

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Interlocutory Application No.29984 of 2021
In
Special Leave Petition (Civil) No. 10587 of 2019

**Bajri Lease Lol Holders Welfare Society
Through its President** **Petitioner(s)**
Versus

The State of Rajasthan & Ors.**Respondent(s)**

W I T H

Special Leave Petition (Civil) No. 10670 of 2019

J U D G M E N T

L. NAGESWARA RAO, J.

1. Realising the damage caused to lakes, riverbeds and groundwater on account of quarry/ mining leases, the Ministry of Environment, Forest and Climate Change (“**MoEFCC**”) constituted a Core Group by its order dated 24.03.2009, to look into the following points:

“(i) To consider the environmental aspects of mining of minor minerals (quarrying as well as riverbed mining) for their integration into the mining process.

(ii) Specific safeguard measures required to minimise the likely adverse impacts of mining on environment with specific reference to impact on water bodies as well as groundwater so as to ensure sustainable mining.

(iii) To evolve model guidelines so as to address mining as well as environmental concerns in a balanced manner for their adoption and implementation by all the mineral-producing States."

2. A report was submitted by the Core Group on the basis of which several recommendations were made by the MoEFCC relating to sand mining in March, 2010. Later, Model Guidelines on "Environmental Aspects of Quarrying of Minor Minerals" were formulated in 2010 for sustainable mining of minor minerals, along with draft rules titled Minor Minerals Conservation and Development Rules, 2010. In ***Deepak Kumar v. State of Haryana***¹, this Court directed the State Governments and Union Territories to implement the recommendations made by the MoEFCC in its report of March, 2010 and the Model Guidelines framed by the Ministry of Mines within a period of six weeks from the date of the judgment. The State Governments and Union Territories were also directed to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 ("**MMDR Act**"). The above directions were issued by this

¹ (2012) 4 SCC 629

Court after recording the deleterious effects of sand mining on biodiversity, such as destabilization of the soil structure of river banks and loss of habitat, to name a few.

3. Pursuant to the directions issued by this Court in ***Deepak Kumar*** (supra), the Rajasthan Minor Mineral Concession Rules, 1986 ("**1986 Rules**") were amended by notifications dated 23.05.2012, 19.06.2012 and 21.06.2012. By the said notifications, mining leases for sand were to be given by tender / auction for a period of five years. Letters of Intent ("**Lols**") were to be issued to the eligible applicants by the competent authority and the eligible applicants were required to submit the requisite No Objection Certificates, Environmental Clearance ("**EC**") and approved mining plan. As the grant of EC was likely to be delayed, the State of Rajasthan incorporated a provision in the 1986 Rules by way of the amendment dated 21.06.2012, permitting sand mining through the then existing system of Royalty Collection Contract and issue of Temporary Work Permit, till EC is granted.

4. A total of 130 mining plots were identified for conduct of auction for sand mining. Tenders were received for 105 plots. Lols were issued to each of the successful bidders with respect to the 105 plots, who were further directed to submit a mining application and obtain EC under the notification dated

14.09.2006 issued by the MoEFCC (“**EIA Notification, 2006**”) and submit the same within a period of 12 months. Between November, 2013 and March, 2016, 65 out of the 82 Lol holders presented final Environment Management Plan (EMP) after Environment Impact Assessment (EIA) study and public hearing. The Expert Appraisal Committee (EAC) constituted under the EIA Notification, 2006 by the MoEFCC recommended grant of EC to these 65 Lol holders. As EC was not granted by the MoEFCC to most of the Lol holders within a period of six months, the State of Rajasthan sought for extension of time for continuing the then existing system of sand mining by way of Royalty Collection Contract. The High Court refused the request made by the State Government by an order dated 21.10.2013. Aggrieved thereby, the State Government filed SLP (C) No. 34134 of 2013 before this Court. This Court passed an interim order dated 25.11.2013 permitting the 82 Lol holders, who had submitted their applications for obtaining EC to the MoEFCC, to carry on mining operations in accordance with the notification dated 21.06.2012 amending the 1986 Rules. Temporary Work Permits were issued to 80 out of the 82 Lol holders to carry on mining operations pursuant to the said interim order. The interim order dated 25.11.2013 was extended by this Court on 24.02.2014 and 27.03.2014. Ultimately, by an order dated 16.11.2017, this Court

restrained all the 82 mining lease / quarry holders from carrying on mining of sand and *bajri*, unless a scientific replenishment study is completed and EC is granted by the MoEFCC. This Court was concerned about the continuation of mining without EC. The State Government stopped the mining activities pursuant to the order passed by this Court on 16.11.2017.

