

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8591 of 2012

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1. Jan Kalyan Sharmik Swalambi Shakari Samitee Limited, through its Treasurer
Sri Bibhash Kumar Singh Son of Shri Dip Narain Singh Resident of Nimarang
Ward No. 29, Post Office, Police Station And District-Jamui

.... Petitioner/s

Versus

1. The State of Bihar through Mines Commissioner, Bihar, Patna
2. Mines Commissioner, Bihar, Patna
3. The Collector, Jamui
4. The Director of Mines, Bihar, Patna
5. The Mineral Development Officer, Jamui

.... Respondent/s

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Appearance:

For the Petitioner/s :	Mr. Amit Srivastava Mr. Prabhat Ranjan Singh
For the Mines :	Mr. D.K.Sinha. Rajendra Prasad
For the State :	Mr. Ashok Kr. Choudhry AAG 13 Ms. Meera Singh, AC to AAG 13

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV JUDGMENT

Date: 26 -08-2015

1. This writ petition has been filed under Article 226 of the Constitution of India for quashing the order dated 21.02.2012 passed by Mines Commissioner, Bihar, Patna in Revision case no. 36 of 2009 as well as for quashing the order dated 18.09.2009 passed by the Mineral Development officer, Jamui by which he cancelled the settlement of group D sand Ghat of Jamui district directing the petitioner to deposit Rs 47, 13041/- as balance of tender amount. Petitioner has also prayed for issuance of command against the respondents to ensure return of the tender amount already deposited by the petitioner with the respondents and to compensate the petitioner for the loss suffered by him.

2. The brief fact, which lies to file this writ petition, is that the

petitioner is a self supporting cooperative society registered under Bihar supporting cooperative society Act, 1966.

3. Petitioner being registered cooperative society made application for taking settlement of group D sand ghat, Jamui district for the year 2007 to 2009 under the provision of Bihar Mineral Concession Rules, 1972 (hereinafter referred to as 'the Rules, 1972'). Petitioner stood the highest bidder and finally, he got settlement for the group D sand ghat, Jamui district and accordingly, sand ghat, Jamui district was settled with him at Rs 93/- lakhs on 12.01.2007. Subsequently, petitioner deposited Rs 9.30/- lakhs as security money and Rs 46.50/- lakhs half of the tender amount and thereafter, symbolic possession was given to the petitioner. Petitioner paid entire rent and royalty for extracting sand from group D ghat for the year 2007-2008 and for the year 2009 only part payment for Rs 5, 10,000/- could be deposited on 31.12.2008 with a request for extension of time for payment of balance amount. Petitioner made written request on 12.01.2009 for issuance of 10 books of transporting challans for extracting sand from group D sand ghat, Jamui district but only 2 books of transporting challans were issued to the petitioner. The above stated challans were unfortunately, lost and thereafter, petitioner gave information regarding missing of challan books and also lodged sanha with local police station. Further case of the petitioner is that on 09.01.2009 and 12.01.2009, Rs 5, 92,434/- and Rs 3, 78, 177/- respectively were deposited by the petitioner with further request to issue 10 books of transporting challans to the petitioner and also gave assurance to the authority for deposit of balance amount of first instalment by 25.02.2009. Petitioner could not extract sand from group D sand ghat due to non-issuance of transporting challans but even then, he again deposited Rs 2, 25,000/- on



30.01.2009 and Rs 5/- lakhs on 02.02.2009 which was accepted by the respondents. The Mineral Development officer, Jamui in stead of issuance of transporting challans, directed all the concerned officers-in-charge of police station vide his order dated 06.02.2009 to stop the petitioner from extracting sand declaring him as defaulter without giving him any opportunity of hearing. Petitioner filed representation on 19.08.2009 before the Principal Secretary, Department of Mines, Bihar, Patna but the said representation went in vain. However, in the meantime, order no. 1573/09 dated 01.09.2009 passed by the Director Mines, Bihar, Patna and order dated 11.09.2009 passed by the Collector, Jamui were communicated to the petitioner by the Mineral Development officer, Jamui vide letter no. 409 dated 18.09.2009 informing the petitioner about cancellation of settlement and for depositing Rs 47, 13041/-. Thereafter, petitioner filed revision case no. 36/2009 before the Commissioner Mines, Bihar, Patna against the order dated 18.09.2009 but his revision petition was rejected vide order dated 21.02.2012 and hence, petitioner filed this writ petition before this court.

