IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP no.10580 of 2018 (O&M)
Date of Decision : 22.05.2019

Satish Kumar

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present : Mr.Girish Agnihotri, Sr. Advocate with
Ms. Roja Agnihotri, Advocate for the petitioner
Mr. Ankur Mittal, Addl. AG, Haryana

MAHESH GROVER, J.

This writ petition has been filed under Article 226 of the Constitution of India and to understand the grievance, the facts would deserve a detailed mention.

The petitioner in order to obtain raw material for his marble cutting and polishing unit in industrial Estate, Narnaul applied for mining lease for marble categorized as minor mineral under the Act. An application was made regarding an area limited to 3.35 hectares falling in khasra no. 212 of village Bayal, Tehsil Narnaul, District Mahendergarh.

The respondents accepted his prayer to grant him a mining lease for a period of 5 years w.e.f 13.3.1995. Pursuant thereto and in order to make mining viable substantial investments were made by the petitioner to set up the infrastructure and purchase of machinery etc.

The mining lease was renewed on its expiry upto 12.3.2000 and again thereafter. The petitioner continued to make investments in the mine. In 2004 an application for further renewal of the mine was made in terms of

Rule 18 of the Punjab Mineral Concession Rules 1964 (hereinafter referred to as the 'State Rules') as adopted by the State of Haryana.

This rule warrants an application to be submitted atleast six months before the expiry of the period. The application was, however, rejected on 31.8.2006 on the ground that no rule permitted renewal of the mining lease as the area allocated to the petitioner was less than the requirement of 4 hectares.

The petitioner then filed a civil writ petition before this Court seeking renewal of the mining lease which was dismissed by this Court on 5.8.2009 leading to LPA no. 1441 of 2012 which was disposed of on 20.10.2016 and operative part of the order is extracted herebelow:-

> "In our opinion, the State could not have shut out consideration to the appellant by referring to less acreage unless the issue of relaxation was considered simultaneously.
>
> For the afore-stated reasons, we are of the view that the judgment of the learned Single Judge suffers from the afore-noticed fallacy and would have therefore, to be corrected only to this extent that the State could not have rejected the prayer for renewal under 2002 Rules on the issue of the acreage in terms of Rule 7 without simultaneously exploring the possibility/ feasibility of renewing/grant of a lease by offering reasons in writing. The finding of the learned Single Judge that such an exercise was inconsequential is, thus incorrect.

Accordingly, we accept the appeal and remit the matter back to the State to offer consideration to the appellant in the light of what has been observed by us."

The petitioner submitted a representation dated 8.11.2016 urging the respondents to look into his claim for renewal of mining lease for a period of 20 years as permitted under Rule 6 of the Marble Development and Conservation Rules 2002 (hereinafter referred to as 'Marble Rules, 2002'). The petitioner was granted a hearing in this regard but the decision was not communicated to him for as long as 10 months thereafter, leading to another writ petition bearing CWP no.2333 of 2018 where the petitioner sought directions for renewal of the mining lease and an appropriate decision on the hearing already granted to him.

The said writ petition was disposed of on 2.2.2018 and while issuing notice of motion this Court passed the following order

"Contends that despite the directions given by this Court, the matter has not been concluded by the Appellate Authority. Notice of motion for 16.2.2018. In the meantime, the Appellate Authority is directed to conclude the matter before the next date of hearing. If it cannot be decided, the Authority shall give reasons for the same."

Eventually the writ petition was disposed of on 6.3.2018 with the following order:-

"Ms. Kirti Singh, Deputy Advocate General, Haryana states on instructions from Mr. Neeraj Kumar, Mining Officer, Department of Mines and Geology, Haryana, Chandigarh that the representation of the petitioner has been accepted and necessary orders to grant the lease would also be issued shortly. Noticing this fact, we would dispose of the instant petition but with a direction that the consequential order of grant of lease be issued positively within a period of two weeks from today."

Finally the matter was decided on 3.4.2018 granting sanction to the petitioner but while accepting the prayer of the petitioner for renewal of lease for a period of 20 years, the sanction was made effective from the date of expiry of the earlier period of lease i.e 12.3.2005. This according to the petitioner was totally unjustified and is the principal grievance amongst others that he highlights in the present petition.

