

Item No. 05

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Original Application No. 37/2020 (CZ)

Varun Thakur

Applicant(s)

Versus

State of M.P. & Ors.

Respondent(s)

Date of hearing: 24.09.2020

**CORAM : HON'BLE MR.JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. S.S GARBYAL, EXPERT MEMBER**

For Applicant(s): Mr. Varun Thakur & Brajesh Pandey, Advs.

For Respondent (s): Ms. Parul Bhadoria, Adv.
Mr. Enosh George, Adv

ORDER

1. Heard the learned Counsel for the Parties and perused the record. By way of filing this application the Applicant has prayed to pass an order directing the Respondent no. 6 to stop the illegal mining of the land of Applicant and to pass an order against the Respondent no. 6 to recover amount against the illegal mining and damage the ecology system of the locality and to constitute the Inspection Team to verify the illegal mining and assessed how much environmental loss as well as the revenue loss of the Government and the Applicant have been committed.

2. The matter was taken up on 09th July, 2020 and it was directed as follows:

“1. This application has been filed against the illegal mining done by the respondent no.6 on applicant land bearing Khasra No. 239/2, Rakba No. 1.20 ha. Village Kerbana, District Damoh, M.P. the respondent no. 6 had done illegal mining and created 30-35 ft. depth/pit (whole in ground) on the applicant’s land, due to this the natural flow of drainage/Barsati nala of the locality are fully disturbed. The respondent no.6 also cut the large number of trees (Sagwan three) planted by the applicant on his land. Moreover, due to the above said illegal mining, the base of electric poll of the High Tension wire (33000 volt) are also very weak and these electric polls of High Volt Power wire can be fell down at any time. The entire ecology system in the area, nature and environmental atmosphere are badly affected.

2. We deem it just and proper to call a report from a Joint Committee consisting of:-

(i) District Magistrate, Damoh;

(ii) Mining Department, Damoh; and

(iii) State Pollution Control Board (SPCB).

3. The Committee is directed to visit the place and submit the action taken report within six weeks. The State PCB will be the nodal agency for coordination and logistic support.

4. The report in the matter be filed by the Committee by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

5. Applicant is directed to supply the required documents and copy of the application to the members of the Committee within a week.

6. List it on 14.09.2020.”

3. In compliance thereof the Joint Committee visited the site and submitted the Report which is as follows:

“ As per direction of Hon’ble National green tribunal Central zonal bench Bhopal in the matter of OA no 37/ 2020 order dated 9-7-2020, the Collector district Damoh has formed a committee of Sub divisional magistrate damoh , mining officer Damoh and representative of MP pollution control board. The committee having member Ms Bhabya tripathi SDM, Shri Ravi Patel Mining officer Damoh and Dr Rajesh Jain, Chief Chemist MP Pollution control Board Sagar visited the site of Applicant shri Varun thakur on 18-08-

2020 in village kervana tah Batiagarh distt damoh at khasara no 239/2 area 1.20 hectares. During inspection the villagers of the area informed that land of khasara number 239/ 2 in village kervana which was in the form of a high rise ground and Sri Varun thakur has purchased the land from Mr sahu resident of village majgava. Electric line of 440 volt is over the land with electric poles are present on the land. Local residents along with farmer shri Mahesh Dubey informed that, soil of this high rise ground was excavated to convert land suitable for agriculture purpose some 3 years back. The land is being used for agriculture and it is being cultivated by shri Mahesh Dubey who has taken the land on lease from land owner shri Varun thakur for agriculture purpose . Soyabeen is being cultivated at present

A nala is following in the west direction of land is not diverted and flowing naturally. No deep pit of 30-35 feet found at site and high voltage HT line of 33000 Volt is also not present at site which is mentioned in the application.

Committee observed that soil excavation was done on land in the past of size approx 174 m x 120 m x4 m (approx 83520 m3). Teak plants (small) approx 10-15 are also present in the land.”

