

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21369 of 2018

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M/s. Broadson Commodities Private Limited, a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chowk, P.S. Koilwar, Ara, District -Bhojpur, through its Director, Ashok Kumar, son of late Ram Chandra Saw, resident of Village/Mohalla- Pareo, P.S.- Bihta, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Patna.
2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Patna.
3. The Director of Mines, Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The District Magistrate-cum-Collector, Patna.
5. The Deputy Collector, Land Reforms, Danapur, District- Patna.
6. The Circle Officer, Bihta, District- Patna.
7. Mangal Singh, son of late Baliram Singh, resident of Village Bindaul, P.S.- Bihta, District- Patna.
8. Om Prakash Singh, son of Mangal Singh, resident of Village- Bindaul, P.S.- Bihta, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P. K. Shahi, Sr. Advocate Mr. Suraj Samdarshi, Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA-7
For Mines Department	:	Mr. Naresh Dikshit, Spl. PP, Mines Mr. Brij Bihari Tiwari, Advocate
For Respondent No.7 & 8:		Mr. Bindhyachal Singh, Advocate Mr. Chandrashekhar Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date : 11-07-2019

This writ application has been filed for quashing the order dated 09.10.2018 passed by the Respondent No.2 under Right to Public Grievance Redressal Act, 2015 (Annexure-4) and also for quashing the order dated 30.08.2017 passed by the Respondent



No.2 (Annexure-2) as well as order dated 21.04.2018 passed by Respondent No.4 (Annexure-3) whereby the Petitioner has been asked to compensate the private Respondents.

2. Counsel for the Petitioner has submitted that the complaint in the nature of claim of compensation from a settlee of sand ghat will not fall under the purview of complaint defined under Section 2(a) of the Bihar Right to Public Grievance Redressal Act, 2015.

3. Brief facts of the case is that the Respondent No.7 has filed a complaint under the provisions of the Bihar Right to Public Grievance Redressal Act, 2015, hereinafter to be referred as “Act, 2015” before the Respondent No.3 alleging that illegal sand mining in the area should be stopped and further Respondent No.7 may be compensated for the loss he suffered on account of crop over the agricultural land due to commercial exploitation of sand. Respondent No.7 claimed that he is having *raiya* land measuring 3.38 acres bearing Khata No.410, Khesra No.1856 and 1857 of Mauza Bindaul. The Respondent No.7 agreed to donate a portion of the said land for the purpose of construction of road from the middle of his total agricultural land measuring 3.38 acres, with a clear stipulation that sand should not be transported through such



road as the same would damage the fertility of his agricultural holding which lies on either side of the road.

4. Respondent No.7 approached Respondent No.3 for compensation for damaged crops during the last seven years on account of commercial excavation of sand, which was not entertained by the Respondent No.3. Thereafter, Respondent No.7 filed an appeal before Respondent No.2. The Respondent No.2 after providing opportunity of hearing to the Respondent No.7 directed that Respondent No.7 be paid compensation of Rs.20,000/- per acre per year for the last seven years and also directed the Respondent No.4 (The Collector, Patna) to take action against settlee i.e. the Petitioner, who acted in contravention to the Sand Policy, 2013. The Respondent No.4 upon the representation filed by Respondent No.7 for compliance of the order dated 30.08.2017 passed by the Respondent No.2 enquired about the settlee from the year 2010 to 2017 for the purposes of recovery of compensation as directed by the Respondent No.2. Upon query from the Department of Mines, Respondent No.4 came to know about the name of the settlee and also came to know that from 01.01.2015 to 31.12.2019, the sand ghats for the District of Patna have been settled with the Petitioner. Therefore, Petitioner was asked to make payment of compensation as directed by the



Respondent No.2. Aforesaid fact would be manifest from the order dated 21.04.2018 passed by Respondent No.4 (Annexure-3).

5. Pursuant to the order passed by the Respondent No.4, Respondent No.8, who is son of Respondent No.7, again filed second appeal before the Respondent No.2 alleging that despite of the order being passed by Respondent Nos.2 and 4, Respondent Nos.7 and 8 have not been paid compensation in terms of order dated 30.08.2017 passed by the Respondent No.2. The Respondent No.4 vide order dated 09.10.2018 directed for compliance of the earlier order within a week, failing which, appropriate action would be taken against the Petitioner. The aforesaid fact would be manifest from the order dated 09.10.2018 passed by the Respondent No.2 (Annexure-4).

6. Counsel for the Petitioner submits that orders passed by the Respondent Nos.2 and 4 are wholly without jurisdiction as a complaint under the Act, 2015, is defined under Section 2(a), which relates to any schemes, programme or services run in the State by the State Government, or in respect of failure or delay in providing such benefit or relief, or regarding any matter arising out of failure in the functioning of, or violation of any law, policy, service, programme or scheme in force in the State, by a public authority. The complaint has to be against a public authority in



relation to the scheme/programme of the Government, or violation of any provision of law or any delay. By no stretch of imagination, a complaint can be filed against a private settlee to ask for compensation as the State Government has not specified the scheme under Section 4 of the Act, 2015.

