IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9814 of 2022

==

Katyayni Contractor Private Limited having its office at Pareo, Bihta, P.S. Bihata, District- Patna, through its Director Randhir Kumar, Son of Suraj Prasad Verma, Resident of Village- Pareo, Bihta, P.S.- Bihta, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Mines and Geology, Bihar, Patna.
2. The Principal Secretary, cum- Mines Commissioner, Mines and Geology, Bihar, Patna.
3. The Collector, Nawada.
4. The Assistant Director, Mines and Geology, Nawada.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. N. K. Agarwal, Sr. Advocate
		Mr. Sanjeev Kumar, Advocate
For the State	:	Mr. Gyan Prakash Ojha (Ga7)
For the Mines	:	Mr. Naresh Dikshit, Advocate

==

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
CAV JUDGMENT
Date : 17-05-2024

Heard Mr. N.K. Agarwal, learned senior counsel assisted by Mr. Sanjeev Kumar, learned counsel appearing on behalf of the petitioner; Mr. Gyan Prakash Ojha, learned GA-7 appearing on behalf of the State and Mr. Naresh Dikshit, learned Spl. P.P. for the Department of Mines.

2. The petitioner has prayed for following relief(s) in paragraph no.1 of the writ petition:-

> "This writ application is being filed for issuance of appropriate writ(s)/order(s)/direction(s) for quashing the order dated 30.04.2022 passed in Revision Case No.07 of 2019 passed by the learned court of Mines Commissioner by which the revision petition of the petitioner challenging the order contained in Memo No.766 dated 09.09.2019, issued by the Collector, Nawada,

whereby the "in principle sanction" order for mining lease dated 17.03.2015 in favour of the petitioner with respect to block No.10 situated at Mauza Bhadhokara, District, Nawada, Plot No.4256, measuring 13.62 acres of land has been cancelled and all the deposited amount including security money and part of first installment (Rs.1.50 crores) was seized which is totally bad and illegal and further for any other reliefs for which the petitioner may found entitled to."

BRIEF FACTS

3. The brief facts, as enumerated in the writ application, for proper adjudication are that a notice inviting tender was published on 13.12.2014 for settlement of stone mines relating to block No.10, Plot No.4256, ad-measuring 13.62 acres, at Bhadhokara District, Nawada. The petitioner, being the successful bidder, had deposited Rs.2,75,10,000/-, as security deposit, as per the requirement of condition contained in Clause 6(iv) of the tender document. Accordingly, the "In Principal Sanction order", was issued in favour of petitioner on 17.03.2015 by the Collector, Nawada (Annexure-2 to the writ application). The petitioner was directed to submit necessary clearances to execute the Agreement in form 'D'. The mining plan was granted by the Mines and Geology Department vide letter dated 21.05.2015, while the environmental clearance was obtained by the petitioner on 27.06.2017 from the State Environment Impact Assessment Authority, Bihar (hereinafter referred as to "SEIAA, Bihar".

4. It has been alleged that after issuance of "In

Principal Sanction Order", the petitioner was required under clause 7(ii) of NIT to get the lease deed executed in form "D" within 120 days, whereas, the petitioner took about 2 years to get environmental clearance and thereby, he delayed the lease deed execution and at the same time, he violated the statutory terms of NIT, as well as, the provisions of Bihar Mineral Concession Rules, 1972. It has further been alleged that Assistant Director, Mines, Nawada vide letter No.651 dated 22.08.2017, directed the petitioner to submit Form "D" along with 1st installment, i.e., Rs.5,50,20,000/-, but the petitioner deposited only Rs.50,00,000/-.

5. The District Magistrate, Nawada also issued similar letter No.898 dated 07.10.2017, informing the petitioner that no step has been taken by him to submit form "D" along with requisite paper in spite of the fact that petitioner has deposited Rs.50,00,000/- through bank draft No.346686, dated 28.03.2017 and why "In Principal Sanction Order" be not cancelled and security deposit be not forfeited. In this regard, petitioner was directed to file his show cause by 15.10.2017. The District Magistrate, Nawada instead of taking any action in accordance with law after issuance of letter dated 07.10.2017, again issued reminder, contained in letter No.611 dated

21.06.2018, directing the petitioner to deposit 20% of his first instalment within a period of 30 days and all the requisite papers along with Form “D” for executing lease agreement in favour of petitioner. Similar reminder were again issued to the petitioner by the Collector, Nawada, contained in letter No.605 dated 22.07.2019 without taking any action to forfeit the security deposit by providing no opportunity to him for execution of the lease deed within a further period of 30 days. The petitioner has filed his representation dated 22.08.2019 before the District Magistrate, Nawada. The representation of the petitioner was rejected vide order dated 09.09.2019 by the District Magistrate, Nawada.

6. A statement has been made in the writ application that on 29.03.2019, the petitioner gave a representation before the respondent no.2 regarding providing approach/passage/road for Block No.10, plot No.4256, ad-measuring an area of 13.62 acres of Mauza- Bhadhokara, District, Nawada and get it pillared. The petitioner is ready to bear the cost of pillaring. As the road shown earlier in the map has been illegally mined by some illegal persons and the said road has already been vanished and it is not possible for the petitioner to start his mining operation in the said quarry without having an approach

road to the site. Petitioner also payed to reduce the auction amount (royalty) proportionately as a huge quantity of stone mineral has illegally been mined by some illegal persons since the auction till date as will be apparent from enquiry report dated 25.07.2017, so that the petitioner may deposit the rest amount of installment and get the mining lease executed.

