occasion, and these circumstances appear to me to be quite sufficient to rebut the presumption arising under section 6 of the Act. I would, therefore, hold that the charges have not been brought home to the petitioners in this case and allowing the petition acquit them. Fines, if paid, will be refunded.

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Khosla, J.

SONI, J. I agree.

CIVIL WRIT

Before Falshaw, J.

S. KHUSHAL SINGH,—*Petitioner*

versus

THE STATE OF DELHI, AND OTHERS,—*Respondents*

1953

Oct. 26th.

Civil Writ Application No. 16/D of 1953

Punjab Land Revenue Act (XVII of 1887)—Whether applicable to the area of Chandrawal, Delhi Civil Station—Delhi Minor Minerals Rules, 1938—Whether apply to quarries situate within the Municipalities of Delhi and New Delhi and the Notified Areas of the Fort and Civil Station—Rules governing such quarries stated—Penalty imposed under Delhi Minor Minerals Rules—Whether legal—Interpretation of Statutes—Amendment in one particular rule—Whether amounts to amendment in several places of another set of Rules.

Held, that the main area of Chandrawal in which the quarries are situated was undoubtedly included in the old District of Delhi and in the originally constituted Province of Delhi to which the Punjab Land Revenue Act is applicable.

Held, that the Delhi Minor Minerals Rules 1938, do not apply to the quarrying of minerals from land belonging to Government within the Municipalities of Delhi and New Delhi and the Notified Areas of the Fort and Civil Station. The rules applicable to quarries in these areas are Quarry Permit Rules issued in a notification, dated the 30th of March 1938.

Held, that the order of the Chief Commissioner holding that the permit was issued under the Delhi Minor Minerals Rules, and that penalties for a breach of its conditions could be enforced as provided by those rules is quite evidently wrong since in the clearest terms the Delhi Minor Minerals Rules did not apply to the quarry at Chandrawal. The penalty to be imposed must be according to the provisions of the Quarry Permit Rules.

Held, that an amendment of one particular rule cannot possibly be deemed to amount to an amendment in several places of another set of rules.

Petition under Articles 226 and 227 of the Constitution of India, praying that the records and proceedings of the respondents be called for and removed to this Hon'ble Court and be quashed by means of a writ of certiorari. Further praying that such other appropriate directions, orders and writs be issued for the purpose of quashing the proceedings and for affording relief to the petitioner, and that pending disposal of this application, ad interim *orders prohibiting the respondents from recovering the sum of Rs. 1560 levied as royalty and penalty against the petitioner be also issued.*

HARDYAL HARDY, for Petitioner.

BISHAMBER DAYAL, for Respondents.

ORDER

Falshaw, J.

FALSHAW, J. This is a petition under Article 226 of the Constitution by Khushal Singh, a quarry contractor, challenging by way of certiorari an order of the Chief Commissioner of Delhi dismissing under section 13 of the Punjab Land Revenue Act an appeal from the order of the Collector imposing a charge of Rs. 520 as royalty and Rs. 1,040 as penalty on the petitioner for having quarried 72,000 cubic feet of rock in excess from a certain quarry owned by the Government in the area of Chandrawal, Delhi Civil Station, under a permit issued by the Collector on the 16th of February 1949 for the quarrying of 20,000 cubic feet of stone in the ensuing years. The amount claimed by the Government, Rs. 1,560, is apparently being treated as realizable as arrears of land revenue under section 98 of the Punjab Land Revenue Act.

The first point raised in the petition regarding the legality of the orders of the Collector and Chief Commissioner is that these orders, being based on the Punjab Land Revenue Act, are wholly illegal in view of the fact that the Punjab Land Revenue Act is not in force in the area where the quarry is situated. This argument involves some study of the history of the Province of Delhi, which was first carved out of the old district of Delhi, forming part of the Province of the Punjab, in the year 1912

