IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.379 of 2019
In
Civil Writ Jurisdiction Case No.12859 of 2017

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Mr. Aman Sethi, male, aged about 48 years approximately, S/o Late Shri Som Prakash Sethi, having office Plot No. 182, Phase IV, Udyog Vihar, P.S.- Udyog Vihar, Sector-18, P.O.- Udyog Vihar, Phase-IV, Gurgaon (Haryana) - 122015 and residence at S-541, Greater Kailash-II, New Delhi-110048, P.S.- C.R. Park, P.O.- Greater Kailash-II

... ... Appellant/s

Versus

1. The State of Bihar
2. The Secretary, Department of Mines, Secretariat, Patna, Bihar
3. The Assistant Director, Mines, Nawada, Bihar
4. The Inspector General of Registration at Old Secretariat, Patna, Bihar
5. The Collector Nawada, Bihar
6. The District Sub-Registrar Nawada, Bihar

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 7034 of 2016

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Mr. Aman Sethi, S/o Shri Som Prakash Sethi, Plot No. 182, Phase IV, Udyog Vihar, Gurgaon Haryana.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Department of Mines, Secretariat, Patna, Bihar.
3. The Inspector General of Registration at Old Secretariat, Patna, Bihar.
4. The Collector, Nawada, Bihar.
5. The District Sub-Registrar, Nawada, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. K.N. Singh, Sr. Advocate
For the Mines Department:	Mr. Naresh Dixit, Advocate
For the State :	Mr. Gyan Prakash Ojha, G.A. 7
	Mr. Uday Shankar Pandey, A.C. to G.A. 7
	Mr. Niraj Kumar Sinha, A.C. to PAAG-2

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-07-2019

This appeal has been filed questioning the correctness of the judgment of the learned Single Judge contending that the appellant should be allowed to operate his mining lease for a full period of five years from the date he was actually permitted to commence mining operations and he should not be compelled to pay royalty other than the mineral "removed and consumed" by the petitioner under the lease. This contention is being advanced by the appellant grounded on the fact that for no fault of the appellant, he was, on account of the obstruction created due to excessive demand of Stamp Duty, prevented from operating the mining lease as it could not have been done without getting the lease-deed registered. This in turn was based on the apprehension that since the law requires registration of the lease, its violation could have resulted in its cancellation.

2. Thus, a two pronged relief was claimed by instituting the writ petition that has given rise to this controversy where a mandamus had been prayed for coupled with a writ of certiorari to quash the letter dated 09.12.2016 whereby a demand of Rs. 2,20,00,000/- was made in respect of the second

installment of royalty which according to the respondent-Department was falling due, and was payable prior to 31st January, 2017.

3. The lease was advertised through a public notice dated 12.12.2014 against which the appellant applied and succeeded in getting a Letter of Intent on 10th of February, 2015 for a lease awarded under the orders of the Collector, Nawada dated 15.01.2015 for mining of stone over an area of 14 acres in Village Badhokra over Plot No. 4256 that was earmarked as Area No. 11, for a period of five years from the date of the execution of the lease which was to be compulsorily registered or else the lease would be cancelled. This Condition No. 4 of the lease is extracted hereinunder:-

"4. अवधिः– **पट्टा निष्पादन से 5 (पॉच) वर्षों के लिए विधिमान्य होगी तथा निष्पादित दस्तावेज का निबंधन कराना होगा अन्यथा पट्टा रद्द कर दिया जायेगा।**"

4. Registration of the lease was made compulsory under Clause 6 (छ) immediately after its execution and was to be tendered before the authority.

5. The State Government approved the mining plan submitted by the petitioner whereafter the formalities of environmental clearance etc. were carried out and the lease-deed

came to be executed on 15th of February, 2016. The agreement of the lease is Annexure-5 to the writ petition. This lease-deed was only on a stamp of Rs. 1000/-. On 19th February, 2016 the petitioner was informed that Stamp Paper worth Rs. 66,00,000/- had to be tendered as duty. This information was given by the Sub Registrar office at Nawada where the lease-deed had been presented for its registration.

6. The petitioner's contention is that this demand of excessive Stamp Duty came to be challenged by him in C.W.J.C. No. 7034 of 2016, the records whereof were also summoned by us for its perusal. The writ petition was filed in April, 2016 and was taken up on 13th July, 2016 whereafter it was adjourned on the request made by the learned counsel for the State on several occasions.

