

CWP no. 30641 of 2018 (O&M) 1

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP no. 30641 of 2018 (O&M)

Date of Decision : 30.05.2019

M/s R.S.Joint Venture

....Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE LALIT BATRA**

Present : Mr.Puneet Bali, Sr. Advocate with
Mr.Vibhav Jain and
Ms. Rubai J Singh, Advocates for the petitioner

Mr. Ankur Mittal, Addl. AG, Haryana

MAHESH GROVER, J.

Costs have been deposited.

A copy of an order dated 17.5.2019 passed by Director General,
Mines and Geology, Haryana has been placed on record. A copy thereof has
been supplied to the counsel opposite.

The petitioner prays for quashing of letter of intent dated
3.1.2014, lease deed dated 5.1.2015 for the mining rights granted to him qua
khasra Nos. 91, 96 to 99, 102 and 10 in the village Rajawas, Tehsil and
District Mahendergarh. He also prays that amount deposited by him by way
of security and other charges as also the other sureties furnished by him be
refunded alongwith interest.

In short the petitioner wants the negation of the entire contract
with the respondents qua the mining rights granted to him through an open
process.

The petitioner responded to an auction notice dated 30.11.2013

for obtaining rights to operate a mine in an open auction which was granted to him and pursuant to which he satisfied all the terms and conditions by depositing the necessary amounts and furnishing sureties. According to the petitioner, he has paid more than sum of Rs.12 crores and 75 lacs as security deposit and furnished sureties of Rs.51 crores. The letter of intent was granted to the petitioner on 3.1.2014 followed by lease deed on 5.1.2015. The environmental clearances were granted to the petitioner on 3.7.2015 but even before that the petitioner realized the difficulties in operating the mine and represented on 2.3.2015 and requested the respondents to grant a passage to the mine. This representation is on record and not denied by the respondents. This was followed by more representations i.e on 27.9.2016 and 16.1.2017.

The case of the petitioner is that apart from the fact that there was forest land which he would have to traverse if he wanted a passage to his mine, he was also prevented from the operations on account of stiff resistance from the villagers who not only filed civil suit to obstruct the mining activity but also resorted to intimidation and violence by setting fire the house of the manager. In support of this he has referred to FIRs that were lodged. That apart one of the residents even made a complaint before the National Green Tribunal. All this was referred to by the petitioner to show that the mining operations were hindered not only on account of the unavailability of the passage but also on account of the trouble shooters in the village. Consequently, when no response was forthcoming, the petitioner submitted a request for surrender of the mine on 17.2.2017, finding it totally un-viable to operate.

But before that the respondents had initially suspended the lease

on 16.1.2017 to which the petitioner requested for keeping it in abeyance as he was still hopeful of getting the mine operational and undertook to pay as well but when his primary problems were not redressed, he resorted to the surrender on 17.2.2017. Instead of dealing with the request for surrender, the petitioner was served with a notice for termination of the lease and an order in this regard was also passed during the pendency of the present petition declining the plea for surrender. This order was passed after strong intervention by this Court.

Learned counsel for the petitioner contends that the imposition of dead rent and other liabilities visited upon him is unjustified as he was unable to mine. This fact is countered by the respondents who contend that environmental clearances were given to the petitioner before the expiry of one year of his application and therefore, the petitioner has no reason to complain about imposition of the dead rent which he is obligated to pay after one year of the letter of intent even if he does not operate the mine. It is contended by them that once the environmental clearances were given to the petitioner, he would have no justification to oppose the imposition of dead rent, particularly, when he started the mining operations as well.

In the order dated 17.5.2019 detail reasons have been given to deny the permission to surrender the mine.

We have heard learned counsel for the parties and have perused the material on record including the order passed during the pendency of the petition declining surrender.

First and foremost we have to understand whether a surrender is permissible or not and if so what is the obligation cast upon the State in this

Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 is extracted herebelow:-

“25. Surrender of a mining contract.

The Government may accept the contractor's request for surrender of a contract or part thereof in cases where it is established that it has not been found feasible to operate the contract grant for whatsoever reasons subject to the condition that the contractor:

(i) has been regular in furnishing the production returns as required in terms of the contract agreement.

(ii) has been taking the requisite steps for the progressive mine closure plan as per the conditions of the contract grant.

(iii) is not in default of payment of any dues of the Government as on the date of making such application and undertakes to pay all such dues till the date of expiry of the notice period either in cash in advance or by way of adjustment of the security or both.

Provided that in case the contractor makes an application for surrender of part of the contract area, it shall not result in any prorated reduction of the contract money and the rate of contract amount payable and applicable for the entire area at the time of making such application shall remain intact.”

Evidently surrender is permissible either in whole or in part and that means complete application of mind by the respondents the moment the application for surrender is received and set down for appraisal. In the instant case despite the fact that the petitioner has been agitating since February, 2015 highlighting the un-viability of a passage, the respondents took no notice of it. There is material on record as report by the District Forest Officer, a reading of which shows that the contention of the petitioner is not misplaced. An order recorded on 18.9.2018 after a public hearing on the request made by the petitioner is extracted herebelow:-

“Subject: Public Hearing in respect of M/s R.S.Joint Venture, Village Rajawas, Tehsil & District Mahendergarh.

