IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8681 of 2013

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Sri Dhananjay Singh, son of Sri Ram Sunder Singh, Resident of Village Kutumba, District Aurangabad through its Power of Attorney Holder, Ravi Kumar Singh, son of Late Ram Naresh Prasad Singh, Resident of Mohalla Karma Road, P.O., P.S. & District Aurangabad.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary-cum-Mines Commissioner, Department of Mines & Geology, Government of Bihar, Patna
2. The Mines Commissioner, Department of Mines & Geology, Government of Bihar, Patna
3. The Additional Secretary, Department of Mines & Geology, Government of Bihar, Patna
4. The Collector, Aurangabad
5. The Mineral Development Officer, Aurangabad.

.... Respondents

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Appearance :

For the Petitioner : Mr. Akash Chaturvedi, Adv
For the Respondent/Mines & Geology Deptt. : Mr. Rajendra Prasad, Adv.
For the State : AC to A.A.G. - 13

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

C.A.V. ORDER

10. 9-09-2016 The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India for following reliefs:-

(i) For quashing of the Revisional Order dt. 07.11.2012 passed in Revision Case No. 25/2012 by the Mines Commissioner, Department of Mines and Geology, Bihar, Patna whereby the Revision filed by the petitioner has been rejected without considering the materials available on record and the impugned order has been passed in most cryptic manner,

(ii) For quashing of the order as communicated vide letter No. 688 dt. 8.12.2011 passed by the Mineral Development Officer, Aurangabad (Respondent No. 5) whereby the Lease of Moram granted to the petitioner has been cancelled vide an order dt. 3.12.2011 which was awarded to the petitioner in respect of the location at Mouza Ordih, Block – B, Plot No. 565, Area 0.87 Acre, due to non payment of arrears which is wholly arbitrary and illegal;

(iii) For a direction upon the Respondents concerned to restore the Lease earlier granted to the petitioner after taking the payment of Royalty which as per the Respondents has not been paid by the petitioner, and/or for any other relief(s) for which the petitioner may be found entitled to in the facts and circumstances of the present case.

2. It is case of the petitioner that respondent/Mines and Geology Department has made an advertisement in the newspaper and invited tender for willing party for auction of Moram situated at Mouza Ordih, Anchal Kutumba, District Aurangabad. The petitioner participated in the auction, which was held on

25-11-2008. In the said auction, the petitioner was declared highest bidder for Block - B for the said auction of Moram at a bid amount of Rs. 24,50,000/- (Twenty four lakh and fifty thousand) for a period of five years. Thereafter, an agreement was entered in between the petitioner and the department, vide **Annexure – 1** to the writ petition. The petitioner claimed that he had subsequently issued power of attorney to one Sri Ravi Kumar Singh. After the agreement was executed, the petitioner deposited first installment and even thereafter, no transit challan was issued in favour of the petitioner. It is case of the petitioner that he prepared a draft dated 24-03-2011 for an amount of Rs. 4,90,000/- (four lakh and ninety thousand) and a separate draft of Rs. 19,600/- (Nineteen thousand six hundred) for the same date for payment towards income tax and tried to deposit the same, but same was not accepted. Subsequently, vide **Annexure – 5** to the writ petition i.e. letter no. 688 dated 08-12-2011, the petitioner was informed by the office of Mineral Development Officer, Aurangabad regarding cancellation of lease. Aggrieved with the order of cancellation, the petitioner preferred a revision before the Mines Commissioner, vide Revision Case No. 25 of 2012, which too was rejected by order dated 07-11-2012 (**Annexure – 6** to the writ petition). Aggrieved with both the orders, the petitioner approached this Court by way of filing the present writ petition.

3. Sri Akash Chaturvedi, learned counsel for the petitioner had argued that despite the fact that petitioner was ready to deposit the installment, as per agreement, the said deposit was not accepted, rather it was informed that due to non-payment of the installment, lease was cancelled by the department, vide **Annexure – 5** to the writ petition. He has argued that the Mines Commissioner too without application of mind has rejected the revision filed by the petitioner against order of cancellation of mining lease of the petitioner. It was submitted by learned counsel for the petitioner that without following the procedure, as prescribed in the Bihar Minor Mineral Concession Rules, 1972, the lease agreement was cancelled. Learned counsel for the petitioner has also placed reliance on an unreported Division Bench judgment of Delhi High Court passed in **L.P.A. No. 742 of 2010 (The M.P. State Mining Corporation Ltd. vs. Sanjeev Bhaskar & Ors.)** with **L.P.A. No. 284 of 2011 (State of Madhya Pradesh vs.**

Sanjeev Bhaskar & Ors.) dated 20-04-2011.

