

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

*Reserved on: 15.04.2026
Pronounced on: 28.04.2026
Uploaded on: 29.04.2026
Whether Full Judgment or
Operative Has Been pronounced: Full*

**WP(C) 710/2024 CM(1896/2024)
CM(1897/2024) CM(5082/2024) CM(6667/2025).**

**Inhabitants Of Village Pariswani
Tehsil Kawarhama District
Baramulla Through:**

- 1. Abdul Rehman Malik (Aged 64 Years Approx.)
S/O Abdul Raheem Malik
R/O Village Pariswani
Tehsil Kawarhama District
Baramulla.**
- 2. Abdul Rashid Malik (Aged 60 Years Approx.)
S/O Ghulam Mohammad Malik
R/O Village Pariswani
Tehsil Kawarhama District
Baramulla.**
- 3. Ghulam Mohi-Ud-Din Malik (Aged 63 Years
Approx.)
S/O Fathe Mohammad Malik
R/O Village Pariswani Tehsil
Kawarhama District Baramulla.**
- 4. Shabir Ahmad Dar (Aged 43 Years Approx.)
S/O Abdul Gani Dar.
R/O Village Pariswani Tehsil
Kawarhama District Baramulla.**
- 5. Bashir Ahmad Malik (Aged 37 Years Approx.)
S/O Ghulam Mohammad Malik
R/O Village Pariswani Tehsil
Kawarhama District Baramulla.**
- 6. Ghulam Mohammad Malik (Aged 55 Years
Aprox.
S/O Fathe Mohammad Malik
R/O Village Pariswani Tehsil
Kawarhama District Baramulla.**

.....Petitioner(s)

Through:
Mr. Gulzar Ahmad Sopori, Adv.

Versus

- 1. UT Of J&K Through Commissioner Secretary To Revenue Department Government Of Jammu And Kashmir At Civil Secretariat Srinagar/Jammu.**
- 2. Commissioner Secretary to Department Of Geology And Mining (Industries And Commerce) At Civil Secretariat Srinagar/Jammu.**
- 3. Divisional Commissioner of Kashmir At Srinagar.**
- 4. Director Geology and Mining of Kashmir Range At Srinagar.**
- 5. Deputy Commissioner Baramulla.**
- 6. District Mining Officer Department of Geology And Mining (Industries And Commerce At Baramulla).**
- 7. Sdm (Sub Divisional Magistrate) Zone Tangmarg District Baramulla.**
- 8. Sdpo (Sub Divisional Police Officer) Tangmarg. District Baramulla.**
- 9. Tehsildar Kawarhama District Baramulla.**
- 10. SHO Police Station Kunzar District Baramulla.**

.....Respondent(s)

Through:
Mr. Hakim Aman Ali, Dy. AG
Mr. Illyas Nazir Laway, GA

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

1. The petitioner through the medium of the instant petition has sought the following relief(s):

I) *“By issuance of writ of mandamus or any other appropriate relief thereby directing upon the respondents not to restrain, not to cause any sort of harassment to the inhabitants while earning their livelihood by extracting sand and bolders/small stones from their property land and from the Arrah/Nallah situated in the Village Pariswani Tehsil Kawarhama District Baramulla.*

II) *By issuance of appropriate writs or appropriate orders thereby commanding upon the respondents to take a decision with regarding to depositing of royalty on behalf of the inhabitants for the land notified as Arrah/Nallah situated in Village Pariswani Tehsil Kawarhama District Baramulla so as to enable the inhabitants to utilize the same for their livelihood purposes to sustain and maintain their survival and feed their families.*

III) *By issuance of appropriate writ or appropriate order thereby direction upon the respondents not to cause unnecessary restrains to the inhabitants while utilizing their land and also while working in the said Arrah/Nallah for their livelihood purposes and allow the inhabitants to earn their livelihood in accordance with the law”.*

Brief Facts:

2. The brief facts of the case are that petitioners, who are residents of village Pariswani, have filed the instant petition on behalf of the inhabitants of the said village, aggrieved of the action on the part of the respondents in not permitting the petitioners and other inhabitants to utilize their proprietary land by extracting sand, crusher material and bajri therefrom, particularly after the said land had been converted into a Nallah. It is further averred that the petitioners and other inhabitants are also not being permitted to extract stones and sand from the Nallah passing through the village, from which they have been earning their livelihood for centuries, despite the fact that the petitioners have been depositing royalty with the Government.