SUBMISSION OF COUNSEL

7. Mr. N. K. Agarwal, learned Senior counsel appearing on behalf of the petitioner submitted that a notice dated 13.12.2014 (Annexure 1 to the writ application) inviting tender with respect to settlement of Mining lease of Minor Mineral (stone) in the District of Nawada by way of auction notice was published in Hindi Daily News Paper, namely, Dainik Jagran. The last date for purchase of tender paper was fixed on 10.01.2015, which was to be submitted by 12.01.2015, the technical bid was to be opened on 13.01.2015 and the auction was to be held at 1:00 p.m. on 13.01.2015.

8. He further submitted that petitioner participated in the said auction for Block No.10 mentioned at Serial No.10 of the tender notice. The said block No.10 is situated at plot No.4256, ad-measuring an area of 13.62 acres and the reserve money was fixed at Rs.4,92,68,988.00 and earnest money was

fixed at Rs.4,92,68,899.00, which he had deposited along with other requisite papers/documents along with the tender paper in the auction.

9. He further submitted that thereafter the technical bid of the petitioner, as well as, other tenderers were opened on 13.01.2015. The petitioner was declared successful bidder in the auction held on 13.01.2015, being the highest bidder, having bidded for Rs.27,51,00,000,00. The petitioner had deposited Rs.2,75,10,000.00, as earnest money, as required under clause 6(v) of the tender paper. The Assistant Director, Mines, Nawada vide letter no.200, dated 17.03.2015 (Annexure 2 to the writ application), communicated that the District Magistrate, Nawada had approved the "In Principal Sanction Order" in favour of the petitioner on 15.01.2015. The petitioner submitted his mining plan before the respondent authorities which was recommended for its approval by letter No.1713, dated 21.05.2015 (Annexure 3 to the writ application) and was finally approved.

10. He further submitted that the petitioner had submitted his application for release of environmental clearance for proposed Bhadhokara, Block No.10 and thereafter by letter No.56 dated 06.06.2017 and letter No.92, dated 27.06.2017, the

environmental clearance for the proposed Bhadhokara stone mining project (Block No.10) were issued in favour of the petitioner. In the meanwhile, on 24.06.2017 with reference to letter No.276, dated 25.03.2017, letter No.247, dated 20.03.2017 etc., a letter was issued to the petitioner with respect to delay in execution of lease deed and the petitioner was sought for an explanation as to why the interest which was to be paid by the respondent authorities to the second highest bidder for late return of their earnest deposit money be not be recovered from the petitioner and in pursuance of which the petitioner gave his application to the District Magistrate, Nawada on 30.06.2017 (Annexure 4 to the writ application) explaining his position stating therein that he had already deposited Rs.50,00,000.00 towards the first installment by a demand draft on 28.03.2017 itself. Thereafter, the petitioner went to the above-said lease hold area and found that a huge part of the said lease hold area had already been mined out illegally since the date of auction till 17.07.2017 and a huge quantity of stone mineral had already been extracted and disposed of illegally as will be apparent from the mining plan itself and hence he gave an application on 17.07.2017 (Annexure 5 to the writ application) to the District Magistrate, Nawada, stating therein all the facts and circumstances and prayed to reduce the proportionate amount of auction equivalent to the extracted stone minerals in between the above said period.

11. He further informed that with regard to above illegal extraction of minerals, a complaint was also lodged by the District Mining Officer, Nawada to the office in-charge of Muffasil Police Station, Nawada contained in letter No.583 dated 02.08.2017 (Annexure 6 to the writ application). Learned counsel for the petitioner further informed that in spite of the admitted position that vide Memo No.545 dated 27.07.2017 an order to recover the amount of interest payable to the second highest bidder from the petitioner was passed on 22.08.2017 (Annexure 7 to the writ application) and failure to which, his "In Principal Sanction Order" shall be cancelled. The Assistant Director, Mines, Nawada, contrary to said letter, directed the petitioner to deposit the first installment by 31.08.2017 to get the lease deed executed, otherwise, his settlement approval would be cancelled.

12. He further submitted that from the perusal of the map of the block No.10, it will appear that there was an approaching passage to the Block 10 area for transportation of extracted stone minerals, but in course of time, road had become

non-existent due to illegal mining. He submitted that in absence of approach road/ passage, it is not possible to operate mining in the proposed site and as such, the petitioner had requested for approach road for mining in the block 10.

13. He further informs that as the road is non-existing on the mining spot, the transporting cost has increased up to Rs. 45/Ton of stone chips. The total estimated amount of Rs. 22.50 Cr. additional charge will have to borne by the company for transportation of 50 lac tone of stone chips from the area which was not assessed at the time of survey of mining plan in view of existing road at that point of time. In absence of any road the petitioner cannot sustain loss of Rs. 22.50 Cr. The petitioner Company had made several request for construction of road but only measurement was done by the Circle Officer for construction as per mining plan.

