

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5288 of 2022**

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Vibharaj Construction Pvt. Ltd. having its registered office at Village - Pathra English, P.O. - Orhanpur, P.S. - Muffasil, District- Nawada, Bihar - 805103 through its Authorised Representative and Signatory Sindhu Kumar, son of Sri Rajendra Prasad Yadav, resident of Village - Baladih Islamnagar, Balapur Sanda, Aliganj, P.S. - Chandradeep, District- Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar.
2. Principal Secretary, Mines and Geology Department, Government of Bihar.
3. District Collector, Nawada.
4. Assistant Director, Mines and Geology Department, Government of Bihar.

... .. Respondent/s

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**Appearance :**

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|-----------------------------|---|--------------------------------------------------------------------|
| For the Petitioner/s        | : | M/s Umesh Prasad Singh, Sr. Advocate<br>Anil Kumar Singh, Advocate |
| For the State               | : | Mr. Gyan Prakash Ojha (GA 7)                                       |
| For the Mines<br>Department | : | Mr. Naresh Dikshit, Spl. P.P. Mines                                |

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**CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY**

**ORAL JUDGMENT**

**Date : 10-04-2023**

Heard learned senior counsel for the petitioner and  
learned Spl. P.P. for the Mines and Geology Department.

The petitioner has filed the instant writ application for  
the following relief(s):-

*“1. To issue rule NISI in the nature of a writ of certiorari to quash and cancel the communication, as contained in Memo no. 1473 dated 09.09.2021 and Memo no.1174 dated 14.03.2022, issued under the signature of Mineral Development Authority, Head Quarter, by which the petitioner had been directed not*



*to remove the stone metal/chips collected at the site and at the same time directed to remove machinery, plant, structure, etc. within a period of six months:*

*II. To issue other appropriate writ, order, direction or directions in the nature of writ of mandamus commanding the respondents particularly Respondent no. 3. District Collector. Nawada, to permit the petitioner to remove the stone metal/chips collected lying at site by virtue of mining operation done by the petitioner during the subsistence of the lease dated 28.01.2016 which expired after five years i.e. on 27.01.2021;*

*III. To issue other appropriate writ/writs, order/orders direction/directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."*

The case of the petitioner in brief is that the petitioner is a registered company under the Companies Act, 1956. Pursuant to the notice inviting tender (NIT) for mining operations on a piece of land appertaining to khata no. 888, plot no. 4256, Block 4, measuring area of 12.36 acres situated at Mauza Bhadokhar, Circle Nawada, P.S. Mufassil, District Nawada, the petitioner being the highest bidder was selected and accordingly lease deed dated 28.1.2016 (Annexure-1) was entered into. The petitioner started mining operations as per the lease deed which was for a period of five years.

It is the case of the petitioner that for various reasons including lockdown due to Covid-19 pandemic, the petitioner



requested the District Collector, Nawada to permit the petitioner to remove the stone metal/chips stored at the site which according to the petitioner was more than 44 lacs cft. However, the District Magistrate got the site inspected and it was found that 22,39,179 cft. stone metal/chips were lying at the site. It is the petitioner's case that for reasons best known to the respondents, the petitioner was not allowed to remove even the admitted quantity of stone metal / chips. As such he continued to sent reminders and ultimately the instant application was filed for the reliefs as stated hereinabove.

The case of the respondents as per the counter affidavit filed on behalf of the District Collector, Nawada is that the agreement with the petitioner was executed on 28.1.2016 and the same expired on 27.1.2021. On an inspection being carried out by the then Assistant Director, District Mining Office, Nawada on 7.2.2021, it was found that a total 22,39,179 cft. of excavated stone was stored at the lease site / area. On the petitioner making an application for removal of 44,22,766 cft. of excavated stone, it is the case of the respondents that by letter dated 23.3.2021 issued by the Assistant Director, District Mining Office, Nawada, permission was granted for removal of excavated stone metal / chips at the lease site / area. It is



submitted by learned Spl. P.P. appearing for the Mines Department that there being no provision for granting additional time for removal of excavated stone / material ore from the lease area after expiry of the lease period, there is no merit in the instant application and the same be dismissed.

In response, it is submitted by learned senior counsel appearing for the petitioner that even as per the respondents' case, once the respondents have admitted that as per the inspection done by the then Assistant Director, District Mining Office, a total of 22,39,179 cft. of excavated stone was found at the lease site / area, the petitioner is entitled to remove at least the admitted quantity excavated stone chips etc. plants and machinaries.

Having heard learned counsel for the parties and taking into consideration the averments made in the respective affidavits, it transpires that against the claim of the petitioner that more than 44 lacs cft stone metal / chips excavated by the petitioner remained at the site, as per the case of the respondents, on inspection it was found that the quantity of stone metal / chips at the site is 22,39,179 cft..

This Court is of the opinion that what is the actual quantity of excavated stone metal / chips which remained at the



site, so far as the dispute in quantity is concerned, the same cannot be decided by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. However, at the same time, so far as the quantity of 22,39,179 cft. of stone metal / chips is concerned, this has been admitted by the respondents also.

As such this Court in view of the above admitted position directs the respondent authorities specially the District Collector, Nawada (respondent no. 3) and the Assistant Director, Mines and Geology Department, Government of Bihar (respondent no. 4) to permit and facilitate the removal of 22,39,179 cft. of stone metal / chips by the petitioner, which is lying at the site by virtue of the mining operation done by the petitioner pursuant to the lease dated 28.1.2016 (Annexure-1). So far as the balance disputed amount is concerned, the petitioner will be at liberty to take appropriate steps in accordance with law to prove the excavation of the same having been done by the petitioner and the petitioner being entitled for consequential reliefs.

The above removal shall be permitted and carried out at the earliest preferably within a period of four months from the date of communication / receipt of a copy of the order by the



respondents.

This application stands disposed of.

**(Partha Sarthy, J)**

Spd/-

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| CAV DATE          |            |
| Uploading Date    | 12.04.2023 |
| Transmission Date |            |