7. On 11th August, 2016 a learned Single Judge of this Court passed an interim order in the said writ petition that the Mining Department will not take any coercive measure for cancellation of the lease.

8. On 16th September, 2016 the learned Single Judge recorded that despite indulgence having been granted on several occasions the State has not answered the query raised by the Court and directed the matter to be listed immediately

thereafter with a *prima facie* opinion expressed that the petitioner was ready to furnish a Bank Guarantee equivalent to the amount of Stamp Duty that was being demanded that would be subject to final decision of the writ petition.

9. The matter was ultimately heard and on 19th November, 2016 a detail order was passed by the learned Single Judge referring to the matter being pending before a Nine Judges Bench in the Apex Court in the case of **Dalmia Cement (Bharat) Limited Versus State of Tamil Nadu and another**, reported in **(2014) 2 SCC 279.** The learned Single Judge directed the petitioner to furnish a Bank Guarantee for the entire amount as demanded in order to facilitate the registration of the lease that would be subject to the outcome of the said writ petition.

10. It is informed at the Bar that the reference before the Apex Court is still pending and has not been decided as yet and pursuant to the aforesaid directions the Sub Registrar proceeded to register the lease of the petitioner on 23rd of March, 2017.

11. The argument on behalf of the appellant is that since the payment of Stamp Duty was directly connected with the registration of the lease document, and since the

operation of the lease could only commence after its registration, which in fact has commenced only thereafter, the appellant should not be deprived of the entire period of five years and he should not be compelled to deposit the entire royalty as per the demand note which should be re-scheduled for payment by the due date by spreading it over to a period of five years to be counted from the date of registration of the agreement and not from the date of execution. For this the contention is that there was no fault on the part of the petitioner and it was an unlawful demand of Stamp Duty that prevented the petitioner from commencing operations, hence, this was a situation not within the control of the petitioner and consequently he should be extended the reliefs as prayed for.

12. To substantiate the aforesaid arguments, Dr. K.N. Singh, learned senior counsel contends that Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 imposes liability of payment of royalty only on the amount of mineral removed and consumed. He, therefore, contends that if the petitioner had not been allowed to remove or consume the mineral, there would be no liability of payment of royalty and therefore any demand of instalment in respect of the period when the petitioner had not been allowed to operate the mines is

unjustified.

13. He has re-emphasized that the Registration Department is another arm of the same Executive Government that has executed the lease in favour of the petitioner in the name of the Governor of the State. He therefore submits that if there is an unlawful demand and the petitioner is bona fidely contesting that demand, then the consequence of such a contest cannot be a default on the part of the petitioner, inasmuch as, the petitioner has been compelled to institute a litigation with regard to payment of Stamp Duty that has been entertained by this very Court which is also pending before the Apex Court. The submission appears to be that this litigative pursuit of the petitioner to contest the imposition of Stamp Duty is a burden which is an outcome of the excessive demand raised by the Registrar for the registration of the lease, and it is under this compulsion that the appellant could succeed in getting the lease registered only after a judicial intervention. This transaction, therefore, being an action taken by the petitioner in good faith to protect his rights cannot be treated as a default on the part of the petitioner and is rather an imposition of forced liability by the State as Stamp Duty that delayed the registration of the lease-deed.

14. He further contends that the terms and conditions of the lease makes registration imperative or else the lease would be cancelled. This consequence provided under the agreement, therefore, does not allow a lease-holder to continue his operations without registration. Caught in between, the petitioner because of the aforesaid contingency that was beyond his control cannot be deprived of the full period of execution of five years and the re-adjustment of the schedule of payment of royalty as prayed for by him.

