

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.202 of 2014
IN
Civil Writ Jurisdiction Case No. 2864 of 2013

- =====
1. The State of Bihar
 2. The Commissioner cum Principal Secretary, Mines and Geology Department, Govt. Of Bihar, Patna
 3. The Mines Commissioner, Mines and Geology Department, Govt. Of Bihar, Patna
 4. The Director, Department of Mines and Geology Department, Government of Bihar, Patna
 5. The Deputy Director, Department of Mines and Geology, Govt. Of Bihar, Patna
 6. The Assistant Director, Department of Mines and Geology, Govt. Of Bihar, Patna
 7. The Collector-Cum-District Magistrate, Rohtas at Sasaram
 8. The Principal Secretary, Water Resources Department, Govt. Bihar, Patna

.... Appellants

Versus

Ajay Singh, S/O Harihar Singh, Resident Of Village Gijawahin, P.O.- Karwandia, P.S.- Sasaram Muffasil, Dist.- Rohtas at Sasaram

.... Respondent

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Appearance :

For the Appellants : Mr. Devendra Kumar Sinha, AAG-2
Mr. Rajendra Prasad, Advocate
For the Respondent : Mr. S.B.K.Mangalam, Advocate
Mrs. Anita Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SMT. ANJANA MISHRA)

Date: 08-04-2015

The present appeal has been filed by the State of Bihar challenging the order, dated 17.12.2013, passed in C.W.J.C. No.2864 of 2013, by a learned single Judge of this Court setting aside the order of cancellation of lease, dated 06.10.2012, passed by the Collector, Rohtas, in Misc. (Mines)



Case No.02/2012, and further directing the authorities concerned to grant to the petitioner appropriate licence for enabling him to use explosives in carrying out the object of the lease. It has further been directed by the order under appeal that the State Government shall, if not inclined to continue with the lease to the petitioner as lessee, refund to the lessee the money paid by him along with interest accruing thereon.

2. Aggrieved by the order under appeal and the directions given thereunder, this appeal has been preferred by the respondents in the writ petition.

3. It needs to be mentioned here that the writ petitioner (i.e., the respondent herein) Ajay Singh, filed a writ application, bearing C.W.J.C. No.2864 of 2013, seeking quashing of the order, dated 6.10.2010, passed by the District Magistrate, Rohtas, in Misc. (Mines) Case No.02 of 2012, whereby the mining lease of the stone, granted to the writ petitioner, was cancelled for the remaining period of the lease on the ground that the petitioner had failed to deposit the amount due within the stipulated time and also that he had failed to procure 'No Objection Certificate' from Water Resources Department, Government of Bihar. The writ petitioner also prayed for restoration of the mining lease, granting of the licence enabling the writ petitioner, i.e., the

respondent herein, to use explosive and to pay compensation to the writ petitioner, i.e., the respondent herein, for the loss incurred by him.

4. The material facts, giving rise to the present appeal, may, in brief, be set out as under:

(i) Pursuant to a public notice, published in Hindi daily 'Hindustan', on 06.02.2008, informing the general public of an auction to be held on 20.03.2008, at 11.00 A.M., in the Rohtas Collectorate, for settlement of blocks for mining of stone, in the district of Rohtas, under the provisions of Rule 9(a) and 52 of the Bihar Minor Mineral Rules, 1972. The writ petitioner participated at the open auction held and his bid was highest, i.e., Rs.12.01 Crores.

(ii) The Assistant Director, Mines and Geology, Government of Bihar, directed the writ petitioner to deposit the amount, as mentioned in the letter, and, consequently, the writ petitioner deposited Rs.50,75,000/- by way of Bank draft.

(iii) The petitioner was, thereafter, further directed to deposit Rs.21,02,000/- by way of security and also Rs.2,00,20,000/- on account of first instalment of settlement amount of the lease. However the petitioner deposited only Rs.15,75,000/-. Because of the writ petitioner's failure to deposit the security and also the first instalment of the

settlement amount, the lease, granted in favour of the writ petitioner, was cancelled and intimation of the same was sent to him by letter, dated 30.07.2008, issued under the signature of the Assistant Director, Mines and Geology, Rohtas.