Condition (vi) of the sanction letter required the petitioner to deposit a security of Rs. 49 lacs in addition to Rs. 1 lac which has been deposited earlier. Condition no.(vi) as imposed upon the petitioner is extracted herebelow:-

"You shall deposit additional security of Rs.49 lakhs (Rs. 1,00,000/- was deposited earlier at the time of execution of lease deeds) to make the security amounting to Rs.50.00 lakh as per requirement of Rule 11 of the State Rules, 2012."

The petitioner contends before us that once the lease granted earlier was renewed it could not relate back to the earlier period of expiry, particularly, when more than a decade had intervened. If at all a lease has to be renewed for a period of 20 years it ought to have been renewed from the date when sanction was accorded.

That apart it is contended that the demand of dead rent etc. for the period the petitioner did not mine at all was impermissible in law as no such demand could be raised, particularly, when the respondents themselves were not taking a decision on his representations. Apart from this, it was pointed out by the learned counsel for the petitioner that not only a demand of Rs.50 lacs was raised for security, the petitioner was also directed to furnish a solvent security for a sum equal to the amount of annual dead rent for the time being assessed as Rs. 3,35,000/- at the rate of Rs. 1 lac per hectare per annum.

The State on the other hand justifies its stand.

We have heard learned counsel for the parties.

Rule 6 of the Marble Rules 2002 is extracted herebelow:-

> **"6. Period for which leases may be granted:-** The maximum period for which a lease may be granted shall not exceed thirty years.
>
> Provided that the minimum period for which any such lease may be granted shall not be less than twenty years."

It is evident that period of 20 years is permissible and it is under this Rule that the petitioner had made a representation in the year 2016 which remained undecided, despite a hearing and led to writ petition bearing CWP no.2333 of 2018. The proceedings in the writ petition were in fact defeated on account of the statement made on behalf of the State of Haryana *"that the representation of the petitioner has been accepted and the sanction letter for the same would be issued shortly"*. This statement was unqualified and in ordinary course when the representation is for grant of lease for 20 years, would mean acceptance of the plea that the sole requirement of the sanction letter being issued. The writ petition was disposed of on the strength of this statement. The stand of the respondents in granting the lease w.e.f 2005 cannot be sustained for the simple reason that Marble Rules came into existence in 2002 and under Rule 6 the petitioner had set up his claim for grant/renewal of lease for 20 years. In fact renewal in the strict sense of the word would be a misnomer. What the petitioner actually sought was a continuity to operate the same mine considering that he had made huge investments from 1995 till 2005. If the interpretation placed by the respondents is accepted it would virtually render the petitioner's claim illusory because of the expiry of the earlier lease in 2005 and the remaining more than a decade being spent pursuing his claim for renewal of lease, which eventually was granted after several rounds of litigation, the State cannot derive any advantage for the period spent in Courts and burden the petitioner with liability for all these unproductive years. This period has to be considered as dead period or zero period.

During the pendency of the instant petition, the State passed an order on 31.10.2018 not to demand/claim a dead rent for the period 12.3.2005 to 1.8.2018 i.e the date on which fresh lease was executed but the period of lease was to remain the same i.e 12.3.2005 to 11.3.2025. The relevant portion of the decision which was taken on record as mark 'X' is extracted herebelow:-

> "4. In this regard, it is informed that as per considered view of the government the financial liabilities for the department of Mines and Geology could be the payment of dead rent for said period. In this regard, it is clarified that the

Government/Department would not demand/ claim the dead rent for this period (12.3.2005 to 1.8.2018- date the fresh lease was executed) from the petitioner though the period of lease shall be from 12.3.2005 to 11.3.2025.

5. In view of the above, it is requested that the above decision of the State Government may kindly be submitted before the Hon'ble High Court during the course of next date of hearing."

Evidently the petitioner is being burdened for the time that he spent in litigation and as a consequence deprived of the benefit to mine for an effective period of 20 years that has largely been frustrated by relating the renewal back to the earlier expiry period of 2005. The benefit of period of litigation should in fact go to the petitioner, particularly, when the State in itself has partially acknowledged this fact by relieving the petitioner of the burden to pay dead rent and royalty.

Taking into consideration the facts in their totality, we are of the opinion that the action of the respondents is totally unjust and the petitioner would be entitled to renewal for a period of 20 years with effect from the date when it has been granted i.e 1.8.2018. Ordered accordingly.

Petition stands allowed in above terms.

(Mahesh Grover)
Judge

22.05.2019 **(Lalit Batra)**
rekha **Judge**

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