5. Shortly after, a notification was issued by the State of Rajasthan on 28.12.2017 with respect to Rule 51 of the Rajasthan Minor Mineral Concession Rules, 2017 ("**2017 Rules**"), permitting grant of short-term permits for excavation of sand in *Khatedari* lands only for Government-related works or organisations aided by the Government. The 2017 Rules were amended on 25.06.2018 by which Rule 17A was inserted, enabling the Government to grant mining lease in *Khatedari* lands to *Khatedars*.

6. On 28.02.2018, sub-rule (4) of Rule 5 of the 2017 Rules was amended. By the said amendment, the time period of one year for fulfilment of the conditions of the Lols, including execution and registration of mining lease, was extended to 13 months from the date of commencement of the 2017 Rules, failing which the rights of the applicants would stand forfeited. According to the State Government, the Lols of 74 members of the Bajri Lease Lol Holders Welfare Society had

lapsed owing to non-fulfilment of conditions within the period of 13 months. The remaining 8 Lol holders, who had been issued EC and subsequently granted mining leases, could not continue with mining operations without the requisite replenishment study reports.

7. The Bajri Lease Lol Holders Welfare Society challenged the *vires* of sub-rule (4) of Rule 5 of the 2017 Rules in the High Court of Rajasthan. On 09.04.2019, the High Court dismissed the writ petitions. Thereafter, the Petitioner-Society filed SLP (C) No.10587 of 2019 assailing the judgment of the High Court. Notice was issued in the matter and an interim order was passed on 10.05.2019 restraining cancellation of the Lols of the members of the Petitioner-Society. On 19.02.2020, this Court, taking note of the scale of the issue of illegal sand mining in the State of Rajasthan, directed the Central Empowered Committee (“**CEC**”) to submit a report on the problems relating to sand mining that are faced by traders, consumers, transporters, the State and other stakeholders and also on measures to stop illegal sand mining.

8. The CEC submitted its report to this Court dated 23.12.2020, in which the following recommendations have been made:

“A. All the Khatedari leases located within 5 kms from the river bank as well as leases where violation of the

lease conditions including misuse of e-ravannas are detected are terminated forthwith and the State Government shall not issue fresh Khatedari leases except for Palaeo deposits in the District of Binaker without the approval of this Hon'ble Court.

B. The State Government shall dispense with the Excess Royalty Collection Contract system in respect of any kind of sand mining leases forthwith and the royalty shall be paid on line by the lessee to the State Government and generate royalty paid e-ravanna before transporting of sand from the mining site;

C. The MoEF&CC will issue EC in respect of all the valid Lol holders recommended by the EAC in its meeting held during 2014-2016 without insisting on submission of scientific study report as a precondition for grant of EC within a period of three months. MoEF&CC shall also prescribe detailed methodology in consultation with CMPDI for undertaking replenishment study during the course of mining as discussed in para 11 (iii) of this Report.

D. River sand mining in Rajasthan is permitted to be conducted after obtaining all statutory clearances and payment of dues and applicable taxes following the procedure listed in para 11 (iii) of this report.

E. The MoEF&CC shall arrange for scrutiny of the DSR prepared as provided in MoEF&CC Guidelines of 2016 and 2020 and the production figures approved in the

DSR are scrupulously followed by the authorities under the EP Act 1986 while issuing the EC.

F. The period of actual mining of sand under TWP should be adjusted against the five-year lease period.

G. Government of Rajasthan will constitute an Empowered Committee headed by the Chief Secretary to consider and settle claims of excess payments collected from the Lol holders during the period of working under TWP. The Committee shall examine each of the cases and take a decision in this regard within a period of six months from the date of orders. Monthly progress reports in this regard may be sent to CEC.

H. The State Government will auction the sand mining leases after proper ground demarcation and after assessing the extractable sand resources as given in the approved DSR and after obtaining no objection certificates from all concerned authorities. The sale of mining blocks objected to by any of the government departments shall not be put up for tender/auction.

I. State Government to review the amendments to Rule 5(4) of RMMCR, 2017 so that it will not be an impediment for execution of sand mining lease.

J. For brazen violation of this Hon'ble Court order dated 16.11.2017 exemplary penalty of Rs.10 lakhs per vehicle and Rs.5 lakhs per cu.m of sand seized

may be imposed as a deterrent. This will be in addition to what has already been ordered/collected by the State agencies as penalty/compensation.

K. State Government of Rajasthan is directed to conduct drone survey in respect of all the remaining Khatedari leases and complete the same within the next four months to assess the irregularities if any committed by them. A copy of this Report may also be made available to CEC."

