IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

L.P.A. No.1441 of 2012 (O&M)
DATE OF DECISION : 20.10.2016

Satish Kumar APPELLANT

VERSUS

State of Haryana and another RESPONDENTS

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE SHEKHER DHAWAN

Present:- Shri Vinod S.Bhardwaj, Advocate for the appellant.

Ms.Kirti Singh, D.A.G. Haryana.

MAHESH GROVER, J.

This appeal is directed against the judgment of the learned Single Judge dated 5.8.2009. We may notice the facts in brief.

The appellant applied for and was granted mining rights for extraction of marble on the strength of a lease deed dated 13.3.1995 for a period of 5 years restricted to an area of 63 kanals (3.35 hectares) in Village Bayal, District Mahendergarh. On expiry of the lease on 12.3.2000, it was renewed by the State vide orders dated 31.12.2001 with effect from 12.3.2000 again for a period of 5 years intended to expire on 12.3.2005.

The grant was made in terms of Rule 18 of the Punjab Minor Mineral Concession Rules, 1964 (hereinafter referred to as the “1964 Rules”) as applicable to the State of Haryana at the relevant time.

These rules were promulgated by the State under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the Act).

During the subsistence of the lease, the 1964 Rules underwent a change through an amendment made to Rule 18 notified on 9.10.2001 doing away with the provisions of renewal by deleting Rule 18 altogether but amended Rule 10 emerged to prescribe a grant of lease for minor minerals only by way of auction. Rule 10 is extracted here below :-

> "**10. Grant of mining lease by auction.-** (1) Notwithstanding anything contained in these rules, any minor mineral deposit my be granted on mining lease for a period of seven years by public auction.
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> (2) The annual dead rent shall be determined by the highest bid offered in the auction and such dead rent shall be subject to enhancement upto 50% after the expiry of three years lease period.
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> (3) Immediately after the completion of the auction, the highest bidder shall deposit 25% of the highest bid as security and dead rent for one month in advance.
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> (4) After the acceptance of the highest bid and on execution of the mining lease deed or commencement of mining operation, whichever is earlier, the lessee shall be liable to pay monthly dead rent in advance by 7th of the every month which shall be adjusted against the royalty payable for that month by 7th of next month :
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> Provided that the lessee shall be liable to pay the dead

rent or royalty in respect of each minor mineral, whichever is higher.

(5) Other terms and conditions of the lease shall be in accordance with rule 21 of the said rules.

(6) The procedure relating to publication of auction notice in Haryana Government Gazette, publicity to auction through newspapers conducting of auction as contained in clauses (i), (ii), (iii), (v) and (vi) of Sub rule (2) of Rule 30 of the said rules shall also apply to the auctions for grant of mining leases of minor minerals.

(7) In case any major mineral for which no lease has been given, is incidentally extracted while extracting minor minerals by the lessee, such major mineral shall be the property of the Government and lessee shall be under an obligation to stack and store it and maintain its proper record in accordance with the directions of the Director or an officer authorized by him.

(8) In case it is detected that lessee has disposed off incidentally extracted major mineral referred to in Sub Rule (7) above in whole or part thereof or failed to maintain the record of stored mineral he shall be liable to penalties as specified in Sub-sections (1),(4) and (5) of Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and determination of mining lease in terms of clause (XVI) of Sub Rule (1) of Rule 21 of the said rules."

For the sake of reference, the unamended Rule 18 is also extracted here below :-

> **“18. Period of Lease** :- (1) The period for which a mining lease may be granted shall be five years in the first instance, unless the Government allows a longer period not exceeding ten years. The mining lease may be renewed for one or two periods not exceeding the period for which the mining lease was originally granted.
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> (2) The application for renewal of the mining lease shall be made in Form 'C' before six months of the expiry of the lease and upon payment of a fee of ***Rs.100/-. This renewal will be subject to the condition, Government being satisfied that the mines have been developed by the lessee and that the substantial investments in machinery, equipments have been made by him.
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> (3) When a renewal is granted, dead rent, royalty and surface rent shall be charged at the rates in force at the time of renewal.”

Another set of rules was introduced on 15.5.2002 known as Marble Development and Conservation Rules, 2002 (hereinafter referred to as the “2002 Rules”) framed by the Central Government with an overall view to provide a uniform framework to regulate the mining of marble intended to enhance the conservation of valued minerals. Confronted with the impending extinguishment of mining rights for marble on the expiry of the period i.e. on 12.3.2005 the appellant applied for renewal of the lease deed on 26.8.2004.