(iv) The writ petitioner, then, filed Revision Case No.40 of 2008 before the Mines Commissioner against the order, dated 30.07.2008, aforementioned. By order, dated 15.05.2009, the Mines Commissioner disposed of the revision application with certain observations to the effect that if the writ petitioner failed to make the necessary payments, the block, in question, would be put to re-auction.

(v) Against the order, dated 15.05.2009, passed by the Mines Commissioner, Government of Bihar, the writ petitioner came to this Court with the writ application made under Article 226 of the Constitution of India and accordingly, C.W.J.C. No.7055 of 2009 was born, which was disposed of, on 12.11.2009, by a learned single Judge of this Court with consent of the writ petitioner, setting aside the order of the Mines Commissioner and directing the Commissioner of Mines and Geology, Government of Bihar, as well as the Collector, Rohtas, to ensure timely compliance from both sides and with further observation that in case of non-compliance of the order, the lease agreement, made in favour of the writ petitioner, shall be deemed to have been cancelled and the

amount, already deposited by the writ petitioner would stand forfeited and no claim for refund of the same would be entertained by the authority concerned.

(vi) Soon thereafter, the police conducted a raid at the office of the writ petitioner and recovered huge quantity of explosives from the said premises, the explosives having been kept therein without any licence, and, hence, the police registered Sasaram P.S. Case No.451, on 15.05.2010, against the writ petitioner.

(vii) By Memo No.189, dated 21.02.2011, issued by the District Magistrate, Rohtas, the mining lease of the petitioner was, thereafter, cancelled on two grounds, namely, that the writ petitioner had dues and, secondly, that he had not obtained a 'No Objection Certificate' from the Water Resources Department, Government of Bihar. It is important to indicate here that the Mines and Geology Department and the Water Resources Department are, admittedly, two separate departments under the State Government and their activities are separate from each other inasmuch as the Mines and Geology Department has mineral rights under the provisions of the Mines and Minerals (Development & Regulation) Act, 1957, and the Rules framed thereunder, whereas the Water Resources Department has *raiyati interest and surface rights* to the land over which the mining activities

are sought to be conducted. The Memo No.189, dated 21.02.2011, was, again, put to test before this Court in C.W.J.C. No.5103 of 2011, but the said writ petition was disposed of, on 08.04.2011, with liberty to the writ petitioner to file revision before the Mines Commissioner.

(viii) Though a revision was accordingly filed by the writ petitioner, the same was dismissed, on 12.01.2012, by the Mines Commissioner, Government of Bihar.

(ix) Against the order, dated 12.01.2012, dismissing the revision, a writ petition was filed, which was disposed of by remitting back the matter to the Collector, Rohtas, to take a decision afresh on the question of cancellation of lease and, upon giving a detailed hearing to the petitioner, the Collector, Rohtas, cancelled the mining lease of the petitioner once again, on 06.01.2012, in Misc. Case No.02 of 2012.

(x) It is important to indicate here that in the meanwhile, the Water Resources Department has acquired 71.66 acres of land, out of total of 174.59 acres, in Plot No.03(Part), situated in Mouza-Dhaurah, in the district of Rohtas, for the purpose of its own use of stones and boulders for its project as it would have the requirement for construction work, in future, though earlier, the said Department had given consent over 4 acres of land, out of aforementioned 71.66 acres of land, for lease in favour of



ex lessee, M/S Nagarjun Construction Limited, yet when the Mines and Geology Department granted lease to the petitioner over the area of 2.0 acres, in Plot No.03(Part), situated in Mouza- Dhaurah, previously leased to M/S Nagarjun Construction Limited, the Water Resources Department did not give consent thereto. The Chief Engineer, Water Resources Department, raised objection to the granting of the lease to the petitioner and requested the District Magistrate, Rohtas, to cancel the lease of the petitioner for want of 'No Objection Certificate' issued in favour of the petitioner by the Water Resources Department.