9. The State of Rajasthan has filed Interlocutory Application No. 29984 of 2021 requesting this Court to accept the recommendations made by the CEC in respect of all points, except recommendations 'A' and 'J'. Recommendation 'A' relates to termination of *Khatedari* leases within 5 km of the river bank and restriction on the State Government to grant fresh *Khatedari* leases without the approval of this Court. Recommendation 'J' pertains to exemplary penalty of Rs.10 lakh per vehicle and Rs.5 lakh per cubic metre of sand seized for violation of the order passed by this Court on 16.11.2017.

10. The reasons given by the State of Rajasthan for its objection to the recommendation made by the CEC for cancellation of *Khatedari* leases is that mineral wealth lying in agricultural land should also be utilized. The State Government has brought to the notice of this Court that a request was made to the MoEFCC to revisit the Enforcement &

Monitoring Guidelines for Sand Mining, 2020 (“**2020 Sand Mining Guidelines**”) regarding excavation of sand within the periphery of 5 km from the river bed. In view of scanty rain fall patterns in the State, the submission of the State is that mining leases in agricultural fields should be permitted. Insofar as additional penalty recommended by the CEC for the illegal sand mining and transportation is concerned, the State is of the opinion that the penalties recommended are excessive and their recovery would be difficult.

11. Interlocutory Application No. 54981 of 2021 seeking intervention has been filed on behalf of 10 *Khatedars* who asserted that no illegal sand mining is being carried on by them. It was argued on their behalf that these *Khatedars* have been acting in accordance with the conditions of their lease. It was contended that the CEC committed an error in recommending cancellation of their mining leases. The said *Khatedars* found fault with recommendation ‘C’ of the CEC in favour of the Lol holders.

12. The CEC, in its report, has highlighted the delay in the grant of EC by the MoEFCC to the Lol holders as the cause for widening the gap in demand and supply of sand, which has resulted in proliferation of illegal sand mining activities to meet the shortfall in supply. The recommendation made by the CEC is that the MoEFCC will issue EC in respect of all the

valid Lol holders recommended by the EAC, within a period of three months, without insisting on submission of the scientific replenishment study report as a pre-condition for the grant of EC, with the replenishment study due to be undertaken during the course of mining.

13. In spite of the order passed by this Court on 16.11.2017 that no river sand shall be permitted unless a scientific replenishment study is completed and EC is granted, 194 mining leases of *Khatedari* lands have been granted in the State of Rajasthan, with most of these lands being in close proximity of the river banks of the State. 114 *Khatedari* leases are within a distance of 100 metres or less from the river bank and only 23 *Khatedari* leases have been granted beyond a distance of 5 km from the river bank. The CEC has stated in its report that the agricultural lands do not have deposits of quality sand suitable for construction, being a mixture of sand, silt and clay. The *Khatedars* have been exploiting the locational proximity to the river banks by excavating sand from the river bed, instead of restricting the mining to their leasehold areas, completely in violation of the mining plan. The quantity of sand is in excess of the permissible limit which is transported by being shown as having been mined in the *Khatedari* lands. The CEC has commented upon the involvement of sand *mafia* in the trade of sand illegally mined

by the *Khatedars* as well as the involvement of authorities in the State of Rajasthan. Therefore, the CEC has recommended the cancellation of all *Khatedari* leases located within 5 km from the river banks as well as those leases where violation of lease conditions including misuse of e-ravannas are detected. The CEC further recommended that no fresh *Khatedari* leases shall be granted, except for Palaeo deposits, without the approval of this Court.

14. Section 23C of the MMDR Act empowers the State Governments to make rules for preventing illegal mining, transportation and storage of minerals. This Court in ***Deepak Kumar*** (supra) directed the State Governments / Union Territories to formulate rules in accordance with the Model Guidelines. Pursuant to the directions issued by this Court and the National Green Tribunal (“**NGT**”), the Sustainable Sand Mining Management Guidelines, 2016 were issued (“**2016 Sand Mining Guidelines**”). The responsibility for implementation of the said Guidelines was placed on the State Governments which had to create a mechanism to measure the mined-out mineral and its transportation and also to ensure that the amount of mineral mined does not exceed the quantity permitted in the EC. The 2016 Sand Mining Guidelines recommended use of Transport Permits with bar codes, for generation of reports showing the daily lifting of

sand and user performance reports. Transport Permits with bar codes would also enable vehicles carrying sand to be tracked from source to destination. Dissatisfied with the ineffective monitoring mechanism, failure of the Mines Surveillance System as well as lack of an effective institutional monitoring mechanism not only at the stage of the grant of EC but at subsequent stages with respect to illegal sand mining, the NGT, in an order dated 05.04.2019 in ***National Green Tribunal Bar Association v. Virender Singh*** in OA No. 360 of 2015 and connected matters, directed the MoEFCC and the State Governments to review extant monitoring mechanisms and consider revision of the 2016 Sand Mining Guidelines. Consequently, the MoEFCC issued the 2020 Sand Mining Guidelines.