14. He further submitted that unless the above said grievances of the petitioner with respect to fixation of the royalty/auction amount after reducing the same proportionately and unless the approaching road to the above said lease hold area is provided it will be impractical for the petitioner to operate the said lease hold area for the mining purpose and the petitioner is entitled to get the above said reliefs and only after

that the petitioner will be liable to deposit the entire amount of first installment though he had already deposited Rs. 1 Crore and Fifty Lacs against the first installment.

15. It has been stated in paragraph nos. 21 and 22 that a notice was issued vide letter No.611 dated 21.06.2018, to which the petitioner has given detailed explanation on 20.07.2018 (Annexure 8 to the writ application), wherein he had again reiterated all his grievances, relating to non-existent road and inability to operate in the mining area in respect of block 10. No step has been taken till date by the Government. Even admitting the above facts, a notice, contained in letter no.605 dated 22.07.2019 (Annexure 10 to the writ application) was served upon the petitioner by which the petitioner was directed to deposit 20% of the first instalment amount and for getting the lease deed executed by submitting requisite documents along with Form “D”. The petitioner had filed his detailed representation and without considering the representation of the petitioner, the District Magistrate vide memo no. 766 dated 09.09.2019 (Annexure 11 to the writ application) has cancelled the “In Principal Sanction Order” dated 17.03.2015 with respect to Block No.10, situated at Bhadhokara, District, Nawada, Plot No.4256 ad-measuring an area of 13.62 acres of land. Learned

counsel further submitted that against the order dated 09.09.2019, the petitioner has filed a revision case No.7 of 2019 before the learned Mines Commissioner, Bihar and the application of the petitioner was finally rejected vide order dated 30.04.2022, without considering the case of the petitioner

16. Learned senior counsel in these backgrounds submitted that the petitioner cannot be considered to have faulted in any manner with the terms and conditions of the order dated 09.09.2019, cancelling the "In Principal Sanction Order" and directing the petitioner to compensate the interest amount payable to the second lease holder is without authority of law. Learned counsel further submitted that the order cannot be sustained, even considering the fact that the authority has himself admitted the fact that non-existing road in block no.10, while lease executed in respect of block no.9, namely, M/s. B. K. Road Line and 11, namely, M/s Eklavaya Stone and Mines Pvt. Ltd., where abovementiond two mining companies are operating in the area.

17. He further submitted that the case of the petitioner is similar to that of petitioner of CWJC No.15832 of 2017 and the Hon'ble Court was pleased to direct the respondent state to refund the deposited security deposit and the first

installment to them by its order dated 30.11.2018.

18. *Per contra*, learned counsel appearing on behalf of the respondents submitted that the approval to the mining plan was granted by the Department vide letter dated 21.05.2015, while the environmental clearance was obtained by the petitioner on 27.06.2017 from SEIAA, Bihar. It has been alleged that after issuance of "in principal sanction" order the petitioner was required under clause 7(ii) of NIT to get lease deed executed in form "D" within 120 days, however, the petitioner took about 2 years to get environmental clearance and thereby he delayed lease deed execution and at the same time, he violated terms of NIT as well as the Bihar Mineral Concession Rules, 1972.

19. He further submitted that Assistant Director, Mines, Nawada vide letter No.651 dated 22.08.2017 directed the petitioner to submit Form "D" along with 1st installment, i.e., Rs.5,50,20,000/- but the petitioner paid only Rs.50,00,000/- and Assistant Director, Mines, Nawada again directed the petitioner vide letter No.898 dated 07.10.2017, but the petitioner did not comply. Thereafter, the petitioner had again been given opportunity to get execution of lease and was noticed vide letter no.611 dated 21.6.2018 to deposit the first installment and to