4. Sri Rajendra Prasad, learned counsel for the respondent/Mines and Geology Department, by way of referring to averment made in the counter affidavit, submits that after being declared highest bidder for Block No. B for bid amount of Rs. 24,50,000/- (Twenty four lacs and fifty thousand), the petitioner put his signature on the bid-sheet and he agreed to make the payment of the bid amount. Thereafter, the petitioner was directed, vide letter no. 787/Mining dated 01-12-2008 (**Annexure R/1** to the counter affidavit) to make payment of the first installment of the bid amount and also to submit the required papers. In this regard, remainders were also sent by the respondent authorities and thereafter, the first installment of Rs. 4,90,000/- (Four lacs and ninety thousand) was deposited by the petitioner, vide challan and after payment of first installment as well as submission of required papers in prescribed form the agreement/lease was executed between the petitioner and respondent no. 4 on 15-06-2009 whereby an area of 0.87 Acre of land was leased out in favour of the petitioner for a period of five years. It has been argued by Sri Prasad, learned counsel for the Mines & Geology Department that as per

agreement, second and third installment was to be paid before 31-01-2010 or 31-12-2010, but no payment was made by the petitioner. Thereafter, notices were issued. By way of referring to statement made in paragraph – 8 of the counter affidavit, it has been argued that one Ravi Kumar Singh, in the garb of being partner of the petitioner, on 24-03-2011 entered into the office of respondent no. 5/Mineral Development Officer, Aurangabad and misbehaved with the officer and as such, an F.I.R. with Aurangabad Town Police Station was lodged against the said Ravi Kumar Singh as well as against the present petitioner for offence under Sections 448, 353, 506, 379 and 34 of the Indian Penal Code. However, in the meanwhile, remainders were also issued to the petitioner to pay the due amount. Since as per agreement, the petitioner had not deposited any installment after the first installment, in view agreement itself as well as provision contained under Rule 52(5) of the Bihar Minor Mineral Concession Rules, 1972, as per the order of the Collector , the lease, which was granted in favour of the petitioner earlier, was cancelled and communication issued to the petitioner, vide **Annexure – 5** to the writ petition. According to the learned counsel for the respondent/Mines

& Geology Department, since the petitioner had himself violated the terms and conditions by non-deposit of successive installments, the lease was rightly cancelled and same was correctly approved by the revisional authority i.e. order of the Mines Commissioner.

5. Besides hearing, I have also perused the materials available on record. After going through the same, the Court is of the opinion that once the agreement was entered in between the petitioner and the respondent with specific stipulation that by 31st of January every year installment amount i.e. Rs. 4,90,000/- was to be deposited by the petitioner, it was mandatorily required on the part of the petitioner to deposit the same, unless in accordance with law any extension was granted by the competent authority. On perusal of entire petition, the Court is satisfied that after first installment, which was deposited by the petitioner at the time agreement in the year 2009, the petitioner had not deposited any installment by 31st January, 2010 or even by 31st December, 2010. Ofcourse, in the writ petition, the petitioner has stated that he had prepared a draft of Rs. 4,90,000/-, but was itself dated 24-03-2011, which is mentioned in paragraph – 9 of the petition. It depicts that

as per agreement, the petitioner had not deposited the installments within time, whereas on perusal of Part - V of the agreement i.e. **Annexure – 1** (at page 18), it is evident that the lessee was to deposit 20% of the total auction amount i.e. Rs. 4,90,000/- by 31st of January of every year. In the said agreement, in Part – VI, Clause - 5, it has categorically been indicated that in case of non-deposit of any installment continuously for three calendar months after due date, the Collector was competent to determine the lease and take possession of the premises. At this juncture, the Court proposes to incorporate Part - V and Part - VI of the agreement i.e. **Annexure – 1** to the writ petition, which are as follows:-

PART-V

1. Rate & mode of payment of auctioned amount : The lessee shall pay the 20% of the total auctioned amount i.e. Rs. 4,90,000/- (Rupees Four lakh ninety thousand only) only the sum of royalties actually received during the year which ever is greater by 31st January of every year.