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when the capital of India was shifted from Calcutta to Delhi. The Delhi Laws Act 13 of 1912 was enacted to provide for the application of the law in force in the Province of Delhi and for the extension of other enactments thereto. The territory of the new province of Delhi was stated in Schedule 'A' of the Act to be that portion of the District of Delhi comprising the Tehsil of Delhi and the Police Station of Mahrauli. By section 3 all enactments already in force were continued including the Punjab Land Revenue Act. Shortly after the new Province was thus formed, it was found expedient in the interests of administration to inlcude a small area east of the Jamna, which had hitherto been the boundary between the Punjab and United Provinces, within the area of Delhi Province and for this purpose the Delhi Laws Act VII of 1915, was enacted. This is specifically an Act to declare the law in force in certain territory added to the Province of Delhi and Schedule I of the Act, which is headed "Territory added to the Province of Delhi", contains a list of 65 villages. Section 2 provides that all enactments, except the enactments specified in Schedule II for the time being in force in the territory specified in Schedule 'A' to the Delhi Laws Act, 1912, * * * shall be deemed to be in force in the territory specified in Schedule I in the same manner and subject to the same modifications as they are for the time being in the territory specified in the said Schedule to the said Act. Schedule II is headed "Enactments in force in the Delhi Province which will not be in force in the territory added to that Province" and included in it is the Punjab Land Revenue Act of 1887. A third Schedule was added to the Act of 1915, which is headed "Enactments in force in the United Provinces of Agra and Oudh which will continue to be in force in the territory added to the Delhi Province" and among the Acts mentioned is the United Provinces Land Revenue Act, 1901. The first portion of section 3 of the Act specifies that the enactments specified in Schedule III shall continue to be in force in the territory specified in Schedule I.

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The case of the petitioner is based on the fact that item No. 13 in Schedule 1 to the Act of 1915 is "Chandrawal" which is the name of the area in which the quarry regarding which the dispute has arisen is situated. At first sight, it would appear that this is conclusive and that the area known as "Chandrawal" is governed not by the Punjab Land Revenue Act but by the United Provinces Land Revenue Act and, therefore, the proceedings taken against the petitioner under the provisions of the Punjab Land Revenue Act would appear to be without jurisdiction. There does not, however, appear to be any doubt whatever that the area described as "Chandrawal" in which the quarry is situated is and always has been part of the old District of Delhi and of the original Delhi Province, since it is situated on the west or right bank of the Jamna, and the Delhi Gazetteer of 1912 prepared during the time when Delhi was still a district clearly states that the Jamna was the boundary between the district of Delhi and the neighbouring portion of the United Provinces, and also a map of the Cantonment, Civil Station, City and suburbs of Delhi which forms part of the Gazetteer clearly shows the villages of Chandrawal as within the limits of Delhi.

Since the portions of the Act of 1915 and its Schedule refer in the clearest possible terms to that portion of United Provinces which was added at that time to the existing Province of Delhi, it seemed to me at first to be most probable that the name Chandrawal at item 13 in Schedule I must refer to some other village called Chandrawal which was situated in the part of Meerut District then included within the boundaries of Delhi Prc vince. Mr. Hardyal Hardy, however, for the petitioner insisted that there could be no mistake on this point and that the Chandrawal referred to in the Schedule was clearly the Chandrawal situated in the civil station of Delhi, and in support of this contention he relied on the fact that another village Timarpur, also forming part of the civil station, was included next to Chandrawal in the list at

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No. 12. At the same time it is quite obvious that both Chandrawal and Timarpur were originally included in the old district of Delhi and were included in the Province of Delhi in the year 1912, and it, therefore, seems impossible that they could have been included in the list of villages added to the territory in 1915. In the face of these contradictions, when the matter was first considered an adjournment was taken for the purpose of undertaking research for the purpose, if possible, of resolving the apparent conflict. The result of the research on the part of learned counsel for the Government has convinced me that there is in fact no contradiction and that the main portions of the villages Timarpur and Chandrawal were included in the old district of Delhi and in the Province of Delhi as originally constituted in 1912, and that the names in Schedule I to the Act of 1915 refer to portions of the villages on the east bank of the river, which perhaps at some remote time changed its course leaving isolated parts of the original areas of Chandrawal and Timarpur on the other side of the river. The fact that portions of Chandrawal and Timarpur existed on the east bank of the river and so were within the boundaries of United Provinces when the territory was added in 1915 is confirmed by the fact that in 1915 and 1916 a new revenue estate was constituted under the name of Charagah Shamali in which were included isolated portions of the villages not only of Chandrawal and Timarpur but also of Wazirabad, Sadatpur, Khajuri, Gudhi Maindo, Asamanpur, Chawinda, Andhawali, Kaitwara, Salimpur Aamad Delhi, Salimpur Kahawar, Salimpur Banga, Jafarabad, and Auldanpur. The new revenue estate of Charagah Shamali forms a trip running along the eastern bank of the river. The history of the creation of Charagah Shamali in the revenue records was first started in 1915. This area seems in fact to have been acquired by the Government from the proprietors for pasture land in the year 1912.