Vide orders dated 31.8.2006, the prayer of the appellant was declined by virtue of an order appended to the writ proceedings as Annexure P-1 and for the sake of clarity, the reasons enshrined therein are extracted here below :-

> “2. Govt. has observed that in the absence of any rule for

> renewal of mining lease of minor mineral in Punjab Minor Mineral Concession Rules, 1964 and also the minimum area for grant of marble mines of lease is 4 hectares and area in question is less than 4 hectares. Therefore, the application for renewal of lease has been rejected."

Thus, two grounds are mentioned for rejection :-

(i) There is no provision for renewal of mining lease of minor mineral in Punjab under the 1964 Rules.

(ii) The minimum area for grant of lease for mines and marbles is 4 hectares and the area in question is less than 4 hectares.

On a challenge made to it in the writ proceedings, the same was rejected by the Writ Court resulting in the present appeal.

The grievance of the appellant before us as also before the Writ Court is that twofold reasoning has been assigned while rejecting his prayer for renewal of mining lease in his favour which cannot be sustained as they are contradicting one another. The first reason talks of 1964 Rules while the other talks of provisions of 2002 Rules.

In so far as the first reason is concerned, the appellant cannot make any grievance for the simple reason that Rule 18 under which renewal was contemplated, was done away by virtue of the amendment dated 9.10.2001 giving way to grant and renewal through auction only. Even otherwise, the lease in favour of the appellant was under the 1964 Rules pertaining to grant of minor minerals and 2002 Rules governing grant of removal of marble came subsequently. The right to seek renewal having accrued in 2005 would thus, have to be dealt with in accordance with the existing rules i.e. 2002 Rules.

Rule 7 of the 2002 Rules reads as follows :-

> "**7. Minimum and maximum area for grant of a mining lease.-** (1) The minimum area that may be granted under a lease for ensuring mining activities to optimum depth shall not be less than four hectares with the restriction that the dimension on any one side of such area shall not be less than 200 meters.
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> (2) The maximum area that may be granted under a mining lease shall not exceed fifty hectares :
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> Provided that the State Government, if it is satisfied on the basis of proposed production level, geological, topographical or other conditions, may for the reasons to be recorded in writing, grant a lease over an area more than the maximum area or less than the minimum area specified under his rule."

Evidently, the proviso to the afore-extracted rules envisages grant of a lease over an area, more, or less than the prescribed area under the rules which is 4 hectares. The variation from the specified area either in terms of increase or decrease in the event of a grant would have to be supported by reasons recorded in writing. The learned Single Judge also noticed this aspect favourably to the appellant but observed that it need not be gone into as the State Government had declined to renew the lease in view of the 1964 Rules and therefore, even if the requirement of minimum area could have been relaxed, the same would have been inconsequential.

We are of the opinion that it is at this juncture that an error has crept in the impugned judgment for reasons that we intend to dilate here below.

If the State had declined the renewal with reference to 1964 Rules alone, there would have been no quarrel at all, but it injected into its reasoning a clause from the 2002 Rules to say that renewal could not be granted as the acreage was less than 4 hectares. In any case, 1964 Rules had done away with the grant/renewal except by an auction and dealt with minor minerals and was not to be applied at all leaving the consideration under 2002 Rules alone. Since the lease under 1964 Rules was expiring it could even have been treated as a fresh grant.

The learned Single Judge noticed that Rule 46 was not attracted as there was no repugnancy between the 1964 Rules and 2002 Rules and that both these rules operated in different spheres. The mining rights given to the appellant were qua marble and after the coming into force of special rules to regulate the mining of marble, it was imperative upon the State to consider grant/renewal of mining lease under the 2002 Rules. It is only then that the intended purpose could be achieved. In the wake of a special enactment and in view of the doctrine of *generalia specialibus non derogant* special enactment would have to prevail over the general rules of 1964 which govern only minor minerals. The special enactment of regulating the mining of marble created under the Central Statute would in our opinion prevail and in terms of Rule 46 the procedure for auction in 1964 Rules retained by way of amended Rule 10 would certainly be repugnant to 2002 Rules which do not envisage any such grant by way of an auction, but lays emphasis on strict control and regulatory measures which in our opinion, also have to be strictly enforced.

