

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.27343 of 2022

Anirban Chattopadhyay

.....

Petitioner

Mr. Nabin Kumar, Sr. Advocate

Vs.

Union of India & Anr.

.....

Opposite Parties

Mr. P.K. Parhi, DSGI along with

Mr. S.S. Kashyap, CGC

(O.P.1)

Mr. P.K. Muduli, AGA

(O.P.2)

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER

31.10.2022

Order No.

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This matter is taken up through hybrid mode.

2. Heard Mr. Nabin Kumar, learned Senior Counsel appearing for the petitioner and Mr. P.K. Muduli, learned Additional Government appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking to quash the order dated 14.12.2016 under Annexure-20 passed by opposite party no.1-Revisional authority and order dated 16.03.2016 under Annexure-16 passed by opposite party no.2, and further to declare that the right of the petitioner for a mining lease to be executed with respect to 45.55 ha in village-Rugudihi, Laidapada and Bhuyan Radukal, Keonjhar district in terms of the grant order dated 22.01.2003 issued by opposite party no.2 is unaffected or uncurtailed under the provisions of MMDR Act, 1957 and the rules made thereunder especially Rule-8 (4) of MCR, 2016 and further to declare that provisions of Clause (c) of Sub-section (2)

of Section 10A of the MMDR Act does not curtail, abridge or restrict the right of the petitioner to have a mining lease deed executed in his favour.

4. Mr. Nabin Kumar, learned Senior Counsel appearing for the petitioner contended that the petitioner's father was granted mining lease in the year 1992 over an area 380 acres vide Annexure-3 dated 22.01.2003. But fact remains, mining lease was granted in favour of the father of the petitioner in respect of the area over 229.53 acres or 92.888 hecets. in village-Rugudihi, Laidapada and Bhuyan Radukal in the district of Keonjhar for a period of 30 years subject to conditions laid down in the letter dated 18.04.2001 under Annexure-2 issued by the State Government and clause-xi of the said letter states that the assignment is subject to condition that the land recorded as Gochar in the lease-hold is either to be exchanged or de-reserved under Section-3(A) of the OGLS Act, 1962 and the lessee has to obtain prior permissive possession of land recorded as Rasta and Nala in the ROR before execution of the Mining Lease Deed. The petitioner could not satisfy this clause and therefore, the grant which was made in favour of the father of the petitioner cannot sustain the eye of law. But subsequently on 08.05.2008 under Annexure-7, the petitioner, having not come out successful in exchanging the Gochar land as per clause-xi of the letter dated 18.04.2001 under Annexure-2, made a request that the leasehold area should be reduced to an extent of 45.555 hecets, which was only confined to one revenue village i.e. Bhuyan Rudukela and accordingly revised reduced map and revised land schedule along with boundary description were sent to the Director of Mines,

Orissa. When the same was pending for consideration, the State Government cancelled the same vide order dated 16.03.2016. Against the said order, the petitioner preferred Revision bearing Revision Application No.22/23/2016/RC-I and the Revisional Authority, vide order dated 14.12.2016 under Annexure-20, confirmed the order dated 16.03.2016 passed by the Government. The petitioner challenged the order passed by the Revisional Authority before this Court by filing W.P.(C) No.412 of 2017, which was disposed as withdrawn, vide order dated 25.04.2022, with an observation that the writ petition had become infructuous in view of Section 10A(2)(d) of MMDR Act and no liberty was granted to the petitioner to approach the Court once again. But the petitioner again approached this Court by filing W.P.(C) No.19919 of 2022, which was disposed of vide order dated 29.09.2022 with liberty to file fresh writ petition with better particulars at the instance of the petitioner, as the writ petition was defective. Pursuant to said order, the petitioner has filed this writ petition assailing the order dated 14.12.2016 passed by the Revisional Authority in Revision Application No.22/23/2016/RC-I and contended that even if there is amendment to MMDR Act, that itself cannot take away the right of the petitioner.

5. Mr. P.K. Muduli, learned Additional Government appearing for the State-opposite parties raised preliminary objection with regard to maintainability of the writ petition, as the order dated 14.12.2016 passed by the Revisional Authority has been challenged in 2022. It is further contended that the petitioner had challenged the order passed by the Revisional authority in W.P.(C) No.412 of 2017, which was withdrawn without giving

any liberty. As such, it is contended that the writ petition suffers from delay and laches. Thereby, the relief sought cannot be granted to the petitioner at this stage.

6. Considering the contentions raised by learned counsel appearing for the parties and after going through the records, it appears that admittedly the State Government issued a grant in favour of the father of the petitioner pursuant to Annexure-3 dated 22.01.2010 subject to compliance of the conditions stipulated in Annexure-2 dated 18.04.2001. But the same having not been complied with, the petitioner wanted to reduce the area for grant of mining lease vide Annexure-7 dated 08.05.2008. The application for reduction of area and grant was cancelled by the State Government vide order dated 16.03.2016, which was challenged before the Revisional Authority in Revision Application No.22/23/2016/RC-I and the Revisional Authority, vide order dated 14.12.2016, confirmed the order dated 16.03.2016 passed by the State Government. Thereafter, the petitioner challenged the said order before this Court by filing W.P.(C) No.412 of 2017 and when the said matter was sub-judice, there is amendment to the MMDR Act. Therefore, learned counsel for the petitioner contended that the said writ petition was infructuous and accordingly withdrew the same and, as such, no liberty was granted to the petitioner to file fresh writ petition challenging the order passed by the Revisional Authority. But the petitioner again approached this Court by filing W.P.(C) No.19919 of 2022, which was disposed of vide order dated 29.09.2022 with liberty to file fresh writ petition with better particulars at the instance of the petitioner as the writ petition was

defective. As a consequence thereof, the petitioner has filed this writ petition on 14.10.2022 assailing the order dated 14.12.2016 passed by the Revisional Authority in Revision Application No.22/23/2016/RC-I. Earlier also the petitioner challenged the order of the Revisional Authority in earlier W.P.(C) No.412 of 2017, which was withdrawn vide order dated 25.04.2022. Therefore, once the said writ petition was withdrawn without any liberty, the petitioner cannot challenge the very same order passed by the Revisional authority by filing writ petition again as it is barred by res judicata. Thereby, the writ petition cannot sustain in the eye of law.

7. In the above view of the matter, the writ petition merits no consideration and the same is dismissed.

(DR. B.R. SARANGI)
JUDGE

(B.P. SATAPATHY)
JUDGE

Alok