give his explanation which he furnished on 20.07.2018 raising various grievances, but not depositing the amount demanded towards the first installment. The petitioner again submitted his representation on 29.03.2019 with request to provide approach road to Block No. 10, Mauza- Bhadokra, Nawada and to get it pillared apart from direction, the petitioner also requested to reduce the auction amount/royalty as huge amounts of stone and minerals were illegally mined by some illegal persons since the auction till the date. After issuance of 'in principle sanction' order, it is the responsibility and obligation on part of petitioner to put signboard and monitor the site and to report any illegal mining at the earliest coupled with the fact that it was impractical that any other person would do illegal mining of a block issued and allotted to him, and he would be having no information. The petitioner was issued Notice vide letter no. 605, dated 22.07.2019 seeking for deposition of 20% of the settlement amount and other documents along with Form 'D' for getting the lease deed executed. Again, petitioner reiterated his earlier grievance about the approach road and illegal mining etc. and thus, finally the order contained in Memo no. 766 dated 9.9.2019 was issued. The order dated 09.09.2019 delineates about issuance of reminders to the petitioner from time to time to get the environment clearance deposited and which was furnished only on 27.6.2017 also about payment of only Rs. 50,00,000/= towards first installment of Rs. 5,50,20,000/=. It also delineates about issuance of letters dated 07.10.2017 and dated 21.06.2018 for execution of lease deed, yet, it is apparent that inspite of passage of about more than two years' time since issuance of environmental clearance, the petitioner did not get lease deed executed and in total, only Rs. 1.5 crores were paid towards 1st installment. The petitioner was issued notice vide letter no. 605 dt. 22.7.2019 with averment to cancel the sanction order of settlement for Block No. 10, Bhadokhara, Nawada in favour of petitioner in case he failed to comply with the requirements. The petitioner had furnished his explanation on 22.08.2019 to the District. Magistrate, Nawada which was totally baseless and beyond the facts of the case. It has been found that Block No. 09 and 11 which are adjacent to Block No. 10, were being mined properly, but due to apathy of petitioner, execution of lease was kept pending. The competent authority has not been satisfied with the reasons given by petitioner in support of his claim not to cancel the settlement and was not convinced with reasons behind seeking proportionate calculation of settlement amount, and therefore, the order dated 09.09.2019 was passed and it has been upheld under revisional jurisdiction. A reply to the revision petition was filed by Assistant Director, Mines, Nawada where it was pleaded that petitioner was issued letter no. 884, dated 08.08.2015 and letter no. 1106 dated 02.12.2015 with clear and candid averment that if illegal mining was found to have been done on the site, it would be presumed that it was done by the petitioner. In the facts of this case, the petitioner had never given any information about illegal mining to the concerned officers or the local police station which establishes his involvement in such activity. The Muffasil P.S. Case no. 87/2017 was instituted by the District Mining Officer, Nawada. The petitioner has not taken any such step. Thereafter, the petitioner was issued reminder and notice from time to time, for furnishing environmental clearance, as well as to deposit the full and final 1st installment and to get execution of lease deed, yet, he did not respond properly and kept on raising mitigating circumstances and to get the 1st installment amount lowered down. In light of aforesaid facts and circumstances, action against petitioner was taken and the order passed by Collector, Nawada, contained in Memo No.766 dated 9.9.2019 and revisional order, passed by the Mines Commissioner, Mines and

Geology Department, Bihar contained in Memo No.1946 dated 30.04.2022, upholding the order dated 9.9.2019 in accordance with law. Accordingly, the writ application is fit to be dismissed in light of the above-mentioned facts and circumstances of the case and law.

20.Heard the parties.

ADMITTED FACTS

21. Admitted facts, which appear from the pleadings are that the petitioner had participated in the auction held on 13.01.2015. The petitioner was declared the highest bidder and accordingly the District Magistrate, Nawada had issued an "In Principal Sanction Order" to the petitioner vide letter no.200 dated 17.03.2015. Mining plan of the petitioner was approved on 21.05.2015 and environmental clearance was also granted on 27.06.2017. The petitioner had deposited Rs.50 lacs towards first installment on 28.03.2017. However, the lease could not be executed as the petitioner raised his grievance regarding motorable approach road in the mining area. Notices were issued to the petitioner for short payment of first installment, which was challenged by the petitioner in CWJC No.13056 of 2017 with an additional prayer to proportionately reduce the settlement amount, which has been disposed of by this Court

vide order dated 26.04.2023. A notice was issued to the petitioner on 22.07.2019, directing him to deposit 20% of the settlement amount along with Form ‘D’ with all the requisite papers for execution of lease deed. Respondent no.3 proceeded to cancel the “In Principal Sanction Order” vide the impugned order dated 09.09.2019. The petitioner preferred the Revision Case No.7 of 2019, which was dismissed by the Commissioner of Mines, Bihar vide order dated 30.04.2022, upholding the order passed by the District Magistrate dated 09.09.2019.

ANALYSIS

22. It is admitted that the petitioner had filed an application/representation in reply to the notice dated 20.07.2018 and thereafter had filed a detailed representation on 29.03.2019 before the Assistant Director, Mines and Geology, Nawada. The petitioner had requested to reduce the auctioned amount and royalty proportionately on the basis of the admitted fact that a huge quantity of stone has illegally been mined by some illegal persons, since the auction till date, which is supported by the inquiry report dated 25.07.2017, wherein a suggestion has been given that in case the petitioner is permitted to deposit the rest amount of instalment then the mining lease can be executed in favour of the petitioner. The

petitioner has given reasons for delay in execution of mining lease, showing his inability.

23. The petitioner was declared highest bidder on 13.12.2015 and thereafter 'In Principle Sanction Order' was granted to him after approval by the Assistant Director, Mines and Geology, Nawada on 17.03.2015. The mining plan submitted by the petitioner was approved on 21.05.2015 and thereafter the petitioner could obtain environmental clearance on 06.06.2017, duly issued by the (SEIAA,Bihar). The petitioner deposited rupees fifty lacs towards first instalment by demand draft on 28.03.2017. The petitioner had deposited the amount of first instalment on 28.03.2017, the District Magistrate, Nawada issued letter dated 13.06.2017, seeking explanation from the petitioner, as to why, the interest, which was to be paid by the respondent authorities to the second highest bidder for late return of earnest money could not be recovered from the petitioner. The petitioner in response to the said show cause notice, submitted his detailed reply on 17.07.2017, informing the District Magistrate, Nawada that already large quantity of stone minerals has been excavated, and in this regard, complaint has already been submitted by the District Mines Officer Nawada to the office in charge of Muffasil P.S Nawada on

