IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16238 of 2023

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M/s. Mahadev Enclave Pvt. Ltd. A registered company having its registered office at B- 37, Ayodhya Marg, Hanuman Nagar, Jaipur, Rajasthan through its authorized representative namely Rajendra Singh male aged about 41 years S/o Bahadur Singh R/o Village and P.O. - Sawnloda Ladkhani, Khuribadi, District- Sikar (Rajasthan)-332315.

... ... Petitioner/s

Versus

1. The State of Bihar Through The Additional Chief Secretary Cum Commissioner, Department of Mines and Geology, Govt. of Bihar, Patna.
2. The Additional Chief Secretary cum Commissioner, Department of Mines and Geology, Govt. of Bihar, Patna.
3. The Director, Department of Mines and Geology, Govt. of Bihar, Patna.
4. The District Magistrate cum Collector, Nawadah.
5. The Assistant Director Mines, District Mining Office, Nawadah.
6. The Officer on Special Duty, Department of Mines and Geology Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA-7
For the Mines	:	Mr. Naresh Dikshit, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
Date : 04-02-2025

Heard Mr. Gautam Kumar Kejriwal, learned counsel for the petitioner, Mr. Naresh Dikshit, learned Special Public Prosecutor for the Mines Department and Mr. Gyan Prakash Ojha, learned GA-7 appearing on behalf of the State.

2. The present writ petition has been filed for the following reliefs;

> (a) For issuance of a writ in the nature of certiorari for quashing of the order dt. 14.09.2023 passed by the respondent No. 2 issued vide memo number 4639/M dated

14.09.2023 by the respondent no. 6;

(b) For holding and a declaration that in terms of section 3 (c) read with section 3(d) of the Mines And Minerals (Development And Regulation) Act, 1957 (hereinafter referred to as the Act 1957 for short) and rule 25(2) of the Bihar Minor Mineral Concession Rules 1972 (hereinafter referred to as the rules 1972 for short) the liability for payment of rent/royalty would commence from the date of commencement of actual and physical mining operation by the petitioner after obtaining all clearances and permissions and not from the date of execution of the lease deed;

(c) For further holding and a declaration that acceptance of 1st installment at the time of execution of lease deed in the year 2017 and 2nd installment in the month of January/February 2019 by the respondents without any action taken for cancellation of settlement in terms of rules 52(5) of the rules and clause 24, 25 and 26 of Part VII of the lease deed dt. 18.09.2017 constitute an implied extension of time and as such no liability of interest would arise as per the law laid down by the Hon'ble Supreme Court in the matter of **AIR - 2002-SC-2340 [R. K. Saxena Vs DDA];**

(d) For further holding and a declaration in the alternative that the petitioner was prevented by force majeure conditions as the required licenses and clearances were pending from the ends of statutory authorities and therefore the respondents cannot approbate and reprobate at the same time by initially refraining from any step taken under rule 52(5) of the rules 1972 and by raising demand of 2nd installment and interest later which is also a situation covered by the **AIR 1956 SC 593/602 [Nagubhai Ammal Vs B Shama Rao] -3 J, AIR 2010 -SC-2077 [Karam Kapahi and Others Vs Lal Chand Trust and Others] and AIR 2009-SC-1783 [Badri Kedar Paper Pvt. Ltd Vs U.P Electricity Regulatory Commission];**

(e) For issuance of a writ or order or direction restraining the respondents from taking any coercive action against the petitioner for recovery of the amount of interest in terms of the impugned order dated 14.09.2013 passed by the respondent number 2;

(g) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.

3. Learned counsel for the petitioner submits that petitioner's company has been awarded settlement of stone mines at Nawadah for a period of 5 years from the date of execution of agreement pursuant to the tender invited by the respondent Department of Mines & Geology, Govt. of Bihar. The petitioner's company participated in the tender process and having made the highest bid and was declared as the successful bidder in the auction with respect to block No. 2 in Razouli, Nawadah followed by issuance of letter of acceptance bearing

ref. no. 113/khanan dated 10.02.15 by the Assistant Director of Mines, Nawadah (respondent no.5).

4. Learned counsel for the petitioner submits that as per the requirement of Rule 21 of the Rules 1972 as well as Clause 7 (iii) of the NIT, the petitioner's company had to execute lease deed in the statutory form D prescribed in the said rules. As per the clause 53 of the lease deed in form D the petitioner filed an application in the office of the respondent Collector on 06.06.2018 along with all the permissions and clearances granted to the petitioner by various authorities. The office of the respondent Collector granted permission vide letter dt. 30.07.2018 and after the permission granted by the respondent Collector that the mining could start at the site and not before that. Thus, there is a huge difference between the execution of lease deed and execution of mining lease as contemplated under rule 25(2) of the rules 1972.

5. Learned counsel for the petitioner submits that the respondent Department of Mines and Geology called upon the petitioner's company to deposit the second installment of the settlement vide letter no. 25/khanan dated 05.01.2018. The petitioner's company submitted an objection vide letter dated 23.01.2018 to such demand of the second installment by the

respondent Department of Mines and Geology. No response to such objection and therefore the petitioner once again submitted another representation dated 03.06.2018 requesting the department to deem the period of commencement of lease in question to be from the date of grant of CTE and CTO and also for fixing the schedule for payment of second installment in the year 2019. The petitioner’s company has not received any response from the respondent Department of Mines and Geology all of sudden petitioner has received a letter no. 203/khanan dated 24.02.2020 from the office of the respondent Assistant Director of Mines Nawadah whereby the inspection report no. 23/2019-20 of the Accountant General (Accounts Audit) was referred to and the demand of second installment with interest was made for a sum of Rs. 2,84,00,000/- (Rupees two crore eighty-four lakh only) from the petitioner.

