

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15774 of 2016

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M/s. Broadson Commodities Pvt. Ltd., Dr. Himanshu complex, Block Road, Koilwar Chowk, P.S. Koilwar, District- Ara (Bhojpur) through its Director, Krishna Mohan Singh, son of Late Parmeshwar Singh, resident of Village-Bagmazhuan, P.S. Koilwar, District- Bhojpur at Ara.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Government of Bihar, Main Secretariat, Patna.
3. The Principal Secretary, Department of Mines and Geology, Department, Government of Bihar, New Secretariat, Vikas Bhawan Patna.
4. The Principal Secretary, Department of Environment & Forest, Government of Bihar, Main Secretariat, Patna.
5. The State Level Environment Impact Assessment Authority, Bihar, Patna through its Chairman, BELTRON BHAWAN, Shastri Nagar, Patna.
6. District Magistrate, Bhojpur, Ara.
7. Assistant Director, Mines & Geology, Bhojpur, Ara.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Jai Kishor Poddar, Advocate

For the Respondent/s : Smt. Kumari Amrita, GP-3
Mr. Rajendra Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 30-09-2016

Mr. Sivendra Kishore, learned senior counsel for the petitioner and Mr. Rajendra Prasad, learned counsel for the Mining Department are present.

The petitioner is aggrieved by the directions issued by the Appropriate Authority whereby a restraint on extraction of sand from the sand ghats settled in favour of the petitioner has been issued for the month(s) of July, August and September each year, in the light of the advisory issued by the State Level Environment Impact Assessment Authority, Bihar.

The relief prayed by the petitioner runs as follows:

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- (i) For a direction to the respondent authorities not to charge the installment payable by the petitioner for December 2016 against the Parwana granted in favour of the petitioner for excavation and transporting the sand in the district of Bhojpur as the petitioner has been restrained from mining and transporting sand for the months of July, August and September by the State Environment Impact Assessment Authority (for short 'SEIAA').
- (ii) For a declaration that the amount offered by the petitioner deserves proportionate reduction and till such exercise is completed respondents be restrained for demand of further installment due in the month of September, 2016 and December 2016.
- (iii) For a declaration and consequential direction on the respondent that the sand ghat in the district of Bhojpur has been settled in favour of petitioner for a period of 5 years i.e. 60 months which has been reduced to 45 months as such petitioner is entitled for proportionate reduction in the consideration amount for such settlement in terms of NIT and consequential work order / parwana.
- (iv) For a declaration that the amount offered by the petitioner for the year 2015 was Rs. 71,52,67,930/- formed the basis for computation of the amount payable for further 4 years which was to be enhanced by 20% every year and as such, reduction of period subsequent to such fixation deserves consideration by the state government and in particular the installment payable by 15.09.2015 as per clause-12 of the terms and

condition for settlement of sand ghats in the light of NIT.

The agreement in between Department of Mines and the petitioner is not in dispute and a copy of which has been enclosed at Annexure-5 to the writ petition bearing Memo No. 629 dated 29.12.2014 whereunder the petitioner has been granted settlement for extraction of sand for a period of five years w.e.f 1.1.2015 to 31.12.2019. Clause 23 of the agreement binds the petitioner with the terms and conditions of the advertisement present at Annexure-3 issued in the light of the notification of the Mines Department dated 22.7.2014 present at Annexure-2 and is effective for a period of five years with effect from 1.1.2015. The payment schedule is given at paragraph 12 of the tender present at Annexure-3 and which shows that of the bid amount, the petitioner would have to pay 50% thereof by 15th of December of the year concerned followed by deposit of second instalment of 25% by 15th of April the following year and the balance deposit of 25% on or before 15th of September. It is the case of the petitioner that for the period 2015, there was no dispute between the parties for there was no disturbance in extraction of sand and the petitioner made his deposit in terms of the agreement. It is the grievance of the petitioner that an obstruction to the sand mining has erupted by virtue of advisory issued by the State Level Environment Impact Assessment Authority, Bihar present in their letter dated 4.3.2016 whereby a restraint has been issued from sand mining during

the months of July, August and September and which advisory has been mechanically accepted by the Mining Department to issue a restraint order whereby the petitioner has been restrained from operating the mines for the month of July, August and September.

It is the submission of Mr. Kishore learned Senior counsel appearing for the petitioner that whereas in the year 2015, no objections of this kind was raised but in view of the restraint order the petitioner is made to pay the third instalment without extraction of the sand during the month of July, August and September. The twin prayer made by the petitioner in the writ petition is, for a consideration by the respondent State in its Mining Department to consider a proportionate reduction in the settlement amount in view of the subsequent development whereunder the petitioner is now being restrained from extracting sand from the Ghats during the month of July, August and September each year as also for postponing the date for deposit of the third instalment which falls on 15th of September.

Mr. Prasad learned counsel for the Mining Department while raising a preliminary objection as regarding the maintainability of the writ petition submits that the petitioner has rushed to this Court in his exuberance whereas he should have raised his grievance at the first instance before the District Magistrate, Bhojpur, Ara in view of the restraint order issued and any such prayer made by the petitioner would be considered by the District Magistrate accordingly.

Having heard learned counsel for the parties and

considering the nature of grievance raised in this writ petition, I deem it fit and proper to dispose of the writ petition with a liberty to the petitioner to raise his grievance as suggested by Mr. Prasad, learned counsel for the Mining Department before the District Magistrate, Bhojpur, Ara and who shall consider and dispose of the same in accordance with law and with opportunity of hearing to the petitioner, by speaking order and considering the nature of the grievance raised, an expeditious disposal preferably within a period of four weeks from the date of filing of the application would serve the purpose.

It goes without saying that the deposit of the third instalment would be subject to the disposal of the grievance raised by the petitioner, by the District Magistrate, Bhojpur, Ara.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

S.Sb/-

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