Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 14 OF 2021
WITH
CIVL APPLICATION NO. 14 OF 2021
AND
CROSS OBJECTION NO.1 OF 2021

The State of Goa, Thr. Its Chief Secretary & anr.	… Appellants
Versus	
Pravinkumar Gosalia	…Respondent

Mr. Deep Shirodkar, Additional Government Advocate *for the Appellant.*
Mr. Nitin Sardessai, Senior Advocate *with Mr. Kaif Noorani, Advocate for the Respondent.*

CORAM: G. S. KULKARNI, J.
DATED: 7 December, 2022

ORAL ORDER

1. This appeal is filed by the State of Goa, through its Chief Secretary, assailing the order dated 14 December, 2020, passed by the Adhoc District Judge-II (FTC), Panaji, whereby two applications praying for temporary injunction filed by the respondent-plaintiff dated 12 March, 2020 and 13 October, 2020, have been allowed by the following order :

ORDER

The application for temporary injunction dated 12/3/2020 is partly allowed with the costs. By way of temporary injunction the defendants their agents or any persons claiming through them are restrained from (a) dispossessing the plaintiff from the suit lease or any part thereof, (b) from creating third party rights and (c) the auctioning, the suit lease or any part thereof until the suit is finally disposed on merits. The application for temporary injunction dated 13/10/2020 is partly allowed with costs. By way of temporary mandatory injunction the defendants are directed to restore the access of the plaintiff to the ore accounting system portal within 7 days from today. By way of temporary prohibitory injunction the defendants are restrained from disabling the access without following the due process of law.

The plaintiff shall within a period of 7 days from today execute an indemnity Bond in favor of the Defendants indemnifying the defendants to the extent of the actual loss caused on account of the operation of this temporary injunction order, undertaking to indemnify the defendants in case an adverse finding is given against the plaintiff upon the final disposal of the suit, that the suit lease expired on 31.03.2020.

For this purpose, it is open for parties to lead evidence to show the projected loss that would be incurred if the suit mine was permitted to be auctioned by the defendants in April 2020.

This order shall not have any effect on the orders passed by IBM in respect of the suspension of mining operations of the suit mine."

2. The dispute subject matter of the suit is in regard to a mining lease which was initially granted to the respondent-plaintiff in the year 1968. The said lease was initially granted for a period of 30 years. It had accordingly expired on 12 December, 1998. Prior to the lease expiring by efflux of time, on 5 August, 1997, an application for renewal of the lease came to be made by the respondent-plaintiff. The said application was not decided for quite sometime. The State Government on 10 November, 2014, passed an order renewing the lease for a further period of twenty years. The renewed document of lease came to be executed on 21 July, 2015 and the same was registered on 13 August, 2015. In the intervening period, as pointed out at the bar, the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (10 of 2015) (for short, 'Mining Act'), came to be amended by an order dated 15 January, 2015. The provision which is relevant in the context of the present petition is Section 8A of the said Act.

3. As per the document of lease as renewed, the lease would expire by efflux of time on 12 December, 2018. At page 2 of the renewed document of Mining Lease (Form K of Mining Lease at page 200 of the paper book), has been clearly stated as under :

> "...... TO HOLD the premises hereby granted/renewed and demised unto the lessee from the 12/12/1998 for the term of 20 years thence next......."

4. It appears that although the renewal of the lease was up to 12 December, 2018 as per the said document of renewal, the Indian Bureau of Mines (IBM) suspended the mining operation of the plaintiffs on 8 July, 2016 and after such suspension, the mining operation till date have not been restored although proceedings have been initiated by the respondent-plaintiff for setting aside of the suspension. It has also been pointed out on behalf of the appellant that the State Government was informed by the IBM by its letter dated 26 February, 2019 that the mining operations were suspended recommending initiation of the proceedings to terminate the lease.

