

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9562 of 2015

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Surajdev Singh @ Suraj Baba S/o Shri Mahendra Singh R/o Panchayati Akhara,
P.S. - Kotwali, District - Gaya.

.... Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Mines and Geology, Govt. of Bihar, Old Secretariat Building, Patna.
2. The Principal Secretary, Mines and Geology, Govt. of Bihar, Old Secretariat Building, Patna.
3. The Mines Commissioner, Bihar, Old Secretariat Building, Patna.
4. The Collector, Gaya.
5. The Director Mines, Mines and Geology Department, Govt. of Bihar, Patna.
6. The Deputy Director, Mines, Gaya.
7. The Assistant Director, Mines, Gaya.
8. The Mines Inspector, Gaya.
9. The Divisional Forest Officer, Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Senior Advocate
Mr. Anil Kumar Singh, Advocate
For the Respondent-State : Mr. Ratna Kumari, AC to AAG-2
For the Respondent Nos.1 to5 : Mr. Naresh Dixit, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

CAV JUDGMENT

Date: 29-06-2018

The petitioner has prayed for the following reliefs in
the instant writ petition :-

- (i) For quashing of the order contained in memo no.1704 dated 16.11.2013 whereby the licene/lease granted to the petitioner has been



cancelled by the respondent Collector, Gaya in purported exercise of power under Rule 24(3) of the Bihar Minor Mineral Concession Rules, 1972 (for short 'BMMC Rules, 1972').

(ii) For quashing of the order passed by the respondent Mines Commissioner in Revision Case No. 26/2013 dated 19.05.2015 whereby the respondent Mines Commissioner has rejected the revision application of the petitioner and upheld the decision of the respondent Collector, Gaya cancelling the lease deed for the remaining period.

(iii) For a direction to the respondents to allow the petitioner to operate the mining lease on the terms and conditions of the lease agreement executed on 14.05.2009 and 26.05.2009 on payment of yearly installment notwithstanding the order of the Collector, Gaya dated 16.11.2013 and the order of Mines Commissioner dated 19.05.2015 as the orders of the Collector and the Mines Commissioner is patently illegal and based on misconception of fact and law.

(iv) For a further direction to the respondents to allow the petitioner to complete five years lease period in connection with lease hold of quarry block no. 1 and quarry block no. 2 of Mauza Bodha Chak, Plot No. 789, District- Gaya.

(v) For any other relief or consequential reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case.”



2. The case of the petitioner is that for settlement of stone quarry in the Gaya District, auction was held on 30.12.2008 in which he participated. On successful bidding, he was granted lease in connection with quarry in block no. 1 and block no. 2 of Mauza Bodha Chak, Plot No.-789, P.S.-Wazirganj, District Gaya with bid offer of Rs.1.55 lacs and 25.55 lacs respectively. Accordingly, lease agreements were executed on 14.05.2009 and 26.05.2009 for block no. 1 and block no. 2 respectively. In terms of the lease agreements, the petitioner was required to deposit annual installment of Rs.31 lacs for block no. 1 and Rs.5.11 lacs for block no. 2. The petitioner deposited Rs.124 lacs along with Rs.15 lacs as security money in connection with the lease agreement of block no. 1 and Rs.22.44 lacs along with 2.5 lacs as security money in connection with block no. 2. The leases were granted for five years but the petitioner was not allowed to carry mining activities as the respondents failed to demarcate the land in terms of the lease agreement and they failed to issue clear work order after demarcation. The petitioner was allowed to operate mining from 08.09.2011 after demarcation of the leased area and the liability to pay annual lease installment legally commenced from 08.09.2011 as prior thereto the lease was only illusory and only on paper.

3. The further case of the petitioner is that on 24.04.2013,



the Collector, Gaya vide letter nos. 738 and 740 issued two demand notices for deposit of Rs.93 lacs and Rs.15.33 lacs. On receipt of notices, he deposited Rs.62 lacs by way of seven demand drafts dated 29.05.2013 in connection with block no. 1 and Rs.10.22 lacs vide two demand drafts dated 29.05.2013 in connection with block no. 2. The Collector, Gaya issued show-cause notice to the petitioner highlighting acts of omission and commission on his part and asking as to why not the lease agreements for the remaining period be cancelled. The petitioner submitted his reply on 30.09.2013 denying all the allegations made in the show-cause notice. However, the Collector, Gaya without appreciating the explanation of the petitioner rejected the same and cancelled the lease of the petitioner for the remaining period vide impugned order contained in Memo No. 1704 dated 16.11.2013.