Since, as I have said, there is no doubt whatever that the main area of Chandrawal in which

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the quarries are situated was undoubtedly included in the old district of Delhi and in the originally constituted Province. it does not seem to me that there can be any doubt whatever that the area which is described by the name "Chandrawal" in Schedule I to the Act of 1915, means only that portion of Chandrawal which was included in the area added to the Province in 1915 from the U.P. and since then incorporated in the revenue estate Charagah Shamali along with other outlying portions of villages. As far as I am aware this is the first time forty years after the foundation of the Province of Delhi that it has ever been questioned that the Punjab Land Revenue Act was in force in the area generally known as Chandrawal and situated on the west bank of the river, and in my opinion the plea of the petitioner on this point must fail.

The other point raised was that the order of the Chief Commissioner was illegal in that it purports to be passed under the Delhi Minor Minerals Rules, whereas these rules are not applicable. There certainly appears to be considerable confusion on this point. The permit issued to the proprietor, of which both parties have filed a copy, purports to be issued under "the Punjab Minor Minerals Rules published with the Financial Commissioner's notification, dated the 23rd of December 1933". It is not the case of either party that the permit was, or could be, issued under the Punjab Minor Minerals Rules, but the Chief Commissioner has held that the permit must have been issued under the Delhi Minor Minerals Rules, which appeared in a notification, dated the 10th of February 1938, issued in the Gazette of India, dated the 2nd of April 1938. It is not, however, in dispute that the Chandrawal quarries are situated within the notified Area of the Civil Station and according to rule (1) (v) (a) of these Rules, the Rules do not apply to the quarrying of minerals from land belonging to Government within the Municipalities of Delhi and New Delhi and the Notified Areas of the Fort and Civil Station.

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These areas are governed by the following paragraph, which reads—

> "Permission to quarry minerals must be obtained in these cases for quarries in category (s) from the Superintending Engineer, Delhi Province, or his representative."

This has been amended by a notification, dated the 18th of July 1947, appearing in the Government of India Gazette of the 26th July 1947, by which the words "Collector, Delhi", have been substituted for "Superintending Engineer, Delhi Province". The permit in this case was undoubtedly granted by the Collector, but it is clear that, as was now for the first time contended on behalf of the respondents, the permit was governed not by the Delhi Minor Minerals Rules but by the Quarry Permit Rules issued in a notification, dated the 30th of March 1938. This is clear from the terms of rule 1(2), which states that the rules apply to all quarries owned by Government in the Municipalities of Delhi and New Delhi and in the Notified Areas of the Fort and Civil Station for the working of which permits are issued by or under the authority of the Superintending Engineer, Delhi Province, and so is clearly connected with the exclusion Clause in Rule 1(v)(a) of the Delhi Minor Minerals Rules.

The fact that the respondents have adopted this position is virtually an admission of the illegality of the order of the Chief Commissioner holding that the permit was issued under the Delhi Minor Minerals Rules, and that penalties for a breach of its conditions could be enforced as provided by these rules. The order of the Chief Commissioner is in fact quite evidently wrong, since in the clearest terms the Delhi Minor Minerals Rules did not apply to the quarry at Chandrawal. It is thus clear that if any penalty is to be imposed on the petitioner regarding his quarrying of stone in excess of the amount specified in the permit, this must be done according to the provisions of the

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Quarry Permit Rules, of which the respondents have filed a copy. The relevant provision in these rules is contained in Rule 7 Clause (2) which reads as follows—

> "Material quarried in excess of the quantity authorised by the permit shall be liable to a penal royalty not exceeding one-eighth of its market value; the amount to be charged in each case shall be determined by the Superintending Engineer, Delhi Province."

