

AN ANALYSIS OF THE MINES AND MINERALS (DEVELOPMENT AND REGULATION)
ACT, 1957

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I. Introduction

The Mines and Minerals (Development & Regulation) Act, 1957 was enacted in the year 1957 in the wake of India's trail for establishing a planned economy. This paper shall endeavour those substantive and procedural aspects that underlay mines and minerals, its protection, its development and regulation in India. Beginning from the question, why the Mines and Minerals (Development and Regulation) Act, 1957 [*hereinafter* 'the Act'] was enacted? It was enacted to provide for the development and regulation of mines and minerals under the control of the Union. It is critiqued to say that the name of the Act itself is a misnomer, as there is no slightest step involved for development of mines or minerals. Mines and minerals take thousands of years for its formation but within no time it is taken away and used under the guise of modernization and to some extent necessity.

II. What are Minerals?

Section 3(aa) of the Act envisage that, minerals includes all minerals except mineral oils. There are 2 kinds of minerals, namely [a] Major minerals (Limestone, Magnesete, Beach sand minerals etc.) and [b] Minor minerals (Rough stone, Jelly, Earth, Gravel etc.)

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III. Melancholies in the Act

Section 30B of the Act provides for the constitution of Special Courts for the purpose of enabling speedy trial of offences for contravention of the provisions under Section 4(1A) or Section 4(1) of the Act. However, at present such cases are being dealt with by the Principal District Courts in each district, as the special courts are yet to be constituted. This limits the realization of the potential of the Act and contributes to pendency of cases before the Principal District Courts.

IV. Jurisdictional Puzzle

According to Section 22, of the Act, a ‘Competent Person’ can file a complaint. The Government of Tamilnadu in G.O No.12, Industries (MMC) department dated 2.2.2009 exhaustively illustrates those competent persons authorised to file a complaint. One critical aspect emanating from the applicability of Section 22 of the Act is a critical aspect of taking responsibility of a case.

V. The Role of ‘Magistrate’

Though the word ‘Magistrate’ is not mentioned even once in the Act, it is quite clear that the power of remand is entrusted upon the Magistrates for the persons reported to have committed offences under the Act by the Code of Criminal Procedure. If the offence committed is registered under Section 379 IPC, alone or with Section 21 of the Act, the Magistrates remand the accused into judicial custody as per the Code of Criminal Procedure. When the case is registered u/S. 379 IPC, alone, the Magistrates have to peruse the FIR and relevant documents to verify the property involved. Therefore, it is quite clear that when FIR is registered u/S. 379 IPC, or u/S. 21 of the Act, judicial Magistrates would remand the accused on perusal of relevant documents as usual in other cases.

VI. Bail

When a FIR is registered u/S. 379 IPC, alone, the counsel for accused files bail petition and represents that as it is only an offence u/S. 379 IPC, which creates a dilemma in the mind of the Judicial Magistrates, as to whether they should entertain the bail petition or not. Section 30B of the Act gives a helping hand, by stating that Special Courts would be constituted to try the cases. Thus it is imperative that when a bail petition is filed before Judicial Magistrates, they have to verify the involvement of mines or minerals in the FIR. They shall not entertain the petition when the case involves mines and minerals they have no jurisdiction to deal with such bail petition.

VII. Return of Property

When mines or minerals are seized by the Competent Authority, the designated courts are directed to deal with the question of confiscation or release of the vehicles on receipt of the private complaint or seizure report from the person authorized notwithstanding the exercise of power of compounding. The persons authorized are directed to comply with the earlier directions with reference to making the private complaints. And whenever the vehicles/materials seized are produced, the courts concerned, shall take photographs of the vehicles/materials and keep the material by public auction. The authorities concerned shall issue sale certificate to the successful bidder and deposit the sale price. In the event when confiscation is ordered by the trial court the amount shall be confiscated to the Government. Therefore, the Special Courts, designated for the purpose of the Act, alone could do the above return of the property.¹

¹ P. Kandasamy Vs. The District Collector Writ (MD) No. 80 to 82 of 2019, at Para 5 (ii), 5 (iii)

VIII. Cognizance

When a case is registered u/S. 379 IPC, alone, whether the Judicial Magistrates may take the cognizance as well as FIR registered u/S. 379 IPC, and Section 21 of the Act? The case though registered u/S. 379 IPC, it has to be committed to the special court. Further, as far as the complaint given under the Act, or the Tamilnadu Minor Mineral Concession Rules, 1959 is concerned, cognizance can be straight away taken by the designated court and therefore, there is no need to file the same before the Jurisdictional Magistrate.²

IX. Officers

For the major minerals and minor minerals, District Collector and RDO/Sub-collectors are delegated with powers u/S. 22 of the Act and officers not below the rank of Inspector of Police and District Forest Officer could make complaints in writing to the competent Jurisdictional Court. Section 21(4) of the Act, prescribes who are those Officers authorized to seize the Minerals, Tools, Vehicles etc. under the Act. Officers not below the rank of Deputy Tahshildar appointed as Executive Magistrates, Assistant Director of Geology and Mining, Assistant Geologists, Special Tahshildar (Mines), Special Deputy Tahshildar (Mines) and Police personnel not below the rank of Inspector of Police.³

X. Complaint

Section 22 of the Act envisage about who are the authorities to file complaint in writing before the designated court u/S. 22 of the Act. The Revenue Divisional Officers, District Forest Officers and Police Personnel not below the rank of Inspector of Police are empowered to file criminal case before appropriate court by

² Muthu Vs. District Collector, Pudukottai District (CDJ 2018 MHC 7179) at Para 13 (xii), (xiii)

