

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4975 of 2014

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Md. Sikandar Alam son of Md. Abdul Majid, resident of village- Baradari,
P.O. and P.S.- Biharsharif, District- Nalanda

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Mines
And Geology, Bihar, Patna
2. Principal Secretary-cum-Commissioner, Mines and Geology
3. The Collector, Sheikhpura, P.S. and District- Sheikhpura
4. The Mineral Development Officer, Sheikhpura, P.S. and District-
Sheikhpura

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Janardan Prasad Singh, Sr. Advocate
Mr. Arbind Kumar Singh, Advocate

For the Respondent/s : Mr. D.K. Sinha, Sr. Advocate
Mr. Rajendra Prasad, Special P.P., Mines

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 11-02-2015 Heard Mr. Janardan Prasad Singh, learned senior
counsel appearing on behalf of the petitioner and Mr. Rajendra
Prasad, learned counsel appearing for the Mining Department.

The petitioner is aggrieved by the order dated 28.6.2013
passed by the Mines Commissioner in Revision Case No. 3 of
2013 as contained in Annexure-12 whereby the Mines
Commissioner while rejecting the revision filed on behalf of the
petitioner has affirmed the order dated 18.12.2012 passed by the
Collector, Sheikhpura as communicated to the petitioner vide
letter no. 1914 dated 20.12.2012 of the Mining Development
Officer, Sheikhpura placed at Annexure-11 to the writ petition.



The facts of the case briefly stated is that the petitioner was a lease holder for operating the stone quarry in the district of Sheikhpura and the last of the lease entered in between the petitioner and the Mining Department, a copy of which is present at Annexure-6 to the writ petition, though was executed on 29.9.2008 for a period of five years but it was given a retrospective effect from 4.12.2007 i.e. the date on which the previous lease of the petitioner had expired. The lease contains the joint signature of the petitioner as well as the Officer of the Mining Department. No issue was raised by the petitioner and it is only when the lease reached its last leg in the year 2012 that a representation was filed by the petitioner for correction of the date from which the lease was made effective, a copy of which is placed at Annexure-8 to the writ petition and which has been rejected by the Collector and affirmed by the Revisional authority and hence this writ petition.

Mr. Janardan Prasad Singh, learned senior counsel has questioned the impugned orders on the following grounds:

- (a) The lease cannot be given a retrospective effect.
- (b) The lease having been renewed on 29.9.2008 for a period of five years, the petitioner was entitled to operate the stone quarries until

28.9.2013.

- (c) There is no order of rejection by the District Magistrate, Sheikhpura on his representation.

The argument of Mr. Singh has been contested by Mr. Prasad appearing for the Mining Department to submit that it is with open eyes that the petitioner has entered into the lease and since by the time the representation of the petitioner fell for consideration before the Collector that the period of lease was over and accordingly the representation was disposed of for lease itself had expired. Learned counsel with reference to the order of the Collector present at Annexure-A to the supplementary counter affidavit has stated that it is upon the termination of lease that the representation of the petitioner was held not worthy for consideration and which opinion of the District Magistrate stands affirmed by the Mines Commissioner.

I have heard learned counsel for the parties and I have perused the material on record. No doubt a lease cannot be given a retrospective effect unless the lessee is held to have derived the benefits thereof, for that period. Though a stand has been taken by the respondents in the counter affidavit that the petitioner was in a possession of the stone quarries for the period 4.12.2007 until the



execution of the lease on 29.3.2008 when it was formerly handed over to the Department but then there is nothing on record to show that the petitioner at any stage did operate the stone mines since after the expiry of lease on 4.12.2007. Thus even if the petitioner was in possession of the stone quarry in question but the respondents have failed to substantiate with documentary evidence viz permit, chalaan etc. that the petitioner operated the mines and in such circumstances the lease executed on 29.9.2008 could not have been given a retrospective effect from 4.12.2007. The laches on the part of the petitioner is that though he signed on the lease deed being fully aware of its retrospective effect but he never questioned the same either before the statutory authority or before this Court and it is in the last lap of the lease period that on 12.1.2012 the petitioner tried to rake up this issue and which obviously has not been entertained by the statutory authorities by virtue of the closure of the lease period in December, 2012. Though there is gross infirmity in the lease insofar as its retrospectivity is concerned but then considering the passage of time as well as the fact that the period has expired, no infirmity can be found in the order passed by the statutory authorities warranting indulgence. Having held as such this Court would also safeguard the interest of the petitioner inasmuch as he definitely

stands prejudiced by the retrospective effect given to the lease insofar as the lease amount or royalty if any is concerned. The lease having been executed on 29.9.2008, certainly the respondents were not entitled to collect the lease amount for the anterior period i.e. 4.12.2007 until 28.9.2008 more particularly in view of the fact that there is no documentary evidence on record to show that the petitioner did operate the stone quarries for this period. The petitioner thus is entitled for refund of the proportionate amount of the lease amount for the period 4.12.2007 to 28.9.2008 and for which the petitioner would be at liberty to represent before the Collector, Sheikhpura who shall pass appropriate orders thereon in the light of the observations made hereinabove expeditiously and preferably within three months of receipt / production of a copy of this order.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

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