

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 8033 of 2002

Reserved on: August 25, 2010

Decision on: September 21, 2010

SANJEEV BHASKAR Petitioner
Through: Ms. Kirti Mishra, Advocate

versus

MINES TRIBUNAL, GOVT. OF INDIA & ORS. Respondents
Through: Mr. Mukesh Kumar Tiwari with
Mr. Ruchir Mishra, Advocate for UOI.
Mr. Ashok Singh, proxy counsel for
Mr. Ravi Jaiswal, Advocate for R-3.

And

W.P.(C) 5809 of 2004

SANJEEV BHASKAR Petitioner
Through: Ms. Kirti Mishra, Advocate

versus

MINES TRIBUNAL, GOVT. OF INDIA & ORS. Respondents
Through: Mr. Mukesh Kumar Tiwari with
Mr. Ruchir Mishra, Advocate for UOI.
Mr. Ashok Singh, proxy counsel for Mr. Ravi
Jaiswal, Advocate for R-3.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be
allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT
21.09.2010

1. Writ Petition (Civil) No. 8033 of 2002 is directed against the order dated 7th November 2001 passed by the Mines Tribunal, Ministry of Mines, Government of India ('Mines Tribunal') dismissing the

Petitioner's Revision Application No. 16/8/99-RC-II which challenged
W.P.(C) No. 8033/02 & 5809/04

the order dated 21st April 1999 passed by the Department of Mineral Resources, State Government of Madhya Pradesh (Respondent No. 2).

2. Writ Petition (Civil) No. 5809 of 2004 is by the same Petitioner, challenging an order dated 31st December 2002 passed by the Mines Tribunal in Revision Application No. 16(26)/99-RC-II filed by the Petitioner seeking quashing of the impugned order dated 30th July 1999 passed by the Department of Mineral Resources, State Government of Madhya Pradesh (Respondent No. 2) granting a mining lease (ML) of an area of five hectares of the area in question in favour of the M.P. State Mining Corporation (Respondent No. 3).

Background Facts

3. The facts leading to the filing of the present petitions are that late Shri R.N. Bhaskar, father of the Petitioner, was originally granted an ML by Respondent No. 2 over an area of 28 acres (11.331 hectares) for Pyrophyllite and Diaspore minerals in village Kari, District Tikamgarh, Madhya Pradesh for 20 years i.e., from 3rd November 1966 till 2nd November 1986. The Petitioner claims that his father had been operating the mines in a professional way. On 18th September 1979 the Collector, Tikamgarh issued a show cause notice to the Petitioner's father alleging violation of two conditions of the ML. In his reply dated 3rd October 1979 the Petitioner's father denied the allegations. By an order dated 5th April 1980, Respondent No. 2 determined the lease after holding that the explanation offered by the Petitioner's father was not satisfactory.

4. Thereafter, the Petitioner's father filed a revision application before the Mines Tribunal which was rejected on 6th April 1981. Subsequently, the Petitioner's father filed a writ petition being Misc. Petition No. 805 of 1981 in the High Court of Madhya Pradesh.

5. During the pendency of the aforementioned petition, the Petitioner's father died on 7th September 1982. The case of the Petitioner is that at that time the lease deed continued to subsist. It appears that by an order dated 16th December 1982 in Misc. Application No. 805 of 1981 the Petitioner's father was substituted by his five legal heirs, including the Petitioner herein. The said petition was ultimately disposed of by the Division Bench of the High Court of Madhya Pradesh by an order dated 16th July 1986 which reads as under:

“The petitioner was granted a mining lease for a period of 220 years commencing from 4.11.1965 over an area of 11.33 hectares in village Kari, Tahsil and District Tikamgarh. A notice (Annexure J) dated 18.9.79 was given to the petitioner by the Collector Tikamgarh to show cause as to why his mining lease should not be revoked on the ground of certain breaches committed by him which were discovered in the inspection made by the Mining Inspector on 28.5.79. The petitioner gives a reply dated 3.10.1979 to this notice denying the alleged breaches in the conditions of the lease as well as the rules which are applicable. Thereafter, by order dated 5.4.80 (Annexure L) passed by the State Government, the lease was determined in accordance with rule 27(5) of the Mineral Concession Rules, 1960, on the ground of contravention of clause (f) and (g) of sub-rule (1) of the rule 27. The petitioner's revision to the Central Government under rule 54, read with

section 30 of the Mines and Minerals (Regulation and Development) Act 1957 has ultimately been dismissed by order (Annexure o) dt. 6.4.81. Hence this petition.

2. From the impugned orders of the State Govt., Central Govt., and also the stand taken by the respondents in this petition, it appears that determination of the petitioner's lease is only on account of breach of the conditions of the lease contained in clauses (f) and (g) of sub-rule (1) of rule 27 of the Mineral Concession Rules, 1960. These clauses require the lessee to commence the mining operation within one year from the date of execution of the lease unless the State Govt., for sufficient cause, permits otherwise. Clause (g) requires the lessee at his own expenses, to erect and maintain and keep in good repair the boundary marks and pillars necessary to indicate the demarcation of his area. It has been held that the petitioner had committed breach of both these conditions. So far as clause (f) is concerned, it relates to commencing mining operations within one year from the date of execution of lease, but there is no finding by any of these authorities that the petitioner did not commence mining operation within one year from the date of execution of the lease. Even in the show cause notice, no such ground is mentioned.

3. The other ground relates to erection and maintenance of boundary marks and pillars. The show cause notice details the breaches on the basis of the Mining Inspector's inspection made on 28.5.79 and mentions this as one of the breaches committed by the petitioner. However, the Collector, by his order dated 27.7.79 (Annexure G), had issued a direction to all the lessees in the area to have their areas re-demarcated according to the direction given in the order. In such a situation, the order dated 27.7.79, passed by the Collector, subsequent to the Mining Inspector's

inspection made on 28.5.79 was required to be noticed and its effect also examined before reaching the conclusion that the lease was liable to be terminated on this ground. The impugned orders do not disclose that this aspect was taken into account. Accordingly it follows that all the relevant circumstances were not taken into account before making the impugned orders and that the requisite findings for supporting the conclusion of breach of the aforesaid conditions contained in clauses (f) and (g) of sub-rule (1) of rule 27 have not been recorded. For this reason, determination of the lease by the State Govt., and dismissal of the revision by the Central Govt. cannot be upheld. The matter has to be re-examined and decided afresh by the State Government.

4. Consequently the petition allowed. The impugned orders of the State Govt. and Central Govt. are quashed. The State Govt. shall decide afresh the question of determination of the petitioner's lease in accordance with law. No order as to costs. Security amount be refunded to the petitioners.

Sd/-
Chief Justice
16-7-86

Sd/-
Judge
16-7-86''

6. On 2nd September 1986 the Petitioner made a representation to the State Government requesting that the lease deed be mutated in his name. He pointed out that by the virtue of the family arrangement entered into between the legal heirs it had been decided that the aforesaid lease should be mutated in the name of the Petitioner. In response thereto, after more than a year on 29th September 1987 Respondent No. 2 wrote to the Petitioner asking him to furnish the succession certificate and the affidavits of the other successors giving consent to the mutation of the

lease in favour of the Petitioner. This was done by the Petitioner. In the meanwhile the Petitioner kept paying the dead rent for the period April 1987 to March 1989 and again from 1990 to 1993. This was beyond the original lease period. It is stated that the payments of dead rent were made pursuant to two letters dated 14th August 1990 and 8th December 1993 written to him by Respondent No. 2.

7. The Petitioner made a detailed representation to Respondent No. 2 on 28th August 1996 referring to the order of the High Court, the relevant provisions of the Mines and Minerals (Development and Regulation) Act 1957 (MMDR Act) and the Mineral Concession Rules 1960 (MCR) and requested that the High Court order should be complied with. He sent reminders on 19th October 1996, 14th April 1997 and 23rd September 1997.

