IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7023 of 2001

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1. Smt. Reena Verma, wife of late Ramesh Prasad Verma,
2. Satyavrat Verms, son of late Ramesh Prasad Verma,
3. Satya Priya Verma, son of late Ramesh Prasad Verma, all resident of D.K. Shikarpur, P.O. D.K. Shikarpur, P.S. Shikarpurm, District West Champaran, presently residing at Sinha Library Raod, P.S. Kotwali, District Patna.
4. Archana Varma, daughter, wife of Shri Amitabh Srivastava, resident of House no.5, Pragati Path W. Boring Canal Road, P.S. S.K. Puri, District Patna, presently residing at House no.C793 Nikka Singh Block, Asian Game Village New Delhi

.... Petitioner/s

Versus

1. The State of Bihar
2. The Mines Commissioner, Government of Bihar, New Secretariat, Patna
3. The district Magistrate, Bettiah, West Champaran
4. The Assistant Mining Officer, bettiah, west Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Verma, Advocate.

For the Respondent/s : Mr. D.K. Sinha, Sr.Counsel Mines
Mr. Rajendra Prasad, Spl.PP Mines.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

CAV JUDGMENT

Date: 22.06.2015

Heard the parties.

2. In the present writ petition the petitioners are challenging the order dated 27.2.2001 issued by the Assistant Mining Office3r, Bettiah, west Champaran (respondent no4.) vide memo no.209 by which demand of Rs. 24,55,645.00 was made to the petitioner under the head of Dead rent under the Bihar Minor Mineral Concession Rules and further made a prayer for issuance of writ of mandamus or any other appropriate writ, order or direction commanding the respondent not to interfere with the

petitioner enjoyment of his lease hold mining rights or raise any demands with regard to the same except in accordance with law.

3. In the present case the dispute is of dead rent with respect to 100 acres of river bed land for the period 25.12.1992 to February, 2001. The original petitioner late Ramesh Prasad Verma was granted mining lease in the year 1966 for manual picking of floated pebbles and shingles from the bed of river Pandui within the area of Village Bhiknathori in the District of West Champaran on the Indo Nepal Border. Lease was renewed from time to time and at last lease expired on 24.12.1992. The original petitioner applied for fresh lease in the month of January, 1993 for 205 Acres =81 Hectares of river bed for the aforesaid purposes. Initially the lease was for 250 Acres of land but in the year 1986 it was reduced for 205 Acres and continued the same. The prayer for renewal was rejected by the Collector, West Champaran vide his order dated 24.3.1993. Against that rejection the petitioner approached this Court vide C.W.J.C. No. 5454 of 1993 which was disposed of vide order dated 23.7.1993 with a direction to pass a reasoned order after hearing the parties.

4. Again the application for lease was rejected vide order dated 9.8.1993 by the Collector which was again challenged in C.W.J.C.No.9179 of 1993 which was disposed of vide order

dated 12.10.1993 with a direction to the District Magistrate, Bettiah, west Champaran (respondent no.3) to forward the application to the Central Government under Section 2 of the Forest Conservation Act for seeking approval. In pursuance thereof respondent no.3 forwarded the proposal to the Central Government on 23.12.1993 and after due consideration granted approval for renewal of lease vide order dated 15.2.1999 to the petitioner for ten years over 42 hectares=105 Acres of forest land in Pandui river bed for picking up floated pebbles under the Forest Conservation Act on stipulating conditions mentioned in the said approval letter. In pursuance thereof the petitioner was granted lease for 105 Acres of land for 10 years with the stipulation that $1/4^{th}$ area of both sides of river was prohibited from mining. For the period 1.7.1993 to 30.9.1993 the petitioner was not under the lease but a demand was made for Rs.1,15,175.00 which was challenged in C.W.J.C. No.1321 of 1993. This Court after consideration quashed the impugned demand interpreting Section 9A of the Minor Mineral Concession Act and held that as during that period the petitioner was not under lease of the said land, was not entitled for claim of Dead Rent. It has been claimed by the petitioner that as petitioner was granted the lease for 105 Acres of river bed land charge of

Dead Rent will be proportionate to the area which has given under the lease and it has been claimed that the State authority can not claim the dead Rent more than the lease area on the illegal ground that petitioner has not handed over the possession of 100 Acres of land as earlier the petitioner was granted lease for 205 Acres of land.

5. Learned counsel for the petitioner submits that the Dead Rent is the fixed rent which is otherwise then the royalty relatable to the lease granted to the petitioner and royalty is chargeable to the relatable to the amount of minerals extracted from the mining area. The royalty is variable always proportionate relatable to the amount of mining extracted from the mining bed whereas the Dead Rent is fixed rent related to the mining area.

