



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3882/2023

Avinash s/o Namdeo Warwatkar

Vs.

Hon'ble Minister, Industry, Energy and Labour Department, Mumbai and others

WITH

WRIT PETITION NO.3964/2023

Avinash s/o Namdeo Warwatkar

Vs.

Hon'ble Minister Industry, Energy and Labour Department, Mumbai and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.P. Kshirsagar, Advocate for petitioner
Shri A.M. Kadukar, AGP for respondent Nos.1 to 3/State

**CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.**

DATED : 10/04/2024

1. Writ Petition No.3882/2023 questions the order dated 23.03.2023 (pg.129), communicated to the petitioner by the letter dated 03.04.2023, by which, in exercise of the powers under Section 4-A (4) of the Mines and Minerals (Development and Regulation) Amendment Act, 2021 [“MMDR (Amendment) Act, 2021” for short hereinafter], lease of the petitioner in respect of an area admeasuring 11.72 HR of village Majra, District Yavatmal has been declared as lapsed.

2. Shri S.P. Kshirsagar, learned Counsel for the petitioner contends, that since the application for extension of lease by the petitioner was pending, there was no question of

the authorities/respondent no.1 passing the impugned order. He further relied upon the provisions of Section 8-A (3) of the MMDR (Amendment) Act, 2015 to contend that the lease ought to have been granted for 50 years. He, therefore, submits that the impugned order cannot be sustained and is required to be quashed and set aside.

3. Shri A.M. Kadukar, learned Assistant Government Pleader for the respondents/State supports the impugned order.

4. It is not in dispute that by a lease dated 13.05.2005, the aforesaid land was leased out to the petitioner for excavation of Limestone Minerals (pg.22). A perusal of the lease itself indicates that it is for a period of 30 years, which would lapse on 12.05.2035. There is, therefore, no cause of action to the petitioner for applying for extension of lease. In fact, the provisions of Section 8-A (3) of the MMDR (Amendment) Act, 2015 mandate that all mining leases granted before the commencement of the MMDR (Amendment) Act, 2015 shall be deemed to have been granted for a period of 50 years, in view of which, though the document dated 13.05.2005, was for a period of 30 years, however, in view of the deeming provisions, as contained in Section 8-A (3) of the MMDR (Amendment) Act, 2015, the same would be deemed to be for a period of 50 years.

5. The lease, as per the impugned order, has been declared to be lapsed on two grounds, first; that though there was a proposal for transfer of the lease and the State Government had granted its consent on 24.03.2008, however, a registered instrument in that regard was not submitted

within the stipulated period. It is trite that in absence of a registered instrument, the factum of transfer of lease, cannot be presumed and, therefore, even if, consent was granted on 24.03.2008, in absence of the document of lease and there being nothing on record to indicate that the lease was being operated by the proposed transferee, it cannot be held that there was transfer of lease, thereby attracting Rule 37 of the Mineral Concession Rules, 1960.

6. The second ground for holding that lease has lapsed, is Section 4-A (4) of the MMDR (Amendment) Act, 2021. In this context, it is necessary to note, that the impugned order has been passed on 23.03.2023. The words “mining operations” are replaced with words “production and dispatch” in Section 4-A (4) of the MMDR (Amendment) Act, 2015 with effect from 28.03.2021 and the lapsing, can only be there in case production and dispatch has discontinued for a period of two years. The date 28.03.2021, therefore, becomes material in determining the period of two years, for the propose of lapsing of the lease. Since in the instant case, the impugned order has been passed on 23.03.2023, the period of two years as of date, had not come to an end, considering that the amendment was brought into effect from 28.03.2021. It is also necessary to note, that the proviso to Section 4-A (4) of the MMDR (Amendment) Act, 2021 permits the extension of the above period of two years, as contemplated therein.

7. In that light of the matter, the impugned order cannot be sustained and the same is hereby quashed and set aside.

8. Since the facts in Writ Petition No.3964/2023 are also identical, except for change of dates, the order impugned

in the said petition therefore, is also quashed and set aside.

9. The writ petitions are accordingly allowed in the aforesaid terms and disposed of. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)

R.S. Sahare