15. The learned Single Judge after going through the entire pleadings came to the conclusion that the petitioner had a liability to pay the Stamp Duty and the registration being compulsory, this dispute of payment of Stamp Duty having been raised by the petitioner himself had no connection with the timely payment of royalty which cannot be controlled by the delay in the registration of the lease. The learned Single Judge held that these two being separate issues the petitioner cannot take any advantage of any delay in the registration of the lease, inasmuch as, the Mining Department at no point was responsible for any such delay. While referring to the clauses of the mining agreement and the reference to the relevant rules, the learned Single Judge held that since the agreement had to be

registered within 120 days, the Mining Department was not concerned with the payment of Stamp Duty demanded by the registering authority and, therefore, this was a default on the part of the petitioner that resulted in the delay of the registration of which no advantage could be taken of, inasmuch as, the entire terms and conditions of mining were well known to the petitioner in advance which did not contain any such relaxation as claimed by the petitioner. It was, therefore, held by the learned Single Judge that the petitioner cannot claim a right to raise a challenge for redefining the period of five years from the date he was allowed to start mining operations. For this, reference was made to Rule 25 (2) of the Bihar Minor Mineral Concession Rules, 1972 which provides for the date of commencement of a mining lease as the date of execution and not the date of registration.

16. A preliminary objection, even though feeble, was raised by the learned counsel for the State that the writ petition giving rise to the controversy was not maintainable, inasmuch as, the same relief had also been claimed in C.W.J.C. No. 7034 of 2016 where the dispute of Stamp Duty had been raised by the petitioner. Accordingly, the petition should not have been entertained.

17. We may at the outset reject this contention, inasmuch as, this relief which was Relief No. 1(e) in C.W.J.C. No. 7034 of 2016 was deleted with liberty to the petitioner to move before the competent forum for redressal of such grievances available to him under law vide order dated 19.11.2016. The petitioner has narrated in the writ petition that the petitioner had thereafter approached the department on 25.02.2017, 28.04.2017, and even thereafter, but having failed to get any response, he then filed the writ petition giving rise to the present appeal. We find this fact available on record and, therefore, the preliminary objection raised by the learned counsel for the State as to the maintainability of the writ petition giving rise to this appeal is overruled.

18. Learned counsel for the State has further supported the impugned judgment contending that the terms of the lease, particularly Clauses 55 and 56 read with Rule 25 of the 1972 Rules makes it more than evident that the payment of royalty has to be made as per the schedule and any default would invite consequential action. It is, therefore, urged that the terms and conditions of lease cannot be now modified for the convenience of the petitioner and to the detriment of public revenue which the petitioner is liable to pay under the terms of

the mining lease.

19. We have considered the entire arguments and the broad canvas of arguments advanced by Dr. Singh emphasizing on the functioning of the State where he contends that the contract of lease has to be construed subject to the conditions that ensue on account of the terms and conditions imposed under the contract itself. It is on this reasoning that Dr. Singh contends that the petitioner should not have been treated as a defaulter by the learned Single Judge moreso when he had already complied with the terms and conditions as imposed by this Court by a judicial order in the matter of payment of Stamp Duty. The conclusion, therefore, drawn by the learned Single Judge according to him that the Mines Department was not at fault but it was the petitioner who failed to discharge his duty is not a correct assumption.

20. For this, we may proceed to examine the provisions of the 1957 Act read with 1972 Rules referred to hereinabove. It is correct that royalty is payable as fixed under the lease and which is made commensurate to the removal and consumption of the mineral allowed to be mined. The lease holder has to carry out this operation. The statutory prescription of the commencement of the lease is clearly contained in Rule

25. The date of commencement of the lease, therefore, cannot be altered unless there is an express agreement to that effect and subject to such terms and conditions that may be in conformity with the said rules.

21. It is in this context that the contingency of payment of Stamp Duty as raised herein has to be considered. From the terms and conditions of the lease the undisputed position is that the registration of a mining lease is compulsory. We have, however, not been able to locate any rule or any terms in the condition of agreement that prohibits mining by the lease-holder after the execution of the lease and before its registration. A period of three months (120 days) is provided for the registration of the lease immediately after its execution. This period of 120 days, therefore, is the only gestation period given for registration of the lease or else it may result in cancellation of the lease thereafter. Admittedly, in the present case the lease was executed on 15.02.2016, but it was not registered within three months. The respondents did not cancel the lease after 15th of May, 2016, that is, after the expiry of three months. On 11th of August, 2016 the Mining Department was restrained from taking any coercive measure for cancellation of the lease by way of an interim order passed in C.W.J.C. No. 7034 of 2016 filed

by the petitioner where he had made the prayer in relation to the present relief claimed. The interim order was passed when the said writ petition was filed with a similar relief which came to be deleted much later by the order passed by the learned Single Judge on 19.11.2016 giving liberty to the petitioner to approach the appropriate forum for redressal of the grievances pertaining to the present dispute. This chain of circumstance and the orders passed from time to time are clearly at the instance of the petitioner who was ultimately successful in getting an interim order on 19.11.2016 for extending a Bank Guarantee to get his lease registered subject to the outcome of the said litigation.