Submissions on Behalf of Petitioners:

3. Learned counsel for the petitioners, Mr. Gulzar Ahmad Sopori, submits that the Government without issuance of any notification is not accepting royalty from the inhabitants for extracting the said sand/small stones, which has caused hardships and starvation to the hundreds of families. It is contended that the main survival of the inhabitants is on the said extraction, and till 2021, the petitioners were regularly depositing royalty before the concerned department, pursuant to which they were permitted by the Government to extract sand and small stones from the Nallah in question. The material so extracted was being utilized for construction of buildings, houses and roads. According to the petitioners, the action of the respondents in not accepting the royalty and in restraining the inhabitants from carrying on their livelihood is illegal, arbitrary and unjustified.

4. It is further submitted that petitioners have been earning their livelihood by extracting sand and stones from the Nallah, i.e., Block Nos. 10, 11 and 12, upon payment of the requisite royalty, which was being regularly deposited earlier. It is further averred that the said Nallah passes through the proprietary land of the petitioners and that a portion of such proprietary land has since merged into the Nallah. The petitioners submit that, having no other regular source of income, they have been engaged in the extraction of sand and stones from the said Nallah since time immemorial for their sustenance.

5. Learned counsel for petitioners contended that they have been subjected to victimization, inasmuch as their vehicles have been seized and fines have been imposed by the respondents, and they are not being permitted to extract sand and stones despite the fact that they had been depositing royalty with the respondents. The petitioners, in support of their case, have relied upon Article 19 of the Constitution of India, contending that they possess a fundamental right to carry on occupation, trade and business for their sustenance and livelihood. According to the petitioners, extraction of sand and stones from the land in question, which are utilized for construction purposes, forms part of their constitutional right, and the respondents cannot raise any objection in this regard.

Submissions On Behalf of Respondents:

6. The material placed on record reveals that there are two set of replies filed on behalf of the respondents. It has been submitted by respondents that the grant of mineral concessions in the erstwhile State of Jammu and Kashmir was earlier governed by the Minor Mineral Concession Rules, 1962 till January, 2016. Thereafter, the Government of Jammu and Kashmir, vide SRO-105 dated 31.02.2016, introduced a new statutory framework known as **the Jammu and Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016**, regulating the grant of various forms of mineral concessions in respect of minor minerals in the State. It is submitted that the said Rules were framed in light of the judgment passed by the Hon'ble Supreme Court in *Deepak Kumar vs. State of Haryana and Ors.*, as well as the subsequent amendments made in the Environmental Impact Assessment (EIA) Notification issued by the Ministry of Environment, Forest and Climate Change vide Notification No. S.O. 141(E) dated 15.01.2016, along with amendments in the Mineral Concession Rules, 1960 and the introduction of the Mineral (Auction) Rules, 2015.

7. It is further submitted that although the petitioners had been granted permissions for minor mineral extraction under the earlier regime till March, 2016, however, with the advent of the new Rules of 2016, the entire procedure and requirements for grant of mineral concessions underwent a substantial change. Consequently, the Department of Geology and Mining identified environmentally viable spots on Ferozpora Nallah and carved out Minor Mineral Blocks which were thereafter put to e-auction under the prevailing Rules. These included Minor Mineral Block No. 10 measuring 9.98 hectares and Minor Mineral Block No. 11 measuring 6.68 hectares.

8. The respondents further submit that the petitioners raised an objection that part of their proprietary land had been included in the said auctioned blocks and accordingly approached this Court in the matter titled *Abdul Rashid Malik & Ors. vs. Geology and Mining & Ors.* Pursuant to the directions passed therein, the matter was referred to the Revenue Department

and the Tehsildar, Kawarhama, who vide communications dated 03.10.2020 and 02.12.2020 reported that proprietary land under Survey No. 191 partially and Survey No. 95 wholly falls within Minor Mineral Block No. 11, while proprietary land under Survey Nos. 101, 202, 199 min, 200, 201, 207, 208 and 212 fell within Minor Mineral Block No. 10. In light of the said reports, Minor Mineral Blocks No. 10 and 11 were accordingly resized by excluding the private/proprietary land. It is submitted that the remaining area of the said blocks falling under Survey No. 215 stands recorded as State land and/or Gair Mumkin Ara.