15. The damage caused to the environment due to rampant unscientific illegal mining needs no reiteration. Unabated illegal mining has resulted in the emergence of sand *mafia* who have been conducting illegal mining in the manner of organized criminal activities and have been involved in brutal attacks against members of local communities, enforcement officials, reporters and social activists for objecting to unlawful sand excavation. The statistics provided by the State Government highlights the magnitude of the problem as about 2411 FIRs have been registered in relation to illegal mining in

the State of Rajasthan, between 16.11.2017 and 30.01.2020. When this Court has restrained 82 mining lease / quarry holders from carrying on mining of sand and *bajri* unless a scientific replenishment study is completed and EC is issued by the MoEFCC, the State of Rajasthan ought not to have issued mining leases in favour of the *Khatedars*. It is clear from the report of the CEC that the majority of the *Khatedari* leases are within 100 metres from the river bed. The 2020 Sand Mining Guidelines prescribe that mining plan for mining leases on *Khatedari* lands shall only be approved if there is a possibility of replenishment of the mineral or when there is no possibility of river bed mining within 5 km of the patta land / *Khatedari* land. Agreeing with the CEC's conclusions on the issue of mining leases in *Khatedari* lands facilitating legalisation of transportation and sale of illegally extracted sand, we approve the recommendation of the CEC that all *Khatedari* leases which are located within 5 km from the river bed and those leases where lease conditions have been violated have to be terminated forthwith and that *Khatedari* leases shall be granted only with the permission of this Court.

16. The CEC has recommended imposition of exemplary penalty of Rs.10 lakh per vehicle and Rs.5 lakh per cubic metre of sand seized, which would be in addition to what has already been ordered / collected by the State agencies as

compensation. Compensation / penalty to be paid by those indulging in illegal sand mining cannot be restricted to the value of illegally-mined minerals. The cost of restoration of environment as well as the cost of ecological services should be part of the compensation. The “Polluter Pays” principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of “Sustainable Development” and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.²

17. The scale of compensation by those who are involved in illegal mining has been dealt with by the NGT in ***National Green Tribunal Bar Association v. Virender Singh*** (supra). In its order dated 26.02.2021, the NGT considered and approved the Report submitted by the Central Pollution Control Board dated 30.01.2020, in pursuance of its earlier orders, on scale of compensation to be recovered for violation of norms for mining on “Polluter Pays” principle. Additionally, para 9.2 of the 2020 Sand Mining Guidelines provides as follows:

² *Vellore Citizens' Welfare Forum v. Union of India & Ors.* (1996) 5 SCC 647

“The environmental damages incurred or resulting due to illegal mining shall be assessed by a committee constituted by District Administration having expertise from relevant fields, and also having independent representation of locals and State Pollution Control Board. Guidelines for assessment of ecological damages prescribed by the State Government or Concerned Pollution Control Boards or any other authority shall be applicable and compensation as fixed shall be paid by the project proponent, in light of Hon’ble National Green Tribunal orders.”

18. Section 21(5) of the MMDR Act empowers the State Government to recover the price of the illegally-mined mineral, in addition to recovery of rent, royalty or tax. The penalty recommended by the CEC for illegal sand mining is in addition to the penalty that can be imposed by the State Government in terms of Section 21(5) of the Act. However, the basis for imposition of exemplary penalty of Rs. 10 lakh per vehicle and Rs. 5 lakh per cubic metre of sand has not been stated by the CEC in its report. The CEC is directed to follow the directions given by the NGT in respect of imposition of penalty / determining scale of compensation for illegal mining and the provisions of the 2020 Sand Mining Guidelines and determine the penalty / compensation afresh and submit a report to this Court within a period of eight weeks from today.

19. The recommendations made by the CEC, except recommendation 'J', are approved for implementation forthwith. IA No. 29984 of 2021 and IA No. 54981 of 2021 are disposed of.

20. SLP (C) No. 10587 of 2019 and SLP (C) No. 10670 of 2019 are directed to be listed after eight weeks.

.....J.
[L. NAGESWARA RAO]

.....J.
[SANJIV KHANNA]

.....J.
[B.R. GAVAI]

**New Delhi,
November 11, 2021.**