

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 1699 of 2013**

1. Awadh Ram Sonwani S/o Late Shri Puran Sonwani Aged About 40 Years
R/o Village Mudaina, P.O. Baisunda, P.S. And Tahsil And Distt.
Mahasamund C.G., Chhattisgarh **---- Petitioner**

Versus

1. State Of Chhattisgarh And Ors. S/o Through Its Secretary, Minera
Resources Department Mantralaya, D.K.S. Building, Distt. Raipur
Chhattisgarh
2. Director Director Of Geology And Mining Sonakhan Bhawan, Raipur
Chhattisgarh
3. The Collector Mining Section, Mahasamund, C.G., District : Mahasamund,
Chhattisgarh
4. Narendra Singh S/o Shri Bramhanand, Aged About 45 Years R/o Village
Goinda, P.O. Paragaon, P.S. Tahsil Aarang, Distt. Raipur C.G.

---- Respondents

For Petitioner	: Mr. Yogesh Pandey, Advocate
For State/Respondent No. 1, 2 & 3	: Mr. V.R. Tiwari, Addl. A.G.
For Respondent No. 4	: Mr. Rakesh Kumar Thakur, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10/07/2020**

1. The challenge in the present writ petition is to the order dated 06.06.2013 (Annexure P/9) passed by the Secretary, Mineral Resources Department State of Chattisgarh wherein the Secretary had exercising the revisional powers affirming the order passed by the Director of Geology & Mining Department (Annexure P/5) dated 23.07.2011 in an appeal and also the order passed by the District Collector, District Mahasamund dated 08.12.2010 (Annexure P/4) terminating the quarry lease of the petitioner.

2. Counsel for the petitioner submits that the petitioner was granted the quarry lease for the land situated at Khasra No. 333/1, ad-measuring 0.55 hectare in village Mudena, District Mahasamund Chhattisgarh. The quarry lease was granted to the petitioner vide order dated 25.04.2002 by executing an agreement (Annexure P/1) and the lease period was for a period of 10 years till 24.04.2012. However, subsequently, the respondent No. 4 preferred an appeal before the respondent No. 2- Director, Geology and Mining, alleging that the Collector while granting the quarry lease has not considered Rule-9 (k) of the Chhattisgarh Minor Mineral Rules, 1996. The Director while considering the appeal found that there is a violation of Rule-9 and accordingly allowed the appeal vide order dated 21.03.2006 and the matter was thereafter remanded back for a fresh adjudication taking into consideration the provision of Rule-9 of Rules, 1996 against which the petitioner has preferred a revision which too stood rejected. Based upon which the Collector after considering the submission of all the parties in concerned passed a fresh order on 08.12.2010 (Annexure P/4) cancelling the lease granted in favour of the petitioner.
3. This order of the Collector was further subjected to challenge before the Director of Geology & Mining Department who again rejected the appeal of the petitioner vide order dated 23.07.2011 (Annexure P/5). Against which the petitioner again approached the Revisional Authority by preferring a revision before Respondent No. 1 who has rejected the revision vide the impugned order dated 06.06.2013 (Annexure P/9), which has led to filing of the present writ petition.

4. According to the counsel for the petitioner, though the respondent No. 4 had initially raised an objection so far as granting quarry lease to the petitioner is concerned but pending the writ petition the petitioner and the respondent No. 4 have entered into a compromise and now the respondent No. 4 does not have any objection in case if further lease is granted to the petitioner.
5. This fact has been accepted by the learned counsel appearing for the respondent No. 4 and who also refers to the additional reply that he has filed in this regard in the present writ petition.
6. The other contention which has been raised by the Counsel for the petitioner is that in the instant case there is no requirement of law for getting an NOC in respect of a government land under Rule-9 and the finding of the authorities to that effect is bad-in-law.
7. According to the counsel for the petitioner, the finding of the Collector itself is that from the revenue records, the property has been shown to be "Samilat Charagah" which means it is a grass land in the name of the Government. According to the counsel for the petitioner, since it is a Government land there was no requirement for getting an NOC from the alleged original owner i.e. the Respondent No. 4. Even if such an NOC is required, the respondent No. 4 is not the person who would have to issue "No Objection" in this regard as it was a government land.
8. However, the State Counsel opposing the petition submits that since the original lease period was only uptill 24.04.2012 and the period having lapsed about more than 8 years back, nothing as such remains to be adjudicated upon in this writ petition. According to the State Counsel, even if the impugned order goes, the petitioner is not

going to get any relief by virtue of the lease period having been lapsed.

9. The other contention of the State Counsel was that once when the requirement of law is that of obtaining an NOC from the original owner of the property over which the lease is being sought for. In the absence of any such NOC from the original owner, the action on the part of the respondent can not be said to be improper or illegal. In any case admittedly there was no NOC produced by the petitioner along with application for grant of lease that he had made or during the period when the lease was being executed.

10. It would be relevant at this juncture to refer to Rule-9 (k) of the Chhattisgarh Minor Mineral Rules, 1996. For ready reference reproduced here-in-under:-

“(k) An affidavit to the effect that the applicant has, where the land is not owned by him, obtained surface rights over the area or has obtained the consent of the owner/owners for conducting mining/quarrying operations . Provided that no such affidavit shall be necessary where the Land-rights vest with the State Government.

11. From the plain reading of the aforesaid provisions of the Rule, it clearly reflects that the requirement of No Objection is only in the event, if the property is a property owned by a private person.

12. In the instant case, admittedly in the revenue records the property has been reflected as samilat charagah, which means it is a grass land and the owner is the Government.