9. Further, the respondents have categorically submitted that under the existing Minor Mineral Concession Rules, no permission can be granted to the petitioners for extraction of stones and sand from State land. However, it is stated that the petitioners are at liberty to apply for grant of mineral concession in respect of their proprietary land, subject to fulfillment of all requisite formalities prescribed under the Rules. It is contended that instead of following the statutory procedure, the petitioners have continued extraction from State land without valid permission, which is impermissible in law.

10. The Learned counsel for respondents, while placing reliance upon the section 4(1) of the Mines and Minerals (Development and Regulation) Act, 1957, have submitted that no person has an unfettered right to transport or store any mineral except in accordance with the provisions of the Act and the Rules framed thereunder. It is contended that, in the absence of any valid permission in favour of the petitioners, action, as warranted under the Act and the Rules, has rightly been initiated against them for violation of the law.

11. The respondents have further submitted that, in case the petitioners want to extract the minor mineral from the said Nallah, they are required to follow the procedure as envisaged under law and the Rules framed thereunder, however, no such permission has been granted to them till date. The petitioners, however, are resorting to illegal and unscientific extraction during oddhours, and have taken undue advantage of the locality and in a way are causing damage to the fragile ecology of the area, besides causing substantial loss to the public exchequer.

12. Further, learned counsel for respondents with a view to fortify their claim have placed reliance upon Section 4(2) of the Mines and Minerals (Developmental Regulation Act) 1957, which provides that no mineral concession shall be granted otherwise than in accordance with the provisions of the Act and the Rules made thereunder. Relying upon the said statutory provision, it has been contended that no mineral concession can be granted unless all requisite formalities, are duly completed in conformity with the rules, in force.

13. Lastly, it has been submitted that the inhabitants of village Pariswani had, in the month of February, 2024, approached the District Mineral Office, Baramulla, seeking permission for extraction of sand and stones from their proprietary land, which had admittedly been affected by floods. Pursuant thereto, they were apprised of the requisite formalities to be fulfilled under the Rules for grant of mineral concession and were accordingly advised to complete the same so that the concession could be considered in their favour. However, till date, the petitioners have neither approached the competent authority nor have completed the requisite formalities, and to the contrary, are carrying out illegal mining activities from the State land/GairMumkin Area falling in estate Pariswani.

LEGAL ANALYSIS

14. Heard learned counsel for the parties at length and perused the material placed on record, this Court finds that the entire case set up by the petitioners proceeds on the premise that their alleged proprietary rights over the land, which has subsequently converted into Nallah due to floods, together with the past practice of extraction of minor minerals, confers upon them a vested, continuing and enforceable right to carry on such activity.

15. In light of the aforesaid pleadings and submissions, the following issues arise for consideration before this Court:

1) Whether mere ownership of proprietary land or past practice of extraction confers upon the petitioners a vested right to extract minor minerals such as sand, boulders and stones from the land/Nallah?

II) Whether extraction, transportation and storage of minor minerals from the said Nallah/proprietary land can be undertaken by the petitioners without obtaining a valid mineral concession, licence, lease or permission under the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules framed thereunder?

III) Whether the refusal of the respondents to permit such extraction and their action in restraining the petitioners, seizing vehicles and imposing penalties amounts to violation of the petitioners' fundamental right under Article 19(1)(g) of the Constitution of India or is justified as a reasonable statutory restriction in public interest?

IV) Whether this Court, in exercise of writ jurisdiction under Article 226 of the Constitution of India, can issue a writ of mandamus directing the respondents to permit extraction of minor minerals or accept royalty in contravention of the statutory provisions governing mining activities and environmental protection?

I) Whether mere ownership of proprietary land or past practice of extraction confers upon the petitioners a vested right to extract minor minerals such as sand, boulders and stones from the land/Nallah?

16. The core issue that falls for the consideration of the Court is Whether mere ownership of proprietary land or past practice of extraction confers upon the petitioners a vested right to extract minor minerals such as sand, boulders and stones from the land/Nallah.