If they were to resort to this reasoning of a reduced acreage to reject or accept a claim, then it was incumbent upon them to explore the feasibility of renewal/grant of a lesser area by also considering whether relaxation was necessary and feasible or not by giving reasons in terms of Rule 7.

It is not the case of the State that renewal is prohibited altogether. Rule 12 in particular Rule 12(2)(a) which is extracted here below, would enable the State to consider renewal as well :-

> "**12. Mining Plan as a pre-requisite to the grant of lease.-** (1) No lease shall be granted by the State Government unless there is a mining plan duly approved by the State Government or any person authorized in this behalf by that Government for the development of marble deposit in the area concerned.
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> (2)(a) For the renewal of any lease over an area exceeding one hectare the State Government shall require the lessee to submit a mining plan duly approved by the State Government or any person authorized in this behalf by that Government for the development of marble deposit in the area concerned.
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> (b) For the purpose of renewal of a mining lease up to an area of on hectare, the State Government shall specify a simplified scheme of mining to be submitted by the lessee for approval by the State Government or any other person authorized in this behalf."

For the sake of reference, Rule 17 is also extracted here below :-

> "Rule 17 : Mining plan to be submitted by the existing lessee.- (1)(a) Where mining operations for marble covering leasehold areas exceeding one hectare have been undertaken before the commencement of these rules without an approved mining plan, the holder of such lease shall submit a mining plan within a period of one year from the date of commencement of these rules, to the State Government or any person authorised in this behalf by that Government for its approval.
>
> (b) In case of existing mining leases upto one hectare, the State Government shall specify a simplified scheme of mining

and every lessee shall submit such scheme of mining within a period of one year from the date of commencement of these rules to the State Government or any person authorised in this behalf by that Government for its approval.

(2) If a holder of a lease has not been able to submit the mining plan or scheme of mining within the time specified in sub-rule (1) for reasons beyond his control, he may apply for extension of time giving reasons to the State Government or any person authorised in this behalf by that Government.

(3) The State Government or any person authorised in this behalf by that Government on receiving an application made under sub-rule (2) may, on being satisfied, extend the period for submission of the mining plan or scheme of mining for a period which may not exceed one year.

(4) The State Government or any person authorised in this behalf by that Government may approve the mining plan or scheme of mining submitted by the lessee under sub-rule (1), or may require modifications to be carried out in the mining plan or scheme of mining and the lessee shall carry out such modifications and resubmit the modified mining plan or scheme of mining for approval of the State Government or the person so authorised, as the case may be.

(5) The State Government or any person authorised in this behalf by that Government shall, within a period of ninety days from the date of receipt of the mining plan or scheme of mining or the modified plan or scheme of mining, convey its or his approval or disapproval to the applicant and in case of

disapproval, it or he shall also convey the reasons for disapproving the said mining plan or scheme of mining or the modified mining plan or scheme of mining.

(6) If no decision is conveyed within the period stipulated under sub-rule (5), the mining plan or scheme of mining or the modified mining plan or scheme of mining, as the case may be, shall be deemed to have been provisionally approved and such approval shall be subject to the final decision whenever communicated.

(7) The mining plan or scheme of mining submitted under sub-rule (1) shall be prepared by a recognized person."

This is not to say that the appellant would not be required to meet the requirement of Rules 12 and 17 or any other regulatory measure in entirety. The State would very well be within its rights to insist on compliance of the rules if a favourable decision were to materialize in favour of the appellant, but such an eventuality would arise only if a proper consideration is afforded to the appellant by considering the feasibility of relaxation, - a situation contemplated under Rule 7.

In our opinion, the State could not have shut out consideration to the appellant by referring to less acreage unless the issue of relaxation was considered simultaneously.

For the afore-stated reasons, we are of the view that the judgment of the learned Single Judge suffers from the afore-noticed fallacy and would have therefore, to be corrected only to this extent that the State could not have rejected the prayer for renewal under 2002 Rules on the issue of the acreage in terms of Rule 7 without simultaneously exploring the possibility/feasibility of renewing/grant of a lease by offering reasons in writing. The finding of the learned Single Judge that such an exercise was inconsequential, is, thus, incorrect.

Accordingly, we accept the appeal and remit the matter back to the State to offer consideration to the appellant in the light of what has been observed by us.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

October 20, 2016
GD

Whether speaking/reasoned	Yes
Whether reportable	Yes/No