

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.970 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 8491 of 2013**

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1. The State of Bihar, through the Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna
 2. The Commissioner, Mines and Geology cum Commissioner, Government of Bihar, Patna
 3. The Collector, District - Bhagalpur
 4. The Director, Department of Mines Geology, Government of Bihar, Patna
 5. The Mines Development officer, at District Mining Department, Bhagalpur

.... Appellants

Versus

Bhavishya Kumar, son of Late Yogendra Mandal resident of village and P.O. & P.S. Shahkund, District – Bhagalpur.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Rajendra Prasad, Advocate.

For the Respondent/s : Mr. Anil Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 27-10-2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 19th November, 2013 whereby, communication dated 22nd of January, 2013 cancelling the mining lease of minor mineral of Mauza-Jagariya, Plot No. 1971/P of land measuring 1.80 acres at Jagariya in the District of Bhagalpur, was set aside, on the ground that in terms of Section 114A of the Transfer of Property Act, 1882 (hereinafter referred to as

the 'Property Act'), if the breach is remediable, it must be remedied.

It was also found that the show cause notice for cancelling the lease must be served by the Collector himself and, therefore, the order of cancellation of lease by another officer cannot be sustained.

3. The writ applicant was granted mining lease for extraction of stones and murram by the Collector by Memo No. 1037 dated 25.10.2008, pursuant to an auction held on 14th June, 2008. The lease deed was executed on 26th November, 2008 for a period till 25.10.2013.

4. It is asserted by the writ applicant that notice dated 1st August, 2012 was received from the office of the District Mining Office, Bhagalpur pointing out certain irregularities in carrying out the mining lease such as there is encroachment on the area beyond his settlement area. It is thereafter the lease was revoked on 22.01.2013.

5. Learned Single Bench was the view of the fact that Section 114A of the Property Act contemplates that if the breach is remediable, it must be remedied and that cancellation cannot be ordered much less by an officer other than Collector. We find that reference to Section 114 A of the Property Act, in respect of mining lease, is not tenable.

6. Section 3 of the Mines and Minerals (Development



and Regulation) Act, 1957 (for short the Act) defines mining lease to mean a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purposes. The mining lease is granted in terms of the Rules contained in the Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as the 'Rules'). The conditions for the grant of mining lease are mentioned in Rule 21. Surrender of such lease is dealt in Rule 24. The Collector has been given power to determine the lease, if the lessee commits any breach of the terms and conditions of the mining lease, after giving the reasonable opportunity to the lessee of being heard.

7. The Collector is defined under the Rules. Rule 2(i) of such Rules defines the Collector to mean that the Chief Officer in-charge of the revenue administration of a district or any officer specially empowered by the State Government to perform the duties of a Collector under these rules, is a Collector.

8. Admittedly, the writ applicant was given notice on 1st August, 2012 pointing out the violations of the terms of the lease. Still further, a perusal of the order, Annexure-9 of the writ application dated 22nd January, 2013, shows that the Collector had passed the order of cancellation of lease, but the same was communicated by the Mining Development Officer, Bhagalpur. Therefore, it is not a case where the order of cancellation of lease

was passed by an officer other than the Collector. Therefore, the mining lease was cancelled after following the procedure prescribed under the Rule 24 of the Rules.

9. We find that the reference to Section 114A of the Property Act, in respect of mining lease, has no relevance as the lease under the Act is different as against the lease granted under the Property Act. The Act being a special statute will prevail over the provisions contained in the General Act i.e., Property Act. The lease is a concession granted to a lessee to extract minerals in terms of concession so granted. Therefore, the provisions of the Property Act would not have any applicability to the mining lease granted under the provisions of the Act and the Rules therein.

10. In view thereof, we find that the order passed by the learned Single Bench setting aside the order of cancellation of lease cannot be sustained. The same is set aside. The appeal is allowed and the writ application, bearing CWJC No. 8491 of 2013, is dismissed.

(Hemant Gupta, J)

Mishra/-

(Ahsanuddin Amanullah, J)

AFR/NAFR	A.F.R.
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