17. The basic premise of the petitioners arguments is that since the land originally belonged to them and part of the same has now assumed the character of a Nallah, they possess a continuing right to extract sand, stones and boulders therefrom. They further fortify their claim by relying upon the fact that for several years they had been extracting such material and depositing royalty with the Government. According to petitioners, this long-standing and continuous practice has crystallized into a vested and enforceable legal right.

18. It is well settled that minerals do not constitute part of the attributes of proprietary rights in land, and the right to extract the same cannot be claimed as an incident of ownership of the land. Mere ownership does not ipso facto confer any right to extract or exploit the minerals beneath. The right to undertake such activity is not inherent but is subject to a comprehensive statutory regime enacted in public interest, keeping in view the need for regulated and scientific exploitation of natural resources. Extraction of minerals, therefore, can be carried out only in accordance with the provisions of the governing statute and the rules framed thereunder, and not otherwise and any claim to the contrary is clearly untenable in law

19. In the considered opinion of this Court, the contention raised by the petitioners is fundamentally misconceived. Mere Ownership of land does not automatically confer ownership over the minerals lying beneath the surface, nor does it create an unrestricted right to exploit such minerals. Mineral wealth is not treated as an ordinary incident of proprietary ownership rather, it is governed by a distinct statutory regime enacted in larger public interest. Minerals are regarded as national assets and natural resources, the regulation and exploitation whereof is controlled by the State in trust for the people.

20. It is well settled that rights over surface land and rights over sub-soil minerals are separate and distinct. Mere ownership of land does not ipso facto entitle a person to undertake mining operations. Extraction of minerals is not a natural extension of proprietary rights but is subject to statutory regulation under the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules framed thereunder.

21. The Kerala High Court in case titled **Joby P.D vs The District Collector** reported as **2016 SCCOnline Ker 27349** while relying on *Thressiamma Jacob & Ors vs Geologist,Dppt.Of Mining & Geology* has held that:

“37. As held by the Apex Court in Thressiamma Jacob's case (supra), the provisions under the MMDR Act is a regulatory measure and despite the ownership of the sub soil being conferred on the owner of the property, it does

not detract from the requirement for a lease/licence/permit to extract minor mineral like ordinary clay from such property. In case of extraction, even if made from land owned by private persons, the owner is obliged under Chapter III of KMMC Rules to get quarrying permit on the same conditions as in Chapter II of the said Rules and submit an attested copy of the same to the competent authority. Otherwise, the extraction of minerals made from such lands would also be illegal, in which event, it will be open to the State to invoke the provisions under sub-section (5) of Section 21 of the MMDR Act.”

22. The plea of the petitioners that their proprietary land has now become part of a Nallah also does not advance their case. Once the land assumes the character of a natural watercourse or Nallah, it acquires public significance beyond private ownership. Such natural resources are subject to environmental regulation and public trust obligations. The petitioners cannot assert exclusive extraction rights over such an area merely on the basis of previous ownership.

23. In **Mineral Area Development Authority & Anr. Vs M/S Steel Authority of India & Anr Etc. reported as (2024) 10 SCC 1** the Hon'ble Supreme Court observed that :

“The public trust doctrine is founded on the principle that certain resources are nature's bounty which ought to be reserved for the whole populace, for the present and for the future.

Since these resources are intrinsically important to every person in society, the State acts as a public trustee to safeguard them. In M C Mehta v. Kamal Nath, Justice Kuldeep Singh observed that the State is the trustee of all natural resources

which are by nature meant for public use and enjoyment. The learned Judge further observed that the State has a legal duty to protect natural resources which cannot be converted into private ownership.

The environment and natural resources are national assets and subject to intergenerational equity.

The public trust doctrine looks beyond the needs of the present generation and obligates the State to protect natural resources for future generations as well.”

24. This court is of the considered view that the Public Trust Doctrine is a constitutional reminder that natural resources such as minerals, rivers, forests, and nallahs are not private commodities but collective assets belonging to the people. The State holds them only as a trustee and is under a legal and moral obligation to protect, preserve, and regulate their use in public interest and for future generations. Mere long-standing extraction or payment of royalty cannot create an enforceable right to exploit such resources, particularly where environmental balance and ecological sustainability are at stake. Private commercial interest must always yield to public welfare, environmental protection, and the principle of intergenerational equity, for nature's bounty cannot be exhausted for present convenience at the cost of future survival.

