

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19005 of 2013

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1. Eklavya Stone and Mines Private Limited through its Director Eklavya Kumar
S/O Raj Ballabh Prasad Resident and Office at Village- Pathara English, P.O-
Orhanpur, P.S- Mufasil, District- Nawada.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Mines and Geology
Department, Bihar, Patna.
2. Mines Commissioner Cum Principal Secretary, Mines and Geology Department,
Bihar, Patna.
3. The Deputy Director of Mines, Magadh Division, Gaya.
4. The Assistant Director, Mines, Nawada.
5. The Inspector, Mines, Nawada.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Prasad Singh, Adv.

For the Respondent/s : Mr. V.M.K Sinha, Adv.

For the Mines Department: Mr. Rajendra Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-11-2016

Heard Mr. Umesh Prasad Singh learned Senior Counsel for the
petitioner, learned counsel for the State and Mr. Rajendra Prasad
learned counsel appearing for the Mining Department.

With the consent of the parties, the writ petition has been heard
with the view to its final disposal at the stage of admission itself.

The petitioner is aggrieved by the order passed by the Mines
Commissioner in Revision Case No. 12 of 2012 whereby he has
proceeded to uphold the order dated 21.9.2011 and 12.11.2011 passed
by the Assistant Director, Mines, Nawada whereby a royalty to the tune
of Rs. 14,15,275/- together with additional royalty of an equal amount
has been raised under Rule 40(8) of the Bihar Minor Mineral
Concession Rules, 1972 (hereinafter referred to as 'the Rules') on

allegation of illegal extraction and transportation of 791040 cubic fit of stones from Plot No.1 having a area of 14.40 acres.

Facts of the case briefly stated is that the petitioner was awarded mining lease of Block No.22 having an area of 2 acres in Mauza-Khakhandua Circle, P.S. Govindpur in the district of Nawada. A copy of the lease is enclosed at Annexure-1 to the writ petition and the area of the lease is detailed at part- I of the lease document at running page 69. On an allegation set up against the petitioner of encroaching on the adjacent block having an area of 14.40 acres that he was put to notice vide notice bearing No.256 dated 27.4.2010 as is confirmed from the file produced by Mr. Rajendra Prasad. A spot enquiry was carried out which reported against the petitioner and a provisional demand of royalty on account of encroaching upon and alleged mining on the adjacent block was raised by the Assistant Director, Mines, Nawada vide demand letter bearing No. 379 dated 6.8.2010 present at running page 115 of the writ proceeding to the tune of Rs. 7,47,886/- which included additional royalty for an equal amount. Perhaps, no objection was raised by the petitioner at this level and soon thereafter, the demand of royalty as well as additional royalty so raised was enhanced, twice of the original amount vide letter No. 650 dated 21.9.2011 of the Assistant Director, Mines, a copy of which is impugned at Annexure-12. By the said order a demand of royalty to the tune of 14,15,275/- was raised and an additional royalty for an equal amount, was imposed,



making the total demand at Rs.28,30,550/-. Feeling aggrieved, the petitioner filed an appeal before the Deputy Director, Mines as stated at paragraph 26 of the writ petition under Rule 47 of 'the Rules' and in the meantime a third notice was issued on 12.11.2011 by the Assistant Director, Mines confirming the demand present at Annexure-12 which has been impugned at Annexure-14. The non payment of the demand so raised by the petitioner has resulted in institution of certificate proceedings for realization of the amount.

Feeling aggrieved by non-disposal of the appeal and institution of certification proceedings that the petitioner filed a revision before the Mines Commissioner giving rise to Revision Case No. 12 of 2012 and the Mines Commissioner vide order passed on 2.8.2013 has dismissed the revision application impugned at Annexure-28 thus confirming the demand raised by the Assistant Director even when the appeal remains pending before the Deputy Director. In between, the settlement lease period has expired. The petitioner feeling aggrieved by the development is before this Court.

Mr. Umesh Prasad learned Senior counsel for the petitioner has questioned the impugned action of the respondents on two grounds:

- (a) The Assistant Director, Mines had no jurisdiction to raise a demand.
- (b) The copy of the report was not provided; and
- (c) The demand raised is without opportunity of hearing to the

petitioner to contest the allegations as well as the report so prepared upon physical verification.

It is also the argument of Mr. Singh that even when the appeal remained pending for adjudication before the Deputy Director, that the respondents resorted to institution of certificate proceedings and since all these developments were taking place despite the position and that the demand was passed without hearing to the petitioner, that he chose to move the revisional authority and the peculiarity of the matter is that even when the revisional authority was aware of the pendency of the appeal, instead of issuing appropriate direction to the appellate authority to dispose of the appeal, the revisional authority himself has proceeded to uphold the demand.

The arguments of Mr. Singh has been contested by Mr. Rajendra Prasad learned counsel for the Mining Department and who while contesting the argument on the jurisdiction vested in the Assistant Director to raise the demand, has referred to Rule 2(iii) of 'the Rules' to submit that while Rule 40 of the Rules also vests jurisdiction in the competent officer to raise a demand, the term 'competent officer' is defined in the Rule 2(iii) to also include an Assistant Director. He thus submits that there is no error in the jurisdiction exercised by the Assistant Director to raise the demand. Responding to the other issues raised by Mr. Singh as regarding demands in question having been raised by the Assistant Director without opportunity of hearing to



the petitioner, while Mr. Rajendra Prasad has invited the attention to the Court to a notice bearing No. 256 dated 27.4.2010 present at page 109 of the file so produced by him to submit that due notice was given to the petitioner but in my opinion, the reliance is thoroughly misplaced since the said notice is issued from the Collector's office under the signature of an Additional Collector and not by the Assistant Director, Mines. Apart therefrom, the proceedings file so produced by Mr. Rajendra Prasad does not contain any notice issued under the signature of the Assistant Director. Meaning thereby the impugned demands raised by the Assistant Director, is without notice to the petitioner and without an opportunity of hearing to him to defend himself. There is thus no answer to the argument of Mr. Singh learned Senior counsel representing the petitioner that the impugned demands/orders are in violation of principles of natural justice.

In result, the provisional demand raised by the Assistant Director, Mines, Nawada dated 6.8.2010 present at running page 115 together with the demand raised on review dated 21.9.2011 impugned at Annexure-12 as well as the reminder dated 12.11.2011 impugned at Annexure-14 cannot be upheld for having been passed without opportunity of hearing to the petitioner. Where the foundation for the demand itself is lacking, the successive orders including the order passed by the Commissioner impugned at Annexure-28 in Revision Case No. 12 of 2012 also becomes unsustainable.

For the reasons discussed hereinabove, the demands dated 21.9.2011 and 12.11.2011 along with Revisional order passed by the Mines Commissioner in Revision Case No. 12 of 2012 are quashed and set aside. As a consequence of the order passed hereinabove, the appeal so filed by the petitioner pending before the appellate authority i.e. Deputy Director, Mines become infructuous and is disposed of accordingly. This order is however would not preclude the Assistant Director, Mines to proceed in the matter afresh but in accordance with law and only after handing over the spot enquiry report to the petitioner which forms the basis for raising of the demand of royalty and additional royalty.

The writ petition is allowed.

Let the file so produced by Mr. Rajendra Prasad be returned to him.

Bibhash/-

AFR	
CAV DATE	
Uploading Date	01.12.16
Transmission Date	

(Jyoti Saran, J.)