8. Aggrieved by the refusal of Respondent No. 2 to take any action pursuant to the order of the High Court, a fresh Writ Petition No. 2801 of 1998 was filed in the High Court of Madhya Pradesh by the Petitioner which was dismissed as withdrawn. This was followed by the Petitioner filing a Contempt Petition No. 186 of 1998. This petition was dismissed on 7th October 1998 by the High Court with the following order:

“Cont. Pet. No. 186 of 1998

7.10.1998

Shri A. Sapre, adv. for the petitioner.

Heard learned counsel. This is a contempt petition in respect of order of this Court passed on 16th July 1986. The petitioner has waited for 12 years and approached this Court

by filing the contempt petition is hopelessly barred by time and therefore we cannot entertain the same. However, we hope and trust that the Government will implement the order passed by this Court in 1986 if they have not implemented the same so far.

With the above observation, the contempt petition is dismissed.”

9. When the Petitioner submitted a copy of the above order, Respondent No. 2 wrote to the Collector, Tikamgarh on 9th December 1998 asking for the records of the case. By a letter dated 6th February 1999, the Collector replied to Respondent No. 2 stating that the Petitioner had been paying dead rent from April 1980 to 1999 and was in possession of the leased area. On 21st April 1999 Respondent No. 2 passed an order to the following effect:

“No.: 19-142/86/12/1

Bhopal, Dated 21/4/99

To,

Shri Sanjeev Bhaskar
S/o Shri Rajinder Nath Bhaskar,
7, Ishwar Nagar, Mathura Road,
New Delhi.

Sub.: Mining Lease in respect of 28 Acres of area in Village Kari, Dist. Tikamgarh for minerals Pyrophyllite and Diaspore.

Ref: Notice dt. 21.3.99 – received from Shri Abhay Sapre, Advocate.

You are hereby informed that in terms of the order dated 16.7.86 passed in Petition no. 805/81, the department order dated 5.4.80 being quashed, the mining lease was automatically restored for the remainder of the period upto 2.11.86. Therefore, the lease holder was required to submit a renewal application according to the rules. This was not done since the lease period expired on

2.11.86, the State Govt. did not consider it necessary to pass an order rejecting the mining lease.

Since no renewal application has been made in terms of rule 24A(6) of the Mineral Concession Rules 1960, you have no right to work the mine after the expiry of the lease period and since there is no right, the period of the lease cannot be extended.”

10. Aggrieved by the above order, the Petitioner filed a revision application before the Mines Tribunal *inter alia* on the ground that the said order dated 21st April 1999 had been passed by Respondent No. 2 contrary to Rule 26(1) MCR which mandated prior hearing to be given to the applicant before refusing to grant or renew an ML. Secondly, it was contended that the said order was contrary to the orders passed by the High Court on 16th July 1986 and 7th October 1998. Respondent No. 2, in terms of those orders, was required to pass an order regarding the restoration of the ML in favour of the Petitioner. Thirdly, under Section 9A of the MMDR Act and Rule 27(1) of the MCR, dead rent was paid by a holder of the ML in terms of the conditions stipulated in the lease deed. By accepting the dead rent from 1980 to 1999, Respondent No. 2 had accepted that the ML stood restored to the Petitioner. As regards the renewal application, it was pointed out that till the order of the High Court dated 16th July 1986 was passed and with the substitution not having taken place, the Petitioner could not have filed an application. It was stated that in any event, the Petitioner’s letter dated 2nd September 1986 should be treated as a renewal application and the delay in making such application should be condoned in terms of Rule 24A(10) of the MCR. It was prayed that the balance period of six years, six months and

29 days of the original lease ought to have been revived in terms of the order of the High Court.

11. By a letter dated 12th August 1999 the Mines Tribunal granted an interim stay and directed that Respondent No. 2 would not grant the said ML area to any third party till further orders or till the disposal of the revision application whichever was earlier.

