

**W.P.No.4686/2010**

**23.07.2015**

Parties through their counsel.

The present petition has been filed against the order dated 05/06/2015 passed by the State Government rejecting the representation of the petitioner-company.

The facts of the case reveal that the Collector, Mandsaur in exercise of powers conferred in the M.P. Land Revenue Code, 1959, read with M.P. Minor Mineral Rules, 1996, has passed the order dated 18/11/2004 by which the recovery was ordered by the petitioner-company. The order of recovery was challenged before the Board of Revenue and the Board of Revenue has passed the order dated 02/02/2006 upholding the recovery against the order passed by the Board of Revenue.

The petitioner has preferred a writ petition i.e., W.P. No. 2650/2006 and this court has dismissed the writ petition by the order dated 19/05/2006. The petitioner has thereafter, preferred a representation to the State Government and the State Government has rejected the

representation on the ground that the State Government can not sit in an appeal over the judgment passed by this court.

This court while deciding the writ petition preferred by the petitioner-company i.e., W.P. No. 2650/2006, M/s. Donypolo Udyog Ltd., vs. Board of Revenue and others has passed the following order.

"This order shall also govern the disposal off W.P. No. 2652 of 2006 between same parties as common question of facts and law are involved in both petitions. For the sake of convenience, facts may be noticed from the above petitioner.

2. In these petitions under Article 227, petitioner is assailing the order dated 02/02/2006 passed by the Board of Revenue Ann. P-1, whereby appeal preferred by the petitioner against the order by the commissioner, Ujjain Division was dismissed.

3. Petitioner was served with Notices by Collector Mandsaur to show cause against illegal winning of minor mineral from government land and to pay fine, royalty and price of mineral. Show Cause Notices were based upon the report of the SDO. After getting the reply, and affording opportunity of hearing, Collector Mandsaur passed the order

in each case holding that petitioner indulged in illegal mining in the grab of quarry lease and imposed fine besides ordering recovery of royalty. Being aggrieved by said order, petitioner carried the matter in appeals before Commissioner, Ujjain, who allowed the appeals and remanded the cases to Collector for a fresh decision after recording further evidence. Orders were challenged by the petitioner in appeals before the Board of Revenue. As stated above, Board of Revenue rejecting appeals set aside remand orders and restored orders passed by the Collector, Mandsaur.

4. Learned counsel for petitioner contended that Board of Revenue committed serious illegality as such order impugned is unsustainable in law. According to learned counsel for petitioner, order impugned is contrary to all established canons of law and has been passed without any application of mind. He had gone to the extent of submitting that it was possible for the Board of Revenue to pass the order impugned.

5. After hearing learned counsel for petitioner at length on the question of admission and going through material available in record, this court finds no merit in this petition. Perusal of order impugned

reveals that Board of Revenue came to conclusion that Collector Mandsaur passed the order based upon on material and evidence. Before passing the order, Collector had afforded opportunity of hearing to petitioner and Commissioner Ujjain unnecessarily remanded the case for the fresh decision. There is no inflexible rule that a higher forum in appeal cannot set aside the order of remand. Procedural Rules are hand made tools of justice and rigidity as claimed by petitioner is likely to cause more harm, rather than advancing the course of justice.

6. In view of the foregoing discussion, these petitions fail and are hereby dismissed summarily. No order as to costs.

7. Let an authentic copy of this order be kept in record of connected W.P. No. 2652 of 2006.

In light of the aforesaid order, once the matter has been adjudicated by this court and the order passed by the Board of Revenue has been affirmed by this court, the question of entertaining second writ petition does not arise. Not only this, the State Government was justified in rejecting the admission of the petitioner.

It is pertinent to note that against the order dated 19/05/2006, even SLP was preferred and the same was withdrawn.

In the considered opinion of this court, this petition is nothing but an attempt to adjudicate the matter inspite of the fact that the writ petition has been dismissed way back in the year 2006 filed by the petitioner-company.

The admission is accordingly declined.

No order as to costs.

Certified copy as per rules.

**(S.C. Sharma)**  
**Judge**

Karuna