IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12859 of 2017

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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 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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Appearance :

For the Petitioner/s	:	Dr. Krishna Nandan Singh, Sr. Advocate with Mr. Sriram Krishna, Advocate
For the State	:	Mr. Prabhu Narayan Sharma, AC to Advocate General
For the Respondents-Department of Mines	:	Mr. Naresh Dixit, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
CAV JUDGMENT
Date : 06-02-2019

This Writ Application has been filed for following reliefs:

(a) For issuing a writ of Mandamus or any other appropriate writ, order or direction in the nature of Mandamus to direct the Respondent authorities to commence the 5 years of the lease from the period the Petitioner is permitted to start mining and exclude the period during which no mining could be undertaken due to the illegal demand of Stamp Duty; and/or

(b) For issuing a writ of Mandamus or any other appropriate writ, order or direction in the nature of Mandamus to direct the Respondent authorities to treat the amount of Rs.2,20,00,000/- as paid pursuant to the demand on 27.11.2015 and Rs.2,20,00,000 as paid under protest without prejudice to his right pursuant to demand on 09.12.2016 as the first and second installment for the period of the lease, after the same commenced in terms of prayer (a); and / or

(c) For issuance of a writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari to quash the letter dated 09.12.2016 bearing No.1826 (Annexure P-7) issued by the Assistant Director, Mines, District Nawada; and/ or

(d) For any other relief/reliefs to which the Petitioner found entitled under the facts and circumstances of the present case.

2. The Petitioner is a citizen of India. The State of Bihar issued a Public Notice published on 12.12.2014 whereunder in terms of the Bihar Minor Mineral Concession Rules, 1972, and Bihar Minor Minerals Concession (Amendment) Rules, 2014, 17 areas/blocks for proposed stone mining were acutioned all situated in the District of Nawada. The Public Notice published on 12.12.2014 is enclosed as Annexure P-1 to the writ application.

3. The Petitioner having experience in undertaking mining and especially stone quarrying expressed an interest in the same and submitted his tender. Pursuant to opening the tender and the Petitioner being found suitable, he was called for bidding in the open auction held amongst the successful tenderers. The Petitioner was found to be highest bidder for Block No.11 in village Badhokra in the District of Nawada for an area of 14 acres situated in portion of Khesra No.4256. The Petitioner was awarded the said block for the period of five years having offered the highest bid of Rs.11 Crores. The bid amount was to constitute the minimum guaranteed royalty or dead rent for a period of 5 years and in the event the royalty payable on the mineral extracted in a year exceeded Rs. 2.2 Crores, the excess royalty would become payable.

4. Pursuant to the auction, which was held on 15.01.2015, the Petitioner deposited an amount of Rs.1,10,00,000/- as Earnest Money i.e. 10% of the total amount. The aforesaid amount of Rs.11 Crores was payable in 5 annual installments of Rs.2.2 Crores.

5. The Letter of Intent was issued to the Petitioner with regard to grant of approval for mining for a period of 5 years in Khesra No.4256 (14 Acres) at Block No.11 in village Badhokra, District- Nawada. True copy of the Letter of Intent dated 10.02.2015 is enclosed as Annexure P-2 to the writ application.

6. In terms of the Bihar Minor Mineral Concession Rules, the mining can be undertaken after preparing of the Mining Plan and obtaining environmental clearance. The Petitioner appointed a Consultant and pursuant to undertaking various studies prepared the Mining Plan, which was finally approved by the State on 21.05.2015. True copy of the letter dated 21.05.2015 of State approving Mining Plan is annexed as Annexure P-3 to the writ application.

7. The Petitioner took steps for obtaining the environmental clearance and as the present mining block/ area was less than 50 hectares, the same falls under category- 'B' Project under the EIA Notification dated 14.09.2006. Accordingly, permission was sought and obtained from State Environment Impact Assessment Authority (SEIAA). The SEIAA was pleased to grant the environmental clearance on 07.09.2015. A true copy of clearance dated 07.09.2015 granted to the Petitioner is enclosed as Annexure P-4.

8. In terms of Rule 25 of the Bihar Minor Mineral Concession (Amendment) Rules, 2014, mining agreement can be executed only after environmental clearance and Mining Plan as required under the Rules has been approved. Accordingly, pursuant to the Petitioner having been granted the aforesaid clearance for mining plan and environmental clearance, the Mining Agreement in terms of the Bihar Minor Mineral Concession Rules and the subsequent amendments was executed on 15.02.2016 by the Department of Mines on a stamp paper of Rs.1,000/-. The Petitioner also paid first installment of Rs. 2.2 Crores to the Respondent-Department of Mines before execution of the agreement after being given to understand that Petitioner would be permitted to undertake mining operations. A true copy of the Mining Agreement dated 15.02.2016 is annexed as Annexure P-5 to the writ application.