12. It is pointed out that in spite of the above order of stay dated 12th August 1999, Respondent No. 2, by an order dated 30th July 1999, granted 5 hectares out of the leased area to the MP State Mining Corporation (MPSMC) (Respondent No. 3 in Writ Petition No. 5809 of 2004). The lease deed was executed on 25th September 1999. On 15th December 1999, the Petitioner filed another revision application before the Mines Tribunal challenging the order dated 30th July 1999 granting the lease in favour of MPSMC. The request by the Petitioner to hear both revision applications together was not accepted by the Mines Tribunal. It is stated that on 28th August 2001 only the first revision application was listed. Orders were reserved and thereafter on 7th November 2001 the impugned order was passed. Aggrieved by the said order, the first mentioned writ petition, W.P. (C) No. 8033 of 2002, was filed by the Petitioner. The second writ petition, Writ Petition (Civil) No. 5809 of 2004, was filed subsequently by the Petitioner challenging the order dated 31st December 2002 passed by Mines Tribunal dismissing the Petitioner's second revision application challenging the grant of lease to the MPSMC.

13. While directing Rule to issue on 13th July 2005 in the first writ petition, this Court noted the submissions of the parties and ordered that till the disposal of the writ petition no further ML will be executed in respect of the land in question. On 13th December 2006 Rule was issued in the second Writ Petition (Civil) No. 5809 of 2004.

Findings of the Mines Tribunal

14. The findings of the Mines Tribunal in the first revision application filed by the Petitioner is that even presuming that the original ML got extended for a further period of six years, six months and 29 days beyond 2nd November 1986 in view of the State Government not passing any order on the Petitioner's application dated 2nd September 1986, it was not understandable "as to what kind of right the petitioner believes he holds in the said lease beyond that date. Since no renewal application was ever filed during the currency of the lease period before the State Government, it cannot be said that the lease period will be deemed to have been extended on the day Impugned Order was passed." It was held that the impugned order was merely by way of information to the Petitioner regarding the status of lease, and not an order. It was further held that "if the petitioner considers that the State Government failed to pass any order in pursuance of the order of Hon'ble High Court dated 16.7.86 or 7.10.98, the remedy does not lie before the Central Government."

15. As regards the second revision application, the Mines Tribunal by its order dated 31st December 2002 held that the Collector, Tikamgarh
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executed the lease deed pursuant to the order dated 15th September 1999 passed by the High Court in Writ Petition No. 3914 of 1999 and therefore the Central Government was not competent to interfere in the matter. It was further observed that if the Petitioner “has any grievance about the impleaded party having suppressed material facts before Hon’ble High Court, the Central Government is not an appropriate forum to agitate this issue.” Therefore, the refrain in both orders of the Mines Tribunal was that since the matters were covered by the orders of the High Court, it had no jurisdiction in the matter.

Submissions of Counsel

16. This Court has heard the submissions of Ms. Kirti Mishra, learned counsel for the Petitioner. The case was heard finally on 20th August 2010 and 25th August 2010 when orders were reserved. On both dates proxy counsel appearing for the Respondents kept seeking further time. Since the petitions were already being heard finally on two different dates, no further adjournments were granted. However, the Respondents were permitted to file their written note of submissions within a period of three days after 25th August 2010. The Respondents have not done so till date.

17. It is submitted by Ms. Mishra that leasehold rights were hereditary as was apparent from the lease deed itself. In fact, the request for inclusion of the Petitioner’s name in place of his father was never ever rejected by Respondent No. 2. By letter dated 29th September 1987, Respondent No.