25. The reliance placed by the petitioners upon the past practice of depositing royalty is equally misconceived and does not advance the case of petitioner. Royalty, by its very nature, is a contractual or statutory payment made for the extraction of minerals pursuant to a valid lease, licence or concession; it does not, in itself, constitute or create an authorization to undertake mining activity. In other words, the right to extract minerals flows from a valid permission granted in accordance with law, and not from the act of depositing royalty. The past practice and long-standing extraction, even if

it was permitted earlier, does not create a vested or perpetual right. If the law changes or regulatory requirements are altered, every person must comply with the prevailing statutory framework. Past tolerance or administrative practice cannot create legal entitlement contrary to law.

26. The doctrine of legitimate expectation also has no application where the expectation itself is contrary to statute. No citizen can claim a legitimate expectation to continue an activity prohibited by law.

27. This Court is therefore of the considered opinion that neither proprietary ownership of land nor past practice of extraction creates any vested or enforceable right in favour of the petitioners to continue extraction of minor minerals. Such activity can only be undertaken in accordance with statutory permission granted under law and not otherwise.

28. *Accordingly, Issue No. I is answered.*

II) Whether extraction, transportation and storage of minor minerals from the said Nallah/proprietary land can be undertaken by the petitioners without obtaining a valid mineral concession, licence, lease or permission under the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules framed thereunder?

29. This issue strikes at the very root of the controversy involved in the present petition. The petitioners seek a direction from this Court permitting them to extract sand, stones and boulders from the Nallah and the adjoining proprietary land on the ground that such activity has been their traditional source of livelihood. However, the legality of such extraction must be tested strictly in light of the statutory framework governing mining operations.

30. The field of mining and extraction of minerals is comprehensively regulated by the Mines and Minerals (Development and Regulation) Act, 1957 (for short, “the MMDR Act”) and the Rules framed thereunder. Section 4 of the Act creates an absolute prohibition against undertaking any mining operations except in accordance with a valid mineral concession, lease, licence or permit granted under the statute.

31. Section 4(1) of the Act clearly provides that no person shall undertake reconnaissance, prospecting or mining operations in any area except under and in accordance with the terms and conditions of a mineral concession granted under the Act and the Rules framed thereunder. The provision further extends the prohibition to transportation and storage of minerals by specifically providing that no person shall transport or store any mineral except in accordance with the provisions of the Act. For facility, of reference, section 4(1) is reproduced as under:

“No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a mineral concession or of a or of a exploration licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder: Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting license or mining lease granted before the commencement of this Act which is in force at such commencement: [Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines,] [Inserted by Act 37 of 1986, Section 2 (w.e.f. 10.2.1987).][the Atomic Minerals Directorate for Exploration and Research] [Substituted by Act 38 of 1999, Section 5, for " the Atomic Minerals Division" (w.e.f. 18.12.1999).][of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government

(by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of [clause (45) of section 2 of the Companies Act, 2013, and any other entities including private entities that may be notified for this purpose, subject to such conditions as may be specified by the Central Government”] [Inserted by Act 37 of 1986, Section 2 (w.e.f. 10.2.1987).]:][Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union territory of Goa, Daman and Diu.] [Inserted by Act 16 of 1987, Section 14 (w.r.e.f. 1.10.1963).

No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.] [Inserted by Act 38 of 1999, Section 5 (w.e.f. 18.12.1999).

(2)[No mineral concession, prospecting license or mining lease] [Substituted by Act 38 of 1999, Section 5, for " No prospecting license or mining lease" (w.e.f. 18.12.1999).] shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(3)[Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under section 18,] [Inserted by Act 37 of 1986,

Section 2 (w.e.f. 10.2.1987).][undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any mineral concession, prospecting license or mining lease] [Substituted by Act 38 of 1999, Section 5, for certain words (w.e.f. 18.12.1999)”.

32. The Hon’ble Supreme Court in ***Common cause v. Union of India*** reported as (2017) 9 SCC 499 has categorically held that:

“130. Section 4(1) of the MMDR Act makes it clear that no person can carry out any mining operations except under and in accordance with the terms and conditions of a mining lease granted under the MMDR Act and the rules made thereunder. Obviously therefore, any person carrying on mining operations without a mining lease, is indulging in illegal or unlawful mining. This would also necessarily imply that if a mining lease is granted to a person who carries out mining operations outside the boundaries of the W.P. (C) Nos. 114/2014 etc. mining lease, the mineral extracted would be the result of illegal or unlawful mining.”