7. It has further been submitted on behalf of the Petitioner that the order dated 30.08.2017 (Annexure-2) was passed without issuing notice or providing any opportunity to the Petitioner to rebut the claim of the Respondent No.7, rather, on the basis of the documents furnished by Respondent No.7, it was presumed that land of Respondent No.7 was cultivable land and without any survey, compensation was granted beyond the scope of the Act, 2015.

8. Counsel for the Petitioner has further submitted that Section 4 of the Act, 2015, prescribes that the State Government from time to time will notify the department-wise schemes, programmes and services on which complaint can be filed. In absence of any notification by the State Government for claim of compensation by the Department of Mines & Geology, that too, realizable from a private party, the complaint itself was *ab initio void*.



9. Counsel for the Petitioner has further submitted that Section 5 of the Act, 2015, provides for rights of the parties concerned of a reasonable opportunity of being heard. The Public Grievance Redressal Officer is obliged under Section 5 of the Act, 2015, to provide an opportunity of hearing to the Complainant and after hearing the Complainant decide the complaint either by accepting it or by suggesting an alternative benefit or relief available under other law, policy, service, programme or scheme or can reject the claim by a reason to be recorded.

10. In the present case, specific provision for claim of compensation is available under Rule 50 and 51 of the Bihar Minor Mineral Concession Rules, 1972. Therefore, without making appropriate application under relevant law, for the time being in force, the Respondent No.7 could not have invoked provisions of the Act, 2015. Counsel for the Petitioner submits that on this account complaint of Respondent No.7 was not maintainable.

11. Counsel for the Petitioner has further submitted that under Section 8 of the Act, 2015, there is provision for penalty against the Public Grievance Redressal Officer or any other public authority or the first appellate authority for not providing an opportunity of hearing and redressal of the complaint within the



stipulated period of time. The revision lies under Section 9 of the Act, 2015, by such Public Grievance Redressal Officer or any public authority or the first appellate authority against the order imposing penalty. Thus, the scheme of the Act, 2015, is to provide right of public grievance redressal to the people of the State within the stipulated time limit and not invocation of original jurisdiction with regard to any dispute.

12. In the present case, Respondent No.7 has tried to invoke the Act, 2015, for the purposes of compensation without filing any application under Rule 50 of the Bihar Minor Mineral Concession Rules, 1972, and therefore, in absence of any application made, any provision of the present Act 2015, can not be invoked. If the Respondent No.7 would have preferred an application under Section 50 of the Bihar Minor Mineral Concession Rules, 1972, the Respondent No.7 might have approached the authority concerned under the Act, 2015, for speedy redressal of the application filed under Bihar Minor Mineral Concession Rules, 1972. Thus, in absence of any application pending before any competent authority, the grievance of the Petitioner could not have been entertained by the Respondent No.2 or 4, that too, without providing any opportunity



to the Petitioner either to rebut or to produce relevant document to show that Respondent No.7 was not entitled to any compensation.

13. Counsel for the Petitioner has further submitted that revenue record would suggest that nature of land of Respondent No.7 is not even cultivable land, rather, it is mixed patch of water and sand even as per cadastral survey *Khatiyaan* (Annexure-5). The report of the Circle Officer with regard to land also refers the nature of the land and nowhere it refers that it is an agricultural land capable of cultivation. Xerox copy of report of the Circle Officer is annexed as Annexure-6.

14. Counsel for the Petitioner has submitted that the orders passed by Respondent Nos.2 and 4 are wholly without jurisdiction and authority of law.

15. Counter Affidavit has been filed on behalf of Respondent Nos. 7 and 8 stating therein that Respondent No.7 was within jurisdiction to file complaint for compensation under the Act, 2015. Respondent authority has got jurisdiction to pass the impugned order under the Act, 2015, read with Sand Policy and Bihar Minor Mineral Concession Rules, 1972.

16. Separate Counter Affidavit has been filed by the Respondent No.4. It has been stated that Respondent No.4 has very limited role to play in the present issue and was only



executing the orders of the Principal Secretary, Mines & Geology Department i.e. second appellate authority. The Respondent No.4 as per direction of the Principal Secretary, Mines & Geology Department, made query with regard to settlee of sand ghats from 2010 till date. The Petitioner is a lease holder from 2015 to 2019 and, therefore, order has been passed on 21.04.2018 by the Collector, Patna, directing the Petitioner to pay compensation amount of Rs.20,000/- per acre per year (Annexure-3 of the writ application).

17. This Court after hearing parties finds that originally complaint was filed before the District Public Grievance Redressal Officer, Patna. Subsequently, complaint was filed before the Departmental Public Grievance Redressal Officer, Mines and Minerals Department, Govt. of Bihar, which was disposed of to move before the District Public Grievance Redressal Officer, Patna, which was challenged before the Principal Secretary, Mines and Minerals Department, Government of Bihar, by filing appeal.