(xi) The Collector, Rohtas, accordingly, cancelled the lease by order, dated 06.10.2012, as already indicated above, and the same was put to challenge by way of writ petition, which gave rise to C.W.J.C. No. 2864 of 2013.

5. The appellant herein, as respondent in the writ petition, namely, C.W.J.C. No. 2864 of 2013, keenly contested the writ petition by taking the stand that since the Water Resources Department had not given consent (i.e., 'No Objection Certificate') in favour of the petitioner and also because the petitioner had consistently defaulted in making payment of the instalments due, the lease of the petitioner had to be cancelled.

6. In the writ petition, it was contended by the



appellant herein that the writ petitioner, by not depositing the instalments due in lieu of the mining lease, on repeated occasions, violated Rule 52(4) of Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as 'the BMMC Rules') and had also not been able to obtain 'No Objection Certificate' from the Water Resources Department, which was in clear violation of Rule 9(8) of the BMMC Rules, and, hence, the petitioner's lease for the remaining period was cancelled. It was also contended by the State that by virtue of the order passed by this Court in C.W.J.C. No.7055 of 2009 if the petitioner failed to deposit the instalments due, it was open to the State authorities to cancel the lease and forfeit the amounts deposited by the lessee and it was in the wake of such directions that the lease of the petitioner was cancelled.

7. The learned single Judge, while hearing the writ application, came to the conclusion that the lease deed was executed, on 06.02.2010, by the Collector, Rohtas, for a period of five years from the date of execution of the lease, which was to remain valid up to 05.02.2015. The learned single Judge also came to the conclusion that if the lease was granted, then, both lessor and lessee were under legal obligation to see that there was no impediment in the exploitation of the lease. The learned single Judge took the view that the petitioner could have enjoyed the lease and



exploited the same only if he had paid the amount fixed under the lease, but when he was precluded from enjoying the lease and exploiting the same by impediment being created by the State, it amounted to restricting his development and his capacity to make payment of his dues and thereby rendering him a victim at the hands of the State. The learned single Judge has, therefore, held, in the order under appeal, that the Water Resources Department and the Mines Department were not different entities and the properties did not vest in one or the other of the said two departments; rather, the land belonged to the State of Bihar and the same could not have been transferred from Government to Government.

8. Thus, the learned single Judge repelled the contention of the State that consent from the Water Resources Department was required by the Mining Department, which was not available to the petitioner, leading, thus, to the cancellation of the lease. Consequently, the learned single Judge has gone on to hold that if the State did not desire the lessee to continue with the lease, it was up to them to refund, with interest, all that the lessee had paid and if the State was not in a position to do so, then, it ought to allow the writ petitioner unhindered access to mining under the lease including grant of licence to use explosives so as to make the lease meaningful.

9. We have heard Mr. Devendra Kumar Sinha, learned Additional Advocate General No. 2, appearing for the appellants, and Mr. S.B.K. Mangalam, learned Counsel appearing for the respondent-writ petitioner.

10. Aggrieved by the directions contained in the order, dated 17.12.2013, passed in C.W.J.C. No.2864 of 2013, the appellants herein have urged the following grounds for setting aside the same:

(i) The contention of the appellant before us is that the learned single Judge erred in presuming and surmising that the writ petitioner had deposited the rest instalment amounts, as directed by this Court in C.W.J.C. No.7055 of 2009, which the petitioner had, in fact, defaulted in making payment of, and, thus, violated Rule 52(4) of the BMMC Rules, 1972.

(ii) It was also urged that the Mines Department and the Water Resources Department were both Departments of the State Government having affairs separate from each other inasmuch as the Mines Department has mineral rights under the provisions of the Mines and Minerals (Development & Regulation) Act, 1957, and the Rules framed thereunder, whereas the Water Resources Department has *raiyati interest and surface rights* on the land, in question.