33. The language in Section 4 is mandatory and leaves no scope for any exception based on personal hardship, local practice, proprietary rights or livelihood concerns. The legislative intent is clear that mineral resources, being valuable natural assets, must be regulated strictly through a legal mechanism so as to prevent indiscriminate exploitation and environmental degradation.

34. The provision unequivocally stipulates that no person shall undertake any reconnaissance, prospecting or mining operations in any area except under and in accordance with a valid mineral concession, licence or lease granted under the Act and the rules framed thereunder. The provision further extends the prohibition not only to extraction but also to transportation and storage of minerals, thereby indicating the legislative intent to regulate the entire chain of mining activity in a comprehensive manner.

35. Applying the aforesaid statutory mandate to the facts of the present case, this Court finds that in the absence of any valid mineral concession, licence or lease in favour of the petitioners, their act of extracting, transporting or dealing with minor minerals cannot be sustained in the eyes of law. The petitioners cannot seek to justify such activity on the basis of ownership of land, past practice or alleged hardship, as none of these considerations can override the express statutory prohibition. In such circumstances, the action of the respondents in restraining the petitioners and taking steps in accordance with law cannot be faulted, being in consonance with the mandate of Section 4 of the Act.

36. The Hon'ble Supreme Court in **Deepak Kumar v. State of Haryana reported as 2012 (4) SCC 629** has emphasized that even extraction of minor minerals such as sand, gravel and boulders must be subjected to strict environmental scrutiny and statutory regulation. The Court observed that:

“Mining of minor minerals, though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of major minerals. However, the activity as a whole is seen to have significant adverse impacts on environment. It is, therefore, necessary that the mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide

for reclamation and rehabilitation of the mined out areas.”

37. This court is of the considered view that “minor minerals” are not minor in their environmental consequences their impact is often grave and far reaching. Extraction of sand, gravel, stones, and boulders from riverbeds and nallahs may appear insignificant, but their cumulative impact is often severe, leading to soil erosion, depletion of groundwater, destruction of aquatic ecosystems, weakening of riverbanks, and increased risk of floods. The Hon’ble Supreme Court rightly emphasized that such activities cannot be left to unchecked private exploitation and must operate only within a strict statutory and environmental framework. Mining plans, environmental clearances, and rehabilitation measures are not mere procedural formalities but essential safeguards to ensure that economic activity does not cause serious damage to the environment and public welfare.

38. In the present case, it is an admitted position that the petitioners do not hold any valid mineral concession, mining lease, licence or statutory permission authorizing them to undertake extraction of minor minerals from the Nallah in question. The respondents have specifically stated that the petitioners were informed of the procedure required for obtaining mineral concession in accordance with the Rules of 2016, yet they failed to complete the requisite formalities.

39. Instead of following the legal procedure, the petitioners continued extraction activities and were allegedly transporting minerals without valid documentation. Such conduct clearly falls within the ambit of illegal mining and unauthorized transportation of minerals, which is expressly prohibited under law.

40. The argument that the petitioners were earlier permitted to extract minerals upon payment of royalty does not dilute the mandatory nature of Section 4. Even if such practice existed prior to the coming into force of the new Rules, the same cannot continue de hors the present statutory regime. Once the law mandates grant of concession through prescribed procedure, every person is bound to comply with the same.

41. This Court is therefore of the considered opinion that no extraction, transportation or storage of minor minerals can be legally undertaken without a valid mineral concession or statutory permission. In the absence of such authorization, the petitioners possess no enforceable right to continue such activity.

42. Accordingly, *Issue No. II is answered.*

III) Whether the refusal of the respondents to permit such extraction and their action in restraining the petitioners, seizing vehicles and imposing penalties amounts to violation of the petitioners' fundamental right under Article 19(1)(g) of the Constitution of India or is justified as a reasonable statutory restriction in public interest?

43. The petitioners have sought to invoke Article 19(1)(g) of the Constitution of India by contending that extraction of sand and stones from the Nallah constitute their traditional occupation and sole source of livelihood, and therefore any restraint imposed by the respondents amounts to infringement of their fundamental right to carry on trade, occupation and business.