³ G.O.No.1464, Industries Department, dated 8.12.1981; G.O.No.626, Industries (K) department dated 11.06.1986; G.O. (M. S. No.) 114 Industries (K) department dated 18.9.2006.

filing appropriate affidavit with fees through the concerned Local Government Pleader. The affidavit should be supported by Mahazar, seized vehicles documents, statement of police officials, copy of FIR and if concerned person is concerted, evidence thereof.⁴

XI. Bottlenecks

The bottlenecks in enforcing the Act efficiently are important. Section 22 of the Act provides that, no court shall take cognizance, except upon complaint in writing mode by a person authorized by Central or State government. It creates conundrums in the minds of authorized persons to file a complaint before a court of law as it is unlike other criminal cases. In order to overcome confusion and hesitation, continuous training is to be imparted to make them comfortable in the discharge of their duties. It is said that no written complaint by authorized persons is placed before the special court due to the above reason, and therefore the object of the legislation is not fulfilled. Suggestively, there needs to be further deliberation on the purpose of the Act. This is the time to think that police personnel as that of other criminal cases may be empowered to file chargesheet as in other criminal matters by suitable Amendment in this Act. When a FIR is registered u/S. 379 IPC, and if it is committed to the designated court, the problem arises when returning the case again to the Magistrate court, as no written complaint is given by any authorized person in the designated court. If the Judicial Magistrate tries the case which deals with minor minerals, the dilemma arises as to whether it will amount to contempt as per the decision of the Hon'ble High Court in *Muthu Vs. District Collector Cited Supra*.

⁴ G.O (MS) No.4, Industries (MMC1) dated 2.1.1998; G.O (MS) No.167, Industries (MMC1) dated 2.2.2009; G.O (MS) No.12 Industries (MMC1) dated 2.2.2009;

XII. Points to Remember

Judicial Magistrates shall remand the persons who have committed offences u/S. 379 IPC, and Section 21 of the Act. When the final report u/S. 173, Cr.P.C is filed before Judicial Magistrates u/S. 379 IPC or u/S. 21 of the Act for theft of sand, the Judicial Magistrates have to make committal of case to the Special Court designated.⁵ Bail petitions and return of seized properties petition to be filed only with the Special Court.⁶The cognizance of the cases filed under the Act is to be taken by the Special Courts designated.⁷ Section 21(4) of the Act, envisages that, the power to seize any vehicle, equipment or tool involved in illicit mining by an officer or an authority specially empowered. As per Section 21(4-A), such a vehicle, equipment, tool or mineral shall be liable to be confiscated by the order of the Court, competent to take cognizance. Section 21(4-A) of the Act consciously uses the word ‘shall’ while dealing with confiscation. Any vehicle, mineral, tool, equipment or any other things seized, is involved with any violation, then, it has to be followed by confiscation and disposal. Compounding authorities are prescribed u/S. 23A of the Act and Rule 36A of the Tamilnadu Minor Mineral Concession Rules, 1959 to compound the offences.⁸

XIII. Conclusion

The discourse began with an analysis of the MMDR Act wherein it is implied that, ‘development’ and ‘regulation’ of mines and mineral are the two key factors underlying this legislation. This legislation has witnessed more than five decades of endeavoring to develop and regulate the mines and minerals of our country. By the above analysis, the dilemmas faced by judicial officers, particularly Judicial Magistrates are clarified. Firstly, whenever a final report is filed u/S. 379 IPC,

⁵ G.O.No (MS) No.298 Home (ts.11) department dates 13.06.2019, under ROC No.86124/A/2018/G4 dt.18.06.2019.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

involving mines and minerals as subject matter, the same shall be committed by the Jurisdictional Magistrate, to the Special Court and shall not be tried by him for the reason that police case and private complaint to be dealt with Special Court⁹ and the Designated/Special Court shall deal with the question of confiscation or release of the vehicles seized as per this Act, not the jurisdictional Magistrates. The Designated/Special Court shall take photographs of vehicle after getting valuation certificate from the Motor Vehicle Inspector and shall issue sale certificate and deposit the sale price into the particular case. When the complaint is filed under this Act, cognizance can be taken by the Designated Court and there is no need to file the same before a Jurisdictional Magistrate.¹⁰ To conclude, we all as judges have this moral concern about environment and development. We are the key parent of the environment. Therefore when we promote the idea of development it shouldn't supplant our environment.

XIV. References

- ❖ Gandhi Selvin Vs. Inspector of Police CrI.O.P. (MD) No.3446 of 2020 dated 26.02.2020
- ❖ Gandhi Vs. Tahsildar, Thiruverumbur Taluk, Trichy & Anr. CDJ 2018 MHC 6465
- ❖ M. Subbaiah Vs. The Revenue Divisional Officer W.P. (MD) No. 3998 of 2021 dated 23.03.2021
- ❖ Mohandoss Vs. State CDJ 2020 MHC 2436
- ❖ Muthu Vs. District Collector CDJ 2018 MHC 7179
- ❖ R. Kannan Vs. State CDJ 2020 MHC 2444
- ❖ State (NCT of Delhi) Vs. Sanjay 2014 SCC 9 772

⁹ Muthu *Supra* note 3

¹⁰ G.O. (MS). No.170 dated 05.08.2020

- ❖ ROC. No. 86124/A/2018 dated 18.06.2019
- ❖ G.O. (Ms.) No. 114 dated 18.09.2006
- ❖ G.O. (Ms.) No. 12 dated 02.02.2009
- ❖ G.O. (Ms.) No. 169 dated 04.08.2020
- ❖ G.O. (Ms.) No. 170 dated 05.08.2020