18. Section 2(a) of the Act, 2015, defines the meaning of complaint, which is as follows:

“(a) “**complaint**” means any application made by a citizen or a group of citizens to a Public Grievance Redressal Officer for seeking any benefit or relief relating to any schemes, programme or services run in the State by the State Government or in respect of failure or delay



in providing such benefit or relief, or regarding any matter arising out of failure in the functioning of, or violation of any law, policy, service, programme or scheme in force in the State by a public authority but does not include grievance relating to the service matters of a public servant, whether serving or retired, or relating to any matter in which any Court or Tribunal has jurisdiction or relating to any matter under Right to Information Act, 2005 (Central Act No.22 of 2005) or services notified under the Bihar Right to Public Services Act, 2011.”

19. Section 4 of the aforesaid Act, 2015 describes about notification of Department-wise schemes, programmes and services on which complaint may be filed.

20. In the present case, Respondent No.7 had tried to invoke the Act, 2015, for the purpose of compensation with allegation that illegal sand mining in the area should be stopped and Respondent No.7 may be compensated for the loss on account of crop over agricultural land due to commercial exploitation of sand.

21. Section 50 of the Bihar Minor Mineral Concession Rules, 1972, prescribes for payment of compensation to owner of surface rights etc. Aforesaid Section is quoted below:

“50. Payment of compensation to owner of surface rights etc.--(1) The holder of a prospecting licence or a mining lease shall be liable to pay to the occupier of the surface of the land over which he holds the prospecting licence or as the case may be the mining lease, such annual compensation as may be determined by an



Officer appointed by the State Government by Notification in this behalf in the manner provided in sub-rules (2) to (4).

(2) In case of agricultural land other than the land referred to in sub-rule (4) the amount of annual compensation shall be worked out on the basis of the average annual net income for the cultivation of similar land for the previous 3 years.

(3) In case of non-agricultural land, the amount of annual compensation shall be worked out on the basis of average annual letting value of similar land for the previous three years;

(4) The annual compensation referred to in sub-rule (1) shall be payable on or before such date as may be specified by the State Government in this behalf.”

22. Similarly, Section 51 of the Bihar Minor Mineral Concession Rules, 1972, describes about assessment of compensation for damage, which is quoted blow.

“51. Assessment of compensation for damage.--

(1) After termination of prospecting licence or mining lease, the State Government shall assess the damage, if any, done to the land by the prospecting or mining operations and shall determine the amount of compensation payable by the licensee or as the case may be the lessee to the occupier of the surface land.

(2) Every such assessment shall be made within a period of one year from the date of termination of the prospecting licence or mining lease and shall be carried out by an Officer appointed by the State Government by Notification in this behalf.”

23. As such, there is clear provision under of the Bihar Minor Mineral Concession Rules, 1972, for payment of compensation for illegal sand mining in the area and compensation for the loss suffered by Respondent No.7. Section 2(a) of the Act



does not prescribe that complaint can be filed against private settllee to direct for payment of compensation.

24. As such, specific provision to claim compensation is available to Respondent No.7 under Rule 50 and 51 of the Bihar Minor Mineral Concession Rules, 1972. The Respondent No.7 could not have invoked provision of the Act, 2015 without making appropriate application under the relevant provisions of the Bihar Minor Mineral Concession Rules, 1972, as mentioned above. In the event Respondent No.7 could have preferred an application under Rule 50 and 51 of the Bihar Minor Mineral Concession Rules, 1972, then Respondent No.7 could have the right to approach the authority concerned under the Act, 2015, by making complaint under Section 2(a) of the Act for speedy redressal of application filed under Rule 50 and 51 of the Bihar Minor Mineral Concession Rules, 1972. In absence of any application pending before any competent authority, the grievance of the Petitioner as stated in the instant complaint filed under Section 2(a) of the Act, 2015, was not entertainable by the Respondent Nos.2 and 4. Moreover, Respondent Nos.2 and 4 have passed order without affording opportunity of hearing to the Petitioner either to rebut or to produce relevant documents to show that Respondent No.7 was not entitled to any compensation.



25. Therefore, the order(s) passed by the Respondent Nos.2 and 4 are without jurisdiction and in utter violation of law.

26. In view of such, order dated 30.08.2017 passed by the Respondent No.2 as contained in Annexure- 2, order dated 21.04.2018 passed by Respondent No.4 as contained in Annexure- 3, and order dated 09.10.2018 passed by Respondent No.2 as contained in Annexure-4 are hereby set aside.

27. This writ application is, accordingly, **allowed**.

(Sanjay Priya, J)

J. Alam/-

AFR/NAFR	AFR
CAV DATE	08-04-2019
Uploading Date	16-07-2019
Transmission Date	N/A

