

Court No. - 17

Case :- WRIT - C No. - 10031 of 2023

Petitioner :- M/S Shiva Buildtech Pvt. Lt. New Delhi Thru.
Director Ashok Kuumar Jain And Another

Respondent :- State Of U.P. Thru. Special Secy. Deptt. Of
Geology And Mining, Civil Sectt. Lko. And 2 Others

Counsel for Petitioner :- Rahul Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Rahul Srivastava, learned counsel for the petitioners as well as learned Standing Counsel for the respondents.

2. It has been submitted by learned counsel for the petitioner that petitioner was granted mining lease by means of lease deed dated 05.06.2020 for a period of five years i.e. from 05.06.2020 to 04.06.2025. It has been submitted that the petitioner deposited the advance monthly royalty up to June, 2021 and thereafter due to monsoon season from 01.07.2021 to 30.09.2021, the mining operations were prohibited. Even after 30.09.2021, the mining operations could not be commenced as the mining area was submerged in water due to change in course of the river.

3. It has been further stated that mining operations could not be carried out in the mining area which lies at the border of State of U.P. and Haryana. Due to change of course of river, the authorities of the State of Haryana did not permit the petitioner to resume mining operations. The petitioner submits that pertaining to aforesaid dispute several letters have been written to the authorities of U.P. and Haryana but no mining could be carried out by him.

4. It is next submitted that for the aforesaid reasons royalty could not be deposited by the petitioner, leading to notice dated 24.01.2023, issued by the District Magistrate, Shamli. According to the said notice it is stated that the petitioner is not carrying out mining operations in the said mining area and he has not deposited the royalty for the period April, May and June, 2021 and also from November, December, 2021 and had also not deposited the dues to the District Mineral Foundation Trust as well as Tax Collection at Source (TCS) for the months of January, February, March, April, May, June 2022 and

October, November, December, 2022 and January, 2023, which is in violation of U.P. Mining & Minerals (Concession) Rules, 2021 (*hereinafter referred to as "the Rules, 2021"*).

5. It has been further stated that according to the Rule 59(1) of the Rules, 2021, he is directed to deposit the said amount within 30 days and if the same is not deposited within 15 days with expiry of the aforesaid period, his mining lease would be terminated.

6. Against the said final notice dated 24.01.2023, the petitioner has preferred revision before the State Government. The petitioner was heard by the revisional authority and by means of order dated 21.03.2023, his revision was held to be not maintainable on the ground that petitioner has been subjected to final notice dated 24.01.2023 and he is at liberty to raise all the points before the District Magistrate and consequently, it is in the aforesaid circumstances that petitioner's matter is already pending before the District Magistrate and revision has been rejected.

7. It is submitted by learned counsel for the petitioner that even issuance of notice under Rule 59 of Rules, 2021, the District Magistrate can only cancel the lease deed in case petitioner fails to deposit the amount as stated in the said notice, and he cannot waive the amount of royalty as prayed by the petitioner in several representations.

8. Countering the submissions of learned counsel for the petitioner, learned Standing Counsel has submitted that as per Rule 41(h) of Rules, 2021, in case the lessee is able to demonstrate that there were any special circumstances leading to disruption of mining operations then the district officials with the prior approval of the State Government shall adjust the amount equivalent to the instalment payable during the disrupted period, online against the forthcoming instalment.

9. Learned Standing Counsel submits that reading the revisional order dated 21.03.2023, alongwith Rule 41(h) of the Rules, 2021, it is clear that once notice has been given under Section 59 of the Rules, 2021, then the District Magistrate is duty bound to consider the reply of the petitioner and in case petitioner is able to demonstrate special circumstance as envisaged in Rule 41(h) of the Rules, 2021, then same shall also be considered by the District Magistrate. In case District Magistrate find that there is any special circumstance with regard to disruption of mining operations and such circumstance is demonstrated by the lessee, then he can pass necessary orders after seeking prior approval of the State

Government under Rule 41(h) of the Rules, 2021.

10. Heard learned counsel for the parties and perused the record.

11. It is evident that the State Government by means of impugned order dated 21.03.2023, has held that revision preferred by the petitioner was not maintainable, only on the ground that petitioner was subjected to notice under Section 59(1) of the Rules, 2021 and it was open for the petitioner to take all the grounds available to him before the District Magistrate, who was required to pass necessary orders. The State Government has clearly stated in the impugned order that the District Magistrate shall consider all the grounds raised by the petitioner in his reply. Therefore the application even if pertaining to aspect of Rule 41(h) of the Rules, 2021, would be liable to be duly considered by the District Magistrate.

12. In the light of above, this Court does not find any merit in the challenge to the order dated 21.03.2023.

13. Accordingly, in the light of order passed by the State Government, the petitioner shall submit detailed reply within next ten days, raising all the grounds available to him including the grounds, as per Section 41(h) of the Rules, 2021. In case said reply is submitted by the petitioner, the District Magistrate shall consider and decide the same in the light of directions issued by the State Government by means of impugned order dated 21.03.2023 as well as by this Court in the present order, in accordance with law.

14. With aforesaid directions/observations the writ petition stands **disposed of**.

Order Date :- 28.11.2023

A. Verma

(Alok Mathur, J.)