(iii) The appellants urged that the writ petitioner

was chronic defaulter in making payment of instalments due for the lease as has been directed by the Mines Commissioner, by order, dated 12.12.2008, and agreed upon by the writ petitioner himself, when the order, dated 12.11.2009, was passed in C.W.J.C. No. 7055 of 2009.

(iv) It is contended before us that since the Water Resources Department had not issued 'No Objection Certificate', the Mines Department could not have allowed the lease to be pursued. The appellants also urged that under the amended provisions of Rule 53 of the BMMC Rules, made in the year 2010, the State was precluded from either renewing or granting fresh lease and the lease of the petitioner having been granted on 26.03.2008 had automatically expired on 26.03.2013 and, hence, continuance of the lease would amount to either renewal or grant of fresh lease, which was not permissible in the face of Rule 53 of the Amended Rules.

11. In order to ascertain the correctness of the order under appeal, it is, first, necessary to refer to the relevant rules, whereunder the lease was issued in favour of the writ petitioner and also the action taken by the appellants leading to cancellation of the lease granted in favour of the writ petitioner.

12. It was contended by the writ petitioner/respondent that the State did not inform the writ



petitioner, as a lessee, that a 'No Objection Certificate' was required to be obtained by him at the time of execution of the lease deed. It is also contended by the writ petitioner/respondent that since the licence to use explosive, in question, was not issued in favour of the petitioner, the writ petitioner suffered great losses. It is also urged before us, on behalf of the writ petitioner-respondent, that on account of illegal mining being conducted in the area, the writ petitioner was prevented by sufficient cause from operating in the area/block and though he had invested a huge amount towards implementation of the mining lease allotted to him, he was unable to conduct the mining operation in the said area.

13. Learned counsel for the writ petitioner/respondent contends that the writ petition was wholly unaware of the fact that in order to operate the mining lease, it was necessary to obtain a 'No Objection Certificate' from the *raiyats*/owners of the land and, consequently, the cancellation of the lease by the appellants was wholly illegal and arbitrary.

14. Responding to the contentions of the writ petitioner/respondent, as noted above, the appellants contend that as per Rule 9(8) of the BMMC Rules, it was necessary that 'No Objection Certificate' be obtained from the owners of the land before operating prospective operation, which was not

taken by the writ petitioner. In this context, it is necessary to refer to Rule 9(8) of the BMMC Rules, which, however, reads as under:

"9.(8) Every application shall be accompanied by a statement in writing that the applicant, has, where the land is not owned by him, obtained surface right over the area or has obtained the consent of the owners for starting prospecting operation; provided that no such statement shall be necessary where the land is owned by the Government.

Provided that consent of the raiyats/owners of the land for starting prospecting/mining operations in the area or part thereof shall be furnished after execution of the lease deed but before entry into said area:

Provided further that no consent shall be required in the case of renewal where consent has already been obtained during the lease."

15. The Water Resources Department was, in fact, the owner of the land and had not granted 'No Objection Certificate' in favour of the writ petitioner. It is submitted by the appellants that previously the Water Resources Department had issued 'No Objection Certificate' in favour of one M/S Nagarjun Construction Company Limited, which had been conducting the mining operations over 4 acres of land in



Plot No.03 between the periods 31.03.2003 and 30.03.2008 and, thereafter, the Water Resources Department, on account of non-payment of the land dues, had cancelled the said *patta* issued in favour of M/S Nagarjun Construction Company Limited on 12.05.2006, whereafter no further 'No Objection Certificate', in favour of anyone, was issued.