It was argued on behalf of the respondents on this point that since in the proviso to Rule 5 the Collector of Delhi had been substituted for the Superintending Engineer as the authority to grant permits relating to the quarries excluded from the scope of the Delhi Minor Minerals Rules, it should be deemed that wherever the words "Superintending Engineer" appear in the Quarry Permit Rules the words "The Collector, Delhi" should be substituted. In my opinion this contention must be rejected at once. In the first place an amendment of one particular rule cannot possibly be deemed to amount to an amendment in several places of another set of rules, and in the second place sub-clause (3) of Rule I of the Quarry Permit Rules clearly provided for what was to happen in case the authority of the Superintending Engineer to grant permits for Government-owned quarries was taken away from him and given to some other authority. The clause in question reads—

> "If the power to issue permits for the working of any quarry owned by Government in the said Municipalities or Notified Areas is transferred or delegated to an authority other than the Superintending Engineer, Delhi Province, or his representative, it shall be a condition of the transfer or delegation that the provision of the rules (subject to such exceptions as the Chief Commissioner may approve) shall be enforced

> in substance and to the satisfaction of the Superintending Engineer, Delhi Province, by the permit issuing authority.."

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This clearly means that even after the Collector was given the former powers of the Superintending Engineer to issue permits for Government owned quarries in the Municipal Areas in the year 1947, the Superintending Engineer still retained some powers of supervision. The learned Government Pleader has not been able to show that the Quarry Permit Rules have ever been amended at all except in one particular, namely that by an amendment issued by the Chief Commissioner on the 30th of January 1945 "one rupee" was substituted for "eight annas" in Rules 5(a) and 7(1). Since this amendment was attached to the copy of the Quarry Permit Rules supplied, which was prepared in the office of the Chief Commissioner, it must be presumed that this in fact is the only amendment that has ever been made.

Apart from this a study of the Quarry Permit Rules would show that although the power to issue permits has been taken away from the Superintending Engineer and given to the Collector, there are a number of rules in which it would evidently by out of place to substitute "the Collector" for "the Superintending Engineer". For instance, Rule 3 provides that permits shall be issued only to persons whose names are entered on a list of contractors approved by the Superintending Engineer, Delhi Province, and the Superintending Engineer may at any time remove the name of any person from the list if for reasons to be recorded in writing he considers that the retention of his name on the list is undesirable. This clearly refers to the customary list of approved contractors kept by various branches of the P.W.D., and it seems doubtful whether the Government would have thought it desirable to substitute a list prepared by the Collector. A similar instance is Rule 9 (iii)

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which provides that no explosives shall be used without the permission of the Executive Engineer, Services Division, and the use of explosives shall be regulated by rules issued by the Superintending Engineer, Delhi Province. *Prima Facie* it is very doubtful whether the Collector has any knowledge of the use of explosives in quarrying, which is obviously a technical matter to be controlled exclusively by Engineers and under rules framed by Engineers. In the circumstances there does not seem to me to be any evidence whatever that it was the intention of the Government to substitute the Collector for the Superintending Engineer as the authority for imposing penalties under Rule 7 clause (2), for quarrying in excess of the limit fixed by the permit, and if it was the intention of the Government to delegate all the functions of the Superintending Engineer under the Quarry Permit Rules to the Collector there ought to have been a general amendment of the rules to give effect to this intention. Incidentally, it may be mentioned that although in the Delhi Minor Minerals Rules it is provided that various sums including penalties for excess quarrying shall be recoverable as arrears of land revenue under section 98 of the Punjab Land Revenue Act, there is no such provision in the Quarry Permit Rules. It does, however, seem possible that sums due under these rules including penalties may be recoverable as arrears of land revenue under the provisions of section 98(b) read with section 42 of the Act itself, but I should prefer not to express any definite opinion on this at present.

In the circumstances I accept the petition and, holding that the order of the Chief Commissioner, dated the 23rd of January 1953, is illegal, quash it and direct that the penalty be assessed and recovered in the manner provided in the Quarry Permit Rules. The petitioner will receive his costs from the State. Counsel's fee Rs. 100.