

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1984 of 2015

IN

Civil Writ Jurisdiction Case No. 4975 of 2014

- =====
1. The State Of Bihar Through The Principal Secretary, Department Of Mines And Geology, Government of Bihar, Patna
 2. The Principal Secretary-Cum-Commissioner, Mines & Geology, Government of Bihar, Patna.
 3. The Collector, Sheikhpura, P.S. And District- Sheikhpura
 4. The Mineral Development Officer, Sheikhpura, P.S. And District- Sheikhpura

.... Appellant/s

Versus

Md. Sikandar Alam Son Of Md. Abdul Majid Resident Of Village- Baradari, P.O. And P.S.- Biharsharif, District- Nalanda

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 28-03-2018

Heard learned counsel for the appellants i.e. the Department of Mines and the private respondent.

The order of the learned Single Judge dated 11.02.2015 is subject of challenge in this intra Court of appeal. The private respondent, who was the petitioner before the writ Court, assailed the order of the Mines Commissioner passed in Revision Case No. 03 of 2013, who in turn, upheld the order dated 18.12.2012 passed by the



Collector, Sheikhpura which became the reason for moving the writ Court.

The private respondent was the lease holder for operating stone quarry in the District of Sheikhpura. A lease was executed for a period of five years. This lease was a kind of renewal as is the stand of the appellants. The lease even though was executed on 29.09.2008, it was given retrospective effect from 04.12.2007 i.e. the period when the previous lease had expired.

From the facts, it emerges that after the expiry of the previous lease on 04.12.2007, lease was not renewed on the ground that there was a ban imposed by the State Government on grant of such leases. However, subsequently, it emerged that the authorities did decide to enter into a lease but that was executed only on 29.09.2008.

After working the lease for almost four years, the private respondent raised a grievance that the validity of the lease counting the period of five years should be from 29.09.2008 i.e. the date of actual execution of the lease and not from 04.12.2007 when the previous lease expired. This stand was taken in the writ application that no retrospective renewal of lease could be made. The lease will become valid only on the date of execution. The previous lease which expired on 04.12.2007 can only be said to be notional.



The learned Single Judge taking note of the above factual position coupled with the fact that even though the mining quarry remained in possession of the lessee but there was no evidence and material to show that the mine was being exploited between 04.12.2007 to 28.09.2008. If that be so then demand of royalty for the period was illegal and irrational.

Even in appeal, counsel for the Department of Mines has failed to bring additional evidence on record to show that the private respondent was working the lease and making extraction from the mines between 04.12.2007 till 28.09.2008.

It is the stand of the Department of Mines that the previous lease could not be renewed because a ban was imposed by the State Government. If that be so then the previous lease came to an end and the next lease will be treated as a fresh lease after the ban was lifted and that is why when the lease was executed on 29.09.2008, it cannot be given retrospective effect as if it is an extension or renewal of the previous lease after expiry on 04.12.2007.

Merely because the counsel for the Mines takes a stand that the mine remained in possession of the private respondent that by itself cannot give a right to the State authorities to claim royalty when the exploitation of the mines on the basis of the previous lease which had expired was banned and was enforced full force by the State.



There is nothing on record to show that the private respondent continued to work the mines and made money out of it. The period from 04.12.2007 till 28.09.2008, therefore, was a dead period when there was no lease subsisting between the State and the lessee since the previous lease having expired and the next lease not having been executed till 29.09.2008. If this be so then the period of five years will have to be counted from 29.09.2008 and not notionally from 04.12.2007. Royalty, therefore, also for this period cannot be demanded on the basis of notional possession of the private respondent merely because the State authorities decided to renew or execute a new lease of the same mines subsequently.

There is no infirmity with the decision of the learned Single Judge which requires rectification in appeal. The appeal is dismissed. There will be no order as to costs.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Devendra/Arjun

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.03.2018
Transmission Date	NA

