

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4588/2019

Shrikrupa Stone Crusher through its Partner-
Avinash Madhukar

..... **PETITIONER**

...V E R S U S...

- 1] The State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-400 032
- 2] Additional Collector,
Buldhana.
- 3] Sub-Divisional officer (Revenue),
Khamgaon, District Buldhana.
- 4] Tahsildar, Khamgaon,
District Buldhana.

..... **RESPONDENTS**

WITH
WRIT PETITION NO.4589/2019

Jai Gajanan Stone Crusher through its
Partner-Namdeo Ananda Bhonde,

..... **PETITIONER**

...V E R S U S...

- 1] The State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-400 032
- 2] Additional Collector,
Buldhana.

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The question that arises in this batch of writ petitions is whether grant of short term permit for minor minerals under Rule 59 of the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013 (for short, the Rules of 2013) ought to be preceded by holding public auction or whether such short term permit can be granted on the basis of an application made to the Competent Authority ?

3. Each petitioner claims to hold permission to operate stone crushers. The petitioners were informed by the Additional Collector that in view of Government Resolution dated 23.01.2019 grant of short term permit would be permissible only through e-auction. For that reason, the request made by the petitioners for grant of short term permit came to be refused. Being aggrieved by the issuance of such communication the petitioners have challenged the orders passed in that regard and further seek a direction that the respondents be directed to issue short term permit for extraction of minor minerals to the petitioners.

4. Shri Shantanu Khedkar, learned Counsel alongwith S/Shri V.B.Bhise and R.D.Dhande, learned counsel for the petitioners submitted that the

Additional Collector by misconstruing the provisions of Rule 59 of the Rules of 2013 alongwith Government Resolution dated 23.01.2019 has refused to grant short term permit for excavation of minor minerals. Inviting attention to the provisions of Rule 2(s) which defines “quarry license or lease” and Rule 2(t) which defines “quarry permit”, it was submitted that the Rules of 2013 make a distinction between quarry license or lease and quarry permit. Rule 9 of the Rules of 2013 prescribes the mode of granting quarry lease and under sub-rule (1) the Competent Authority can grant quarry lease either on receipt of an application or by way of public auction. Inviting attention to Rule 59 it was submitted that for grant of short term permit to extract any minor mineral it was necessary only to make an application to the Competent Authority and the said Rule did not provide for conducting any auction in that regard. It was further submitted that on 12.01.2018 the Revenue and Forest Department issued Notification seeking to amend the Rules of 2013. Rule 9 as existing was substituted making it obligatory on the part of the Competent Authority to grant quarry lease by way of public auction. While introducing such amendment the provisions of Rule 59 of the Rules of 2013 were not so amended and hence there was no basis for the Additional Collector to hold that grant of short term permit was also to be through public auction. On a plain reading of Rule 9 as amended and Rule 59, it was submitted that there was no reason to hold that grant of short term permit was to be through public auction. Rule 59 began with the use of a non obstante clause and therefore there was no

occasion to apply the provisions of Rule 9 while granting short term permit for excavation of minor minerals. The learned counsel referred to the decision *Laxmi Devi vs. State of Bihar and others (2015) 10 SCC 241*. It was thus submitted that the impugned orders passed by the Additional Collector were liable to be set aside and the application for grant of short term permit ought to be considered in the light of Rule 59 of the Rules of 2013.

5. Ms. N. P. Mehta, learned Assistant Government Pleader for the respondents opposed the aforesaid submissions. She submitted that under Section 15 of the Mines and Mineral (Development and Regulation) Act, 1957 (for short, the Act of 1957) the State Government was empowered to make Rules in respect of minor mineral. The Rules of 2013 were accordingly framed. As per Rule 9 a quarry lease could be granted after holding public auction. The same modality was to be followed for grant of short term quarry permit. Inviting attention to Government Resolution dated 23.01.2019 it was submitted that the manner in which such public auction was to be held was stipulated. On a plain reading of the said Government Resolution it was clear that the Additional Collector did not commit any error when he observed that short term quarry permit could be granted only after holding a public auction. It was thus submitted that the writ petitions were liable to be dismissed.

