

HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR

SWP No.1717/2013

Date of Decision:04-09-2015

M/S Quarry Construction Association **Vs.** State of J&K & ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir,
Judge
Hon'ble Mr. Justice Bansi Lal Bhat, Judge

Appearing counsel:

For the Appellant/Applicant(s): Mr. M. A. Qayoom.

For the Respondent(s): None.

Per Yaqoob J'

1. Petitioner Association claims that its members have their quarries in different areas of Khrew, some are located in Shalwanun, Sata Phakhran, Jantrag, Nagander and some at other places which do not fall within the limits of the areas covered under Wildlife Act.
2. It is projected that the quarry contractors have their quarries either in their proprietary lands or in the Shamilat land, as such, have been extracting stones from their respective quarries on proper permits issued by the competent authorities i.e. Geology & Mining Department under J&K Minor Minerals Concession Rules, 1962 for purposes of sale and consumption as building/road material against payment of royalty.

3. It is further projected that on the recommendations of the Committee of Officers constituted for allotment of Royalty Collection Contract of the stone quarry belt Khrew District Pulwama, the petitioner Association was allotted the contract vide No.1620/MCC/DGM/Alt/13/635 -41 dated 05.06.2013 for a period of 3 ½ months with effect from 16.06.2013 on negotiated contract amount of Rs.7.50/ lacs. The Association was authorized to charge royalty from the Quarry Contractors as per scheduled rates.

4. Respondent No.7 (Wildlife Warden) is stated to have addressed letter No.WLWC/Estt/2013/504-06 dated 10.07.2013 to the respondent No.2(Director, Geology and Mining Department) conveying therein that certain stone quarries are operating in Khrew/Khonmoh areas, same shall be stopped and lease permits issued in their favour shall be cancelled because against such persons cases have been framed and lodged in various Courts of law for not following provisions of J&K Wildlife Protection Act, 1978 amended up to 2002. Further it has been conveyed that the High Court has passed order in PIL No.1553/2011. Finally, respondent No.2 has been asked to look into the matter

and help the department in curbing the illegal stone quarrying in the said area.

5. The respondent No.2 was required to get it verified as to whether areas of Shalwanun, Sata Phakhran, Jantrag and Nagandar fall within the Wildlife limits or not and also to look into the fact as to whether order passed by the High in PIL No.1553/2011 has application to the cases of quarries located in said areas. Without looking into that aspect, what has happened the respondent No.4 (Officer Incharge, MCC Centre, Geology and Mining Department), vide his letter dated 24.10.2013 has conveyed to the respondent No.3 and others for an action in terms of letter dated 10.07.2013. Respondent No.5(District Mineral Officer, Pulwama) on receiving letter dated 24.10.2013 forwarded the same to I/C field Wuyan, Khrew, Mandak and Ladhoo for further necessary action. Then field staff has been asked to stop the quarry operations in Shalwanun, Sata Phakhran, Jantrag and Nagandar.

6. Both the two communications dates 10.07.2013 and 24.10.2013 are sought to be quashed or in alternative appropriate direction is sought to the effect that these communications are not applicable to the

beat Shalwanun, beat Sata Phakhran, beat Jantrag and beat Nagandar.

7. Earlier on 7th August, 2015, counsel for the petitioners had made a submission to the effect that no case was registered or framed against the petitioners or against the quarry holders from whom royalty was to be collected. Unnecessarily, quarrying operation has been stopped, as a result whereof the petitioners could not collect the royalty, either they may be given some time after the permission is granted for operating the quarries or an amount of Rs.7.50 lacs as has been deposited shall be refunded to the President of the quarrying Association (petitioner herein).

8. Learned Advocate General had sought time to collect information as to whether for any period petitioner has collected the royalty and to what extent. Same position till date has not been clarified but today learned counsel for the petitioner highlighted that two communication dated 10.07.2013 and 24.10.2013 and also the direction passed in PIL No.1553/2011 are not applicable to such quarry holders who are operating their quarries in their proprietary land as same provide that there should be no quarrying operations in the areas which violate J&K Wildlife Protection Act or which

involved the land which is owned by State or is reserved for grazing purposes.

9. The position of the quarry operators possessing valid permission is protected as they are not carrying the operations in banned areas which position is made clear by the communication dated 01.07.2015 addressed to District Mineral Officer, Pulwama by Tehsildar, Pampore certifying therein that land measuring 215 kanals 10 marlas covered by survey No.4646 is recorded as "Shamilat Deh" under Section 5 "Maqbozah Malikan", same is located at Ladhoo, therefore, stone quarries fall under the same survey number. The said land neither is Forest land nor Kahcharai land. As per revenue record, there seems no objection for issue of permission in favour of stone quarry owners.

10. Another communication addressed to District Mineral Officer, Pulwama by Range Officer, Khrew dated 15.06.2015 reveals that Kongposh Quarry Halqa Nagandar, on identification of Patwari Halqa, is neither located in Forest land nor kahcharai land. The said area is located at down hillside edge of beat Nagandar and Bathen. The land is recorded as "Shamilat Section 5 and Milkiyat and State land" falling outside forest land.

11. The District Mineral Officer, Pulwama vide his communication dated 22.06.2015 addressed to Coordinator, Mineral Section, Geology & Mining Department, Srinagar has certified that as per revenue documents furnished by the Tehsildar concerned, the land is recorded as "Shamilat Section 5 (Milkiyat and Sarkar (State land))".

12. Again, District Mineral Officer, Pulwama vide his communication dated 02.07.2015 has conveyed that verification letter from Tehsildar Pampore dated 01.07.2015 indicates title of the land to be "Shamilat Section 5 and non-forest, non-kahcharai". The issue of permission of quarrying was stopped until obtaining of NOC and in compliance to the court direction. Now, in view of verification/authentication report from the concerned Tehsildar, necessary direction may be issued.

13. Again District Mineral Officer, Pulwama vided letter dated 22.07.2015 while dealing with the application of Abdul Majeed Pinchoo and others, has submitted the report of the Tehsildar as well as of Range Officer to the Deputy Commissioner, Pulwama, mentioning therein that the land is recorded as "Shamilat under Section 5".

14. Furthermore, the direction of the Court issued in PIL No.1553/2011 dated 18.12.2011 provides that the respondents No.2 to 6 and 9 to 12 in the said petition were directed to take steps forthwith and to stop operation of illegal quarrying operations in those areas which fall within forest demarcated areas.

15. The position as has emerged is that the quarrying operations are impermissible and prohibited in the areas falling within the limits of forests or within the limits of Wildlife and also falling in the areas of State land or the land reserved for kahcharai purposes. Vis-à-vis proprietary land or even the land recorded as Shamilat under Section 5, there is no prohibition.

16. In the afore-stated background, the respondent-authorities shall take necessary steps at their respective levels so as to ensure that any stone quarry operation is not allowed in prohibited areas, such as the areas falling within the limits of demarcated forests, limits of Wildlife, State land and the land reserved for kahcharai purposes or any other such land.

17. Quarrying operation in proprietary land or the land covered under Section 5 i.e. Shamilat Jaiz is not prohibited. Therefore, respondent-authorities shall

accord consideration to the appropriate cases for grant of necessary permission after adhering to all requisite formalities. Thereafter subject to payment of royalty shall issue permits permissible under the provisions of Geology and Mining Act.

18. Petition shall, accordingly, stand disposed of.

(Bansi Lal Bhat)
Judge

(Mohammad Yaqoob Mir)
Judge

Srinagar
04.09.2015
"Mohammad Altaf"