

Before : Amarjeet Chaudhary, J.

GRAM PANCHAYAT PEER MUSHIALA AND ANOTHER,
—Petitioners.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 9021 of 1987.

22nd January, 1991.

Punjab Minor Mineral Concession Rules, 1964—Rl. 10—Minor minerals—Lease of—Government deciding to grant lease by auction—Without holding auction, lease granted to certain persons—Validity of such lease.

Held, that it is a case in which the mineral mining rights have been given to the respondents in an arbitrary manner. Had the State put on auction the extracting of mining rights, it would have certainly fetched more than Rs. 5 lacs as annual contract money. There is nothing on record to show that the respondents have discovered the mines and they have acquired specialised knowledge in the field of mining. The so-called experience/knowledge can also be attained by others also if given a chance. In view of the aforesaid reasons and observations of the Supreme Court, the writ petition is allowed and the order of the Government granting lease is quashed with the direction that the respondents to auction the said minor mineral rights through public auction by giving wide publicity.

(Paras 8 & 9)

Civil Writ Petition under Articles 226/227 of the Constitution of India, praying that the records of the case may be called for and after perusal of the same:—

- (i) to issue a writ in the nature of certiorari for quashing annexure P/4 and also for the issuance of a writ of a mandamus to the respondents No. 1 and 2 that a quarry of village Peer Mushiala should be given on lease to the petitioner No. 1 on annual lease money of Rs. 2 lacs or in the alternative to grant the contract of the said quarry in open auction as prescribed by the Punjab Minor Mineral Concession Rules;
- (ii) to issue any other writ, order or direction which this Hon'ble Court may deem fit under the peculiar circumstances of this case;
- (iii) service of prior notices on the respondents be dispensed with and filing of certified copies of annexures be also dispensed with;

(iv) costs of this petition be awarded to the petitioners.

It is further prayed that during the pendency of this writ petition the operation of the impugned order annexure P/4 be stayed and respondents No. 3 and 4 should be directed not to extract the minor mineral from the area of village Peer Mushiala.

H. N. Mehtani, Advocate, for the Petitioners.

Mohan Jain, Advocate, for Respondent 3 & 4.

Rajinder Kumar, Advocate, for the State.

JUDGMENT

Amarjeet Chaudhary, J.

(1) In Shamlat land of village Peer Mushiala per revenue record of the village, Gram Panchayat has been shown owner in possession of the Shamlat land. The minor mineral, i.e., sand, Bajri and boulders are contained in the said Shamlat land. Respondent No. 3 Savinder Singh has been getting the lease of the said land for the last about 10 years on payment of lease money to the State Government. Under the rules, the owner of the land is paid compensation which is about 1/3rd of the lease money. Respondent No. 4 Mr. Suman Singh paid actual compensation of Rs. 5,000 to the petitioner i.e., Gram Panchayat Peer Mushiala. The lease of respondent No. 4 expired somewhere in March 1987. The petitioner-Gram Panchayat and its residents took a decision that from April/May, 1987, onwards, they would get the lease for the extraction of minor mineral from the area of village Peer Mushiala. For that purpose, they approached respondent No. 2 that lease for the extraction of minor mineral of village Peer Mushiala should be given to the Gram Panchayat on payment of annual lease money. The respondents took a decision to give the mineral right by contract by open auction and issued a notice on 4th September, 1987 to that effect, indicating that auction of the mineral rights in various villages in Ropar, Sangrur and Patiala including Peer Mushiala in Patiala district would be held on 12th October, 1987 at 11.00 A.M. at P.W.D. Rest House, Mubarakpur near Dera Bassi in Patiala District, copy of which is Annexure P/1. On the date fixed for auction, respondent No. 3 conveyed the decision to the petitioner that auction of the minor mineral rights of Peer Mushiala will not be held and the

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minor mineral rights will be given to respondent No. 3 or 4 for 10 years. The petitioner-Gram Panchayat and petitioner No. 2 who is right-holder of the village, protested against this action of the Government. They approached the Governor of Punjab bringing to his notice that contract of the mining rights of village Peer Mushiala should be given to the Gram Panchayat on payment of Rs. 1,50,000 per year and further a sum of Rs. 50,000 would be paid to the Gram Panchayat as compensation or mining rights should be given on contract by public auction. Their representation was declined. The petitioners left with no alternative came to this Court under Article 226/227 of the Constitution of India seeking direction to respondents 1 and 2 that the quarry of village Peer Mushiala be given on lease to the petitioner Gram Panchayat on annual lease money of Rs. 2 lacs or in the alternative to grant the contract of the said quarry in open auction as prescribed by the Punjab Minor Mineral Concession Rules.