9. One of the condition of the Letter of Intent, namely, condition 6(g) was that after execution of Mining Agreement, the same would be registered and furnished to the department. In compliance of the said condition, the Petitioner approached the Sub-Registrar Office, Nawada, for the purpose of registration of Mining Agreement. The Petitioner was informed vide letter dated 19.02.2016 that the Petitioner would have to obtain stamp paper for a value of Rs.66,00,000/-. The Sub-Registrar had calculated the same by taking 6% of the bid amount by the Petitioner i.e. 6% of Rs.11,00,00,000/-. Further, over and above the stamp duty, the Registrar had also claimed Rs.22,00,000/- as registration fee being 2% of Rs.11,00,00,000/-. True copy of the letter dated 19.02.2016 being No.173 issued by the District Sub-registrar, Nawada, is enclosed as Annexure P-6.

10. The Petitioner being aggrieved by the said arbitrary action of the Sub Registrar in demanding the stamp duty by taking percentage of the bid amount, which is contrary to the provisions of the Indian Stamp Act, and also by taking lower amount of Stamp Duty pertaining to a mining licence at Sheikhpura, where although the bid amount was more than that of the Petitioner moved this Hon'ble Court by way of CWJC No.7034 of 2016, praying for issuance for direction to the Respondent i.e. District Sub Registrar, Nawada, to register the said Mining Agreement based on stamp duty payable under Article 5(c) of Schedule I of the Indian Stamp Act, 1899, and also quash the letter dated 19.02.2016 bearing No.173 (Annexure-5).

11. Possession of the mine was not handed over to the Petitioner in the meantime. The Petitioner was not allowed to commence mining during the aforesaid period. Department of

Mines was also party in the aforesaid writ application. The Hon'ble Court by order dated 19.11.2016 directed the registering authority to register Mining Agreement dated 15.02.2016 (Annexure P-5) after taking the stamp duty in parity with that of the Sheikhpura Mining Licence and to accept the Bank Guarantee for the differential amount and to permit the Petitioner to commence mining operation. True copy of the order dated 19.11.2016 passed in CWJC No.7034 of 2016 is enclosed as Annexure P-10.

12. The Petitioner in the meantime, was served a letter dated 09.12.2016 sent by the Assistant Director, Mines, Nawada, asking the Petitioner to pay Rs.2,20,00,000/- towards second installment of the bid amount by 31.01.2017. True copy of the aforesaid letter has been enclosed as Annexure P-7.

13. The Petitioner vide its letter dated 27.01.2017 addressed to the Respondent No.3, inter alia, (i) requested him to withdraw the demand notice dated 09.12.2016 and to treat the amount so paid pursuant to the demand dated 27.11.2015 as the first installment, (ii) advice the Registrar, Nawada (Respondent No.3) about the stamp duty liable to be paid, (iii) provide a format of bank guarantee to be furnished by him and the amount of stamp duty liable to be paid and the registration fees so that the same could be deposited and (iv) to consider the period of lease from the date of registration of the agreement instead of from the date of execution of the same. True copy of the Petitioner's letter dated 27.01.2017 is enclosed as Annexure P-11. The Petitioner sent similar letter to other departments also which are enclosed as Annexure P-12, P-13 and P-14. The Petitioner, in the meantime, deposited a sum of Rs.2,20,00,000/-, as demanded, pursuant to demand notice dated 09.12.2016, which finds mention in Annexure-7, on 07.02.2017 by Demand Draft under protest without prejudice to his right.

14. The Respondent No.6 vide his letter dated 25.02.2017 informed the Petitioner to pay a sum of Rs.4,40,000/- at the time of registration of Lease Deed and a sum of Rs.83,60,000/- as bank guarantee as per order of this Court. True copy of the letter dated 25.02.2.107 issued by the Respondent No.6 is enclosed as Annexure P-16.

15. The Petitioner vide letter addressed to Respondent No.6 dated 28.02.2017, enclosed a Bank Guarantee for perusal and approval as in spite of the Petitioner's letters dated 31.01.2017, 11.02.2017 and 20.02.2017, requesting for format of Bank Guarantee so that the same could be arranged as per format and submitted for registration of Mining Lease, no such format had been provided to the Petitioner. True copy of the Petitioner's letter dated 28.02.2017 is enclosed as Annexure P-17. Finally, the Petitioner was intimated by Respondent No.6 vide letter dated 04.03.2017 bearing No. 140, with respect to the format of Bank Guarantee that he had received from the Chief Manager, SBI Main Branch, Nawada, vide letter dated 03.03.2017. True copy of the letter No.140 dated 04.03.2017 is enclosed as Annexure P-18.