4. Counter affidavit has been filed on behalf of the respondents stating therein that petitioner failed to pay first instalment in time as the petitioner had to pay first instalment by 31.12.2008 but the aforesaid instalment was paid in the month of June, 2009 and furthermore, instalment, which was to be paid in the month of March, 2009, became due and was never paid. Furthermore, it has been pleaded in the counter affidavit that 2 transporting challans were issued to the petitioner but account of the challans was never submitted by the petitioner and similarly, petitioner never gave information nor lodged any first information report in respect of missing of 2 transporting books. It has further been pleaded in the counter affidavit that the



petitioner had not deposited the instalment and that was the reason, ban of lifting of sand was imposed upon him on 16.01.2009 and subsequently, on 06.02.2009 all the concerned officers-in-charge of police station were informed about ban of lifting of sand from sand ghat D. Furthermore, it has been pleaded in the counter affidavit that on enquiry and inspection it was found that from unit D mining of sand was being done regularly and being dispatched regularly using transportation challans of unit C as well as on plain paper. Furthermore, it has been pleaded that when Inspector of Mines inspected the area on 27.7.2009, it was detected that numbers of sand ghat had been sold to others by the petitioner for extracting of sand and on the date of inspection, extraction work was going on and furthermore, the Inspector of Mines seized challans of unit C as well as challans made on plain paper. After seizure of the documents, matter was reported to department of Mines, Government of Bihar along with seized papers and thereafter, the concerned authority directed to cancel the settlement of the petitioner and accordingly, due to non-payment of instalment and government dues amounting to Rs 47, 13, 41/- and due to illegal mining, Collector, Jamui vide order dated 11.09.2009 cancelled the settlement of the petitioner.

5. It is submitted on behalf of the petitioner that according to the case of the respondents itself, ban of lifting of sand was imposed upon the petitioner on 16.01.2009 and thereafter, vide order dated 06.02.2009 passed by the Collector, Jamui, all the concerned officers-in-charge of police stations were informed about ban of lifting of sand from unit D ghat. It was contended on behalf of the petitioner that the aforesaid fact clearly goes to show that ban of lifting of sand was imposed upon the petitioner on 16.01.2009 and therefore, it is apparent that from 16.01.2009 to till the date of cancellation of



settlement, petitioner was not authorized to extract sand from group D ghat and furthermore, subsequently, on 06.02.2009 all the concerned officers-in-charge of police station were directed to execute order dated 16.01.2009 passed by Collector, Jamui. Therefore, it is clear that no mining work was done after 16.01.2009. It was further contended on behalf of the petitioner that respondents could not succeed to bring documents on record to show that illegal mining was being done by the petitioner after 16.01.2009 and, therefore, respondents have no right to realize royalty from the petitioner after 16.01.2009. It was further contended on behalf of the petitioner that before cancellation of settlement, the respondents did not give any opportunity of hearing to the petitioner and accordingly, they violated the rules 21 sub-rule (5) of the Rules, 1972 and, therefore, at best, respondents could have realized royalty till 16.01.2009. It was further contended on behalf of the petitioner that admittedly, only 2 books of transporting challans were issued in favour of the petitioner but unfortunately, the aforesaid two challans were lost for which proper information was given not only to official of mines department but also sanha was lodged. It was further contended on behalf of the petitioner that in spite of the above stated information, mines department did not issue another challan to the petitioner as a result of which petitioner could not do work of mining and, therefore, the respondents have no authority to realize royalty. It was further contended on behalf of the petitioner that it is also an admitted position that the petitioner deposited near about Rs 57, 28, 798/- between 31.12.2008 to 08.06.2009 through various demand drafts and the aforesaid amount was accepted by the mining department and, therefore, respondents have no right to say that the petitioner failed to deposit the instalment in time. It was further contended on behalf of the petitioner that



acceptance of amount is itself, an indication to this effect that the respondents extended the period for deposit of instalment. On the strength of the above stated submissions, learned counsel for the petitioner prayed for quashing the order dated 21.02.2012 passed by Mines Commissioner, Bihar, Patna in Revision case no. 36 of 2009 as well as order dated 18.09.2009 passed by the Mineral Development officer, Jamui and for issuance of direction to the respondents to ensure return of tender amount already deposited by the petitioner and also for compensation.

6. On the other hand, learned counsel for the respondents refuted the above stated submissions and submitted that the petitioner could not deposit dues amount within the time and what to say about first instalment, he failed to deposit second instalment also in time. He further submitted that rules 21 (5) of the Rules, 1972 has been complied with and to fortify the above stated contention, he drew my attention towards annexure R series. He further submitted that when the petitioner breached the terms and conditions of the settlement, the competent authority rightly cancelled the settlement of the petitioner and ordered for realization of dues amount and, therefore, there is no scope to interfere with the order of the competent authority.