4. Mr. Y. V. Giri, learned Senior Advocate appearing for the petitioner submitted that the petitioner has been illegally deprived of his valuable right to operate mining for five years under the lease agreement as contained in Annexure-1 and 1/1 and due to default of the respondents, the five year period of lease has been reduced to effective period of two years whereas the respondents even after realizing the substantial lease amount has cancelled the lease to render the right and expectation of the petitioner



illusionary, imaginary and ineffective. Even though the petitioner specifically and candidly mentioned about the factual and legal error committed by the Collector in the decision making process, the respondent Mines Commissioner illegally rejected the revision application and upheld the order of the Collector, Gaya vide impugned order dated 19.05.2015 and has perpetuated the illegality committed by the Collector as quasi-judicial authority and passed the order without applying mind objectively and independently. The revisional authority has based his finding on the materials with which the petitioner was never confronted while issuing show-cause. The foundation of the action against the petitioner is illegal mining but there is no proof of any court that the petitioner was even remotely involved in patronizing illegal mining. He submitted that the decision of the Collector and the Commissioner is based on misconstruction of fact and law as also on consideration of irrelevant and extraneous material and even materials not supplied to the petitioner.

5. *Per contra*, Mr. Naresh Dixit, learned counsel for the respondents submitted that the grant of lease to the petitioner was made through public auction under Rule 52 (1)(i) and (ii) of the BMMC Rules, 1972 which stipulates that the Collector shall notify the toposheet no, extent of area and boundaries, name of village,



circle, plot no., khata no. etc. He submitted that in case of the petitioner also the area was advertised in the newspaper one month before the date of auction wherein the boundary of the area was shown. Hence, the petitioner had sufficient knowledge about the proposed area to be auctioned and only after satisfaction, he took part in the auction. He submitted that the contention of the petitioner regarding not allowing mining activity prior to 08.09.2011 is false. According to him, re-measurement dated 08.09.2011 was done for satisfaction of the adjacent lease holders despite the fact that demarcation was done just after execution of the lease area. He submitted that Rule 25(2) of the BMMC Rules, 1972 clearly states that the date of commencement of the period for which a mining lease is granted shall be the date on which the mining lease deed is executed and the lessee shall be liable to pay rent/royalty from the date of execution of the mining lease. Thus, mining in block nos. 1 and 2 started immediately after execution of the lease agreement and as per Rule 52(4) of the BMMC Rules, 1972. As per the terms and conditions of the lease deed, the petitioner had to pay the auction amount of different blocks in yearly installments. The second installment had to be deposited before 31st January, 2010 but he deposited the second installment of block nos. 1 and 2 after almost after two years and four months on 24.05.2012 and



third and fourth installment was deposited by him after a delay of 1213 and 482 days respectively. He failed to deposit fifth installment in both the cases. He submitted that order of cancellation of the mining lease of the petitioner dealt with reasons as the petitioner had violated the provisions of the BMMC Rules, 1972 and the terms and conditions of the lease deed.

6. I have heard learned counsel for the parties and carefully perused the record.

7. There is no dispute to the fact that auctions were held on 13.12.2008 for the purpose of grant of quarry lease in which the petitioner participated and on successful bidding, he was granted mining lease at Plot No. 789, block nos. 1 and 2, Mauza Bodha Chak, P.S. Wazirganj, District Gaya, which were executed under Rule 25(1) of the BMMC Rules, 1972 on 26.05.2009 and 14.05.2009 for five years respectively.

8. Under BMMC Rules, 1972 for grant of quarry lease, auction is held under Rule 52(1)(i) which reads as under :-

“52.(1)(i)- For the purpose of grant of quarrying lease by auction in respect of mineral notified under Rule 9A, the Collector shall notify the following particulars of the area, namely:-

(a) Toposheet No. extent of the area and boundaries.

(b) Name of village, Circle, Plot No. Khata



No. etc.

(c) The period of quarrying lease.

Provided that the period of quarrying lease shall not be less than five years and extent of the quarrying lease area shall not be more than 2 (two) acres.”