2 asked the Petitioner to furnish the succession certification and the affidavits of the other LRs giving their no objection. She referred to Rule 25A (2) of the MCR to state that in case an applicant in respect of whom an order granting or renewing an ML is passed, but who dies before the deed referred to in sub-rule (1) of Rule 31 is executed, the order shall be deemed to have been passed in the name of the legal representative of the deceased. This was further indicative of the hereditary nature of the leasehold rights. Secondly, it is pointed out that by accepting dead rent from 1980 to 1999 and with the Petitioner continuing to remain in possession, the inference was that Respondent No. 2 had restored the ML. Only a formal order had to be passed permitting the Petitioner to resume mining for the remaining period of six years, six months and 29 days of the original lease. Thirdly, although this was not a case of renewal of lease, even assuming if it were one, the Petitioner's letter dated 2nd September 1986 ought to have been treated as a renewal application and delay, if any, in filing such application could have been condoned in terms of Rule 24A(10) of the MCR. It is submitted that for no fault of the Petitioner, his mining activity was stopped on account of the illegal order dated 5th April 1980. This was set aside by the High Court on 16th July 1986. Till that event happened, the Petitioner could not have applied for renewal of the lease. It was also not as if the Petitioner did not take any action for substitution after the death of his father. The LRs were in fact brought on record on 16th December 1982 much before the disposal of the writ petition. It was therefore, plain that Respondent No. 2 had to comply with the order dated 16th July 1986 of the High Court vis-à-vis the LRs of the original leaseholder. The

restoration of the remaining period of the lease had to be granted by Respondent No. 2 in favour of the Petitioner since the remaining LR's had already given their no objection to it.

Binding nature of the order of the MP High Court

18. This Court finds that the reasons given by the State Government in its impugned order declining to restore the lease deed for the remaining period or renew it to be untenable in law.

19. The admitted fact is that the order of the Madhya Pradesh High Court, passed on 16th July 1986 in favour of the LR's of the original leaseholder was never challenged by Respondent No. 2. They were bound in law to comply with the said judgment. That the lease hold rights are heritable is evident even from a reading of Rule 25A(2) MCR. On 29th September 1987 Respondent No. 2 wrote to the Petitioner asking him to furnish the succession certificate and the affidavits of the other successors giving consent to the mutation of the lease in favour of the Petitioner. Therefore there was no objection in law to the substitution of the Petitioner as the original lease holder. That is not even the reason for the refusal.

20. Secondly, it was not as if the ML was treated by the parties as having expired with the completion of twenty years from the original lease period. It may be recalled that the order dated 5th April 1980 terminating the lease dated 3rd November 1966 was set aside by the High Court on

16th July 1986. In other words, in the interregnum of six years six

months and 29 days, during which the lease stood terminated, the original leaseholder was prevented from working the lease by an illegal order of Respondent No. 2. The effect of the order of the MP High Court dated 16th July 1986 was that the lease stood revived from the time it was illegally terminated. The original leaseholder, after having succeeded in showing that the termination of the lease was unlawful, could not possibly be deprived of that period during which it was unlawfully terminated.

21. This appears to be the understanding of Respondent No. 2 as well as is evident from the letter dated 6th February 1999 of the Collector, Tikamgarh, confirming that the dead rent for the leased area was paid by the Petitioner from 4th August 1980 till 1999. In fact there were two letters dated 14th August 1990 and 8th December 1993 written to him by Respondent No. 2 pursuant to which the dead rent was paid. The collection of dead rent from the Petitioner for the leased area well beyond 2nd November 1986, the date on which according to Respondent No. 2 the period of the original lease came to an end, is contrary to its subsequent stand that the lease expired on 2nd November 1986. There is no explanation by Respondent No. 2 for its inaction in implementing the order of the MP High Court and in not responding to the Petitioner's detailed representation dated 28th August 1996 till 21st April 1999 and that too only after the order of the High Court in the contempt petition. In the considered view of this Court, Respondent No. 2 ought not be permitted to defeat the order of the High Court of MP by its unjustified

failure to pass orders reviving the lease of the Petitioner's father for the
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remaining period during which it stood unlawfully terminated.