Regarding above cited subject, as you are aware that Regional Officer, Haryana State Pollution Control Board, Dharuhera has carried out Public Hearing in respect of M/s R.S.Joint Venture, Village Rajawas, Tehsil & District Mahendergarh on 15.9.2014. This public Hearing is for Khasra No. 91, 96,97, 98, 99, 102 and 103 having area about 53.03 hectares. As per Survey Report conducted under Chairmanship of Deputy Commissioner, Mahendergarh during 2007, for which a khasra-wise report submitted to Director, Mines and Geology, Chandigarh vide Deputy Commissioner Endst. No.199 dated 5.4.2007, these Khasra Numbers were not shown as Araveli plantation. Regarding the said Khasra Nos. some important facts must be taken care before allowing any kind of mining in this area are:-

1. The village Panchayat is the owner of this land and

its category is 'Gair Mukin Pahar' as per revenue record.

2. Since these khasra Nos. surrounded from three sides by Aravelli Plantation and/or Sections 4 & 5 of PLPA, 1900 of village Madhogarh. These Khasra Nos. are situated at zero distance from Aravelli Plantation of Rajawas Village and area closed under Sections 4 & 5 of PLPA, 1900 of Madhogarh village. There is no revenue road/path (Rasta) to reach to these khasra Nos. If mining activity is started in this area, then the concerned leaseholder has to pass through either Aravelli Plantation area or area closed under Sections 4 & 5 of PLPA, 1900. As per Hon'ble Supreme Court's various orders, no such activity is allowed in such areas without taking permission from MoEF under FCA, 1980. Still we have not received any such proposal for path (Rasta) under FCA, 1980.

3. It is clarified that by the Notification No. S.O.8/P.A.2/1900/S.4/2013 dated 4th January, 2013, all Revenue Estate of Mahendergarh is notified u/s 4 of PLPA, 1900 and S.O.81/PA.2/1900/S.3/2012 dated 19th December, 2012 u/s 3 of PLPA, 1900. The area is, however, not recorded as forest in the Government record but felling of any tree is strictly prohibited without the permission of Divisional Forest Officer. The tree density/ Canopy cover in this area is about 20-40%. Mining is not possible without felling/cutting of these trees. Forest

Department has not received any such proposal for compliance of Section 4 of PLPA, 1900.

4. In the concerned Khasra Nos. some endangered tree species like Commiphora Wightii (Guggal), Salvadora Persica (Jall) and Boswelvia Serrata (Salar/Salai Guggal) etc. exists. Only limited numbers of such tree species are present in the District.”

In fact this report by the District Forest Officer should have been sufficient to work as a wake up call to the respondents to address the issues raised by the petitioner of the functional un-viability of the mine. Rather they choose to ignore all this resulting in more complications for the petitioner in public resistance such as filing of a civil suit and violence with the employees of the petitioner who were attacked by the local residents in which FIR No. 113 dated 3.8.2015 was registered as also FIR No. 120 dated 26.8.2015 regarding the burning of the Manager's house.

These are not ordinary obstructions and at the ground level can assume extremely serious over-tones enough to discourage a business activity.

Learned counsel for the respondent has contended that the petitioner did operate the mine despite all this and in any case it was belatedly brought to their notice that there was no passage or there was hindrance at the hands of the public. This is borne out from the record since the petitioner has referred to various representations which were not denied by the respondents but what is glaring is that no response was given by the State to allay the petitioner's concerns until the order of 17.5.2019 was passed rejecting the plea of surrender. In this order the respondents have

now refuted each and every contention raised by the petitioner by passing a fairly detailed order but still what had transpired earlier has not been effectively denied.

Rather it is being said now that the petitioner can use khasra no.100 as a passage as it is free from the forest. Why this was not done earlier is unexplained. Likewise they have merely brushed aside the objection of obstruction from the villagers, without denying the material on record such as the civil suit, lodging of FIRs etc. Besides, the respondents have not said enough about the report of District Forest Officer. Even this exercise has come a day too late. Such an order should have been passed the moment the petitioner made a request for surrender which would have given sufficient opportunity to question it. Not a word, however, has been said except for denying all the assertions made by the petitioner regarding the inaction on the part of the State in addressing the concerns of the petitioner raised way back even before the environmental clearances were given. For this inaction we hold that the petitioner cannot be held accountable by paying the dead rent or discharge any other liability. Rather it seems that the order now passed by the respondents is an attempt to wash off their responsibility altogether while burdening the petitioner with extreme consequences.

A plea of surrender if made on the grounds warrants a consideration in terms of Rule 25. It is obligatory upon the State to look into what has been projected as a reason to surrender and by offering reasons backed by supportive material refute what the lessee wants. The State cannot afford to sleep over it and keep insisting on the terms of the contract demanding dead rent for its own inaction and failure.

Having regard to the facts in totality, we are of the opinion that the demand of dead rent from the petitioner is totally un-justified as they would neither in law nor in equity have any justification to sustain such an action. The petition is, therefore, allowed. Respondents are directed to liberate the petitioner of the mining lease and allow all necessary consequences flowing from such liberation without insistence on the payment of dead rent. However, for whatever mineral the petitioner has mined he would indeed be liable to pay and discharge the liability on account thereof.

(Mahesh Grover)
Judge

30.05.2019
rekha

(Lalit Batra)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No