6. In support of his contention he has relied on the judgment in the case of D.K. Trivedi and Sons Vs. State of Gujarat, reported in 1986 Sup. SCC 20= AI.R.1986 SC 1323, King Pal Singh V. State of U.P. and others, reported in (1996) 11 SCC 571, paragraph 20 where the Hon'ble Supreme Court has explained the difference of Dead Rent vis-à-vis Royalty. Further he has claimed that the Government has made a claim of purported possession of extra area of 100 Acres of land and also claimed that even after the repeated direction for the registration

of the lease agreement is not sustainable in view of section 90 of the Registration Act as the grant of Government has been exempted from compulsory registration of the same. He has further submitted that this Court in C.W.J.C. No.13121 of 1993 has specifically held that the Government can not claim the Dead Rent for the period when the petitioner was not a lessee for the purposes of picking up pebbles and singles from the river Pandui and claimed that the impugned order is not sustainable and liable to be quashed.

7. The State has claimed that present writ petition is not maintainable as the petitioner has alternative remedy under Public Demand Recovery Act where he can get the proper adjudication of the dispute raised by the petitioner and mere notice to pay the impugned amount does not entitled the petitioner to approach this Court under the extraordinary jurisdiction. The basic claim has been made that originally before 1993 the petitioner was under the possession of 205 Acres of land in river bed for picking up pebbles and shingles which remained with him and he never endeavored to hand over the rest 100 Acres of land makes him liable for payment of Dead Rent for the area which was under his possession. It has further been claimed that he continued to extract pebbles and shingles and as such he

can not claim that the petitioner is not liable to pay the impugned amount. He has placed reliance to show that petitioner was in possession of 205 Acres of land on the monthly return Annexure-C to the counter affidavit and letters issued by the State of Bihar periodically asking him to hand over 100 acres of extra land which he never complied with and he has claimed that Mining Department written letter for the same in utter defiance that he remained under the possession of 205 Acres of land. In support of his submission he has placed reliance on the letter dated 30.10.1999 (Annexure A), letter dated 20.1.2000 (Annexure-B) written by the Assistant Officer, Bettiah, returned filed by the petitioner (Annexure-C) showing 82 hectares/205 Acres of land, letter dated 18.2.2001 (Annexure-F), letter dated 29.7.2000 (Annexure-G), report of Divisional Forest Officer-cum-Deputy Director Tiger Project, West Champaran, Bettiah, dated 31.7.2000 (Annexure-H), letter dated 2.6.2000 (Annexure-1) written by Assistant Minding Officer, Bettiah , notice given by the Assistant Mining Officer, Bettiah dated 20.8.2000 (Annexure-J), letter written by Joint Director Government of Bihar vide letter no.1848 dated 1.6.2000 (Annexure-K) requesting the Collator West Champaran about extracting of minerals from the extract of 100 Acres of land, requested to take action in accordance with law, letter no.914 of the Assistant Mining Officer, West Champaran to the District Magistrate Bettiah (Annexure-L), letter no.209 dated 27.2`.2001 written by the Assistant Mining Officer to the petitioner claiming the impugned amount and last but not the least the notice dated memo no.359 dated 23.3.2001 (Annexure N) pointing out that the petitioner was in possession of 100 of extra land then that of leased land demanded the dead rent as impugned in the present case.

8. In reply, learned counsel for the petitioner submits that petitioner always remained under the lease of 105 acres of land and he has disputed the possession of extra portion of land as has been claimed by the State which is apparently clear from the lease land Annexure-2 with respect to 105 Acres of land and disputed claim amount is void.

9. Having considered the rival contentions of the parties Section 9A of the Mines and Minerals (Development and Regulation) Act, 1957 deals with the dead rent which is as follows:

> "9A. Dead rend to be paid by the lessee.- (1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall notwithstanding anything contained in the instrument of lese or in

> any other law for the time being in force, pay to the state Government, every year, dead rent at such rate, as may be specified for the time being, in the Third Schedule, for all the areas included in the instrument of lease:
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> Provided that where the holder of such mining lease becomes liable, under section 9 to pay royalty for any mineral removed or consumed by him or by his agent, manager employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty, or the dead rent in respect of that area, whichever is greater.
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> (2) The Central Government may, by notification in the Official Gazette, amend the Third Schedule so as to enhance or reduce the rate at which the dead rent shall be payable in respect of any area covered by a mining lease and such enhancement or reduction shall take effect from such date as may be specified in the notification:
>
> Provided that the Central Government shall not enhance the rate of the dead rent in respect of any such area more than once during any period of three years."

Whereas Section 9 deals with royalty in respect to mining lease.