9. Since the area was advertised in the newspaper before the date of auction wherein the boundary of the area was shown, the contention of the petitioner that he commenced lease activities of mines only after demarcation on 08.09.2011 cannot be accepted. It has categorically been stated by the respondents in the counter-affidavit that the leased area was advertised in the newspaper one month before the date of auction, which statement has not been controverted by the petitioner. Hence, it can safely be presumed that the petitioner had sufficient knowledge about the proposed area to be auctioned. It is, therefore, clear that only after satisfaction, he took part in it.

10. Further, Rule 25(2) of the BMMC Rules, 1972 stipulates that the date of commencement of the period for which mining lease is granted shall be the date on which the mining lease deed is executed under sub-rule (1) and the lessee shall be liable to pay rent/royalty from the date of the mining lease. Hence, it was incumbent upon the petitioner to pay rent/royalty from the date of



mining lease and not from any other date on the pretext that lease activities of the petitioner started only after demarcation was made only on 08.09.2011. The said demarcation of plot may have been done for any other reason but on that ground the petitioner cannot exonerate himself from the liability of rent/royalty. Moreover, prior to cancellation of lease, the petitioner never ever raised any grievance before any court regarding his inability in carrying on mining activities over the leased area.

11. I further find that Rule 52(4) mandates for payment of bid amount in yearly installments. It reads as under :-

“52(4) Payment of bid amount- The bid amount shall be deposited in yearly basis in equal instalments and each instalment shall be deposited before 31st January.”

12. In the present case, the respondents have categorically stated in their counter-affidavit that the second instalment had to be deposited before 31st January, 2010 but the petitioner deposited the same in respect of block nos. 1 and 2 on 24.05.2012, i.e. after almost two years and four months and third and forth installments were also deposited after delay of 1213 and 482 days respectively and in both the cases, the petitioner failed to deposit the fifth installment. The said contention of the respondents has also not



been controverted by the petitioner. Thus, it would be evident that the petitioner failed to deposit the installment before 31st January of every calendar year and has failed to abide by the rules prescribed under BMMC Rules, 1972 and the terms and conditions of the lease deed.

13. As far as the contention of the petitioner that the Collector and the Mines Commissioner passed the impugned order without appreciating the explanation to the show-cause submitted by the petitioner is concerned, when I look to the records of the case, I find that on a report from the Divisional Forest Officer, Gaya, the Collector, Gaya issued show-cause notice on 23.09.2013 mentioning that illegal mining was being done in forest area by the petitioner, crusher machine was installed by him near the forest land and illegal mining was being done with his involvement on the other side of hill as well as institution of forest case against him and his father. The Collector, Gaya considered the explanation submitted by the petitioner in detail and came to the finding that the petitioner had installed one stone crusher machine near the forest land and his crusher license had already been deemed to be cancelled by the Bihar State Pollution Control Board, Patna. He further found the reply of the petitioner unsatisfactory for the reason that as per rule crusher machine cannot be installed within



one kilometer of forest land whereas crusher machine of the petitioner was found adjacent to the forest land. On physical verification, the Collector found that in the air emission consent order issued by the Bihar State Pollution Control Board a condition was imposed that if any case is filed by the forest department against licensee his license will be treated as cancelled automatically. He held that as forest department had filed a case vide DPC No. 1,2,3,4/2013-14 against the petitioner, it was clear that air emission consent order become null and void since then. The Collector also held that the local people stated that illegal mining is being done by the petitioner on the other side of the hill beyond permitted area in the garb of mining lease. He also held that the petitioner was a defaulter in payment of bid amount. From perusal of the impugned order passed by the Collector, it would be evident that the explanation submitted by the petitioner was duly considered and the findings were recorded on the basis of the evidences adduced before him. He has passed the order taking into consideration the relevant facts for violation of forest rules and for violation of terms and conditions of the lease deed. The order was passed in exercise of powers conferred under Rule 24(3) of the BMNC Rules, 1972 after giving reasonable opportunity to the petitioner of being heard.



14. The revisional authority has concurred with the findings on fact recorded by the Collector and has passed order in detail. The concurrent findings on facts recorded by the learned Collector and the learned Mines Commissioner are neither illegal nor perverse nor without jurisdiction nor in violation of the principles of nature justice.

15. In view of the discussions made above, I see no merit in the present writ petition. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	26.06.2018
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