2. Rate and mode of payment of auctioned amount or the Royalty : The lessee shall pay the total auctioned lease amount of Rs. 24,50,000/- (Rupees Twenty four lakh fifty thousand only) or the sum of

royalties received during the lease period of Five year on the dispatch of the Mineral which ever is greater. The lessee shall pay 20% of the auctioned amount or the sum of royalties received during the year which ever is greater by 31st January every year. The lessee has already paid Rs. 4,90,000/- only (Rupees Four lakh ninety thousand only).

3. Payment of Surface Rent – The lessee shall pay rent to the State Government in respect of all parts of the surface of the said lands which shall form time to time be occupied or used by the lessee under authority of these present at the rate of Rs. 100/- (one hundred) only per annum per acre of the area or at the rates as may be fixed by the collector from time to time so occupied or used and so in proportion for any area less that area during the period from the commencement of such occupation or use until the area shall cease to be so occupied or used and shall as far as possible be restored to its original condition (which rent shall be paid upon each of the quarterly or half-yearly dates herein before appointed for the payment of installments of the certain annual dead rent):

Provided that no rent shall be payable in respect of the occupation and use of the area comprised in any roads or ways to which the Public have full right to access.

4. The lessee shall duly and regularly pay to the appropriate authority all case, taxes and local dues in respect of the leased area, the said minerals or the working of the mines in addition to the rent and royalty so payable as aforesaid.

PART-VI

Provisions Relating to the Rents and Royalties.

1. Rent and royalties to be free from deductions, etc.......The rent and royalties motioned in part V of this schedule shall be paid free from any deduction to the State Government at Aurangabad and in such manner as the State Government may direct.

2. Mode of computation of royalty :- The total royalty for the entire lease period of five year has been fixed at Rs. 24,50,000/- (Rupees Twenty four lakh fifty thousand only) for the sum of royalties actually received at prescribed rate dispatch of the minerals which ever is greater.

The lessee shall keep a correct account of the mineral/minerals in stock in the process of dispatch which may be checked by any officer authorized by the collector or by any competent authority.

3. Monthly account to be sent to state Government :- The accounts for each month in respect of raising, sale dispatch, local consumption, royalty and rent dues and paid shall be submitted within 15 days of the month following and a true copy signed by the lessees or his her its authorized agent shall be sent in triplicate to the competent officer, thereafter in a form that may be prescribe from time to time by the State Government.

4. Interest on arrear payments. – The lessee shall be liable to pay interest at the rate of 24 percent per annum on any amount remaining payable to the State Government.

5. Course of action if rent and royalties are not paid in time – Should the royalty and/or rent reserved and made payable by the lessee be not paid within one month next after the date fixed in the lease for the payment of the same the collector may enter upon the premises and distrain all or any of the mineral or beneficiated products there of or movable property therein or of so much of them as will suffice for the satisfaction of the rent and/or royalties due and all costs and expenses

> occasioned by the non-payments thereof, if any royalty or rent remains at any time unpaid for 3 calendar month after the date on which it is due, the collector may determine the lease and take possession of the premises comprised thereon. These rights shall be without prejudice to the right of the collector of realize the dues under the Bihar Public Demand Recovery Act or any Statutory Act or Rules thereof for the time being in force.

6. On the basis of material on record, there is no dispute that petitioner after deposit of the first installment had never deposited any subsequent installment. Accordingly, the lease was rightly determined, which was communicated, vide **Annexure – 5** to the writ petition. Ofcourse, the petitioner had preferred a revision before the Mines Commissioner, but in view of pleading itself, since subsequent installments were not deposited, there was no reason for the revisional authority to interfere with the cancellation order and the revisional authority has rightly rejected the revision preferred by the petitioner, vide **Annexure - 6** to the present writ petition.

7. So far as reliance placed on the Division Bench judgment of the Delhi High Court (*supra*) by learned counsel for the petitioner is concerned, in view of

facts and circumstances of the present case, the petitioner may not get any assistance from the said judgment.

8. In view of facts and circumstances, the Court is satisfied that there is no reason to interfere with either of the orders.

9. Accordingly, the writ petition stands dismissed.

(Rakesh Kumar, J.)

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