13. This High Court in a Writ Petition i.e. W.P. No. (227)116 of 2010 decided on 28.01.2011 dealing with the status of a land which has come on consolidation and in the said judgment the Hon'ble Court in Paragraphs 6 to 9 held as under:-

“6. On a reading of the order passed by the Board of Revenue it would appear that direction for deletion of the entry “charagan” in

the revenue records has been ordered only on the ground that no document has been submitted to demonstrate that the consent of the owner was taken before making entry of the word “charagan” in the revenue records.

7. The petitioner has filed copies of the consolidation proceedings drawn by the Consolidation Officer under the provisions of the Act as Annexure P-3. The revenue order-sheet of the said consolidation proceedings records that on 27.07.1939, 67 permanent holders of Mouja Chamar Puraina moved application for consolidation of their agriculture holdings. The Consolidation Officer registered the case, drawn the proceedings, prepared a programme of consolidation for the year 1942 and thereafter issued proclamation as required under the rules of consolidation framed under Section 29 of the Act. The scheme of consolidation was made final on 11.05.1943. At page 33 of the paper-book, application signed by the villagers has been placed on record and at page 37 of the paper book, the proclamation is available, At page 38 of the paper-book, the order passed by the Consolidation Officer on 03.05.1943 is available in which it is mentioned that the total number of permanent holders in the village are 77. As earlier noted, 67 permanent holders moved the application for consolidation. Father of respondent No. 2, namely, Ramprasad is one of the signatory, whose thumb impression is available at page 34 of the paper-book. The final order regarding confirmation of scheme of consolidation is at page 39 of the paper-book. Thus, it would clearly appear that consolidation proceeding was duly drawn and completed under the provision of the Act.

8. Section 6 of the Act makes provision regarding application for consolidation of holdings. Sub-section (4) thereof provides that if any scheme of consolidation of holdings is confirmed, it shall be binding on the applicants and those who have agreed to the consolidation of their holdings and on any persons who may subsequently be entitled to hold or occupy the land affected by the scheme. Section 11 of the Act makes provision regarding confirmation of the scheme and Section 12 of the Act provides for correction of record of rights after the consolidation is confirmed. Under Section 15 of the Act, provision has been made that no instrument is necessary in order to give effect to a transfer involved in carrying out any scheme of consolidation of holdings.

Section 21, 22, 25, 26 and 27 of the Act are germane for the present petition and are reproduced hereunder for ready reference.

“21. A permanent holder shall have the same rights in the holding or land allotted to him in pursuance of a scheme of consolidation as he had in his original holding.

22. (1) If the holding of any permanent holder brought under the scheme of consolidation is burdened with any lease, mortgage or other incumbrance, such lease, mortgage or other incumbrance shall be transferred and shall attach to the holding allotted to him under the scheme or to such part of it as the consolidation officer, subject to any rules that may be made under section 29, may have appointed in preparing the scheme; and, thereupon, the lessee, mortgage or other incumbrancer, as the case may be, shall cease to have any right in or against the land from which the lease, mortgage or other incumbrance has been transferred.

(2) Notwithstanding anything contained in section 13, the consolidation officer shall, if necessary, put any lessee or any mortgagee or other incumbrancer entitled to possession, by warrant, into possession of the holding or part of a holding to which his lease, mortgage or other incumbrance has been transferred under section (1)

25. No appeal shall lie from any order passed under this Act or the rules made thereunder or from any order passed by the consolidation officer under section 13, 36, 46, 47, 93, 94, 98, and 100 of the Central Provinces Tenancy Act, 1920.

26. The State Government may, at any time, for the purpose of satisfying itself as to the legality or propriety of any order passed by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit:

Provided that it shall not vary or reverse any order affecting any question of right between private persons without having given to the parties interested notice to appear and to be heard in support of such order.

27. No Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order in respect of any matter which the State Government or any officer is, by this Act, empowered to determine, decide or dispose of.”

9. On a perusal of the above quoted provision of the act it would be apparent that when the holding of any permanent holder is burdened with an encumbrance, he shall cease to have any right

in or against the land from which the encumbrance has been transferred meaning thereby that when charagan is mentioned in the revenue record as a result of confirmation of consolidation, such encumbrance is binding on the holder of the land and he ceases to have any right in or against the land so encumbered. It is further apparent that the order confirming the scheme of consolidation is not appealable as provided under Section 25 of the Act but is revisable under Section 26 of the Act and further that no civil Court has jurisdiction to challenge any action taken by the State Government or any officer in exercise of powers under the Act.

14. Given the aforesaid finding by this Court what is now to be seen is whether the finding of the Collector to the extent that No Objection under the Rule-9 of the Rules 1996 in the given situation was required or not. From the contents of the findings in the order of the Collector and the Higher Authorities in the department admittedly the land vest with the Government and it is a grass land and if that be so, can the property be considered to be a property privately owned any further, if not put the provisions of Rule-9(k) of the Rules 1996 be applicable.

15. In view of the aforesaid categorical finding by this Court in WP No. (227)116/2010 decided on 28.01.2011, prima facie this Court is of the opinion that the requirement of the Rule-9 (k) is not required, because it is a government land.

16. This aspect has not been properly appreciated by the Collector while passing the order dated 08.12.2010 Annexure P/4 and which has also not been dealt with by any of the authorities i.e. the Director in an appeal while deciding the revision. The three orders therefore are not sustainable and is accordingly set aside and the matter stands remitted back to the Collector to pass afresh order on the

objection raised by the Respondent No. 4 so far as the violation of Rule-9 of the Rules 1996 is concerned, it is ordered accordingly.

17. Considering the substantial period of time consumed in litigating, it is expected that the District Collector shall now take a decision on the said application afresh within an outer limit of four months from the date of receipt of copy of this order.

18. With the aforesaid directions/observation, the writ petition stands allowed and disposed of.

Sd/-

(P. Sam Koshy)
Judge

Jyotijha