44. Article 19(1)(g) undoubtedly guarantees to every citizen the right to practice any profession or to carry on any occupation, trade or business. However, such right is not absolute. Article 19(6) expressly permits the State to impose reasonable restrictions in the interest of the general public. Activities involving exploitation of natural resources, particularly mining operations, fall squarely within the sphere of regulated trade and are subject to strict statutory control.

45. Mining is not an ordinary commercial activity. It directly impacts environment, ecology, groundwater, river systems, biodiversity and public revenue. Unregulated extraction of sand and minor minerals from riverbeds and Nallahs can result in riverbank erosion, lowering of groundwater levels,

damage to infrastructure such as bridges and roads, increased flood vulnerability and irreversible ecological degradation.

46. For this reason, the state has enacted a comprehensive regulatory regime under the MMDR Act and the Rules framed thereunder. Such regulation constitutes a valid and reasonable restriction under Article 19(6).

47. The Hon'ble Supreme court in case titled **Sushila Saw Mill Vs. State Of Orissa & Ors reported as 1995 SCC (5) 615**, has held as under:

“The right to carry on trade of business envisaged under Art. 19(1) (g) and Art. 301 is subject to the statutory regulation.”

48. This Court is of the considered view that the activity of extraction of minor minerals, which is governed by a comprehensive statutory framework under the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules framed thereunder, squarely falls within the domain of regulated trade. The petitioners, therefore, cannot claim any unfettered right to carry on such activity merely on the basis of livelihood or past practice, in disregard of the statutory requirements. Livelihood cannot be used as a shield to justify an activity prohibited by law. If such contention is accepted, every form of illegal extraction would be justified on ground of economic hardship, which would defeat the very purpose of environmental and mining regulations.

49. The respondents, in the present case, have not imposed any arbitrary or unreasonable restriction. They have merely enforced the statutory provisions and prevented unauthorized mining. The seizure of vehicles and imposition of penalties are measures contemplated under law to curb illegal extraction and protect public resources.

50. This Court is not oblivious to the hardship projected by the petitioners, who claim that their livelihood depends upon such extraction. However, it is equally well settled that hardship cannot be a ground to permit an activity which is otherwise prohibited by law. The petitioners are at liberty to apply for lawful mineral concession in accordance with the Rules. Accordingly, the

action of the respondents is held to be a lawful exercise of statutory power and does not violate Article 19(1)(g) of the Constitution.

51. *Issue No. III is accordingly answered .*

IV) Whether this Court, in exercise of writ jurisdiction under Article 226 of the Constitution of India, can issue a writ of mandamus directing the respondents to permit extraction of minor minerals or accept royalty in contravention of the statutory provisions governing mining activities and environmental protection?

52. The last issue that arises for determination is whether this Court, while exercising extraordinary writ jurisdiction under Article 226 of the Constitution, can direct the authorities to permit the petitioners to extract minor minerals despite the absence of a valid mineral concession or statutory permission.

53. A writ of mandamus can only be issued for enforcement of a legal right and against failure of a corresponding legal duty. It cannot be issued to compel an authority to act contrary to law, ignore statutory provisions, or bypass mandatory legal requirements.

54. The Hon'ble Supreme Court in **State Of West Bengal vs Subhas Kumar Chatterjee & Ors reported as (2010) 11 SCC 694** has authoritatively held that:

“No court can issue Mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law.”

55. The petitioners' prayer for acceptance of royalty is equally misconceived. Acceptance of royalty is not an independent right. Royalty is merely a statutory consequence flowing from a valid grant of mining

permission. It cannot precede or replace the legal requirement of obtaining a concession.

56. Further, the doctrine of public trust imposes an additional constitutional duty upon the State to protect natural resources such as rivers, Nallahs and fragile ecologically zones for the benefit of the public at large.

57. The Hon'ble Supreme Court in **M.C. Mehta vs. Kamal Nath, (1997) 1 SCC 388**, has held that:

“In our legal system - based on English Common Law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea- shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership”

58. This Court is of the considered view that the Nallah in question, being a natural watercourse, squarely falls within the category of resources held by the State in trust for the public at large. The material placed on record prima facie demonstrates that the petitioners have been extracting minor minerals from the said Nallah without any valid permission or statutory authorization. Such activity, apart from being in violation of the governing statutory framework, also runs contrary to the public trust doctrine, inasmuch as it amounts to appropriation of a public resource for private benefit without lawful sanction.