6. We have heard the learned counsel for the parties at length and we have given due consideration to their respective submissions. For answering

the question as framed hereinabove it would be necessary to first refer to the relevant statutory provisions holding the field.

Under Section 15(1) of the Act of 1957 the State Government is empowered to make Rules for regulating grant of quarry lease, minor lease or other mineral concessions in respect of minor mineral. In exercise of that power the Rules of 2013 have been framed. Rules 2(s) and 2(t) read as under:

*“2(s) **Quarry license of lease** means a license granted under these rules wherein a licensee is required to pay fixed annual license fee exclusive or inclusive of royalty, as the case may be.”*

*“2(t) : **Quarry permit** means a permit granted under Chapter-IV of these rules to extract and remove any minor mineral in specified quantities and specified time.”*

Chapter II lays down the procedure for grant of quarry lease. Rule 9 prescribes mode of granting quarry lease. That rule as substituted by Notification dated 12.01.2018 reads as under :

*“9. **Mode of granting quarry lease** : (1) Subject to the provisions of these rules, mineral concessions for quarry lease on any land vested in the Government or any public authority may be granted by the Competent Authority by way of public auction.”*

Provided that, grant of quarry lease on a private land in the name of the occupant or holder of such private land shall be exempted from auction process and may be granted to such occupant or holder upon his application. However where the occupant or holder of a private land is desirous of leasing his land to another person for quarrying, such occupant or holder shall give his written consent in that regard to the Collector who shall then put quarrying rights in such land to auction for specified

period in which case, the amount realized in auction shall be credited to the Government and the amount of surface rent as decided by the Government from time to time, will be given to the land holder:

Provided further that, the practice of granting quarry lease or permit upon application shall be continued in case of Kumbhar and Vadar families which wish to do such mining for pursuing their traditional business :

Provided further that, the provisions of this rule, shall not apply to any case where prospecting licence or mining lease had been granted but mining lease deed could not be executed before the date of publication of the Government of India Gazette notification No.F. No.5/ 1/ 2015-M.M., dated 10th February 2015 declaring 31 major minerals as minor minerals.

Explanation 1-for the Purposes of this rules,

‘Public Authority’ means any authority or body or institution of self-government established or constituted,-

(a) by or under the Constitution of India;

(b) by any law made by the Parliament;

(c) by any law made by the State Legislature:

by notification issued or order made by the appropriate Government, and includes any body owned, controlled or substantially financed by the Central Government or the State.

Explanation 2- for the Purpose of this rule.

“Surface rent” means rent, payable by the lessee for the surface area, leased to him for the purpose of mining, at the rates prescribed by the Government.

(2) A quarry lease may be granted for quarry operation on the condition of payment of lease money including royalty, dead rent, surface rent, water rates payable to the Government and under such quarry lease, the lessee shall have the right of quarrying and disposing of the extracted minor minerals.

(3) Procedure and terms and conditions for public auction of quarry lease shall be such as the Government may, by an order, specify, from time to time.”.

Rule 11 pertains to an application for seeking quarry lease and Rule 15 refers to disposal of the application for quarry lease. Chapter III comprises of Rules 46 to 57 and it prescribes terms and conditions of quarry lease. Chapter IV pertains to grant of quarry permits for minor minerals and Rule 59, with which we are concerned, reads as under :

“59. Grant of short term permits for minor minerals.

(1) Notwithstanding anything contained in the foregoing rules, the Competent Officer, on an application made to him may grant a quarry permit to any person to extract or remove from any specified land within the limits of his jurisdiction any minor mineral not exceeding in quantity as mentioned under any one permit on payment of advance royalties [at the rate specified in Schedule I] and on such rents and fees assessable for such extraction:

Provided that, no permits shall be granted in case of any specified minor mineral without prior approval of the Director.

(2) The Competent Officer shall grant permit for specific time and specific volume.

(3) The Competent Officer may refuse to grant such permit for reasons to be recorded in writing.”