16. The Lease Agreement dated 15.02.2016 was finally registered on 23.03.2017 after furnishing all necessary Bank Guarantee on 23.03.2017 for amount of Rs.83,60,000/-. True copy of the aforesaid registered agreement dated 15.02.2016 issued by Respondent No.3 along with Bank Guarantee has been enclosed as Annexure P-20.

17. The Petitioner vide letter dated 27.03.2017 submitted Xerox copy of the registered agreement dated 15.02.2016 to the Respondent No.3 for necessary action only after which the Petitioner was able to commence mining operations. True copy of the Petitioner's letter dated 27.03.2017 is enclosed as Annexure P-21.

18. Petitioner vide his letter dated 28.04.2017 requested Respondent No.2 to consider his request for payment of installments and reckon the period of execution of lease from the date of registeration of lease agreement dated 23.03.2017, but no action has been taken. True copy of the Petitioner's letter dated 28.04.2017 is enclosed as Annexure P-22.

19. The counsel for the Petitioner has submitted that Petitioner has not only paid two installments each amounting to Rs.2,20,00,000/-, but also paid required dead rent and other necessary payments towards fulfillment of terms and conditions of the agreement dated 15.02.2016. The Petitioner at all times was ready to get the agreement dated 15.02.2016 registered and commence mining operations, but for inflexible stand of the Respondent authorities, this Petitioner could not commence mining operation on account of non-registration of the agreement dated 15.02.2016, which was finally registered on 23.03.3017. During this period, the Petitioner has spent more than ten crores rupees in preparing its team and infrastructural logistics, but unable to utilize the resources as the Petitioner could not commence mining work on account of non-registration of Mining Agreement dated 15.02.2016.

20. Petitioner has raised mainly three questions of law to be determined in this writ application;

(A) Whether the action of the State authorities in first creating a situation whereby the Petitioner was restrained from carrying out mining and then demanding the bid amount would amount to unjust enrichment on part of the State Government?

(B) Whether the five years lease period of mining licence shall commence from the date the mining agreement is entered into or from the date that the mining agreement is registered and mining operations are actually commenced?

(C) Whether the Petitioner can be held liable for the period during which the mining operations did not commence for reasons beyond the control of the Petitioner?

21. Counter Affidavit has been filed by Respondent Nos.2, 3 and 5. The main contention of the Respondent Nos.2, 3 and 5 in the Counter Affidavit is that clause 6 of the tender document (Annexure P-1) speaks about compliance of terms and conditions of tender document along with other directions of Mines & Geology Department as well as the District Magistrate. Clause-11 of the aforesaid document further says that holder of lease/successful bidder has to deposit required stamp duty for registration and if the lease document is not duly registered then settlement would be cancelled. The period for five years will be effective from the date of execution of lease agreement between the parties.

22. Counsel for the Respondents submits that this clause of tender document was very well known to the Petitioner at the time of submitting tender paper. Counsel for the Respondents has further submitted that Letter of Intent dated 10.02.2015 (Annexure P-2) also expressed conditions with regard to obtaining Mining Plan, Environmental clearance and Clause 6(g) clearly speaks about registration of Mining Agreement to be done by the lease holder soon after execution of Mining Agreement and to be submitted to the Respondents. This clause was also very well known to the Petitioner at the time of execution of Mining Agreement and also prior to participation in the auction process.

23. Counsel for the Respondents further submits in the Counter Affidavit that from perusal of clause 6 and 6(g) of Letter of Intent/ in principal sanction order, the Petitioner had to deposit registered copy of Mining Agreement along with other documents within 120 days failing which under clause 17 of the aforesaid Letter of Intent, process of termination of settlement may be undertaken after due show cause. The Petitioner submitted the registered copy of Mining Agreement after prescribed time limit of 120 days.

24. It is specific statement of Respondents in para 11 of the Counter Affidavit that other stone Blocks situated in the Nawada District, which was settled with successful bidders, have submitted their required documents along with registered Mining Agreement and work orders have also been given to those settles. About 6 of the lessee have submitted their document after registration of agreement/lease and got the possession for mining.

25. The company of the Petitioner on several occasions was informed by Mining Officer for presentation of Mining Agreement for registration. The Respondents have informed vide letters of various dates for presentation of registered copy of Mining Agreement and other documents, but the Petitioner never tried to take any steps towards early execution and registration of Mining Agreement.

