

**IN THE HIGH COURT OF MADHYA
PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 8th OF JULY, 2024

WRIT PETITION No. 3249 of 2006

SMT.NEERAJ VYAS

Versus

STATE OF M.P. AND OTHERS

Appearance:

Shri N.K.Gupta, learned Senior Advocate with Shri S.D.Singh, learned counsel for the petitioner.

Shri Vishal Tripathi, learned Government Advocate for respondents/State.

ORDER

The present petition is preferred under Article 226 of the Constitution seeking following reliefs:-

In view of the facts and grounds it is humble prayed that the order Annexure P/1 passed by respondents No.2 on 13.04.2006 may kindly be quashed and direction for removal of stone contained in Annexure P/9.

Any other writ, order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case looking to the nature of the petition may kindly be issued doing justice in the

matter.

2. Petitioner is aggrieved by the cancellation of NOC vide order dated 13.04.2006 passed by SDO (Forest), Ghatigaon Gwalior by which petitioner who was earlier granted NOC to carry on stone cutting plant is directed to be closed.

3. It is the submission of counsel for the petitioner that petitioner purchased land in question vide Survey No.2925/2 ad-measuring 0.209 hectare at Mohna, Tehsil Ghatigaon, District Gwalior vide registered sale-deed dated 07.03.2005. Petitioner obtained NOC from SDO (Forest) Ghatigaon vide NOC dated 06.04.2005 (Annexure P-6 of petition). After NOC being granted, petitioner continued to work of stone cutting.

4. It appears that later on, Forest Department apparently found the land in question is of revenue land for plantation purpose. Therefore, without issuing show cause notice, impugned order has been passed.

5. Therefore, according to learned Senior Counsel appearing for petitioner, impugned order suffers from vice of natural justice. No opportunity ever was given to the petitioner.

6. Learned counsel for the State opposed the prayer on the basis of reply and submitted that said area was not an agriculture land but earlier was an area of Panch Van of Social Forest Division in which plantation was carried out and therefore, NOC has been cancelled. On 29.03.2006 (Annexure P-8) was given thereafter, impugned order has been passed. Therefore, opportunity of hearing

was given. Since, petitioner failed to submit his reply within stipulated period as such therefore, impugned order has been passed. Later on, it appears that petitioner submitted documents related to royalty receipts for acquiring the stock and therefore, DFO released 100.94sqm. of stone and forfeited 0.197sqmtr of stone for which no documents for acquisition was submitted by the petitioner. DFO directed to remove 119.00sqmtr stone from Phad (Stone Cutting Station) within a period of one month with certain conditions since NOC was already cancelled by respondent No.2.

7. On the basis of instruction received, counsel for the respondent informs this Court that construction over the land in question stopped since 2002. Therefore, on this count also, case of the petitioner after efflux of time, deserves to be dismissed.

8. After order of stay was granted by this Court on 10.07.2006, again an inquiry in the matter was conducted by the forest staff and it was reported by Forest Ranger, Gwalior that in the year 1988 under RLGP Scheme plantation in an area 75 hectares was carried out and on Survey No.2925/2 of village Mohna, 24,500 plants of different category were planted in which most of them were dried and died and 250 plants per hectare are still alive and rest were available in the shape of dead root. Panchnama was prepared in this regard. Therefore, cancellation was right.

9. This is the case where petitioner is taking exception to the order dated 13.04.2006 whereby SDO Forest found the land in question to be a forest land and was earmarked as Social Forestry.

Therefore, NOC was cancelled.

10. Petitioner, in the present case, came out with the argument that land belongs to petitioner and she is the owner of the land in question. However, SDO Forest has specifically mentioned the fact regarding Forest Land. Possibility cannot be ruled out, as per the prevalent practice, person who involved in mining or excavation stone etc. tend to expand the area of operation and in that spree, licensee tends to excavate the sand or other minerals beyond the prescribed limit.

11. This case appears to be one such case. When the land is of social forestry then petitioner cannot be permitted to undergo any construction or excavation activity over it.

12. Even otherwise, as per the information furnished by Government Advocate, after the year 2012, construction activities were closed by the petitioner therefore, on this count also, petitioner had no locus or interest to prosecute it further. On the basis of reason assigned into the order and on cumulative analysis, no illegality has been caused by the respondents.

13. Petition sans merit and is hereby dismissed.

(Anand Pathak)
Judge