

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13269 OF 2022

Subhash Anant Gawas
V/s.

... Petitioner

Union of India through its Secretary
for Ministry of Mines and Ors.

... Respondents

with

WRIT PETITION NO. 13277 OF 2022

Sanjay Pandurang Gawas
V/s.

... Petitioner

Union of India through its Secretary
for Ministry of Mines and Ors.

... Respondents

Ms. S.V. Sonawane with Mr. Satish Muley, Mosin Naik and Zhoab Sayyed for the Petitioners in both Petitions
Ms. Anusha P. Amin for Respondent No.1 – UOI
Mr. B.V. Samant, Addl.G.P. with Ms. G.R. Raghuwanshi, AGP for Respondent Nos. 2 to 7 in both Petitions
Mr. Saket Mone with Anchita Nair i/b. Vidhii Partners for Respondent No.8 in both Petitions

**CORAM : ALOK ARADHE, CJ. AND
BHARATI DANGRE, J.**

DATE : 10th FEBRUARY 2025

Order (Per Chief Justice) :

1. With consent of the learned Counsel for the parties, the Writ Petition is heard finally at the stage of admission.

2. In this Writ Petition, the Petitioner has challenged the validity of notice inviting tender dated 13th April 2022, as well as the Composite License dated 13th April 2022 and import notice dated 7th July 2022 issued by the Respondent No.3 - Directorate of Geology and Mining, Government of Maharashtra, by which the Respondent No.8 has been declared as Preferred Bidder for grant of Composite License of Sasoli Iron Ore Block, issued by the Respondent No.3 Directorate of Geology and Mining, Government of Maharashtra.

3. Facts giving rise in filing of this Petition in nut shell are as under. The Petitioner is the co-owner of the undivided piece and parcel of land admeasuring 8.21.25 hectors and 3.68.88 hectors, respectively, situated at Village - Sasoli, Taluka - Dodamarg, District – Sindhudurg. A notice inviting tender was issued on 13th April 2022 in respect of four mineral blocks viz. three blocks of limestone and one block of iron ore in the form of electronic auction, for the purpose of mining lease and eight mineral blocks viz. Two blocks of bauxite, one block each of manganese ore, copper, and base metal and three blocks of iron ore and associated minerals for electronic auction, for the purposes of Composite License was also invited.

4. The Respondent No.3 – Directorate of Geology and Mining issued the notice for pre-bid on 10th May 2022. Thereafter, on 23rd May 2022, notice was issued for sale of tender documents. Thereafter, on 7th July

2022, the Respondent No.3 - Directorate of Geology and Mining declared the Respondent No.1 as preferred bidder for grant of composite license. In the aforesaid factual background, this Petition has been filed seeking quashment of tender notice as well as document dated 13th April 2022 and notice dated 7th July 2022, by which Respondent No. 8 has been declared as preferred bidder for grant of composite license.

5. The learned Counsel for the Petitioner submitted that the impugned tender notice as well as tender document dated 13th April 2022 and impugned notice dated 7th July 2022 is liable to be quashed as the same has been issued in violation of the mandate provided in Section 48(3) of the Maharashtra Land Revenue Code, 1966 (MLRC). It is further submitted that the Petitioner has a Constitutional right to hold the property which is protected under Article 300-A of the Constitution of India. In support of the aforesaid submission, reliance has been placed on the decision of the Supreme Court in the case of *Kolkata Municipal Corporation and Anr. v/s. Bimal Kumar Shah and Ors.*¹,

6. On the other hand, the learned Counsel for the Respondents submits that the prospective license has been issued for grant of major mining and therefore, the same is governed by the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR) and in

1 (2024) 10 SCC 533

accordance with the Minerals Concession Rules, 1960. It is further submitted that the provisions of Section 48(3) of the Act have no application to the fact situation of the case and rights of the Petitioner in respect of land in question are fully protected under the provisions of the MMDR Act and Mineral Concession Rules.