16. Learned counsel for the appellants has brought on record Letter No.565, dated 18.02.2011 (Annexure R), of the Chief Engineer, Water Resources Department, Dehri, addressed to the District Magistrate, Rohtas. This letter clearly indicates that since illegal mining was going on in pursuance of the *pattas* issued by the District Mining Officer, Rohtas, without obtaining 'No Objection Certificate' from Water Resources Department, the Water Resources Department had lodged first information report, giving rise to Sasaram (Mufassil) P.S. Case No. 478, dated 24.05.2010, and, calling upon the District Magistrate, Rohtas, to cancel the said *pattas* so as to prevent illegal mining in the said area with immediate effect.

17. As a consequence of the letter, dated 18.02.2011, aforementioned, District Magistrate, Rohtas, by Memo. No. 189, dated 21.02.2011, cancelled the stone mining lease of the writ petitioner/respondent, on the land of Water Resources Department, for the subsisting period and also

directed the Assistant Director, Mines, with a copy to the Principal Secretary, Department of Mines, Bihar, Patna, to, immediately, take possession of the said land and hand it over to the Water Resources Department.

18. The reasoning, adopted by the writ petitioner that he was not aware of the requirement of 'No Objection Certificate' from the concerned Department, cannot be accepted as, according to the appellants, the writ petitioner/respondent was fully aware of the legal provisions, when he had made his application for lease, and also when he entered into the lease deed executed by the present appellants.

19. It is urged by the appellants that the writ petitioner had been, apart from omission to submit the 'No Objection Certificate' from the Water Resources Department, wilfully and deliberately avoiding deposit of instalments as fixed by this Court even though he had been exploiting and benefiting from the lease and in that view of the matter, he could not have reaped the benefit of obtaining refund and/or compensation. It is contended that C.W.J.C. No.7055 of 2009 was disposed of vide order, dated 12.11.2009, aforementioned, whereunder the writ petitioner, Ajay Singh, had been asked to deposit the first instalment of the lease requirement along with 20% interest by 31.12.2009, the rest



two-thirds amount was to be deposited in two equal instalments along with interest at the rate of 20% and the first instalment was to be deposited by 31.12.2009, the second instalment by 01.05.2010 and the third instalment was to be deposited by 01.09.2010, whereas the writ petitioner, by depositing the first instalment, got the lease deed executed on 29.01.2010, but he did not deposit, thereafter, the second and third instalments, though he started his mining operation soon after the deposit of first instalment on 31.12.2009 without having requisite licence for exploiting mining lease by using the explosives. Having, thus, willfully defaulted in making payment of the instalments as fixed vide order, dated 12.11.2009, passed in CWJC No.7055 of 2009, the petitioner is liable to forfeiture of his deposits and automatic cancellation of lease deed. Thus, on both counts, according to the appellants, the writ petitioner having violated the provisions of law and stipulation of the lease deed could not have been permitted to continue with the lease and there was no question of any refund and/or compensation payable to him, when the writ petitioner was himself at default. Here, it is needed to quote Rule 52(5) of the BMMC Rules, which runs thus:

"52.(5) Default in payment—If any instalment shall not be deposited before prescribed period, 24 percent simple interest

shall be charged upto two months and after that action for cancellation shall be taken."



20. Having heard learned counsel for the parties, we find considerable force in the submissions made, on behalf of the appellants, that the writ petitioner had been fully aware of the fact that he had to meet the requirements of law as envisaged by Rule 9(8) of the BMMC Rules. So far as the issue of the licence is concerned, the appellants have submitted that since the writ petitioner's mining licence had been cancelled for want of 'No Objection Certificate' prior to the consideration of his application, there was no reason why the said licence under the Explosives Act, 1884, and the Rules be issued in his favour.

21. Learned counsel for the appellants has also drawn the attention of this Court to Section 62 of the Contract Act, which deals with the effect of novation, rescission and alteration of contract. It is contended by the appellants that even when one party proposes novation or modification and the other party accepts the proposal, such modification or substituted contract must be a valid and enforceable contract so as to make the substituted or modified contract enforceable.