5. On such backdrop, apprehending termination and/or losing the rights of the renewed lease in question, the respondent-plaintiff filed the suit in question *inter alia* praying for a declaration that the order dated 10 November, 2014 (order of renewal of lease), the date of commencement of the period of lease of the mine in question be read as 20 years commencing from the date of registration of the executed lease deed and consequently to direct the appellant-defendant to rectify the order dated 10 November, 2014. It would be appropriate to note the prayers as made in the suit which are as under :

PRAYERS

a. That this Hon'ble Court be pleased to pass a Judgment and Decree and declare that in the Order dated 10/11/2014 (Exhibit A) the date of commencement of the period of the Lease of 'Shakti Bauxite Mine' bearing No.4/NSD/BAUX be read as 20 years commencing from the date of the registration of the duly executed Lease Deed and consequently direct the Defendants to rectify the Order dated 10/11/2014 (Exhibit A) to that extent;

b. That this Hon'ble Court be pleased to pass a Judgment and Decree and direct the Defendants to rectify the Lease Deed dated 21/07/2015 (Exhibit B) which is registered in the office of the Sub-Registrar of Quepem on 13/08/2015 to the extent that the period of Suit Lease, i.e. Lease of 'Shakti Bauxite Mine' bearing No.4/NSD/BAUX be read as 20 years from 13/08/2015 to 12/08/2035;

In the Alternative,

c. That this Hon'ble Court be pleased to pass a Judgment and Decree and declare that the period of the Lease of 'Shakti Bauxite Mine' bearing No.4/NSD/BAUX commenced from 13/08/2015 and would end on 12/08/2035 and consequently, direct the Defendants to execute a Deed of Rectification or any other instrument, amending or correcting the Lease Deed dated 21/07/2015 which is registered in the office of the Sub-Registrar of Quepem on 13/08/2015 to read the period of the Suit Lease, i.e. 'Shakti Bauxite Mine' bearing No.4/NSD /BAUX to begin from 13/08/2015 and conclude on 12/08/2035;

In the Alternative,

d. That this Hon'ble Court be pleased to pass a Judgment and Decree and declare that the Lease of 'Shakti Bauxite Mine' bearing No.4/NSD/BAUX is deemed granted for a period 50 years commencing from 13/12/1998 ending on 12/12/2048 in terms of Section 8A(3) of the Mines and Minerals (Development and Regulation) Act 1957 and consequently pass an Order of Perpetual Injunction restraining the Defendants, their Agents, or any person claiming through them or under them from dispossessing the Plaintiff from the Suit Lease till

12/12/2048;

In the Alternative,

e. That this Hon'ble Court be pleased to pass a Judgment and Decree and declare that the Suit Lease i.e. 'Shakti Bauxite Mine' bearing No.4/NSD/BAUX is deemed granted for a period of 50 years commencing from 10/11/2014 ending on 09/11/2064 in terms of Section 8A(3) read with Section 8A(6) of the Mines and Minerals (Development and Regulation) Act 1957 and consequently and consequently pass an Order of Perpetual Injunction restraining the Defendants, their Agents, or any person claiming through them or under them from dispossessing the Plaintiff from the Suit Lease till 09/11/2064."

6. It is in such suit, applications for temporary/mandatory injunctions, came to be filed by respondent no.1/plaintiff. The prayers in the injunction application are quoted in the impugned order. Essentially the prayers are that the possession of the respondent-plaintiff be not disturbed. The respondent-plaintiff be permitted to remove the iron ore which has already been extracted and/or no action be taken on the presumption that the lease has expired on 12 December, 1998. It is on such application, the impugned order has been passed as noted above.

7. On the above backdrop, the question which would fall for consideration of the trial Court and even in these proceedings would be as to whether the respondent-plaintiff would be correct in his contention that the commencement of the lease is required to be reckoned from the date of registration of the renewed lease i.e. from 13 August, 2015, so that the period of expiry of the lease after 20 years would be required to be considered from the date of registration i.e. 20 years from 13 August, 2015, which could be 12 August, 2035. Such question which falls for consideration is clearly on the interpretation of the provisions of Section 8 read with Section 8A inserted by paragraph 4 by Act 10 of 2015, with effect from 12-1-2015 and the provisions of the Mining Concession Rules, 1960, the relevant Rule being 24-A and Rule 31 as applicable to the facts in hand, on which the basic controversy would rest, as also the consequent effect of the provisions of Rule 12(1)(gg) and (hh) of the Minerals (Other Than Atomic And Hydro Carbons Energy Minerals) Concession Rules, 2016.