7. We have considered the rival submissions made on both sides and have perused the record.

8. Admittedly, the Petitioner is the co-owner of undivided parcel of land measuring 8 hector and 2 ares of land situated at Village - Sasoli, Taluka - Dodamarg, District - Sindhudurg. Undoubtedly, it is true that the Petitioner has a Constitutional rights to hold the property and the Petitioner cannot be deprived of his Constitutional rights except in accordance with law. Section 24-A of the Mines and Minerals Act, 1957 deals with rights and liability of mineral concession. Section 24-A is extracted below for the facility of reference, which reads thus :-

“Section 24-A. Rights and liabilities of a holder of reconnaissance permit, prospecting license or mining lease.

(1) On the issue of a [reconnaissance permit, prospecting license or mining lease] under this Act and the Rules made thereunder, it shall be lawful for the [holder of such permit, license or lease], his agents or his servants or workmen to enter the lands over which [such permit, lease or license had been granted] at all times during its currency and carry out all such [reconnaissance, prospecting or mining operations] as may be prescribed:

Provided that no person shall enter into any building or upon an

enclosed Court or garden attached to a dwelling-house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

(2) The holder of a "[reconnaissance permit, prospecting license or mining lease] referred to in sub-section (1) shall be liable to pay compensation in such manner as may be prescribed to the occupier of the surface of the land granted under [such permit, license or lease] for any loss or damage which is likely to arise or has arisen from or in consequence of the [reconnaissance, mining or prospecting operations].

(3) The amount of compensation payable under sub-section (2) shall be determined by the State Government in the manner prescribed."

9. Thus, from perusal of Section 24-A of the Act, it is evident that on the issue of mineral concession under the Act and the Rules, the holder of such permit license or lease cannot enter into any building or upon an enclosed Court or garden attached to a dwelling house except with the consent of the occupier thereof without giving seven days' notice. The holder is entitled to pay compensation in such a manner as may be prescribed to the occupier of the surface of the land granted under such permit, license or lease for any loss or damages which is likely to arise or has arisen from or in consequence of the reconnaissance, mining or prospecting operations. The amount of compensation payable to the owner of land has to be determined by the State Government.

10. Rule 22 of the Mineral Concession Rules 1960 is applicable for grant of mining leases. Rule 22(3)(i) and (h) provides that

along with an application for grant of mining license, a statement in writing that the applicant where the land is not owned by him obtained his right towards the area or part has obtained the consent of the owner for starting mining operations has to be annexed. In other words, the land held by the Petitioner cannot be used for mining purposes without obtaining his consent and in any case the same is so used, the Petitioner is entitled to compensation. Thus, the Constitutional rights of the Petitioner in respect of the property guarantees under Article 300(A) of the Constitution of India are fully protected under the provisions of Mines and Minerals Act 1957 as well as Mineral Concession Rules 1960.

11. In so far as contention that the provisions of Section 48(3) of the Act have not been complied with, is concerned, suffice it to say that when the State Government assigns to any person, its right over the mineral, mines land in question and for proper enjoyment of it necessary powers under sub-Section 1 and 2 of Section 48 have to be delegated, such delegation shall not be made until and unless notice is given to the persons whose rights in land are being affected and their objections are being heard and considered. It is pertinent to note that the prospecting license to Respondent No.8 has been issued in respect of a major mineral viz. Iron Ore and is governed by the provisions of the MMDR Act and the Rules. It is trite law that the provisions of special act will prevail over the general law. Therefore, the provisions of

the MMDR Act and the Rules made therein prevail over the Maharashtra Land Revenue Code, 1966.

12. Needless to state that the official respondents shall ensure that the provisions contained in the MMDR Act and the MCR 1960 which protect the right of the land holder in the land are complied with in letter and spirit.

13. Accordingly, the Writ Petitions are disposed of.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)

JYOTI
PRAKASH
PAWAR

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