Referred:

Mines And Minerals (Development And Regulation) Act, 1957 — Section 23B
Motor Vehicles Act, 1988 — 3, 39, 66, 146, 181, 192, 196, 207
Uttarakhand Mineral (Prevention Of Illegal Mining, Illegal Transport And Illegal Storage) Rules, 2021 — 15, 16
Constitution Of India, 1950 — Article 226, 227

Citation : (2022) 05 UK CK 0030

Hon'ble Judges : Alok Kumar Verma, J

Bench : Single Bench

Advocate : R.S. Sammal, Pratiroop Pandey

Final Decision : Dismissed

Judgement

Alok Kumar Verma, J

1. The case of the petitioner, necessary to be noted for deciding the petition, is that the petitioner is a registered owner of a JCB, bearing Registration No.UK-06 CA-6569. According to the present matter, on 08.03.2022, illegal mining was being done by the said JCB in Sukhi river without any licence. The said JCB was seized by Sub-Inspector Sanjeet Kumar. By the impugned order dated 19.04.2022, the Additional District Magistrate (Revenue and Finance), the respondent no.3, directed to release the JCB in favour of the vehicle owner after depositing a fine of Rs.2 lakh (Rupees two lakh). The said fine was imposed in terms of the provisions of the Uttarakhand Mineral (Prevention of Illegal Mining, Illegal Transport and Illegal Storage) Rules, 2021 (hereinafter referred to as "the Rules, 2021").

2. Hence, the petitioner filed the instant writ petition under Article 226 of the Constitution of India with the following reliefs:-

“(i) Issue a writ, order or direction in the nature of certiorari quashing the condition imposed upon the petitioner by Respondent No.3 to deposit 2 lakh rupees amount pursuant to the challan chit 017821/000009 dated 08.03.2022 17:05 hrs in violation of the Motor Vehicles Act, 1988 punishable u/s 3/181, 146/196, 39/192, 66/192, 207 of the MV Act, 1988 vide impugned order (Letter no.8377/Nyaysaha-2(59/2)/2022) dated 19.04.2021 passed by the Respondent No.3 (Annexure No.4 to the writ petition).

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to release the vehicle in question (JCB bearing registration number UK-06-CA-6569) and be given in the custody of its registered owner i.e. the petitioner (Annexure No.3 to the writ petition); otherwise the petitioner shall suffer irreparable loss and injury.”

3. Heard Mr. R.S. Sammal, the learned counsel for the petitioner and Mr. Pratiroop Pandey, the learned AGA for the State.

4. Mr. R.S. Sammal, the learned counsel for the petitioner submitted that the vehicle-in-question was parked in the courtyard of the petitioner; the said vehicle was taken into custody by the police from his house; sub-Inspector Sanjeet Kumar was not authorized person to seize the vehicle; as per Section 23B of the Mines and Minerals (Development and Regulation) Act, 1957, only a Gazette Officer, authorized by the Central Government or by the State Government, by General or Special Order, has the power to search and seize the vehicle; under the provisions of the Rules, 2021, only an officer nominated by the District Magistrate of the district, not below the rank of Deputy District Magistrate, or, the authorized officer of the Director General, Geology and Mining Unit, shall be authorized to seize the vehicle; no opportunity of hearing was given to the petitioner before imposing the fine; imposition of such onerous condition is against law and also amounts to miscarriage of justice.

5. Mr. Pratiroop Pandey, learned counsel appearing for the State opposed the writ petition on the ground of maintainability of the writ petition and submitted that opportunity of hearing was given to the petitioner before passing the impugned order, and, the petitioner has an effective alternate remedy under Rule 15 for Appeal and under Rule 16 for Revision, therefore, the writ petition should not be entertained.

6. Though the powers of the High Court under Article 226 are discretionary and no limits can be placed upon that discretion, it must be exercised along recognized lines and subject to self-imposed limitations. Under Article 226 of the Constitution of India, the High Court does not sit or act as an appellate authority.

7. In Pepsi Food Limited vs. Special Judicial Magistrate and others, 1998 (36) ACC 20, the Hon'ble Supreme Court has observed that the power conferred on the High Court under Article 226 and 227 of the Constitution of India have no limits, but more the power more due care and caution is to be exercised in invoking these powers.

8. In 'M/s Radha Krishan Industries Versus State of Himachal Pradesh and others', (2021) 6 SCC 771, the Hon'ble Supreme Court held on 20.04.2021,

The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

9. The Hon'ble Supreme Court further observed that these principles have been consistently upheld in Seth Chand Ratan vs. Pandit Durga Prasad, (2003) 5 SCC 399, Babubhai Muljibhai Patel vs. Nandlal Khodidas Barot, (1974) 2 SCC 706 and Rajasthan SEB vs. Union of India, (2008) 5 SCC 632 among other decisions.

10. Admittedly, Rule 15 of the Rules, 2021 provides for appeal to the Commissioner and Rule 16 of the Rules, 2021, provides for revision to the State Government.

11. It is well settled that the High Court exercising extraordinary jurisdiction under Article 226 of the Constitution of India, the petition should be refused, where an effective alternate remedy is available and where there are disputed question of fact, unless exceptional circumstances are made out. In the present case, according to the petitioner, the vehicle-in-question was parked in his courtyard and the said vehicle was taken into custody by the police from his

house. The petitioner does not disclose any “exceptional circumstances” in the writ petition.

12. In the facts and circumstances of the case, in the considered view of this Court, the Court should not entertain the present writ petition to decide on merit. Therefore, the writ petition is dismissed at admission stage. However, it is clarified that it is open to the petitioner to approach the authority as provided under the Rules, 2021, in accordance with law and to raise all contentions available to him.