8. Thus, what is seen is that on one hand, there is a document of renewal of lease deed in Form K as Rule 31 of the Mineral Concession Rules would provide, and on the other hand, it is the interpretation of the provisions of the Act as to what would be the actual date of commencement of the renewed lease. There is a peculiarity to the extent the order of renewal was issued on 10 November, 2014 which is prior to the amending Act of 2015, which is brought into force w.e.f. 12 January, 2015 and the execution of the registration of the renewed lease taking place subsequently after the amendment Act was brought into force. This apart, in the lease Deed itself, the respondent-plaintiff having accepted that the lease would be for a period of 20 years w.e.f. 12 December, 1998, in such situation, whether the respondent-plaintiff would be correct that the cumulative effect of the amended provisions of the Act read with the rules in any manner, can be construed to be applicable to the renewed lease, so that the date of the commencement of the renewed lease itself, be considered as 13 August, 2015 i.e. the date of registration of the renewed lease, when the document says it otherwise. These are the issues which would be required to be decided by the suit Court.

9. Insofar as the present proceedings are concerned, the impugned order is passed on 14 December, 2020, the contention as urged by Mr. Shirodkar, learned Additional Government Advocate for the appellant-State of Goa is that *ex facie* the lease has come to an end by efflux of time as clearly seen from the lease document itself on 12 December, 2018 and hence the respondent-plaintiff would not have any right whatsoever to assert anything in regard to the lapsed/expired mining lease as in question. His contention is that the respondent-plaintiff cannot go behind the stipulation qua the form of the renewed lease as to what has been agreed between the parties. He would submit that this apart, the provisions of law as noted above would clearly go to show that the respondent-plaintiff has no right whatsoever to continue to hold on to the suit mine and/or even deal with the minerals that have been abstracted prior to the suspension of mining by the IBM on 8 July, 2016.

10. On the other hand, Mr. Sardessai, learned Senior Counsel, has disputed the contentions. His contention is that by operation of law, i.e. taking into consideration the provisions of Section 8, 8A read with Rule 31 of the Mining Concession Rules, the commencement of the mining lease is required to be considered from 13 August, 2015 and the lease accordingly expired by efflux of time on 12 August 2035.

11. Having heard the learned Counsel for the parties and having perused the materials on record, in my opinion, it needs to be observed that the impugned order was passed on 14 December, 2020. The complexion of the suit is that the same raises an interesting issue of law in regard to the applicability of the provisions of Section 8 read with Section 8A inserted by paragraph 4 by Act 10 of 2015, inserted with effect from 12-1-2015 and the provisions of the Mining Concession Rules, 1960, the relevant Rule being 24-A and Rule 31 as applicable to the facts in hand, on which the basic controversy would rest as also the consequent effect of the provisions of Rule 12(1)(gg) and (hh) of the Minerals (Other Than Atomic And Hydro Carbons Energy Minerals) Concession Rules, 2016, to the renewed lease in question. Thus, after hearing the learned Counsel for the parties and a substantive deliberation on the issues, in my opinion, without expressing any opinion on the merits of the rival contentions, it would be appropriate that the suit itself is taken up for hearing and decided within a period of six months. Both the learned Counsel for the parties agree that they shall cooperate in the early disposal of the suit.

12. In the light of the above observations, the appeal can be conveniently disposed of by the following order :

ORDER

(i) The learned Adhoc District Judge (FTC), Panaji, is directed to decide the suit as expeditiously as possible and within a period of six months from the date this order is presented before the learned Trial Judge.

(ii) In the meantime, the parties are directed to maintain status quo in respect of the suit mines which would include that the respondent-plaintiff shall not not be permitted to transport any extracted materials till the disposal of the suit.

(iii) All contentions of the parties on merits of the suit are expressly kept open.

13. The Appeal from Order is disposed of in the above terms. No costs.

14. The parties at the first instance are directed to appear before the learned Trial Judge on 20 December, 2022 at 10.00 a.m.

15. In view of the above order, the Cross Objection no. 1 of 2021 and Civil Application No. 24 of 2021 would not survive and the same are disposed of.

G. S. KULKARNI, J

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