

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1455 of 2012

IN

Civil Writ Jurisdiction Case No 731 of 2008

- =====
1. The State Of Bihar Through The Commissioner-Cum-Principal Secretary,
Department Of Mines And Geology, Bihar, Patna
 2. The Collector, Nalanda
 3. The Assistant Mining Officer, Nalanda, Biharsharif

.... Appellant/s

Versus

Ram Naresh Kumar Son Of Shri Deonath Prasad Resident Of Mohalla -
Ramchandra Pur, P.S. Laheri, District - Nalanda

.... Respondent/s

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Appearance :

For the Appellant/s : Mr D K Sinha, Sr Advocate (Mines) with
Mr Rajendra Prasad, Advocate

For the Respondent/s : Mr Satyabir Bharti, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 27-11-2015

State is in appeal. There is delay in filing the appeal
which, in the given facts, is condoned.

2 The writ petitioner, who is the contesting respondent
in this intra-Court appeal, has appeared.

3 With consent of the parties, this appeal has been
heard at length for disposal at this stage itself.

4 The writ petitioner/respondent had applied for
settlement of Sand Ghat Unit II in the district of Nalanda for winning

sand, a minor mineral. The settlement was to be for three calendar years. The settlement process got delayed and in fact the bidding took place in April-June and finally possessions were granted only in July. As per the bid amount, the writ petitioner/respondent was obliged to deposit the entire money for each of the years in advance in certain instalments.

5 The grievance of the petitioner was two fold. Firstly, that so far as the money deposited in respect of the first year is concerned, as the settlement was only made in the month of July, he was deprived of opportunity to exploit the lease for almost seven months of the year. Therefore, there ought to have been a proportionate reduction in the amount payable for the first year.

6 On the face of it, the grievance of the petitioner was fully justified because he was not at fault in late grant of the mining lease. The problem was solely because of administrative difficulties on behalf of State. We fail to see how the writ petitioner/respondent could be denied proportionate refund on that count. However, we do not finally decide this issue because the learned Single Judge has remanded the matter to the Mines Commissioner to take a final decision in this regard. The writ petitioner/respondent has not challenged this on the ground that the matter is yet to take a final shape.

7 The second grievance of the writ petitioner-respondent was that for the second year, there was a delay in depositing the third instalment. There was a default in the first instalment that was required to be deposited for the second year. It was insufficient deposit. On this ground alone, the lease was terminated and the security deposit directed to be forfeited in all, along with the part payment which the writ petitioner/respondent had made. This was challenged as arbitrary on the ground that in fact, for the first year, substantial amount was due as being proportionate refund. That was not being done and asking the petitioner to punctually deposit subsequent instalments in full was itself unreasonable. Further, as per the agreement between the parties, it was specifically provided that in case there was a delay in payment of any instalment, an interest at the rate of 2% would be charged for the period of delay. This clearly stipulated that delay in deposit of instalment was not fatal to the lease. The Writ Court rightly, in our view, held that this delay could not be made a ground for refusing renewal for the subsequent years and then to direct forfeiture of the amount paid as well as forfeiture of the security deposit was unreasonable.

8 In this connection, we may first note that provision for payment of interest on delayed payment having been provided in

the agreement, the contemplation is to quantify damages for the delay but not forfeiture of right of renewal. Assuming, for the sake of argument, that this delay in deposit of instalment amounted to forfeiture of the lease giving right of re-enter to the State, we may remind the State of the provision of Section 114-A of the Transfer of Property Act, which is quoted hereunder:-

[114-A. Relief against forfeiture in certain other cases.- Where a lease of immovable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing-

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach, and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.]

9 Thus, before refusing to renew the lease thereby



terminating the lease and taking over the lease, a notice of breach and seeking its remedy had to be issued. If it could be remedied then the breach could not be treated as such. In other words, the law, therefore, enshrines that once there was a breach which was capable of being remedied in the manner of payment of interest for the delayed payment, an opportunity to make such payments be granted and payment made accordingly, then no action for breach of the terms of lease could be taken. In the facts of the present case, simply on the ground that there had been a delay in payment of the full instalment amount, the renewal has been refused and the amount already deposited, though insufficient, as well as the security deposit forfeited. This is nothing but cancellation of the lease for breach of a condition which was rectifiable.

10 At this stage, we may also notice a fact that the total amount that was required to be paid for the entire year was about Rs 62 lacs. For the first year, if proportionate refund is to be given then writ petitioner/respondent was entitled to a refund of about Rs 30 lacs. State, till date, has not refunded this amount and is retaining this amount, whereas the instalment that was due and he was required to pay about Rs 32 lacs out of which Rs 15 lacs were paid and a balance of Rs 20 lacs were to be paid as against refund of over Rs 30 lacs. If we were to balance equity, it would be seen that it was the

petitioner/respondent who was liable to get more refund from the State than to pay any amount. Then for the State, to refuse renewal of lease, in our view, not only being contrary to the principles therein, it was unreasonable and dehors the public contract.

11 Thus, in our view, no case for interference is made out. This appeal, by the State, is dismissed.

(Navaniti Prasad Singh, J)

M.E.H./-AFR

(Nilu Agrawal, J)

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