02.08.2017 and sought to reduce the amount proportionately. The petitioner has also given information that subsequent to his reply, the local police has lodged an FIR on 02.08.2017, as would appear from letter No.583 dated 02.08.2017. In spite of the above fact, it is claimed by the petitioner that the petitioner was again issued show cause, that interest which was required to be paid on the earnest money deposited by the second highest bidder could only be paid on account of delay in making payment of the first instalment by the petitioner and on this ground, vide Memo No.545 dated 27.07.2017, another show cause has been issued to the petitioner, as to why, the lease be not cancelled. Subsequent to the said notice dated 27.07.2017, another notice was issued to the petitioner on 22.08.2017 by the Assistant Director, Mines, Nawada directing the petitioner to deposit the first instalment by 31.08.2017 to get the lease deed executed. Neither the petitioner nor the respondents have given the exact figure with respect to the amount of first instalment which was required to be deposited by the petitioner in compliance of several notices issued to the petitioner for execution of lease deed in accordance with the provision of Bihar Mineral Concession Rules, 1972. The petitioner had filed a representation dated 20.07.2018 in response to a letter no.611

dated 21.06.2018 and on 16.03.2019, which was received in the office of the Assistant Director, Mines and Geology on 29.03.2019 by reiterating reasons and circumstances why the petitioner has not been able to deposit the entire amount of instalment. The petitioner in his representation has given information that substantial amount of minerals has been excavated from Block 10, for which "In Principal Sanction Order" has been granted to the petitioner. The petitioner claims that in the same vicinity with respect to Block No.5 of Mauza, Bhakadkora, the case was referred to a committee, constituted by the Additional Chief Secretary, for inspecting the said block.

24. The petitioner has claimed parity that similar treatment be given to the petitioner to determine the quantity of stone excavated from Block 10, as on the recommendation of the committee, the proportional award had been reduced with respect to block No.5. The order passed against the petitioner to recover the amount of interest payable to the second highest bidder without adopting the said measure under the threat that in case of failure the settlement lease cannot be executed, requires to be interfered with. It is the admitted case of the parties that the environmental clearance was granted to the petitioner vide letter no.56 dated 06.06.2017 and letter no.92 dated 27.06.2017.

The petitioner was directed to deposit first instalment vide letter dated 07.10.2017 and letter dated 21.06.2017 for execution of lease deed. The petitioner failed to execute lease deed as only 1.5 crores was paid as the first installment. The said amount has been admitted by the respondents in paragraph no.15 of the counter affidavit filed on behalf of respondent no.1 and 2. Conditional letter No.605 dated 22.07.2019 was issued to the petitioner that in case he fails to comply with the requirement, the sanction order of settlement for Block No.10, Nawada shall be cancelled. The petitioner replied on 22.08.2019 to the District Magistrate but without considering the explanation given by the petitioner from time to time, the sanction order was cancelled and the same was affirmed by the revisional authority vide Memo No.766 dated 09.09.2019, as contained in Annexure 11 to the writ petition.

25. The writ petition is pending since 13.07.2022 and oral explanation has been given by the petitioner that due to Covid 2019 pandemic, immediate steps could not be taken to file writ petition in view of several SOPs being issued by the Central Government and the State Government as well as this Hon'ble Court.

26. Considering the fact that no third party right has

been created and State has put the Block 10 on auction, petitioner is the highest bidder and is ready for execution of lease deed in respect of Block No.10, situated at plot no.4256, measuring an area of 13.62 acres for which reserve money was fixed at Rs.4,92,68,988.00 and earnest money was fixed at Rs.4,92,68,899.00 and the same were deposited along with other documents/papers for participating in the said tender and after the petitioner was declared the highest bidder, he deposited Rs.27510000.00, as earnest money as required under Clause 6(b) of the tender paper. The delay has been caused and the petitioner is still ready for execution of lease deed along with requisite documents in Form 'D' for getting the lease deed executed.

27. In **M.C. Mehta Vs. Union of India & Ors., (2006) 11 SCC 582,** the Apex Court directed the Monitoring Committee to inspect the mining activity being carried on in the area in question and report the impact, if any, of continuing mining activity on the environment and the safeguards, if any, adopted to minimize the adverse effects on the environment and any other suggestions relevant to the issue of impact of mining activity on degradation of the environment.

28. In **T.N. Godavarman Thirumulpad (104) Vs.**

Union of India & Ors., (2008) 2 SCC 222, the Apex Court held that adherence to the principle of sustainable development is now a constitutional requirement. The courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the State under the Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity.

29. In my opinion, imposing reasonable restriction in the interest of general public and reasonable restriction on exercise of rights enshrined under Article 19(1)(g) is unassailable in view of Article 19(6) of the Constitution of India. Any development has to be sustainable. The rights of the petitioner to carry on mining operations are subjected to the directives under Article 48A and fundamental duties enshrined under Article 51A(f) and 51A(g) which are also supreme and cannot be violated under the guise of rights under Article 19(1)(g).