(2) The star argument of Mr. Mehtani, learned counsel for the petitioners is that once a decision to auction the minor mineral rights was taken by the Government, it had no right to lease out the same through a secret deal to respondent No. 4 who is closely related to some highly influential politicians of the State of Punjab. It was further urged by Mr. Mehtani that though the Panchayat had offered Rs. 2 lacs for the said minor mineral rights, yet the said minor mineral rights have been given for a petty amount which has resulted loss to the Panchayat as well as to the Government. In order to fortify his argument, the Counsel relied on *Ram and Shyam Company v. State of Haryana and others* (1).

(3) Mr. Mohan Jain, learned Counsel for the respondents, contended that under rule 10 of Punjab Minor Mineral Concession Rules, 1964, (hereinafter referred to as the 'Rules') first priority for granting mining lease is to be given to the discoverer of the new minerals, second priority to a person who intends to set up a mineral-based industry in the State and third priority is to be given to a co-operative society. It was further urged that as per the said rule 10 where two or more persons of the same category have applied for a mining lease in respect of the same land, the applicant whose application is received earlier shall have a preferential right for

the grant of lease over an applicant whose application is received later. Lastly, the learned Counsel argued that there is no violation of any of the provisions contained in the Rules and minor mineral rights have been given according to law.

(4) I have considered the respective stands of the learned Counsel for the parties. It is not in dispute that the State Government had taken a decision to auction the minor mineral rights of village Peer Mushiala publically, but the same was not held, rather the State Government had entered into a deal with private respondents in clandestine manner and the minor mineral rights have been given to them for a meagre consideration. Had the State Government held auction on the scheduled date and time, definitely there would have been more than one bidder in the auction and the State would have earned more revenue. But the State, in utter disregard to the principles of natural justice, equity and fair play, had chosen to give the extracting of minor mineral rights to respondents No. 3 & 4.

(5) The stand of the private respondents that for the last 10 years they have been enjoying the mining rights and as such they are entitled to claim priority in obtaining on lease for the extracting of minor mineral rights, is not at all convincing. If this plea is accepted, in this manner, they shall have perpetual rights in the matter. Ms. Suman Singh, respondent No. 4, who was present in the Court on some query offered to pay Rs. 2 lacs as lease money. On the other hand, the petitioners offered a sum of Rs. 5 lacs as lease money.

(6) The petitioners, also through, Civil Misc. No. 9004 of 1990 have brought on record that the adjoining quarry of village Ram Garh (Haryana) was auctioned for Rs. 6 lacs per annum in the year 1986. Subsequently, in the auction held in the year 1989, the afore-said quarry of village Ram Garh fetched Rs. 13.90 lacs per annum.

(7) Somewhat in identical circumstances, the Supreme Court in *Ram and Shyam Company's case* (supra) held "that shock and surprise was visible on the face of each one in the Court. Shock was induced by the fact that public property was squandered away for a song by persons in power who hold the position of trust. Surprise was how judicial intervention can serve larger public interest. One would require multilayered blind bold to reject the

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appeal of the appellant on any tenuous ground so that the respondents may enjoy and aggrandize his unjust enrichment. On this point, we say no more”.

(8) On consideration of the entire matter, I am of the considered view that it is a case in which the mineral mining rights have been given to the respondents in an arbitrary manner. Had the State put on auction the extracting of mining rights, it would have certainly fetched more than Rs. 5 lacs as annual contract money. There is nothing on record to show that the respondents have discovered the mines and they have acquired specialised knowledge in the field of mining. The so-called experience/knowledge can also be attained by others also if given a chance.

(9) In view of the aforesaid reasons and observations of the Supreme Court, the writ petition is allowed and the order of the Government, Annexure P/4 is quashed with the direction that the respondents to auction the said minor mineral rights through public auction by giving wide publicity.

(10) C.M. No. 9004 of 1990 also stands disposed of. In the circumstances of the case, there will be no order as to costs.

S.C.K.

Before A. L. Bahri, J.

GURMUKH SINGH AND ANOTHER.--Appellants.

versus

SARWAN SINGH AND OTHERS.--Respondents.

Regular Second Appeal No. 2570 of 1989.

31st January, 1991.

Redemption of Mortgages Act, 1913—Ss. 12 & 13—Application for redemption allowed—Order of redemption challenged—Order not implemented on technical grounds—Fresh applications for redemption filed—Such application rejected by Collector—Suit filed by mortgagor to challenge the order of Collector—Maintainability of.