7. Certain facts are admitted in this matter. It is an admitted position that petitioner took settlement of group D and C sand ghats of Jaumi district for the year 2007-09 and he regularly deposited royalty and instalments for the year 2007-08 and dispute arose in respect of royalty of the year 2009. It is also an admitted position that petitioner had to deposit first instalment for the year 2009 by 31.12.2008 but on 31.12.2008, he deposited part amount of Rs 5, 10,000/- and later on, he deposited Rs 57, 28, 798/- on different dates, details of the aforesaid deposited amount have, specifically, been pleaded by



the petitioner at para 14 of the writ petition and the aforesaid paragraph has not been denied by the respondents in their counter affidavit. Annexure I to the writ petition reveals that on 06.01.2009, petitioner filed a petition before Mineral Development officer, Jamui for issuance of challans in respect of sand ghat unit C and sand ghat unit D and on 07.01.2009, the concerned officer issued two challan books in respect of sand ghat D whereas five challan books in respect of sand ghat unit C. Furthermore, it is an admitted position that on 06.02.2009 the concerned officers-in-charge were directed to stop the petitioner from extracting sand from sand ghat unit D. Annexure 3 to the petition reveals that on 26.03.2009, petitioner gave a petition to the Mineral Development officer, Jamui for issuance of direction to the concerned police stations not to stop the petitioner to extract sand from sand ghat D and for issuance of 20 books of transporting challans for the above stated sand ghat D.

8. It is further admitted position that the petitioner prayed before the competent authority to extend time for deposit of due amount but the competent authority did not take any decision on the above stated prayer of the petitioner and in the meantime, petitioner deposited amount of Rs 57.29/- lakhs of first instalment from 31.12.2008 to 08.06.2009 through treasury challans and demand drafts and also prayed for issuance of transporting challan but no further transporting challan was issued to him. It is admitted case of the respondents that first instalment was not made by the petitioner in time and accordingly, petitioner was stopped from extracting sand from sand ghat D vide order dated 16.01.2009 and subsequently, all the concerned officers-in-charge of police stations were directed by the Collector to stop the petitioner from extracting sand from sand ghat D. It is also an



admitted position that the petitioner had to deposit first instalment by 31.12.2008 but the said instalment was paid in the month of June, 2009 and before depositing first instalment, second instalment became due in the month of March, 2009 and no amount towards second instalment was deposited. It is also an admitted case of the respondents that the petitioner had raised objection before the Collector regarding allegation of illegal lifting of sand.

9. From the above stated admitted facts, at least, this much is clear that the petitioner failed to deposit the amount of first instalment by 31.12.2008 but later on, he deposited entire amount of first instalment by June, 2009. It is obvious from the above stated facts that petitioner was stopped from extracting sand from sand ghat D on 16.1.2009 and officers-in-charge of concerned police stations were asked to stop the petitioner from extracting sand from sand ghat D vide letter 06.02.2009. Therefore, it is obvious from the aforesaid facts that the petitioner did not extract sand from sand ghat D after 16.01.2009 and, at best, it can be said that petitioner extracted sand from sand ghat D till 16.01.2009.

10. It is also an admitted position that the petitioner submitted his returns before the competent authority showing NIL transport of sand from sand ghat D and the aforesaid returns were accepted by the concerned authority which is evident from annexure 8 series.

11. It is stand of the petitioner that before cancellation of settlement, no notice was given to him as required under rule 21 (5) of the Rules, 1972 which is evident from annexures R/2 and R/3 of the supplementary counter affidavit.

12. I would like to refer rule 21 (5) of the Rules, 1972 which says that if the lessee makes default in payment of rent/royalty as required by rule



26 or commits breach of any of the conditions referred to in this rule or embodied in the mining lease form “D”, the competent officer shall give notice to the lessee requiring him to pay the rent/ royalty or remedy the breach as the case may be within 30 days from the date of receipt of the notice and if the rent/royalty is not paid or breach is not remedied within such period, the Collector may without prejudice to any proceeding that may be taken against the lessee, determine the lease and forfeit the whole or part of the security deposit.

13. It is obvious from perusal of the aforesaid rule that if lessee makes default in depositing rent/royalty or commits breach of any of the conditions referred in rule, 1972, the Collector may cancel the lease or forfeit the whole or part of the security deposit but before doing so, the Collector is duty bound to give notice to the lessee asking him to pay rent/royalty or remedy the breach as the case may be within 30 days from the date of receipt of the said notice.