30. Now to decide whether order dated 09.09.2019 passed by the District Magistrate, Nawada, as contained in Memo No.766, and order dated 30.04.2022 passed by the Mines Commissioner, Bihar, as contained in Memo

No.1946, are sustainable. I must reiterate that it is well settled principle of law that earnest money is part of purchase price when the transaction goes forward, it is forfeited when the transaction falls through, *“by reason of all a failure of the vendee”*.

31. The Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 provides for forfeiture of security deposit in the event of failure on the part of successful bidder. The relevant part of the aforesaid Rule is produced hereinafter:

> *“22. .... (c) Amount equivalent to 10[ten percent] of auction amount as security which shall be adjusted with the last installment of auction amount if the mining leaseholder is not otherwise defaulter in payment. In case of unsuccessful bidder the security deposit shall be refunded by the Collector.*
>
> *(6) Failure on the part of the successful bidder.-In case the successful bidder fails to deposit the required security deposit along with other payable taxes within the prescribed time limit as referred to in the prevailing notification of the State Government in this regard, his security deposit shall be forfeited and a fresh settlement process through public auction shall be initiated.”*

Rule 28 of the Bihar Mines Minerals (Concession Illegal Mining and Storage) Rules, 2019 provides that lease deed can be executed within 180 days from the date of

<u>*approval of settlement auction.*</u>

32. The Apex Court in the case of ***South Eastern Coalfields Ltd. v. S. Kumar's Associates AKM (JV), (2021) 9 SCC 166,*** has observed as follows:-

> *"**22.** We would like to state the issue whether a concluded contract had been arrived at inter se the parties is in turn dependent on the terms and conditions of the NIT, the LoI and the conduct of the parties. The judicial views before us leave little doubt over the proposition that an LoI merely indicates a party's intention to enter into a contract with the other party in future. [Dresser Rand S.A. v. Bindal Agro Chem Ltd., (2006) 1 SCC 751; Rajasthan Coop. Dairy Federation Ltd. v. Maha Laxmi Mingrate Mktg. Service (P) Ltd., (1996) 10 SCC 405] No binding relationship between the parties at this stage emerges and the totality of the circumstances have to be considered in each case. It is no doubt possible to construe a letter of intent as a binding contract if such an intention is evident from its terms. But then the intention to do so must be clear and unambiguous as it takes a deviation from how normally a letter of intent has to be understood. This Court did consider in Dresser Rand S.A. case [Dresser Rand S.A. v. Bindal Agro Chem Ltd., (2006) 1 SCC 751] that there are cases where a detailed contract is drawn up later on account of anxiety to start work on an urgent basis. In that case it was clearly stated that the contract will come into force upon receipt of letter by the supplier, and yet on an holistic analysis—it was held that the LoI could not be interpreted as a work order.*
>
> ***23.** Similarly if we construe the documents as discussed in the judgment of this Court in Jawahar Lal Burman case [Jawahar Lal Burman v. Union of India, (1962) 3 SCR 769 : AIR 1962 SC 378] it is unequivocally mentioned that "contract is concluded by this acceptance and formal acceptance of tender will follow immediately on receipt of treasury receipt". Thus, once again, it has been stipulated as to at what time a contract would stand concluded even though it was later subject to deposit of the security amount. It was in these circumstances that the requirement of security deposit was treated not as a condition precedent but as a condition subsequent. We have to also appreciate the nature of contract which was for immediate requirement of the full quantity of coconut oil to*

be supplied within 21 days. It was also explicitly mentioned in the LoI itself that any failure to deposit the stipulated amount would be treated as a breach of contact. This is not the case here, where the consequence was simply forfeiture of the bid security amount, and cancellation of the "award" and not the "contract".

***24.** If we compare the aforesaid scenario in the present case, the period for execution of the contract was one year. The respondent worked at the site for a little over the month, facing certain difficulties—it is immaterial whether the same was of the own making of the respondent or attributable to the appellants. No amount was paid for the work done. The respondent failed to comply with their obligations under the LoI. It is not merely a case of the non-furnishing of performance security deposit but even the integrity pact was never signed, nor work order issued on account of failure to execute the contract. We are, thus, of the view that none of the judgments cited by the learned counsel for the appellants would come to their aid in the contractual situation of the present case. The judgments referred by the learned counsel for the appellants, Jawahar Lal Burman case [Jawahar Lal Burman v. Union of India, (1962) 3 SCR 769 : AIR 1962 SC 378] and Dresser Rand S.A. case [Dresser Rand S.A. v. Bindal Agro Chem Ltd., (2006) 1 SCC 751] , if one may say so are not directly supporting either of the parties but suffice to say that to determine the issue what has to be seen are the relevant clauses of the NIT and the LoI.*

***<u>25.</u>** <u>On having discussed the non-compliance by the respondent of the terms of the LoI we turn to the NIT. Clause 29.2 clearly stipulates that the notification of award will constitute the formation of the contract "subject only" to furnishing of the performance security/security deposit. Thus, it was clearly put as a precondition and that too to be done within 28 days following notification of the award. The failure of the successful bidder to comply with the requirement "shall constitute sufficient ground for cancellation of the award work and forfeiture of the bid security" as per Clause 30.2. If we analyse Clause 34 dealing with the integrity pact the failure to submit the same would make the tender bid "as not substantially responsive and may be rejected".</u>*

