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THE HIGH COURT OF MADHYA PRADESH
M.P. No.666/2019

JABALPUR
25.03.2019

Shri Kapil Duggal learned counsel for the petitioner.

Shri Himanshu Mishra, learned Govt. Advocate for the respondent/State.

Heard on the question of admission.

The petitioner has filed this petition being aggrieved by order dated 29.3.2017 passed by respondent no.3; order dated 30.12.2017 passed by respondent no.2 in appeal; and order dated 20.8.2018 passed by respondent no.1 in revision.

It is submitted by the learned counsel for the petitioner that the respondent authorities initiated proceedings against the petitioner under section 247 of the M.P. Land Revenue Code, 1959 (hereinafter referred to as 'the Code') on the ground that the petitioner had illegally extracted and removed minerals contrary to the aforesaid provision. It is submitted that the respondent no.3, after hearing the petitioner, passed orders on 29.3.2017 imposing fine of Rs.1,07,52,800/- on the petitioner. The petitioner challenged the order passed by the respondent no.3 before the respondent no.2 in appeal which was dismissed and the order passed by the appellate authority has been affirmed by the respondent no.1 in revision, hence this petition.

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The learned counsel for the petitioner has assailed the orders passed by the respondents on two grounds; firstly, that even if the petitioner was found extracting and removing minerals illegally, no proceedings against the petitioner could have been initiated under section 247 of the Code, and action under the M.P. Minor Mineral Rules, 1996 (hereinafter referred to as 'the Rules of 1996') alone could have been initiated against the petitioner. The petitioner for this purpose has relied upon the Full Bench decision of this Court in the case of **Nitesh Rathore and another vs. State of M.P. and others**, 2018 (4) MPLJ 193. The second contention of the learned counsel for the petitioner is that the respondent no.3 had no power to pass orders under section 247 of the Code, in view of the specific provisions under section 247(7) of the Code, which confers this power upon the Collector alone.

We have heard the learned counsel for the petitioner at length. From a perusal of the order passed by the Full Bench in the case of **Nitesh Rathore** (supra) specifically the answer given in paragraph-7 in respect to issue no.1 framed therein, it is apparent that the Full Bench has categorically held that the Rules of 1996, do not contradict sub section 7 of Section 247 of the Code, except to the extent of quantification of

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penalty which has subsequently been discussed in paras 15 to 17 in the Full Bench decision and it has been held that the maximum extent of penalty to be imposed under the Rules of 1996, cannot exceed the statutory limit passed under section 247(7) of the Code.

It is worth noting that a Division Bench of the Indore Bench of this Court in W.P (PIL) No.2592/2006 (**Bakir Ali vs. State of M.P. and others**) by order dated 12.5.2015, had held that the Rules of 1996 prevail over the Code and, therefore, in such cases action can be taken only under the provisions of the Rules of 1996. The Division Bench order passed by the Indore Bench of this Court in the case of **Bakir Ali** (supra) was taken note of by the Full Bench of this Court in the case of **Nitesh Rathore** (supra) in para-7 and has been practically over-ruled to that extent by stating that “the order of this Court rendered in **Bakir Ali’s** case (supra) is not in tune with the provisions of law and consequently, is of no legal effect”.

It is also apparent from a perusal of the provisions of the Rules of 1996 in juxta position with the provisions of Section 247 of the Code, that Rule 53 of the Rules of 1996, is a regulatory measure enacted for the purposes of preventing illegal extraction and transportation of “minor

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minerals” and the provisions are in addition to and in furtherance of the object of preventing illegal extraction and transportation of minor minerals as well as to confiscate tools, machines, vehicles, etc. repeatedly used by such offenders, while the provisions of Section 247 (7) of the Code, apply to all cases where a person extracts or removes all kinds of minerals, major or minor, without the authority of law, the right to which vests in the Government and has not been assigned by it by way of any lease or otherwise by any instrument. The provisions of Section 247(7) of the Code, also specifically states that they are without prejudice to any other action that may be taken against the offender.

From a reading of the aforesaid provisions of Rule 53 of the Rules of 1996 and Section 247(7) of the Code, it is apparent that the provisions of the Code apply to all minerals, the right of which has not been leased out or assigned by the State Government to anybody and are without prejudice to any other action that has to be taken against the offender and, therefore, the contention of the learned counsel for the petitioner that no action could have been taken against him under the provisions of Section 247(7) of the Code, in view of the provisions of Rule 53 of the Rules of 1996, is rejected in view of

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the provisions of the Rules of 1996, the provisions of Section 247(7) of the Code and the Full Bench decision of this Court in the case of **Nitesh Rathore** (supra).

The first contention raised by the learned counsel for the petitioner is, accordingly, rejected.

The second contention of the learned counsel for the petitioner regarding competence of the respondent no.3 has not been raised by the petitioner, at any point of time, before the three authorities who had taken up the matter i.e. respondent nos.1 to 3 and it has been raised by the petitioner for the first time before this Court. Quite apart from the above, nothing has been placed on record to indicate that the respondent no.3 had not been conferred with the powers of Collector either under section 24 of the Code or under sections 19 to 23 of the Code which empower the Collector to distribute his work to sub-ordinate revenue authorities.

In such circumstances, in the absence of any material being placed before this Court to indicate that such delegation or conferral of powers had not been made by the State or the Collector and that the power exercised by the respondent no.3 was in excess of and apart from the powers conferred upon him by the provisions

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of the Code, we find no reason to find fault with the orders passed by the respondent authorities, moreso, as the order passed by respondent no.3 has been subjected to appeal before the higher authorities who have affirmed the same.

In view of the aforesaid, the petition filed by the petitioner being meritless is, accordingly, dismissed.

(R. S. JHA)
J U D G E

(SANJAY DWIVEDI)
J U D G E

mms/-