4. The Applicant has filed his response to the Report dated 18.08.2020 filed by the Committee and stated that illegal mining was done by Respondent no. 6 and there is a blockage in natural flow of drainage/barsati nala of the locality, the trees have been cut down or fell down, there is danger to high voltage power wires poles, the Sagwan trees were cut down, the excavation of the land was found by the Committee and argued That Madhya Pradesh Land Revenue Code 1959 provides for the following remedy in case of illegal mining or extraction of sand.

“247.(7) Any person who without lawful authority extracts or removes minerals from any mine or quarry, the right to which vests in, and has not been assigned by, the Government Shall, without prejudice to any other action that may be taken against him be liable, on the order in writing of the Collector, to pay penalty not exceeding a sum calculated at (four time) the market value of the minerals so extracted or removed.

Explanation: *In this Section “Minerals” include any sand or clay which the State Government may declare to have a commercial value or to be required for any public purpose.”*

5. It is argued that in case of “Balavana Singh Vs. State of Madhya Pradesh (OA No.145/2017)” held that that as per Rule 53 of Mines and Minerals (Development and Regulation) Act 1996 the State Govt. have power to imposed penalty for unauthorized extraction and transportation.

The Rule 53 of Mines and Minerals (Development and Regulation) Act 1996 for ready reference are as under:

53. Penalty for un-authorized extraction and transportation - Whenever any person is found extracting or transporting minerals or on whose behalf such extraction or transportation is being made otherwise than in accordance with these rules, shall be presumed to be a party to the illegal mining/transportation, then the Collector or any officer authorized by him not below the rank of Deputy Collector shall after giving an opportunity of being heard determines that such person has extracted/transported the minerals in contravention of the provisions of these rules, then he shall impose the penalty in the following manner, namely :-

- (a) on first time contravention, a penalty of minimum 30 times of the royalty of illegally extracted/ transported minerals, shall be imposed but it shall not be less than ten thousand rupees.
- (b) on second time contravention a penalty of minimum 40 times of the royalty of illegally extracted/transported minerals, shall be imposed but it shall not be less than twenty thousand rupees.
- (c) on third time contravention, a penalty of minimum 50 times of the royalty of illegally extracted/transported minerals shall be imposed but it shall not be less than thirty thousand rupees.
- (d) on third time or subsequent contravention, a penalty of minimum 70 times of the royalty of illegally extracted/transported minerals, shall be imposed but it shall not be less than fifty thousand rupees.

(2) Forfeiture of minerals in cases of illegal extraction and transportation. - In respect of the forfeiture/dischage of the mineral extracted/transported illegally the Collector or any other officer authorized by him not below the rank of the Deputy Collector shall take an appropriate decision. Provided that seized minerals shall not be discharged till the penalty imposed as above is not paid. In case of forfeiture', the seized mineral shall be disposed of through a transparent auction/ tender procedure as prescribed by the State Government,

(3) Forfeiture/Discharge of the seized tools, machines and vehicles etc. and disposal of forfeited material through Auction/Tender. - (a) In case of illegal extraction, the Collector

or any other officer not below the rank of a Deputy Collector, authorized by him shall take an appropriate decision in respect of forfeiture/discharge of tools, machines and vehicles used. Provided that the tools, machines, vehicles and other material so seized shall not be discharged till the penalty imposed as above is not paid. In case of forfeiture, the seized materials shall be disposed of through a transparent auction/tender procedure as prescribed by the State Government.

(b) In respect of Forfeiture/Discharge of vehicle carrying mineral extracted/transported without any transit pass the Collector or any other officer not below the rank of Deputy Collector authorised by him shall take an appropriate decision. Provided that tools, machines, vehicles and other materials shall not be discharged till the penalty imposed as above is not paid.

In case of forfeiture the seized material shall be disposed off through a transparent auction/tender procedure as prescribed by the State Government:

Provided that the vehicle carrying minerals in excess as mentioned in transit pass, shall not be forfeited on doing so for first three times but the vehicle shall only be discharged on payment of penalty as imposed above. On repetition for the fourth time vehicle shall be liable to be forfeited.