10. Section 9A itself makes it clear that the dead rent is relatable to the lease area for mining purposes where as proviso makes it clear that lessee will be liable to pay royalty for any mineral removed or consumed by him or by his agent, manager employee, contractor or sub-lessee from the leased area will be liable to pay either such royalty or the dead rent in respect of that area whichever is greater. The difference of royalty and dead rent has been dealt with by the Hon'ble Supreme Court in the

case of D.K. Trivedi (supra). In paragraph 39 makes it clear that dead rent is calculated on the basis of the area lease while royalty is calculated on the quantity of minerals extracted or removed. Thus while dead rent is a fixed return to the lessor, royalty is a return which varies with the quantity of minerals extracted from as dead rent and royalty are both a return to the lessor in respect to the area leased. looked at from one point of view dead rent can be described as the minimum guaranteed amount payable to the lessor calculated on the basis of the area leased and not on the quantity of minerals extracted or removed. It is relevant to quote paragraph 39 and 40 of the aforesaid judgment:

> "39 In a mining lease the consideration usually moving from the lessee to the lessor is the rent for the area leased (often called surface rent), dead rent and royalty. Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called 'royalty'. It may, however, be that the mine is not worked properly so as not to yield enough return to the lessor in the shape of royalty. In order to ensure for the lessor a regular income, whether the mine is worked or not, a fixed amount is provided to be paid to him by the lessee. This is called 'dead rent'. 'Dead Rent' is calculated on the basis of the area leased, while royalty is calculated on the quantity of minerals extracted or removed. Thus while dead rent is a fixed

return to the lessor, royalty is a return which varies with the quantity of minerals extracted or removed. Since dead rent and royalty are both a return to the lessor in respect of the area leased, looked at from one point of view dead rent can be described as the minimum guaranteed amount of royalty payable to the lessor but calculated on the basis of the area leased and not on the quantity of minerals extracted or removed. In fact, clause (ix) of Rule 3 of the Rajasthan Minor Mineral Concession Rules, 1977, defines "dead rent" as meaning "the minimum guaranteed amount of royalty per year payable as per rules or agreement under a mining lease". Stipulations providing for the lessee's liability to pay surface rent, dead rent and royalty to the lessor are the usual convenants to be found in a mining lease.

40. The grant of a mining lease would thus provide for the consideration for such grant in the shape of surface rent, dead rent and royalty. The power to make rules for regulating the grant of such leases would, therefore, include the power to fix the consideration payable by the lessee to the lessor in the shape of ordinary rent or surface rent, dead rent and royalty. If this were not so, it would lead to the absurd result that when the government grants a mining lease, it is granted gratis to a person who wants to extract minerals and profit from them. Rules for regulating the grant of mining leases cannot be confined merely to rules providing for the form in which applications for such leases are to be made, the factors to be taken into account in granting or refusing such applications and other cognate matters. Such rules must necessarily include provisions with respect to the consideration for the grant. Under Section 15(1), therefore, the State Governments have the power to make rules providing for payment of surface rent, dead rent and royalty by the lessee to the government."

11. The same view has been reiterated in the following

judgments (i) State of Rajasthan V. M/s Hindustan Sugar Mills Ltd. and others, reported in (1988)3 SCC 449, Ambalal Manibhai Patel V. state of Gujarat, reported in 1989 Supp.(2) 362 and in the case of Raojibhai Jivabhai Patel and others V. State of Gujarat and others 744 and at last King Pal Singh (Supra). In paragraph 22 the Court has verbatim quoted paragraph 39 of the judgment in the case of D.K. Trivedi (supra) which makes it clear that dead rent is a fixed rent which is always relatable to the area leased.

12. Earlier also the petitioner has challenged the claim of the State for the dead rent for the period he was not granted lease came up for consideration before this Court in C.W.J.C. No.13121 of 1993 and this Court has found that as the petitioner was not given the lease during that period was not liable to pay the dead rent. Identical issue is also here. In this case also the State has claimed the dead rent of extra area which was not subject matter of the lease.

13. In the present case admittedly the petitioner was given the land of 105 Acres of land though the State Government has claiming to be in possession of 205 acres of land i.e extra 100 Acres which the State claims to be in his possession and was extracting pebbles and shingles from the river bed Pandui. If the

petitioner was violating the lease deed and illegally picking up pebbles and shingles State should have filed a criminal case for violating Mines and Minerals (Development and Regulation) Act as he could not have extracted pebbles and shingles apart from the area which was leased out to him. The dead rent cannot be more than what is the area given on lease and claimed extra 100 acres of land on the ground of illegal possession which has been disputed by the petitioner and the same can not be the subject matter for payment of dead rent is sustainable in law.

14. Accordingly the impugned order dated 27.2.2001 is hereby quashed and this writ petition is allowed.

(Shivaji Pandey, J)

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