22. In the present case, the parties concerned agreed, before the learned single Judge in C.W.J.C. No. 7055

of 2009, to terms as stated in the order, dated 12.11.2009, and were, thus, bound by the contents thereof. However, the writ petitioner himself backed out of his obligations imposed under the order, dated 12.11.2009, aforementioned.

23. The learned single Judge, while hearing the writ application, clearly stated that the State could not avail the benefit of the newly modified Rule 53 of the BMMC Rules as the amended Rule did not stand in the way of the petitioner continuing his lease, which had been executed by him on 06.02.2010, the reason being that neither it was renewal of the lease granted to him earlier nor was it a fresh grant of lease after the amendment dated 04.02.2010. It merely entailed continuation and completion of the period, which had been earlier granted to the petitioner and not anything else. In this context, Rule 53 of the BMMC Rules, as amended, is quoted hereunder:

"2. Addition of new rule 53 in the Bihar
Minor Mineral Concession Rules, 1972

The following rule 53 shall be added
after rule 52 of the said Rules, 1972 :-

53. Notwithstanding anything
contained in the Bihar Minor Mineral
Concessions Rules, 1972 to the contrary—

(1) No mining lease for stone shall
be granted.

(2) Existing leases for stone granted
under Rule 9 and Rule 52 would be allowed
to subsist for the remaining period for which
they have already been granted but they

shall not be renewed thereafter:

Provided where period of lease has expired before coming into force of these Rules but requisite statutory approval from Govt. of India has been received before enforcement of these Rules, lessee may be entitled to renewal subject to fulfillment of other statutory obligation:

Provided further that in public interest, if the State Government is satisfied that quarrying or mining of stone may not adversely affect ecology and environment and further there is requirement of stone for public use, it may relax the above restriction in any area for such period as it may deem fit necessary."

24. It is evident from a perusal of the Rule 53 that while introducing Rule 53 in the BMMC Rules, the amendment has clearly indicated that any lease, granted in favour of any party under Rule 9 read with Rule 52, would be permitted to be continued for the further remaining period/term for which the lease has been granted, but would not be renewed thereafter. It is also evident that in pursuance of the order passed by this Court, the writ petitioner/respondent had deposited the first instalment of the lease, but thereafter, he did not honour his own commitment made before this Court. The respondents also took the plea that the application for licence for use of explosive had remained pending with the



Collector for an unusual period of three years and the Collector, having himself granted the mining lease to the writ petitioner, was required to deal with the petitioner's application seeking explosives licence. It was also contended that the writ petitioner was arrested in connection with an F.I.R. lodged against him under the Explosives Act, 1884, for being in possession of the explosives, at his premises, during the continuance of the said lease. This action, according to him, had been initiated against him by his rivals in the business, who were aware of the shortfall of the petitioner. Since the petitioner was in custody, he was unable to deposit the money. It was under such circumstances that the petitioner was prevented from making payment of the subsequent instalments and when the same was not done, notice was, again, issued asking him to show cause as to why his lease be not cancelled on two grounds, namely, (i) for not having deposited any payment of instalments as required by him, (ii) for not having furnished the 'No Objection Certificate' from the Water Resources Department, i.e., which was the *raiyat* of the land, in question.

25. Learned counsel, appearing for the appellant-State, submits that the settlement with the petitioner of the mining lease was earlier granted by referring to Letter No.2371/M/Patna, dated 15.10.2007, whereby the Government



of Bihar, Department of Mines, had directed the Collector, Rohtas, to make settlement of an area of 4 acres of Plot No.03 of Village Dhaudand as the Department of Water Resources, Government of Bihar, had already granted 'No Objection Certificate' by Letter No.2363, dated 01.11.2002, and consequently, the appellants issued advertisement, dated 06.02.2008, for settlement by means of open auction of the mining lease.

26. In view of the contention by the State that the lease was granted on the presumption that since there was already 'No Objection Certificate' for conducting mining operations, no further 'No Objection Certificate' was required for making the settlement of mining lease at relevant stage.