14. In the present case, respondents have relied upon annexures R series of the supplementary counter affidavit to show this fact that provision of rules 21 (5) of the Rules, 1972 was duly complied with. Annexure R/2 of the supplementary counter affidavit reveals that on 05.06.2009 notice was sent to the petitioner by Mineral Development officer, Jamui mentioning this fact that vide letter no. 142 dated 12.03.2009 the petitioner was asked to deposit due by 15.03.2009 but the petitioner failed to deposit amount and, therefore, petitioner was, again, asked to deposit dues amount mentioned in the aforesaid notice. Two things are obvious from annexure R/2 of the supplementary counter affidavit. Firstly, Mineral Development officer, Jamui extended the period for depositing the dues till 15.03.2009 and again, by



issuance of notice dated 05.06.2009, he extended the period for deposit of dues amount till 12.06.2009. Secondly, in the aforesaid notice, it had not been mentioned that the petitioner was engaged in illegal extraction of sand from sand ghat D and it was only stated in the aforesaid notice that the petitioner failed to deposit dues amount. Furthermore, annexures R/4 of the supplementary counter affidavit reflects that the aforesaid notice was issued on 06.08.2009 for deposit of second instalment and the aforesaid notice also contains fact of non-deposit of second instalment and there was no averment in the aforesaid notice in respect of illegal extraction from sand ghat D. Furthermore, annexures R/4 of the supplementary counter affidavit reflects that only one week's time was given to the petitioner to deposit amount of second instalment. It is also an admitted position that first instalment had to be deposited by 31.12.2008 whereas second instalment had to be deposited by March, 2009 but annexures R/2 and R/4 of the supplementary counter affidavit reflect that time for deposit of due amount was extended by the concerned official itself. Moreover, annexures R/2 and R/4 of the supplementary counter affidavit can not be treated as compliance of rules 21 (5) of the Rules, 1972 because only three days and seven days respectively were given to the petitioner to deposit the dues amount whereas the above stated rule required that, at least, 30 days time should be given to lessee to deposit the due amount. Furthermore, it is obvious from annexures R/2 and R/4 of the supplementary counter affidavit that the petitioner was never asked by the aforesaid notices to explain the circumstance in which he was illegally extracting sand from sand ghat D.

15. Here, I would like to say that rules 24 (3) of the Rules, 1972 gives power to the Collector to determine the lease, if the lessee commits any

breach of the terms and conditions of the mining lease but the Collector is duty bound to give reasonable opportunity of being heard to the lessee before doing so.

16. In the instant case, admittedly, no opportunity of being heard was given to the petitioner before determination of his lease.

17. It is admitted case of the respondents that petitioner was banned from lifting sand from sand ghat D on 16.1.2009 and thereafter, lifting of sand from sand ghat D was forcibly stopped giving direction to all concerned officers-in-charge of police stations vide his order dated 16.02.2009 and, therefore, it is apparent that the petitioner was not in a position to extract sand from sand ghat D after 06.02.2009 and, therefore, at best, respondents can make responsible to the petitioner for deposit the amount till 06.02.2009 and the respondents can not realize the amount after 06.02.2009.

18. So far as allegation of illegal extracting of sand from sand ghat D and selling ghats to different persons are concerned, admittedly, respondents did not lodge any FIR in respect of seizure of so-called fake and forged challans as well as illegal mining against any person including the petitioner, particularly, in the circumstance, when there is specific provision in rule 40 of the Bihar Minor Mineral Concession Rules, 1972 for institution of the FIR.

19. However, I have already stated that the petitioner denied the aforesaid allegation but no opportunity, was given to the petitioner to rebut the aforesaid allegation. It is pertinent to note here that settlement of the petitioner was cancelled mainly on the ground of making default in deposit of instalment and not on the ground of illegal extraction of sand from sand ghat D.

20. As I have already stated that the petitioner was debarred from extraction of sand vide order dated 16.01.2009 and he was forcibly stopped from extracting sand from sand ghat D with the help of the concerned officers-in-charge of police stations vide order dated 06.02.2009 and, therefore, in my view, the respondents can not realize any rent/royalty from the petitioner after 06.02.2009.

21. On the basis of the aforesaid discussions, this writ petition stands disposed of with direction to the respondents to re-calculate the dues amount including rent/royalty till 06.02.2009 and pass a fresh order in respect of realization of dues amount from the petitioner in accordance with rules and adjust the same with the amount already deposited by the petitioner with the respondents and return the remaining amount, if any, to petitioner within 30 days from the recalculation of the dues amount.

(Hemant Kumar Srivastava, J)

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