22. In our opinion, the respondents throughout were contesting this position and had not extended any concession to the petitioner, but at the same time they appear to have not been able to cancel the lease for the reasons aforesaid. Consequently, there was no default on the part of the Mining Department at all so as to gather any deficiency on their part. The High Court even while passing the interim order on 19.11.2016 did not grant exemption to the petitioner or concede to his request for not paying the Stamp Duty. To the contrary, the Court compelled the petitioner to extend the Bank Guarantee in favour of the Sub Registrar in order to ensure the registration

of the lease. The petitioner, therefore, can only claim a right of exemption or concession in the event he ultimately succeeds in C.W.J.C. No. 7034 of 2016 and not before that.

23. The petitioner, therefore, was under a compulsion to have got the lease-deed registered within a period of three months. We do not find the petitioner to have made any attempt to commence the mining operations on his own after the execution of the lease in the absence of any express provision prohibiting the same.

24. Thus, the petitioner being fully aware of the terms and conditions of lease as well as the Act and Rules chose to contest the same in view of the pendency of a reference before the Apex Court which the petitioner hoped would ultimately be answered in his favour. This hope and expectation of the petitioner of succeeding in litigation in future cannot absolve him of the contemporaneous liability of either getting the lease registered immediately after its execution which would obviously be dependent on payment of Stamp Duty and, therefore, the petitioner was under a legal obligation to have tendered the Stamp Duty subject to his objections being accepted or otherwise in the litigation which has been preferred by him. This therefore was a clear voluntary risk undertaken by

the petitioner through his litigative pursuit which he is entitled in law to pursue as a right to seek judicial review. Whether the Sub Registrar had the authority to demand the extra Stamp Duty or not is a subject matter of C.W.J.C. No. 7034 of 2016 which in turn is dependent upon the outcome of the litigation before the Apex Court as referred to in the interim order dated 19.11.2016 passed therein, but that by itself cannot extend any benefit to the petitioner to absolve him of the liability of getting the agreement registered or paying the Stamp Duty. Any delay on that count is therefore at the cost of a voluntary risk of the petitioner who has chosen to challenge the validity of imposition of Stamp duty. The hope of a future success might result in refund of the Stamp Duty that could be the best possible outcome of the litigation being pursued by the petitioner. The terms of the lease cannot be altered on the basis of this speculation. It is informed by the counsel for the State that all lease holders of the area had got their leases registered except the petitioner who was contesting the imposition of Stamp Duty. The petitioner may have a right of judicial review but the same does not dissolve the liability of Stamp Duty unless ordered otherwise.

25. The question of extension of the tenure or otherwise may be dependent on the terms and conditions of the

contract which can be defined or altered to the advantage of the appellant by no one else than the State Government. This cannot be by way of a judicial review on the facts and circumstances of the present case. The judgment relied on by the learned counsel for the appellant in the case of **Uberoi Mohinder Singh and Associates Vs. State of Haryana and others**, reported in **(1991) 2 SCC 362** does not come to the aid of the appellant in the given facts and circumstances of the present case as discussed hereinabove. The demand of Stamp Duty by the Registration Department cannot be termed as unlawful obstruction or an act of omission or unjust commission so long as the demand is not held to be unlawful. That stage has not arrived as yet.

26. The royalty therefore has to be paid which can, however, be subject to any adjustment by the State Government in case it so desires to do so or even for that matter to consider the extension of the period of mining operations. However, the said issue does not call for any further deliberations without prejudice to the rights of the petitioner that may be dependent upon the outcome of the litigation in the Stamp Duty matter or by any other decision to be taken by the State Government in this regard.

27. The appeal is accordingly consigned to records.

28. The records of C.W.J.C. No. 7034 of 2016 shall stand delinked and shall be now placed before the appropriate Bench for being dealt with as per the directions issued thereunder.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	25.07.2019
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