(4) Action and compounding cases of un-authorized extraction/transportation. - Whenever any person is found involved extracting/transporting of the minerals in contravention of provisions of these rules, the Collector/ Additional Collector/Deputy Collector /Chief Executive Officer of Zilla Panchayat/ Chief Executive Officer of Janpad Panchayat/Deputy Director (Mineral Administration)/Officer in charge (Mining section)/Assistant Mining Officer/Mining Inspector/officer in charge (Flying Squad)/Sub Divisional Officer (Revenue)/Tehsildar/Naib Tehsildar and any other officer not below the rank of Class-III executive authorized by the Collector from time to time shall proceed to act in the following manner:-

- (a) to initiate case of unauthorized extraction/transportation by preparing Panchnama on spot;
- (b) to collect necessary evidences (including video-graphy) relevant to un-authorized extraction/transportation;
- (c) to seize all tools, devices, vehicles and other materials used in excavation of miner mineral in such contravention and to handover all material so seized to the persons or lessee or any other person from whose possession, such material was seized on executing an undertaking up to the satisfaction of the officer seizing such material, to this effect that he shall forthwith produce such material as and when may be required to do so :

Provided that where the report is submitted under sub-rule (3) above to the Collector or any other officer not below the rank of a Deputy Collector authorized by him, the seized property shall only be discharged by the order of the Collector or the officer authorized by him.

(d) officer as mentioned above shall inform the Collector or any other officer not below the rank of Deputy Collector, authorised by him about the incident within 48 hours of coming in to notice of the same.

(e) officers as mentioned above shall make a request in writing to the concerning police station/seeking police assistance, if necessary and police officer shall provide such assistance as may be necessary to prevent unlawful excavation/transportation of the mineral

(5) Rights and powers of the investigating officer. - During the investigation of the cases of illegal extraction/transportation of the minerals, in contravention of these rules, the investigation officer shall have the following rights and powers, namely :-

(a) to call for person concerned to record statements;

(b) to seize record and other material related to the case;

(c) to enter into place concerned and to inspect the same;

(d) all powers as are vested in an in-charge of a police station while investigating any cognizable offence under Code of Criminal Procedure; and

(e) all other powers as are vested under Code of Civil Procedure to compel any person to appear or to be examined on oath or to produce any document.

(6) Submitting application by illegal extractor/transporter to compound and its disposal. - Before initiating or during the operation of the case, if the extractor/transporter is agree to compound the case, he shall have to submit an application of his intention to do so before the Collector/Additional Collector/Deputy Collector/Sub Divisional Officer (Revenue)/ Deputy Director (Mineral Administration)/ Mining Officer/Officer-in-charge (Mining section)/ Assistant Mining Officer/Officer in charge (Flying Squad) and he shall proceed to compound in the case.

6. It is argued by the learned counsel for the Applicant that the land has been excavated and there is a cutting of trees and thus the compensation be recovered according to law.

7. We have examined the Report submitted by the Joint Committee where it has been mentioned that the Applicant had purchased the land from Mr. Sahu resident of Village Majgava and local residents along with farmer Mr. Mahesh Dubey informed that soil of this high rise ground was excavated to make land suitable for agriculture purpose about three years back. The land is being used for agriculture and it is being

cultivated by Mr. Mahesh Dubey who has taken the land on lease from the land owner Mr. Varun Thakur for agricultural purposes. Soyabean is been cultivated at present. Now, after perusal of the Report it reveals that the agriculturist Mr. Mahesh Dubey himself has admitted that he was levelling the land for agricultural purposes thus there is nothing about the illegal mining or illegal excavation by Respondent no. 6. The learned Counsel for the State Pollution Control Board has submitted that there is no proof that anyone has cut tree or excavated the land thus nothing can be done by this Tribunal. It has also been observed by the Committee that they did not found any 30-35 feet deep pits in the site. This is a purely a private matter and we do not think proper to intervene in the matter. There is nothing on record to show that the sand has been excavated or there is any illegal mining. Thus, we deem it just and proper not to intervene in the matter and accordingly the relief prayed is not maintainable and the Original Application no. 37/2020 is finally disposed of with no order as to costs.

Sheo Kumar Singh, JM

Dr. S.S.Garbyal, EM

24th September, 2020
Original Application No. 37/2020 (CZ)
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