

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5130 of 2021

M/s Prince Construction a Proprietorship firm having its registered office at 26, Baraundhiya, Village- Budibari, P.S. - Simultala, Anchal - Jhajha, District- Jamui Bihar through its Proprietor Laldhari Yadav, aged about 55 years (Male), Son of Dhanu Yadav, R/o Village - Barondhiya, tola - Simaltala, Jhajha, Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
2. The Principal Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
3. The Additional Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
4. The Sub Registrar, District Registry Office, Sheikhpura.
5. The Principal Secretary, Mines and Geology Department, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
6. The Additional Secretary, Mines and Geology Department, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
7. Assistant Director, Mines and Geology Department, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
8. District Magistrate - cum- Collector, Sheikhpura.
9. Mineral Development Officer, Sheikhpura.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Kunal Tiwary, Advocate Mr. Aniket Singh, Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA-7
For Mines Department	:	Mr. Naresh Dikshit, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6 19-03-2021 The petitioner has sought for following relief :

“(i) For issuance of writ in the nature of Mandamus directing the respondent Sub-Registrar to register the agreement dated 08th December 2020 (Annexure-3), executed between the



petitioner and the State of Bihar granting a Mineral concession in favour of the petitioner for mining stones in accordance with the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter referred to as 'Rules') classifying the same as an agreement/ Memorandum of Agreement chargeable with the Stamp Duty in accordance with Article 5(c) of Schedule 1(a) of the Indian Stamp Act, 1899 (hereinafter referred to as the "Stamp Act")."

2. The petitioner is proprietorship firm engaged in the business in the field of mining stones in the State of Bihar. The firm had participated in an auction for obtaining mining lease of stones in respect of land situate at Mauza Barui and Pachana, Circle Sheikhpura, P.O. Sheikhpura, Plot No. 883 and Plot No. 1143 admeasuring 17 acres. It emerged the highest bidder at Rs. 35,50,00,000=00 and was granted mining lease in respect of the said tract of land for a period of five years. Consequently, a letter of award was granted in its favour. Its mining plan was approved, whereafter he deposited the requisite amount of Rs. 11,14,00,000=00. An agreement was entered into between the petitioner and the State of Bihar on 08.12.2020. There are undisputed facts.

3. The agreement required registration for which the



same was presented before the Sub-Registrar, District Registry Office, Sheikhpura on 21.12.2020 along with amount of Rs. 10,65,000=00 and Rs. 3,55,000=00 as stamp duty and registration fee at par with the rates which were being paid in similar other cases, which is also not in dispute. The Sub-Registrar, however, refused to register the document with an intimation to the petitioner that the stamp duty would be chargeable at the rate of 6% along with registration fee at the rate of 2% on the entire auction amount of Rs. 35,50,00,000=00. The said intimation by the Sub-Registrar for payment of stamp duty at the rate of 6% and registration fee at the rate of 2% for registration of the mining lease agreement grieves the petitioner and accordingly he has approached this Court seeking relief, *inter alia*, as noted above.

4. It has been stated in the writ application, which is not disputed, that the petitioner had been consistently pursuing the Sub-Registrar and Mines Department for registration of the agreement but since the respondents are insisting upon payment of stamp duty and registration fee at the rates noted above, the petitioner is left with no other option but to approach this Court by filing the present writ application.

5. I have heard Mr. P.K. Shahi, learned Senior



Counsel appearing on behalf of the petitioner assisted by Mr. Kunal Tiwary, learned Advocate, Mr. G.P. Ojha, learned GA-7 for the State of Bihar and Mr. Naresh Dikshit, learned counsel who has represented the Mines Department, Government of Bihar.

6. It has emerged on the basis of materials on record that the dispute revolves around a legal issue, as to whether mining lease granted for the purpose of extraction of mineral in favour of the petitioner can be considered to be a lease as contemplated under Section 105 of the Transfer of Property Act or under Section 2(16) of the Indian Stamp Act, 1899.

7. My attention has been drawn by learned Senior Counsel appearing on behalf of the petitioner to an order passed by a coordinate Bench of this Court dated 19.11.2016 in CWJC No. 7034 of 2016 (Aman Sethi vs. The State of Bihar & Ors.), wherein reference to a Larger Bench made by a bench of the Supreme Court in case of *Dalmia Cement (Bharat) Limited vs. State of Tamil Nadu and another* reported in *(2014) 2 SCC 279* has been noticed for considering the legal issue as to what is the true character of mining lease and in the aforesaid background the said coordinate Bench of this Court has disposed of the writ application in case of Aman Sethi



(supra) in following terms :

*“In the aforementioned facts and circumstances, since Nine-Judge Bench of the Supreme Court is considering the issue regarding the nature of character of mining lease after the matter being referred vide **Dalmia Cement (Bharat) Limited (supra)**, it would not be proper for this Court at this stage to take a decision on such issue. At the same time, without taking a decision on such issue, it cannot be finally decided as to what should be the actual stamp duty to be paid by the petitioner.*

Accordingly, I direct the registering authority to accept the stamp duty and registration fee from the petitioner in parity with the another mining lease dated 10.02.2016 in the matter of the Katyayni Contractors Pvt. Ltd., a copy of which has been appended as Annexure 8 and register the document. For the balance amount, which has been demanded vide Annexure 5, after deducting the stamp duty and registration fee paid at par with Annexure 8, the petitioner would be required to produce necessary bank guarantee before the registering authority. On such payment having been made and bank guarantee having been produced, the registering authority would proceed for registration of the document so that mining activity commences immediately as it is neither in the benefit of the State nor for the benefit of the petitioner that extraction of mineral remain stalled for indefinite



period. Such payment and registration would be subject to the final result of this writ application.”

8. This has not been disputed by the State-Respondents that this writ application involves similar issue and facts which can be decided in terms of the coordinate Bench decision of this Court in case of Aman Shethi (supra).

9. A counter affidavit has been filed on behalf of the Mines Department wherein it has been specifically stated that the case of the petitioner is identical with that of Aman Sethi (supra). Mr. Dikshit, learned counsel for the Mines Department, Government of Bihar has no objection to disposal of this application in similar terms as in the case of Aman Sethi (supra).

10. Considering the aforesaid submission, this writ application is disposed of with a direction to the respondents to register the agreement dated 08.12.2020 on payment of stamp duty and registration fee at the same rate as was permitted in case of Katayni Contractors Pvt. Ltd. which finds mentioned in Aman Sethi (supra), subject to payment of necessary bank guarantee before the registering authority for balance amount as demanded by the registering authority whereupon the registering authority shall proceed to register the deed in



accordance with law and such deed shall continue to remain valid until the petitioner continues to renew his bank guarantee periodically as required from time to time and its encashment would be governed by the result of the matter pending before the Supreme Court.

(Chakradhari Sharan Singh, J)

Rajesh/-

U			
---	--	--	--