26. Counsel for the Respondents further submits that Petitioner was given rights of mining on government land through lease deed (*Patta*) and in auction notice/tender document terms and conditions were clearly stated about the procedure for allotment. After execution of Mining Agreement, the lease holder has to get the same registered by depositing required stamp duty to the registration office. In the Letter of Intent, terms and conditions were clearly given that Petitioner has to submit the registered Mining Agreement along with other documents within 120 days, failing which initiation of termination of sanction order would be done. The Petitioner was knowing all the procedure since prior to participation in tender. The Petitioner cannot be allowed to raise such objection at this stage.

27. Counsel for the Respondents has further pointed out Rule 25(2) of Bihar Minor Mineral Concession Rules, 1972, which 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 under sub rule (1) and the lessee shall be liable to pay rent/royalty from the date of the execution of the mining lease".

28. Counsel for the Respondents has submitted that lessee himself is responsible for delay in getting the Mining Agreement registered. Hence, he is liable to pay royalty/ installments as prescribed in the rules. Counsel for the Respondents has further submitted that it is mentioned in Clause 11 of the tender document that no claim will be entertained for delay in handing over of possession of the site to the settle. Therefore, any claim of the lessee to exclude the period during which mining could not be done due to delay in registration of Mining Agreement cannot be entertained by this Court.

29. After hearing counsel for both sides, in detail, as mentioned above, this Court finds that Petitioner has submitted in para 11 of writ petition that one of the condition of the Letter of Intent/approval under clause 6(g) was that after execution of Mining Agreement, the same would be registered and furnished to the department within 120 days. Petitioner has mentioned in para 12 of the writ petition that he was aggrieved by the action of the Sub-Registrar in demanding Stamp Duty by taking percentage of the bid amount, which is contrary to the provisions of Indian Stamp Act, and, accordingly, moved the Hon'ble High Court vide CWJC No.7034 of 2016. The Hon'ble Court by order dated 09.11.2016 (Annexure P-10) directed the registering authority to accept the stamp duty and stamp fee for registration of the documents from the petitioner in parity with another Mining Lease dated 10.02.2016, in the matter of the Katyayni Contractors Pvt. Ltd. It further appears from statement of Petitioner made in para 27 of the writ petition that Agreement dated 15.02.2016 was finally registered on 23.03.2017 and the same was submitted by the Petitioner vide his letter dated 27.03.2017 (Annexure P-21). It is admitted position that Letter of Intent was issued to the

Petitioner on 10.02.2015 with regard to grant of approval for mining for a period of five years under Khesra No.4256 (14 Acres) at Block No.11 at village- Badhokra, District- Nawada, vide Annexure P-2. The Mining Agreement in terms of Rule 25 of the Bihar Minor Mineral Concession (Amendment) Rules, 2014, was executed by the department on 15.02.2016 on stamp paper of Rs.1,000/- (Annexure P-5). Clause 31 of the aforesaid Agreement speaks that the bid amount shall be deposited on yearly basis in equal installments according to the provision of Section 52 of Bihar Minor Mineral Concession (Amendment) Rules, 2014. Clause 42 of the aforesaid Agreement speaks that "If the lessee makes default in payment of any installment, VAT, Income Tax, Stamp Duty and Registration fees on time, the Collector shall give a thirty days notice to the lessee requiring him to pay within prescribed time limit and if not paid within such period the Collector may without prejudice to any proceeding that may be taken against lessee, determine the settlement and forfeit the whole or part of the security deposit. Clause 6(g) of the Letter of Intent clearly speaks that Mining Lease will be registered and furnished to the department within a period of 120 days from the date of execution of mining lease. It is also mentioned in Clause 11 of the tender document (Annexure P-1) that lease holder/successful bidder has to deposit stamp duty for registration of the Mining Agreement. If the Agreement is not registered, it would liable to be cancelled. It is also mentioned in the aforesaid Clause that period for mining will be effective from the date of execution of the Mining Agreement between the parties, which will be valid for five years. Clause 6(g) and Clause 17 of the Letter of Intent (Annexure P-2) speaks that Mining Agreement was to be registered immediately and to be deposited with the department within a period of 120 days from the date of entering into Agreement. In the event of non-compliance of the directions and conditions of Letter of Intent, settlement was liable to be cancelled after due show cause. The work order for mining activity is granted only after registered Mining Agreement along with other documents are submitted by the Petitioner to the department.

