

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.871 of 2012
In
Civil Writ Jurisdiction Case No.5661 of 2010

1. The State of Bihar
2. The District Magistrate, Gaya
3. The Assistant Director, Mines, Gaya

... .. Appellant/s

Versus

Birendra Kumar Tiwari @ Virendra Kumar Tiwari S/O Shri Kailash Tiwary R/O Village-
Panchayati Ashara, P.S.- Kotwali, District- Gaya

... .. Respondent/s

Appearance :

For the Appellant/s :
For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-09-2017

This appeal has been filed by the State of Bihar under Clause 10 of the Letters Patent seeking exception to an order passed by the learned Writ Court in C.W.J.C. No. 5661 of 2010.

Facts in brief go to show that for the purpose of Stone Mining in the district of Gaya, an advertisement was published for the purpose of settlement of Stone Block No. 3 situated in Plot No. 121 measuring 2 acres. As per the advertisement the earnest money required to be deposited was Rs. 28,600/- being 2% of the reserve price.

Petitioner deposited the amount, participated in the process of bid and his bid being the highest was accepted for Block No. 3 and the bid amount was Rs. 2.60 crores. As per



the terms and conditions of the bid, respondent deposited the first instalment of Rs. 5 lacs by bank draft on 14.11.2007. However, thereafter because of financial crisis, petitioner could not deposit the balance amount and, therefore, the lease was cancelled on 28.03.2008 and the entire earnest money forfeited. On an application made by the petitioner for refund of the instalment of Rs. 5 lacs a case was registered which ultimately resulted in Revision Case No. 11 of 2009 being filed before the Commissioner, Mines, Bihar who vide order dated 01.12.2009 impugned in the writ petition forfeited the entire amount of Rs. 5,20,000/- being 2% of the bid amount of Rs. 2.60 crores and directed for refund of Rs. 8,6000/-.

Challenging this forfeiture of Rs. 5,20,000/- the writ petition in question was filed and the learned Writ Court having allowed the same, this appeal.

It is the case of the appellant before this Court that under Rule 52(2)(iii) of the Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as “the Rules”), which reads as under:-

“52.(1)

(2) Every bidder of mining lease shall file the following documents five days before the auction:-



.....

(iii) Deposited the amount equivalent to two per cent of auction amount as security, which shall be adjusted with the last instalment of auction amount if the mining leaseholder is not otherwise defaulter in payment. In case of unsuccessful bidder the security deposit shall be refunded by the Collector within two months after the grant of quarry lease.”

2% of the auction amount has to be deposited by way of security and the power is available to the authority to forfeit the amount. The learned Writ Court considered this aspect and after taking note of the statutory provision contained in Rule 52(2)(iii) and Rule 11-A of the Rules came to the conclusion that under Rule 11-A there is a specific provision in the case of sand for forfeiture of the earnest money or the security deposit but there being no statutory provision for doing so under Rule 52(2)(iii) and in the advertisement also there being no provision for the same, the writ petition was allowed and while doing so, the learned Writ Court held as under:-

“The law is well settled and unless there is any statutory provision providing for forfeiture or the terms and conditions of the settlement specifically provides for forfeiture of the security amount, no such order of forfeiture of security deposit can be passed by the



authorities. A forfeiture of security deposit is a penal action and has to derive its source either from the statutory provisions or the terms and conditions of the advertisement or terms of settlement. Neither the impugned order nor the learned counsel for the respondents has been able to satisfy the Court as regarding the source of power in the statutory authority for directing such forfeiture. The reliance on rule 52(2)(iii) is completely misplaced as it nowhere empowers any such forfeiture.”

Even though the learned counsel for the appellant by referring to Section 52(2)(iii) of the Rules as reproduced hereinabove, tried to indicate that the same is a forfeiture clause, we find that the provision only contemplates that a deposit equivalent to 2% of the auction amount as security is required to be deposited which shall be adjusted with the last instalment of the auction amount if the mining lease holder is not otherwise defaulter in payment and in the case of unsuccessful bidder the amount has to be refunded. However, in this clause there is nothing to indicate that in case of breach of terms and condition of the lease or termination of the lease the amount shall be forfeited. In the advertisement also, there is no provision of forfeiture of the amount at this stage. On the contrary, in the case of allocation of stone mine there is a



specific provision for forfeiture in Clause 11-A of the Rules and if taking note of all these factors the learned Writ Court allowed the writ petition, we see no error in the same warranting reconsideration as held by the learned Writ Court that the terms and condition for allocation of the lease is determined by a statutory provision wherein a detailed procedure is laid down and when an advertisement is also issued prescribing the conditions for grant of lease. In the absence of there being a specific condition for forfeiture of the entire amount on account of breach no power is available with the competent authority to forfeit the amount and in allowing the writ petition on such consideration no error has been committed by the learned Writ Court warranting reconsideration.

The Letters Patent Appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

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