22. The stand of Respondent No. 2 that the original lease expired on 2nd November 2006 and could not, in the absence of a renewal application, be renewed thereafter overlooked the legal consequences of the binding order dated 16th July 1986 of the MP High Court. In other words, the loss of six years six months and 29 days of the original lease period on account of the illegal termination of the ML for the period from 5th April 1980 to 16th July 1986 had to necessarily be made good by Respondent No. 2 by allowing the Petitioner to resume the working of the ML for the said period. This was therefore not a case for renewal of lease after expiry of the lease period. Consequently, the rejection of the Petitioner's request for restoration of the ML by Respondent No. 2 by its order dated 21st April 1999 is held to be untenable in law.

Approach of the Mines Tribunal erroneous

23. The Mines Tribunal in the impugned order dated 7th November 2001 erred in refusing to deal with the issue only because the order dated 21st April 1999 of Respondent No. 2 was assailed as being violative of the directions of the High Court. The approach of the Mines Tribunal that the Central Government could not do anything about the violation of an order of a High Court by a state government is contrary to the correct legal position. In the first place, it was not appropriate for the State Government not to pass any order pursuant to the order dated 16th July 1986 of the High Court. This they persisted with even after the order dated 7th October 1998 of the High Court. At no point in time was the

Petitioner informed that because of non-filing of an application for renewal, his request could not be considered. This was belatedly informed to him only on 21st April 1999. All authorities including the Central Government and the State Government were bound to act in compliance with the orders of the High Court. They cannot simply wash their hands off from the issue as if they were under no legal responsibility to ensure that valid orders of a superior court are duly implemented.

24. For the aforementioned reasons, this Court sets aside the impugned order dated 7th November 2001 of the Mines Tribunal and the order dated 21st April 1999 of Respondent No. 2. Respondent No. 2 will now pass consequential orders within a period of four weeks from today permitting the Petitioner to resume working the ML in question for the remaining period of six years, six months and 29 days. The said period will begin from the date that the decision of the State Government pursuant to this judgment is received by the Petitioner. This will be subject to the Petitioner complying with all the requirements of the MMDR Act, MCR and any other applicable law and also paying the dead rent and other charges as required by law.

Grant of lease of 5 hectares to MPSMC illegal

25. As regards W.P. 5809 of 2004 it is plain to this Court that the execution of lease deed dated 28th May 1999 granting 5 hectares of the leased land in favour of MPSMC was in the teeth of the orders dated 16th

July 1986 passed by the High Court in favour of the Petitioner. Till such
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time Respondent No. 2 did not take a decision on the MP High Court's order and the subsequent representations of the Petitioner, it could not have executed any lease deed in respect of any land covered by the said lease deed in favour of any third party. Further, the order of the State Government was stayed by the Mines Tribunal in its order dated 12th August 1999. Clearly, the execution of the lease deed was in the teeth of the said interim order as well. Even assuming that the said lease was executed pursuant to an order dated 12th August 1999 of the High Court in Writ Petition No. 3914 of 1999, it was the duty of Respondent No. 2 to either go back to the same court with an application seeking clarification by placing the complete facts before it or to have it reviewed or appealed against. For the above reasons it is held that the order dated 30th July 1999 passed by Respondent No. 2 granting the lease of 5 hectares from out of the area leased to the Petitioner's father in favour of MPSMC is unsustainable in law and is hereby set aside. The lease deed executed consequent thereto in favour of the MPSMC is also held to be invalid.

26. Inasmuch as the Mines Tribunal, by its second impugned order dated 31st December 2002, erred in refusing to exercise its jurisdiction to invalidate the order dated 30th July 1999 passed by Respondent No.2 in favour of the MPSMC, the said order of the Mines Tribunal is also hereby set aside.

Conclusion

27. The writ petitions are allowed in the above terms with costs of Rs. ***W.P.(C) No. 8033/02 & 5809/04***

5,000/- which will be paid by Respondent No. 2 to the Petitioner in each of the writ petitions within four weeks.

S. MURALIDHAR, J.

SEPTEMBER 21, 2010

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