30. Therefore, this Court after looking into entire facts of this case as well as hearing argument of both sides, finds that Mining Department was at no point of time responsible for delay in granting permission to Petitioner for mining operation. It is apparent from the averments made in the writ application that Letter of Intent was issued to Petitioner on 10.02.2015 after being declared highest bidder for mining for a period of five years in Khesra No.4256 (for 14 Acres) for Block 11 in village- Badhokra in the District of Nawada (Annexure P-2). The Mining Department immediately after submission of mining plan and environmental clearance by the Petitioner, entered into Mining Agreement in terms of Bihar Minor Mineral Concession (Amendment) Rules, 2014, on 15.02.2016, on stamp paper of Rs.1,000/-. The Petitioner was required to get the aforesaid Mining Agreement registered within a period of 120 days under clause 6(g) of the aforesaid Intent Letter (Annexure P-2), but he failed to do so.

31. From the statement made in the writ petition, it appears that the Petitioner has got aforesaid document registered on 23.03.2017 and submitted the same in the Department vide letter dated 27.03.2017 (Annexure P-21). The Petitioner has taken plea in the writ petition that Sub Registrar made demand of stamp duty, which was arbitrary. Aforesaid demand was challenged by the Petitioner before the Hon'ble High Court vide CWJC No.7034 of 2016. The Hon'ble Court has passed order in aforesaid writ on 19.11.2016 (Annexure P-10).

32. From Annexure P-10, it appears that Petitioner has been given only interim relief by Hon'ble Court. The aforesaid writ application filed by the Petitioner was directed to be put up after a decision by larger Bench of the Apex Court.

33. There is statement of Respondent Nos.2 to 5 in para 11 of the Counter Affidavit that other stone blocks situated in Nawada District, which was settled with successful bidders, have submitted their required documents along with registered agreement and work order was given to those settles. It is mentioned in aforesaid paragraph that since the Petitioner has submitted his document after registration of Mining Agreement with delay, he, accordingly, got permission to commence mining work. Therefore, the Mining Department was at no point of time at fault in not allowing the Petitioner to commence mining work after entering into Mining Agreement with the Petitioner on 15.02.2016.

34. The Petitioner has asserted in the writ petition that registering authority demanded stamp duty arbitrarily, which was challenged by him in this Hon'ble Court vide CWJC No.7034 of 2016.

35. This Court is of the view that Mining Department is not concerned with stamp duty fixed by the registering authority for registration of the aforesaid agreement. The Petitioner was required to comply Clause 6 of the Letter of Intent as well Clause 11 of the Tender Document (Annexure P-1), which was entered into between the Petitioner and Mining Department.

36. Section 25(2) of Bihar Minor Mineral Concession Rules, 1972, clearly provides 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 under sub-rule (1) and the lessee shall be liable to pay rent/royalty from the date of the execution of the mining lease".

37. Counsel for the Petitioner has relied on the decision of Hon'ble Supreme Court in the case of ***Uberoi Mohinder Singh Vs. State of Haryana*** reported in ***(1991) 2 SCC 362*** in support of his submission. This Court after looking into aforesaid judgment finds that facts of that case was quite different from the facts of this case. In that case, Hon'ble Supreme Court has held that *Contractor was always ready and willing to perform his part of the contract, but not given 'no objection' from Flood Control Department nor made it feasible to execute the contract by excavating or taking out sand.*

38. In the instant case, this Court finds Mining Department has performed his part of duty as per clause of the Tender Document as well as Letter of Intent. The Petitioner was at fault for not complying his part within time. The reasons submitted by the Petitioner in the instant case for not performing/complying aforesaid duty will not make the Mining Department liable to not take any action against the Petitioner or to charge the amount of royalty as fixed by the Department in terms of Letter of Intent (Annexure P-2) and Mining Agreement (Annexure P-5). All those criteria were well known to the Petitioner at the time of bidding, which was clearly mentioned in Tender Document (Annexure P-1).

39. Therefore, this Court comes to the finding that Petitioner was not in any manner restrained from carrying out mining operation by creating a situation by the State for not carrying out the same. As per rule 25(2) of Bihar Minor Mineral Concession Rules, 1972, 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 under sub-rule (1) and the lessee shall be liable to pay rent/royalty from the date of the execution of mining lease. Therefore, the same cannot be challenged before this Court to commence for five years from the date Petitioner is permitted to start mining operation and exclude the period during which no mining could be undertaken by the Petitioner.

40. This writ application is, accordingly, **dismissed**.

(Sanjay Priya, J)

J. Alam/-

AFR/AFR	AFR
CAV DATE	08-01-2019
Uploading Date	06-02-2019
Transmission Date	N/A