

In the High Court of Punjab and Haryana at Chandigarh

(124)

CWP No. 19156 of 2023
Date of Decision: 31.8.2023

M/s Shri Ganesh Royalty Co

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Gurminder Singh, Senior Advocate with
Mr. RPS Bara, Advocate for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. The contesting litigants, do not wrangle, over the factum of applicability of the relevant OTS scheme to the present petitioner. However, the contest which has emerged amongst them, relates to there being an imperative requirement under the relevant lease granted to the petitioner, hence in respect of the disputed lease lands, thus qua undertakings of mining activity upto 90 percentum of the area which becoming assigned to the present petitioner, thus for mining activities.

2. The learned Additional Advocate General, Haryana submits, that since the resultant effect of the above non-engaging by the petitioner of mining activities in respect of 90 percentum of the lands allotted to them, for subjecting them to mining activities, thus would result in loss to the exchequer in the shape of royalties or other financial incidents. Therefore, the learned Additional Advocate General, Haryana argues, that the imposition of royalty, upon the petitioner is vindicable.

3. The above argument is opposed by the learned senior counsel

for the petitioner on the pedestal, that the above subjecting to mining activities of 90 percentum of the lands allotted to the present petitioner for, mining purposes, was not yet possible at the instance of the petitioner, as, it is revealed by a table occurring at page 76 of the paper book, that over an area of 45 bighas, existing cremation ground, schools, and, cultivable area. If so, it appears that the above contention of the learned senior counsel for the petitioner may *prima facie* be a validly raised contention. Nonetheless, at this stage, it becomes a disputed factum, and, but requires the same becoming supported by cogent evidence, thus to be adduced only before the authorities below.

4. Be that as it may, the above ground if not appropriately raised before the authority below, and/ or if has not been dealt with in a judicious manner. Therefore, instead of this Court, at this stage, straightaway accepting the above contention raised before this Court by the learned senior counsel for the petitioner, rather this Court deems it fit, and, appropriate to, after quashing the impugned order, thus relegate the lis to the appropriate authority concerned, so that in terms of the above argument, and, in terms of the above referred table, a decision is made whether the present petitioner thus became well prohibited to undertake or engage itself in mining activities over about 90 percentum of the area allotted for the afore said purpose.

5. The decision on the remanded lis by the remandee authority shall be drawn, after hearing all the affected persons concerned, but positively within two months from today. However, in the decision to be made by the remandee authority concerned, it shall bear in mind whether the above argument is also supported by an approved mining plan. In case, the

above mining plan *prima facie* reveals, that thereins neither the crematorium,

cultivable lands or school play grounds exist, thereupon the remandee authority concerned, may take such decision, as deemed fit, in accordance with law.

6. It is further clarified, that only from the approved mining plan, a decision shall be made whether 90 percentum of the area mentioned therein thus became subjected to mining activities. In case it is found that from the approved mining plan, the lessee has not made excavation of upto 90 percentum of the minor minerals , thereupon also an appropriate decision, as deemed fit by the remandee authority, shall be taken.

7. The petition stands disposed of accordingly.

**(SURESHWAR THAKUR)
JUDGE**

**(KULDEEP TIWARI)
JUDGE**

August 31, 2023
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No