

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.12472 of 2018

ORDER:

The grievance of the petitioner in the present writ petition is the non-refund of an amount of Rs.3,26,428/- said to have been paid by the petitioner under Transaction I.D.No.TPTUPO3447279 for the period during which there was an order of suspension of lease.

2. Heard the learned counsel and perused the material available on record.

3. On the ground that the petitioner herein failed to submit the annual returns the lease of the petitioner was suspended by the authorities in the year 2013 and subsequently after submission of the annual returns by the petitioner the authorities revoked the order of suspension vide order of Controller of Mines, Government of India issued in Proceedings No.10 (41)/2011/KNL/Hyd, dated 22.02.2018. It is further case of the petitioner herein that consequent upon the said order of revocation, petitioner herein paid to the Department of Mines, State of Andhra Pradesh, on 31.03.2018, an amount of Rs.3,26,428/- towards the Royalty CFMS, interest amount and User and Cess charges and further an amount of Rs.8,000/- towards the Stationary for the years 2018-2019 and also paid an amount of Rs.46,661/- on 04.04.2018 towards the Top-up advance amount.

4. According to the learned counsel for the petitioner, petitioner herein is entitled to get back the above said sum of Rs.3,26,428/-, which the petitioner herein paid towards Royalty, CFMS interest amount, User and Cess Charges paid for the period during the order of suspension of lease was in force as per Circular instructions No.16(24) 2001-MVI, dated 09.10.2001. The said instructions issued by the Government of India, read as follows:

“No.16(24) 2001- MVI
Government of India
Ministry of steel and Mines
Department of Mines
New Delhi

Dated the 9th October, 2001.

- I. The Secretary
Mining and Geology Department,
All State Governments.
2. The director Mining and Geology,
All State Governments.
3. Secretary General,
Federation of Indian Mineral Industries,
New Delhi.

Sub: Clarification Regarding Charging of dead rent in certain cases.

Sir,

In terms of the Mines and Minerals (Development and Regulation) Act, 1957, (MMDR Act) the holder of mining lease is required to pay to State Government every year 'dead rent at such rate as may be specified for the time being in the Third Schedule to the MMDR Act, 1957, for all the areas included in the instrument of lease. However, when the holder of the mining lease become liable to pay royalty for any mineral removed or consumed from the lease area, he shall be liable to pay either royalty or the dead rent in respect of that area whichever is greater.

There have been instances of the holders of mining leases and quarry lessee approaching the Courts seeking relief from payment of dead rent in cases where due to reasons beyond their control the lessees were not able to work the area held by them under the mining lease. In case of Karnataka High Court judgement dated 20th July, 1990 in the matter of WP No. 38462/1989 between M/s. Jyothi Brothers and the State Government of Karnataka the Court ruled that after premature determination of the mining lease since the lessee was not legally allowed to carry out mining activities, even if the lease was restored later, the State Government could not demand arrears of dead rent for the intervening period. In the case of Rajasthan High Court judgement dated 14th July, 1992 in the matter of SB CWP No. 418/1986 between Chhaga Ram Mundolia Vs the State of Rajasthan, the Court observed that even after execution of the lease granted, the Petitioner could not operate and he did not excavate and utilize the leased property, and the lease was terminated and the lessee asked to pay dead rent with interest thereon as penalty by the State Government. The Court rules that under the circumstances, the Mining Department was not entitled to recover any money for the leased area up to the period the lease was cancelled. Thus, the Honourable Courts have held that if the petitioner could not operate the area held under mining lease because the lessee did not have physical possession over the lease area despite the lease deed executed and in such cases where the lessee has seized to have legal rights (i.e. termination of the lease and rejection of application for renewal of mining lease) which may be restored subsequently by the competent authority, dead rent shall not be payable for such periods when the lessee has no possession (physical or legal as the case may be) over the leased areas.

The above are brought to the notice of the all concerned.

Yours faithfully,
Sd/- XXX
(ADITI S RAY)
Director”

5. While referring to the above said Circular, it is the submission of the learned counsel for the petitioner that for the period during which the petitioner herein did not operate the mine, petitioner is entitled for the refund of the amounts paid.

6. It is contended by the learned Government Pleader that the petitioner herein never approached the respondents in writing with the claim as being sought in the present writ petition and if the petitioner herein approaches the authorities with a written representation, the claim will be considered strictly in accordance with law and appropriate orders will be passed.

6. Having regard to the submissions, this Court deems it appropriate to dispose of the writ petition, leaving it open for the petitioner herein to submit a representation to the respondents within a period of two weeks from the date of receipt of a copy of this order by enclosing a copy of the Circular No. No.16(24) 2001-MVI, dated 09.10.2001. If any such representation is made by the petitioner herein, the same shall be examined by the respondents herein and take appropriate action/pass appropriate orders, strictly in accordance with law, as expeditiously as possible, preferably within three months from the date of submission of such representation. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:24.09.2018
grk

THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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