"42. The distinction between a security and an earnest money has also been pointed out by this Court in Maula Bux v. Union of India [(1969) 2 SCC 554] in the following terms:

"4. Under the terms of the agreements the amounts deposited by the plaintiff as security for due performance

of the contracts were to stand forfeited in case the plaintiff neglected to perform his part of the contract. The High Court observed that the deposits so made may be regarded as earnest money. But that view cannot be accepted. According to Earl Jowitt in Dictionary of English Law at p. 689; "Giving an earnest or earnest-money is a mode of signifying assent to a contract of sale or the like, by giving to the vendor a nominal sum (e.g. a shilling) as a token that the parties are in earnest or have made up their minds". As observed by the Judicial Committee in Kunwar Chiranjit Singh v. Har Swarup, AIR 1926 PC 1,:

"Earnest money is part of the purchase price when the transaction goes forward; it is forfeited when the transaction falls through, by reason of the fault or failure of the vendee."

In the present case the deposit was made not of a sum of money by the purchaser to be applied towards part payment of the price when the contract was completed and till then as evidencing an intention on the part of the purchaser to buy property or goods. Here the plaintiff had deposited the amounts claimed as security for guaranteeing due performance of the contracts. Such deposits cannot be regarded as earnest money."

43. Referring to Section 74 of the Indian Contract Act, it was observed:

"There is authority, no doubt coloured by the view which was taken in English cases, that Section 74 of the Contract Act has no application to cases of deposit for due performance of a contract which is stipulated to be forfeited for breach, Natesa Aiyar v. Appayu Padayachi; Singer Manufacturing Company v. Raja Prosad; Manian Pattar v. Madras Railway Company. But this view is no longer good law in view of the judgment of this Court in Fateh Chand case. This Court observed at p. 526: "'Section 74 of the Indian Contract Act deals with the measure of damages in two classes of cases: (i) where the contract names a sum to be paid in case of breach, and (ii) where the contract contains any other stipulation by way of penalty,' 'The measure of damages in the case of breach of a stipulation by way of penalty is by Section 74, reasonable compensation not exceeding the penalty stipulated for.' "

The Court also observed:

"It was urged that the section deals in terms with the right to receive from the party who has broken the contract reasonable compensation and not the right to forfeit what has already been received by the party aggrieved. There is however no warrant for the assumption made by some of the High Courts in India, that Section 74, applies only to cases where the aggrieved party is seeking to receive some amount on breach of

contract and not to cases whereupon breach of contract an amount received under the contract is sought to be forfeited. In our judgment the expression "the contract contains any other stipulation by way of penalty"

comprehensively applies to every covenant involving a penalty whether it is for payment on breach of contract of money or delivery of property in future, or for forfeiture of right to money or other property already delivered. Duty not to enforce the penalty clause but only to award reasonable compensation is statutorily imposed upon courts by Section 74. In all cases, therefore, where there is a stipulation in the nature of penalty for forfeiture of an amount deposited pursuant to the terms of contract which expressly provides for forfeiture, the court has jurisdiction to award such sum only as it considers reasonable, but not exceeding the amount specified in the contract as liable to forfeiture, and that, "There is no ground for holding that the expression 'contract contains any other stipulation by way of penalty' is limited to cases of stipulation in the nature of an agreement to pay money or deliver property on breach and does not comprehend covenants under which amounts paid or property delivered under the contract, which by the terms of the contract expressly or by clear implication are liable to be forfeited."

33. Section 74 of the Indian Contract Act deals with the measure of damages in two classes of cases:

(i) where the contract names a sum to be paid in case of breach, and (ii) where the contract contains any other stipulation by way of penalty than reasonable compensation not exceeding the penalty stipulated for is statutorily imposed.

34. The legal right that can be enforced “must ordinarily be the right of the Appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a

benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized." In ***Laxminarayan R. Bhattad v. State of Maharashtra, (2003) 5 SCC 413*** the Apex Court held that "the manner in which a statutory authority had understood the application of a statute would not confer any legal right upon a party unless the same finds favour with the Court of law dealing with the matter."

35. As the security deposit is made for ensuring satisfactory fulfillment of terms and condition of letter of intent and default in that process shall entail forfeiture thereof if it is considered in view of the information given by Mr. Naresh Dikshit, learned Special PP appearing on behalf of the Mines and Geology Department that the case of the petitioner as claimed in paragraph no. 30 of the writ petition that its case is similar to that of **CWJC No.15832 of 2017(M/s Saini Foods Private Limited versus the State of Bihar & Ors.)**, which was heard along with **CWJC No.16616 of 2017 (M/s. Mahadev Enclave Private Limited Versus the State of Bihar & Ors.)** and the same were disposed of by a co-ordinate Bench