Chapter V prescribes grant of concession by way of public auction. Under Rule 68 minor minerals can be disposed by way of public auction and under Rule 70 sand from nalah, river beds and creeks can be disposed of by way of public auction. The Rules also comprise of various forms. Form B is an application for quarry lease, Form C is an application of renewal for quarry lease and Form

P is an application for quarry permit.

7. From the aforesaid provisions it becomes instantly clear that reference to grant by way of public auction can be found in Rules 9(1), 68(1) and 70. Rule 59 merely refers to an application to be made to the Competent Officer for grant of quarry permit. On a plain reading of the aforesaid Rules, it is obvious that the procedure for grant of quarry lease under Rule 9 as amended is distinct from the procedure for grant of short term permit under Rule 59. The Forms prescribed under the Rules of 2013 are also distinct. Moreover, Rule 59(1) states that “notwithstanding anything contained in the foregoing rules,.....” Rule 59 (1) thus is intended to operate notwithstanding anything contained in the foregoing rules including Rule 9. It is also pertinent to observe that by Notification dated 12.01.2018, the Rules of 2013 were amended. While existing Rule 9 was substituted, the earlier provision in Rule 9(1) of making an application for grant of quarry lease has been done away with. After amendment, quarry lease can be granted by the Competent Authority only by way of public auction. Rule 59 however has not been amended and it continues to operate in its earlier form. Thus after amendment the distinction between Rule 9(1) and Rule 59(1) becomes more obvious and it is thus clear that it was not the intention of the State that short term permit for minor minerals should be granted by way of public auction. The mode of granting such permit on an application made has been retained.

8. Much emphasis was sought to be placed on the Government Resolution dated 23.01.2019. A complete reading of this Government Resolution indicates that it lays down the procedure for conduct of auctions for grant of quarry lease under Rule 9 of the Rules of 2013. In the entire Government Resolution reference can be found only to the modality prescribed by Rule 9 and other ancillary Rules in that regard. There is no reference whatsoever to Rule 59 which empowers grant of short term permits. In the absence of any provision in Rule 59(1) to grant short term quarry permit by holding public auction, the same cannot be imported by referring to Government Resolution dated 23.01.2019. In any event, that Government Resolution specifically refers to Rule 9 of the Rules of 2013 and there is total absence of any reference to Rule 59 of the Rules of 2013. It is thus clear that the modality for grant of quarry lease under Rule 9 has been prescribed only to be by way of public auction while grant of short term permit is only by way of making an application to the Competent Authority. The question as framed is answered accordingly.

9. Having found that short term quarry permit under Rule 59(1) of the Rules of 2013 can be granted on an application being made to the Competent Authority, we find that the application made by the petitioners herein are not in accordance with Form P. Rule 61(1) of the Rules of 2013 prescribes the nature of application to be made for grant of quarry permits and therefore if

the petitioners seek quarry permit they would be required to apply as per the provisions of Rule 61(1) of the Rules of 2013 and Form P thereof. However rejection of the application as made by the petitioners is for the reason that grant of quarry permits has to be as per public auction which reason has been found to be incorrect. Incidentally, we may observe that holding of public auction would always be preferable than any grant being made on the basis of an application. However, for that purpose there ought to be some statutory provision in that regard which is however absent in Rule 59 of the Rules of 2013.

10. Accordingly, the following order is passed :

(1) It is held that grant of quarry permits under Rule 59(1) would be pursuant to application made in Form P to the Competent Authority and not by public auction since there is no such requirement in Rule 59 of the Rules of 2013. Government Resolution dated 23.01.2019 is not applicable to grant of quarry permits under Rule 59 of the Rules of 2013.

(2) The impugned orders refusing to grant short term quarry permit by stating that the same can be granted only by way of public auction are set aside.

(3) If the petitioners desire to seek grant of quarry permit under Rule 59(1) of the Rules of 2013, they are free to make such application under Rule 61(1) and Form P as prescribed. If such application is made the Competent

Authority shall decide the same in accordance with law and in the light of the observations made hereinabove.

Rule is made absolute in aforesaid terms with no order as to costs.

(SMT. M.S.JAWALKAR,J.)

(A.S.CHANDURKAR, J.)

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