6. Learned counsel for the petitioner had already paid the first installment before the execution of the lease deed on 18.09.2017. The second installment was paid by the petitioner in the month of January-February 2019. The petitioner further deposited the third installment on 30.01.2020. The petitioner has challenged the action of the respondent dated 24.02.2020 issued by the respondent no.5 in C.W.J.C. No. 7580

of 2020 seeking quashing of the said demand and the same was disposed of with a direction upon the petitioner to pay the principal amount of second installment along with interest for two months in three equal monthly installments and also granted liberty to represent before the respondent no.2 as regards the issue of liability of interest for rest of the period as demanded in the letter no. 203/khanan dated 24.02.2020. In compliance of the order dated 15.09.2020, the petitioner has submitted a detailed representation in the office of the respondent No. 2 and also paid the amount equivalent to second installment with interest in the manner as directed by this Hon'ble Court.

7. Learned counsel for the petitioner submits that the petitioner’s company have received a letter number 3191/M, Patna dated 02.12.2020 issued by the Development whereby the petitioner was intimated of rejection of the representation submitted in light of the order of this order dated 15.09.2020 passed in C.W.J.C. No. 7580 of 2020. Petitioner has received another letter no. 103/Khanan dated 15.01.2021 whereby the petitioner was issued a 7 days’ notice of demand for payment of Rs. 1,29,07,879/- (Rupees one crore twenty-nine lakh seven thousand eight hundred seventy-nine only) being balance of the amount payable against interest. The petitioner

has challenged the letter no. 3191/M dated 02.12.2020 as well as the initial letter of demand issued vide letter no. 203/Khanan dated 24.02.2020 in C.W.J.C. No. 5380 of 2021 and the same was disposed of vide order dated 13.07.2023 whereby the petitioner was directed to file a representation before the respondent no.2 afresh with a direction to the said respondent to take a decision within a time frame.

8. Learned counsel for the petitioner submits that the petitioner has filed a detailed representation along with additional representation in the office of the respondent no.2 in light of the order dated 13.07.2023 passed in C.W.J.C. No. 5380 of 2021, the Miscellaneous Case No. 03 of 2023 was registered in the office of the respondent no.2 but without considering the question of law raised by the petitioner, the respondent no.2 has disposed of the representation of the petitioner vide order dt. 14.09.2023 and has confined himself to the issue of entitlement of petitioner to sympathetic consideration and further to an accommodation for payment of the amount of interest in installments.

9. Learned Spl. P.P. for the Mines Department as well as learned GA-7 for the State, on other other hand, have vehemently opposed the prayer of the petitioner and Mines

Department has filed a counter affidavit referring paragraph nos.19 & 20 of the order dated 13.07.2023 passed in C.W.J.C. No. 5380 of 2021 which is being reproduced hererinbelow;

> *"19. This court finds force in the submission put forward by the respondents. The letter of agreement was very clear: the petitioner was to pay the 2nd, 3rd, 4th and 5th installment by 31st of January of every calender year. However, it defaulted in clearing the 2nd instalment by 31.01.2020 which came to be paid on 13th October of 2020 and only after an order of the coordinate Bench of this court in CWJC No. 7582 of 2020.*
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> *20. So far as grievances of the order in question having not been passed by the respondent no. 2, the Principal Secretary -cum- Commissioner, Department of Mines and Geology, Bihar Patna, a perusal of the order shows that same has actually been communicated to the petitioner on the direction of the Principal Secretary and the word 'Niredeshaanushar' is present in the order.*

Learned Spl. P.P. for the Mines Department submits that in view of the aforesaid paragraph, the respondent-Mines Department has only limited issue to look upon the representation of the petitioner and the same was considered and due opportunity of being heard was given to the petitioner. The Hon'ble court has clearly observed that the letter of agreement was very clear and the petitioner was legally bound to make payment by 31st of January every calendar year by way of 2nd, 3rd, 4th and 5th installment and it was also found that installment was defaulted and it was also observed that the petitioner was legally bound to make payment of installment by 31st January of every calendar year for five years and the petitioner had defaulted in making such payment, and finally the Hon'ble court ordered the petitioner to approach Principal Secretary, Department of Mines and Geology on very limited issue that:

(I) Whether any sympathetic consideration to the prayer of the petitioner to waive of the interest part for the delayed payment can be allowed or not, and;

(ii) If the same cannot be allowed, whether the same can be taken by way of installment or not.

10. Learned GA-7 for the State submits that the Mines Department has considered the same and after hearing the learned advocate appearing on behalf of the petitioner and after having scrutinized the facts and circumstances of the case, a reasoned order dated 13.09.2023 has been passed in the light of provisions of Bihar Minor Mineral Concession Rules, 1972, Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 and the agreement made

with petitioner and despite of direction by this Hon'ble Court the petitioner was allowed to pay the recoverable dues in three equal installments. From a bare perusal of the order dated 13.07.2023 it is clear that the Hon'ble Court did not accept to the contention of the petitioner and had decided the matter in favour of respondent State of Bihar and as such the petitioner now has no *locus standi* to raise same issues in the present writ petition.

11. Having heard the learned counsel for the parties and perused the documents available on the record and in view of the paragraph nos.19 & 20 of the order dated 13.07.2023 passed in C.W.J.C. No. 5380 of 2021, the authority has rightly passed the order in compliance of the order dated. 13.07.2023 passed in C.W.J.C. No. 5380 of 2021.

12. Accordingly, no interference is required in the present matter.

13. Accordingly, the writ petition is dismissed.

(Rajesh Kumar Verma, J)

ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2025
Transmission Date	NA