59. A Nallah is not merely a source of sand and stones for private exploitation, it is a living ecological asset, an integral component of environmental balance, replenishment of groundwater, biodiversity preservation and the larger public trust doctrine. Riverbeds, streams and Nallahs perform a vital ecological function by maintaining the natural flow of water, preventing soil erosion, sustaining aquatic life and preserving the hydrological balance of the surrounding region. Indiscriminate extraction of

sand, boulders and minor minerals from such natural watercourses disturbs the ecological equilibrium and causes irreversible environmental damage.

60. Unregulated sand mining from a Nallah results in deepening of the riverbed, destabilization of banks, erosion of adjoining agricultural land and weakening of embankments, thereby increasing the risk of floods and landslides. It lowers the groundwater table by disrupting the natural recharge mechanism and adversely affects irrigation and drinking water availability for nearby inhabitants. Excessive removal of stones and boulders also damages the natural flow pattern of the stream, destroys fish habitats, affects aquatic biodiversity and leads to the collapse of ecosystems. Such activity further endangers public infrastructure such as bridges, culverts and roads by undermining their structural foundation. Therefore, illegal mining is not merely a question of unauthorized extraction of minerals. It is a direct impact on environmental sustainability and inter-generational equity.

61. In such circumstances, the action of the respondents in seizing the vehicles and imposing penalties upon the petitioners cannot be said to be arbitrary, excessive or without authority of law. On the contrary, this Court finds that the respondents have acted strictly in discharge of their statutory as well as constitutional obligations to prevent illegal mining, protect natural resources and uphold the rule of law. Any failure on their part to take such action would itself have amounted to a breach of the public trust reposed in them. This Court, therefore, finds no infirmity in the action taken by respondents.

62. The Hon'ble Supreme Court in **Natural Resources Allocation, In Re, Special Reference No. 1 Of 2012 reported as (2012) 10 SCC 1** has observed as under:

“128. In a constitutional democracy like ours, the national assets belong to the people. The Government holds such natural resources in trust. Legally, therefore, the Government owns such assets for the purposes of developing them in the interests of the people.”

63. This Court is of the considered view that the extraction of minor minerals from a Nallah, which forms part of natural resources, cannot be permitted except in strict adherence to the statutory regime governing the field. Any direction by this Court allowing the petitioners to carry out such extraction without compliance of the prescribed procedure, licence or concession would not only be clear violation of the statutory provisions but would also defeat the doctrine of public trust and the principle that natural resources are to be utilized for the benefit of the public at large. Such a course would amount to conferring an undue and unauthorized benefit upon a few individuals at the cost of public interest .

64. This Court finds that the relief sought by the petitioners, if granted, would run contrary to the law and would undermine the larger public interest which the statutory framework seeks to protect.

65. This Court is of the considered opinion that any direction permitting the petitioners to carry out extraction without following due process would not only violate the statutory scheme but also be contrary to the larger public interest.

66. *Issue No. IV is answered, accordingly.*

CONCLUSION:

67. In view of the aforesaid , this Court is of the considered opinion that the petitioners have failed to establish any enforceable legal or fundamental right so as to warrant interference in exercise of writ jurisdiction under Article 226 of the Constitution of India. The reliefs sought, if granted, would amount to permitting extraction of minor minerals de hors the statutory framework , which is not permissible in law and contrary to the mandate of the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules framed thereunder, as well as the law laid down by the Hon'ble Supreme Court. The claim of the petitioners, being founded on alleged proprietary rights and past practice, cannot override the binding statutory provisions and is, therefore, devoid of any merit.

68. Accordingly, the writ petition, being misconceived and without any legal basis, is dismissed. It is, however, made clear that the dismissal of the present writ petition shall not come in the way of the petitioners in seeking appropriate relief in accordance with law. The petitioners shall be at liberty to apply for grant of the requisite license/mineral concession before the competent authority, strictly in terms of the applicable statutory provisions and the Rules framed thereunder. In the event such an application is made, the same shall be considered on its own merits, in accordance with law expeditiously, and without being influenced by any observations made in this judgment.

(WASIM SADIQ NARGAL)
JUDGE

Srinagar

28.04.2026

Sakeena

