

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11355 of 2015**

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M/s B.k.m. Stone Co Pvt. Ltd. through its director Smt. Sabita Kumari, wife of Late Bijendra Prasad Yadav, Resident of Village- Barui, P.O.+ P.S- Patharaita, District- Shaikhpura.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Mines Commissioner-cum-the Principal Secretary, Mines & Geology Department "Vikas Bhawan", Bailey Road, Patna-15
2. The Collector-cum-District Magistrate, Sheikhpura.
3. The Additional Secretary, Mines and Geology Department, 'Vikas Bhawan', Bailey Road, Patna-15.
4. The Mineral Development Officer, Sheikhpura.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|----------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Rajendra Narayan, Sr. Adv.<br>Mr. Manish Sahay<br>Mr. Anil Kumar Sinha |
| For the Respondent/s | : | Mr. Naresh Dixit, Spl. P.P. Mines                                          |
| For the State        | : | Mr. Shashi Shekhar Kumar Prasad, AC to PAAG-2                              |

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**  
**ORAL JUDGMENT**

**Date : 28-03-2019**

Heard the learned counsel for the petitioner, Spl. P.P.

Mines and the State.

This writ petition has been filed challenging the order dated 15.06.2015 as contained in Annexure-9 passed in Revision Case No. 22 of 2014, by which the Revisional Authority has affirmed the order of the Collector, Sheikhpura dated 22.05.2014 and also for setting aside the letter bearing no. 531/Khanan, Sheikhpura dated 26.05.2014, as contained in Annexure-8, issued under signature of the Mineral Development Officer, Sheikhpura



as contained in Annexure-8, whereby the petitioner has been directed to hand over the possession of land in question and deposit a sum of Rs. 8,79,890/- in favour of government for violating the terms of agreement and also for exceeding the mining area.

Learned counsel for the petitioner has submitted that he has never been given any copy of the order passed by the Collector dated 22.05.2014. It is further submitted that the Collector has never issued any notice to the petitioner as required under Section 25(1) of the Bihar Minor Mineral Concession Rules, 1972 and in arbitrary manner by Annexure-8 the lease agreement of the petitioner was cancelled while four months was still there for expiry of the lease agreement.

Learned counsel for the petitioner has submitted that in spite of specific order of this Court dated 31.01.2019 to the Mining Department, aforesaid order of the Collector dated 22.05.2014 has not been brought on record in the Counter Affidavit. He has also submitted that the Mining Department has not clarified whether after cancellation of mining lease of the petitioner, department has entered into fresh lease with respect to aforesaid area.

Counter Affidavit filed on behalf of Mining Department is available on record. He has mainly taken stand that the revision



was decided after hearing both the parties. At the time of hearing of revision, petitioner had not raised any objection that he had not received the order of the Collector, Sheikhpura dated 22.05.2014. Now he cannot be allowed to raise such grievance.

It is further submitted that petitioner herself admits in her reply that mining was done beyond the lease area vide Annexure-5. She has made request with the Department for re-calculating the amount of demand for excess mining and department has accordingly on the basis of Annexure-5 re-calculated the excess area of mining and has after reviewing the loss made demand of Rs. 8,79,890/- as contained in Annexure-8. Petitioner is liable to pay the aforesaid amount.

This Court after looking into order passed by the Revisional Authority and also the Counter Affidavit filed by the Mining Department finds that the initial order passed by the Collector, Sheikhpura dated 22.05.2014 is not on record. In the Counter Affidavit the Mining Department has stated that the petitioner has preferred Revision Application bearing Revision Case No. 22 of 2014 before the Mines Commissioner, Bihar against the order of cancellation.

The petitioner has mentioned in the writ petition that he had filed revision application without getting the copy of order of



the Collector, Sheikhpura dated 22.05.2014 since his lease was cancelled and demand of Rs. 8,79,890/- was made by the department on the basis of the aforesaid order of the Collector for excess mining by the petitioner.

This Court finds that Revisional Authority has passed the order dated 15.06.2015 merely relying upon the order of Collector, Sheikhpura dated 22.05.2014, which was not on record. The aforesaid order was not produced before this Court. The same has also not been communicated to the petitioner as asserted by the petitioner in the writ petition. The petitioner has also asserted that Collector has never issued any notice to the petitioner as required under Section 25(1) of Bihar Minor Mineral Concession Rules, 1972.

Therefore, this Court is of the view that the revisional order passed by the Revisional Authority is illegal.

Since no order dated 22.05.2014, alleged to be passed by Collector, has been produced by the respondent either in this Court or communicated to the petitioner, the aforesaid order will be deemed to be not in existence and no reliance can be placed by respondent on such order.



Therefore, the impugned order dated 15.06.2015 as contained in Annexure-9 passed by the revisional authority is illegal.

Accordingly, the orders contained in Annexures 8 and 9 are hereby set aside.

The Mining Department has not stated in the Counter Affidavit whether fresh agreement has been entered into with respect to aforesaid mining area after terminating the lease agreement of petitioner.

In such circumstances, if no fresh agreement is entered into by the Mining Department with respect to aforesaid mining area then consequent upon setting aside the orders as contained in Annexures 8 and 9, the petitioner will be entitled to do mining for remaining period of the agreement.

The respondent no. 1 will pass appropriate order in accordance with law within a period of two months from the date of receipt/production of copy of this order, in the event no fresh agreement has been entered into with respect to mining area for which lease agreement has been executed in favour of the petitioner.



This writ application is hereby allowed with  
direction made above.

**(Sanjay Priya, J)**

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