

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.D-1659of 2024

[Syed Shahrukh Shah vs. Secretary, Home Department and others]

Present: **Mr. Justice Arbab Ali Hakro**
 Mr. Justice Riazat Ali Sahar

Petitioner by : Mr.Mumtaz Ahmed Lashari, Advocate

Respondents by : Mr.Rafiq Ahmed Dahri, Asst. Advocate
General Sindh a/wAssistant Director
Mines & Mineral Department
(**Maqsood Ahmed Ujan**)

Dates of Hearing : **06.3.2025**

Date of Decision : **06.3.2025**

ORDER

ARBAB ALI HAKRO, J:-The Petitioner was initially granted a Mining Permit for the extraction of Silica Sand over an area measuring 100-53 acres, situated in the vicinity of Kapat, District Jamshoro. The said permit was valid until 16.6.2011, as sanctioned by Respondent No.2. Subsequently, the Mining Permit was renewed for an additional period of seven years, extending its validity until 16.6.2018, through a Notification dated 26.5.2014, duly issued by Respondent No.2.It is the case of the Petitioner that, prior to the expiry of the renewed Mining Permit, he submitted an application on 3.8.2017 to the Respondent No.2, accompanied by the requisite challan evidencing the payment of Rs.12,000/- towards annual rent, seeking a further renewal of the Mining Permit. The Petitioner further avers that he subsequently sent a reminder application and served a legal notice dated 8.10.2024.The Petitioner maintains that he awaited the competent authority's decision regarding the renewal of his Mining Permit. However, he later learned that, through a Notification dated 20.9.2024 ("**impugned Notification**"), the aforementioned Mining Permit had been cancelled and/or deemed to have expired. The cancellation was purportedly justified on the ground that the period of validity of the Mining Permit had already concluded. Moreover, it was stated that the cancellation was in compliance with the Order dated 28.5.2021, passed in C.P No.D-185/2019, by the Divisional Bench of this Court at Sukkur. Consequently, the Petitioner's application dated 3.8.2017,

seeking renewal of the Mining Permit, was declined, thus necessitating the filing of the present Petition.

2. At the very outset, learned counsel for the Petitioner has vehemently contended that the cancellation of the Petitioner's Mining Permit by Respondent No.2 was carried out without issuing prior notice or affording the Petitioner an opportunity for a personal hearing. Consequently, the impugned Notification is in contravention of the principles of natural justice. It is further argued that no notice was served upon the Petitioner prior to the purported cancellation of the Mining Permit, and the impugned Notification fails to disclose any cogent reasons for such cancellation, which constitutes a violation of the Sindh Mines and Minerals Governance Act, 2021 as well as the Sindh Mines and Minerals Governance Rules, 2023. Learned counsel has further asserted that the impugned Notification is liable to be declared illegal, unlawful, and void ab initio. It is also submitted that, in light of the foregoing, the Petitioner is entitled to the renewal of his Mining Permit in accordance with the law.

3. Conversely, the learned Assistant Advocate General (A.A.G) has contended that the Mining Permit of the Petitioner had already lapsed upon the expiry of its validity period. As such, it is argued that there was no legal obligation upon the Respondents to issue a Show Cause Notice to the Petitioner prior to the rejection of his renewal request. He has further argued that with the expiration of the Mining Permit, the Petitioner no longer possesses any legal entitlement to retain possession of the subject area.

4. Having meticulously considered the submissions advanced by the learned counsel for the parties and having thoroughly examined the record.

5. The Sindh Mines and Minerals Governance Act 2021 (the "**Act of 2021**") was promulgated to regulate the minerals, mines, mining, and mineral dressing activities within the Province of Sindh. Its overarching objectives include fostering a transparent, competitive, and enabling business environment to attract investment while establishing institutional oversight mechanisms to ensure robust mining sector governance. The Act encompasses the regulation of grants concerning mineral titles, mineral permits, and mineral dressing, along with matters ancillary thereto.

6. The Petitioner has challenged the Notification whereby the Licensing Authority (Director General, Mines and Minerals Development, Sindh), as defined under Section 2(xxxii) of the Act of 2021, cancelled/declared as expired the mining permit issued in favour of the Petitioner for Silica Sand. The Licensing Authority, while exercising its powers under Section 5 of the

Act of 2021, and acting upon the recommendation of the Mines Committee, issued the said impugned Notification. The cancellation of the mining permit was precipitated by the lapse of its validity, an assertion that remains undisputed by the Petitioner. The Act of 2021 explicitly provides a mechanism for redressal of grievances through an appellate forum. Section 48 of the Act of 2021, stipulates that any person aggrieved by an order passed by the Licensing Authority may prefer an appeal to the Appellate Authority within thirty days of the service of such Order, upon payment of the prescribed fee. The provision further empowers the Appellate Authority to confirm, modify, or vacate the Order within sixty days, ensuring an expeditious adjudication process. The Appellate Authority, as defined under Section 2(iii) of the Act of 2021, is the Secretary to the Government of Sindh for Mines and Minerals Development Department, who is duly vested with the jurisdiction to entertain appeals against the orders of the Licensing Authority.

7. Where an alternate remedy is available under a statute, the aggrieved party must exhaust such remedy first before invoking the constitutional jurisdiction of this Court. It is settled law that the rule that the High Court will not ordinarily entertain a petition under Article 199 when an adequate remedy is available and such remedy only regulates the exercise of constitutional jurisdiction and does not affect its existence. When the law provides an adequate remedy, constitutional jurisdiction under Article 199 will ordinarily only be exercised in exceptional circumstances. The exceptional circumstances which may justify exercising jurisdiction when an adequate remedy is available are when the Order or action assailed before the High Court is palpable without jurisdiction, manifestly mala fide, void or coram non-judice. The tendency to bypass a statutory remedy is ordinarily discouraged so that the legislative intent is not defeated¹.

8. The Petitioner's failure to avail the appellate remedy under Section 48 of the Act of 2021 constitutes a procedural lapse, rendering the instant Petition unsustainable. The cancellation of the Petitioner's mining permit does not, in any manner, contravene the fundamental rights guaranteed under the Constitution. The impugned action is rooted in the statutory framework established under the Act of 2021 and cannot be deemed arbitrary or mala fide. Furthermore, the impugned Notification is in accordance

¹ Muhammad Safeer and others vs. Muhammad Azam and others (PLD 2024 S.C 838)

with the powers conferred upon the Licensing Authority under Section 5 of the Act, thereby upholding the rule of law.

9. In view of the foregoing deliberations, this Court holds that the Petitioner has an adequate and efficacious remedy available under Section 48 of the Act of 2021, which he has failed to exhaust. The instant Petition, therefore, does not merit interference by this Court under its extraordinary jurisdiction. Consequently, the Petition is hereby **dismissed** as being not maintainable. The Petitioner, however, is at liberty to avail the alternate remedy of appeal in accordance with law.

JUDGE

JUDGE

AHSAN ABRO