12.
10-03-2022
debajyoti
(Ct. no.06)

MAT 1376 of 2021
with
IA NO:CAN/1/2022

Cemmix Structural Private Limited & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharyya,
Mr. Aninda Bhattacharyya
... For the Appellant.

Mr. T. M. Siddiqui,
Mr. N. Chatterjee
... For the State.

By consent of the parties, the appeal and the application are taken up together for hearing.

This is an appeal against a judgment and order dated December 02, 2021, whereby WPA 8477 of 2020 was disposed of by the learned Single Judge.

The matter pertains to the renewal of a mining lease in favour of the writ petitioners/appellants. The operative portion of the order under appeal reads as follows:

> " The District Magistrate and Collector is directed to execute the deed of renewal for the remaining period of lease in compliance with the direction of the Hon'ble Division Bench upon consideration of the fresh deed of rectification submitted by the petitioner, within a period of four weeks from the date of receipt of the deed of rectification, in accordance with law. "

The appellants say that although the order is in favour of the appellants, they are aggrieved by the portion which directs execution of the deed of renewal "for the remaining period of lease in compliance with the direction of the Hon'ble Division Bench". The appellants say that after 2009, no lease was granted or the earlier lease was not renewed in their favour. Hence, the question of renewing the lease or granting fresh lease "for the remaining period of lease" does not arise.

The brief factual background of the case is that on February 12, 2004, a Deed of Indenture was executed by the State in favour of the appellant no.1 (in short 'the company') granting mining lease to the company for five years. The lease expired by efflux of time in 2009.

The company applied for renewal of the long term mining lease before the appropriate authority. Alleging inaction on the part of the authority, the company moved this Court by filing WP No.13468(W) of 2009. An order was passed directing Chief Mining Officer, Asansol, to consider the company's prayer for renewal of the long term mining lease provided the company makes payment of the demand raised by the State in connection with the working out of the earlier lease. On March 05, 2011, an agreement was executed between the company and private parties, who described themselves as lessees/joint lessees of the land in question, permitting the land to be utilized by the company for mining purposes. The said agreement was for a period of ten years.

Thereafter, there was exchange of correspondence between the company and the authorities. The company liquidated the outstanding dues of the State on account of royalty. On May 20, 2011, Royalty Clearance Certificate was issued to the company by the State.

On June 10, 2011, an order was passed for grant of long term renewal mining lease for stone in favour of the company. Thereafter, certain procedural formalities were complied with by the company.

On November 10, 2016, the company submitted the draft lease to the authorities.

In the meantime, the West Bengal Mining Minerals Concession Rules, 2016 came into effect. As per the said Rule, long term mining lease could be granted only by way of E-auction.

On March 17, 2017, the Deputy Secretary, Department of large Industries and Enterprises (C&I), sought for clarification from the District Magistrate, Burdwan as to whether the case of the company is covered as "saved cases" under Rule 61 of the West Bengal Minor Minerals Concession Rules, 2016. In this connection, Rule 61 may be noted as follows:

> " **61. Declaration of ineligibility of the pending minor mineral applications for mining lease including the applications of reclassified major minerals. –** All applications for mining lease of minor minerals including the reclassified minor minerals vide SO No.-423 (E) dated 12th February, 2015 received prior to the giving-effect to this rules irrespective of its duration of pendency shall become ineligible.
>
> Provided that if the applicant has been issued a Grant Order or Letter of Intent (Lol) or any other Government

> Order requiring the alteration of applicant's position then his mining lease application may be considered after due compliance of all the necessary conditions. "

Thereafter there was further exchange of correspondences between the parties. The mining plan of the company was approved by the concerned authority. Environmental Clearance Certificate for the proposed stone mining was granted to the company by the Competent Authority.

On February 15, 2018, the SDL & LRO, Asansol, informed the company that the District Magistrate, Paschim Burdwan may renew the lease in its favour for five years. In case the company wanted a lease for ten years, they were asked to approach the C&I Department.

By an order dated August 27, 2018, the company's application for mining lease was rejected by the District Magistrate and Collector, Paschim Burdwan, in view of certain alleged anomalies therein.

The company challenged such rejection by filing WP 20730(W) of 2018. By an order dated January 14, 2019, a learned Single Judge quashed the District Magistrate's order of rejection of the company's application for mining lease and directed execution of deed of renewal in the company's favour in accordance with law.

On an appeal preferred by the State being MAT 332 of 2019, the order of the learned Single Judge was modified to the extent that the writ petitioner was held to be entitled to the renewal of the lease upon furnishing a Deed of Rectification as a Supplementary

Agreement with the required declaration from the owners of the property and upon furnishing such document, the writ petitioner was held to be "entitled to immediate grant of the lease for the remaining period of the lease".

On June 27, 2019, a Nadabi Patra/Agreement was executed by and between two private persons and the petitioner for carrying out mining operation for another period of six years on the land of such persons.

The company's Special Leave Petition filed against the order of the Division Bench was dismissed by the Hon'ble Supreme Court by its order dated December 02, 2019.

By an order dated January 28, 2020, the company's prayer for mining lease was again rejected by the concerned District Magistrate.

On November 28, 2021, the draft Mining Lease Deed was forwarded to the Director, Directorate of Mines and Mineral for vetting.

The company again approached this Court by filing WP 8477 of 2020, wherein the order under appeal was passed on December 02, 2021.

We have heard learned counsel for the parties. We see from the facts noted above that upon expiry of the initial mining lease that was granted in favour of the company, from 2009 onwards, the company has been running from pillar to post to have the lease renewed in its favour or to have a fresh lease executed in its favour. The company says that it has made huge investments for the purpose of carrying on mining activities. It would be highly prejudiced if the lease is not renewed in its favour or fresh lease is not granted.

Learned advocate for the company says that since after 2009 no lease was granted in favour of the company, the question of granting lease for the "remaining period of the lease" does not arise. A fresh lease for either five years or ten years should be granted in favour of the company.

Learned advocate for the State points out that upon the 2016 Rules coming into effect, the only manner in which a long term mining lease can be granted is through the process of holding E-auction. However, in his usual fairness, Mr. Siddiqui, learned advocate for the State, points out that since the Government had passed an order for grant of a long term mining lease in favour of the company in 2011, much prior to the 2016 Rules coming into force, the case of company is saved under Rule 61 of the 2016 Rules. Hence, there should be no impediment to a lease being granted in favour of the company even without requiring the company to participate in E-auction.

This Court appreciates the fair stand taken by the State. This Court is of the view that in the factual backdrop of the case recorded above, it would be just and fair if the State executes a mining lease in favour of the company for five years from the date of execution of the lease.

We trust and hope that such lease shall be executed at the earliest since all formalities already stand complied with. We make it clear that the lease that shall be executed in favour of the company, will be only for a period of five years. After expiry of such lease, if the company is desirous of a fresh lease being granted in its favour, it has to go through the process of E-auction as contemplated in the 2016 Rules.

The appeal and the connected application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance with all the necessary formalities.

(Kausik Chanda, J.) **(Arijit Banerjee, J.)**