27. However, the appellants have placed on record a letter, dated 18.02.2011 (Annexure R), contained in Memo No.565, issued by the Chief Engineer, Water Resources Department, Dehri, indicating that the licence/'No Objection Certificate' issued in favour of M/S Nagarjun Construction Company Limited, for conducting minor operation over Plot No.03 having an area of 4 acres in Village Dhaudand, was only for a period of five years effective from 31.03.2003 to 30.03.2008. It was clearly stated, in the said letter, that the 'No Objection Certificate', in question, had already lapsed/ cancelled, vide order of the Collector, dated 12.05.2006, but



ignoring the same, illegal mining was being conducted and the District Mining Officer had been issuing *pattas*/lease in favour of the same parties for conducting mining operations and, hence, appropriate steps be taken for cancellation of the licence of such lease-holders. The lease of the petitioner had to be, accordingly, cancelled for want of 'No Objection Certificate'.

28. Thus, this Court is clearly of the opinion that there was no fault on the part of the State Government and its functionaries in creating the present situation, but the petitioner had exploited the lease without depositing the instalments due, which necessitated the State to issue the cancellation order. The petitioner's lease for mining of the quarry had been cancelled squarely because of default being made consistently by the writ petitioner and, therefore, under the changed circumstances, there was no need for any grant of explosive licence to the petitioner by the District Magistrate. Accordingly, his application for issuance of licence to use explosives was not processed and, ultimately, rejected by the Collector, Sasaram. This explanation, offered by the State can, thus, be well accepted.

29. It is, thus, evident that the grant of lease to the writ petitioner was made in the year 2008 and the lease was executed only after interference by this Court. In the



meanwhile, the writ petitioner was prevented from operating and exploiting the lease only because he had been found to be exploiting the same without obtaining explosive licence. Though he had made investments initially for executing the mining operations, he consistently defaulted in making payments. It appears from a perusal of the documents, annexed to the writ application, that though the lease was executed for a period of five years, no licence to use explosives was granted in favour of the petitioner due to default on his part. Since the petitioner was under an obligation to pay the amount in compliance of the order passed by this Court, for which he had already deposited the first instalment, the writ petitioner proceeded to bring some explosives, but even before he could get a licence for use of the same for conducting mining operation, he was put behind bars, because of his own act of committing breach of law contained in that behalf.

30. In view of such facts and circumstances, as indicated above, we have no option, but to hold that the writ petitioner had been consistently defaulted and, for his own fault, was prevented from exploiting the lease and the cancellation order passed by the State cannot be said to be without any justification. Thus, the action of the State authorities can well be sustained in the eyes of law. The writ

petitioner was, thus, not entitled to the relief for the loss sustained by him and, accordingly, the learned single Judge clearly erred in holding that the writ petitioner be refunded the money with appropriate interests accruing thereon.

31. The order, under appeal, with regard to the refund of money with interest on all the amounts, which lessee had paid, cannot, therefore, be sustained. So far as the continuance of the lease is concerned, it is evident that the period has already lapsed and no order need be passed in that regard.

32. Learned counsel for the appellants, however, contends that the petitioner, having consistently defaulted in making payment, which, at the outset, he was required to do, within ninety days itself, he cannot, now, legally, come forward to claim compensation. Had the writ petitioner deposited the amounts within the time-frame of ninety days (Annexure 4), the litigation and questions, which were raised subsequently up to the present stage, would not have occurred. Hence, the writ petitioner, being himself a defaulter, could not claim compensation. Thus, this Court is of the opinion that the claim for compensation cannot be entertained.

33. For the reasons discussed above, we allow this appeal and set aside the order, dated 17.12.2013, passed in

CWJC No. 2864 of 2013 and, in consequence thereof, the writ petition shall stand dismissed.

(Anjana Mishra, J.)

I.A. Ansari, J.: I agree.

(I. A. Ansari, J.)

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