of this Court *vide* order dared 30.11.2018, wherein also, relief for refund of security deposit and first installment deposited was prayed for, and as far as similar relief can be granted to the petitioner is concerned, he has clarified that the petitioners of the above cases were debarred from pressing for grant of interest and to participate in next bid for the sight in question which was the subject matter of the writ petition and in light of the said direction, the total amount was required to be refunded within a period of 12 weeks. He, however, has shown concern that the respondents have no objection to allow the petitioner to execute a lease deed subject to the condition that petitioner will not make any objection in future for proportionate compensation, admitting the fact that mining has already been done in the cluster in question for which a lease agreement is required to be settled in favour of the petitioner. Further admitting the position of the road leading to the mining cluster, which was in existence at the time of issuance of letter of intent, is no more in existence for which the petitioner cannot be said to be innocent. He submitted that if the petitioner wants to proceed to execute the lease deed subject to the above condition then in that case, he has been informed that the State Government and the concerned department will ensure to get the road repaired soon, considering the fact that the road which was existing has been illegally excavated by the miscreants, putting the State revenue at loss and at the same time creating hindrance to the petitioner, in approaching the mining site.

36. In the facts and circumstances of the case, I find that the order dated 30.11.2018, passed in CWJC No.15832 of 2017 along with CWJC No.16616 of 2017 is distinguishable to the extent that information as has been given by the learned Special P.P. on behalf of the respondents that the security deposit as estimated, considering the fact that petitioner was the highest bidder had deposited the required amount of first installment after much delay and the respondents too have proceeded to take action against the petitioner who did not make payment of the interest accrued in respect of the amount which was required to be refunded to the next highest bidder. While the "In principle sanction" order for mining lease was issued on 17.03.2015 in favour of the petitioner with respect to block No.10 situated at Mauza Bhadhokara, District, Nawada, Plot No.4256, measuring 13.62 acres of land has been cancelled and all the deposited amount including security money and part of first installment (Rs.1.50 crores) has been forfeited by the order passed by the Collector, Nawada as contained in Memo

No.766 dated 09.09.2019 and the consequential order dated 30.04.2022 passed in Revision Case No.07 of 2019 by the Mines Commissioner whether calls for any interference by this Court considering the offer given by the State Government that the petitioner can proceed with the mining in case the petitioner don't claim for proportionate amount of the illegal excavation in respect of the area which has already been mined out.

37. Considering the terms and conditions as contained in the letter of intent on the one hand and the action of the respondents specially the officer of the mining department for alleged violation of LOI and the terms and conditions of the Rules 28 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage), Rules, 2019, whether in accordance with Section 56 of the Indian Contract Act, 1872, a contract to do an act, which after the contract is made, becomes impossible, or, unlawful, by reason of some event which the promisor could not prevent, becomes void when the act becomes impossible or unlawful, and it will be assumed that the terms and conditions of letter of intent extinguishes and a fresh term and condition has to be issued, which is a subject matter to be decided by the State Government.

38. This Court finds it surprising that the

disappearance of the motorable road of the petitioner's block came into notice of the respondent authorities only when the petitioner complained about it. There is an utter failure in the monitoring mechanism followed by the State Boards, SEIAAs and DEIAAs, and the lackadaisical attitude of the authorities in failing to take any prompt action despite there being substantial change in the subject matter of the lease agreement due to illegal mining i.e the excavation of minerals from the petitioner's block.

39. In the case of **Natural Resources Allocation, In re, Special Reference No.1 of 2012; (2012) 10 SCC 1** the Apex Court has held that Article 14 of the Constitution provides that any disposal of a natural resources for commercial use must be for revenue maximization, and thus by auction, is based neither on law nor on logic. There is no constitutional imperative in the matter of economic policies. Article 14 does not pre-define any economic policy as a constitutional mandate. Even the mandate of Article 39(b) imposes no restrictions on the means adopted to sub-serve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. Economic logic establishes that alienation/allocation of natural resources to the highest bidder

may not necessarily be the only way to sub-serve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all natural resources through auctions is clearly not a constitutional mandate.

40. Considering the mandate of Constitution, as well as, the fact that the Courts are required to balance development need with protection of environment and ecology. It is the duty of the State under Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity. The public cause for the purpose of economic development and reason for providing opportunity for giving employment with an intention to remove poverty and employment in the area at the same time cannot be defeated by inaction of the State Government. In counter affidavit, there is no denial that any of the Mining Officer had taken notice of disappearance of the motorable road from the block.

41. The mining department dealing with mining activity in respect of State can consider the discrepancies between the quantity of mineral assessed and that which has been excavated allegedly illegally and still the mining would be sustainable and given a chance to the petitioner to proceed with

mining in terms of the Environmental Clearance given to him with respect to geo-coordinates as per the district survey report being the disputed question of fact, I don't find it proper to interfere with the impugned order dated 09.09.2019 passed by the Collector, Nawada and the consequential order dated 30.04.2022, passed by the Mines Commissioner and, accordingly, the writ petition is dismissed.

42. The Additional Chief Secretary, Government of Bihar is directed to constitute a team of competent officers and eminent person in the field of geology and environmental scientists to inspect and suggest measures to stop illegal mining in the different mining area which has been leased out or which are already there on the website of the Mining Department giving details of the District Survey Report (DSR) calling for auction, so that illegal mining to the extent as has been noticed in the present case can be restricted.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	
CAV DATE	20.03.2024
Uploading Date	17.05.2024
Transmission Date	