
(2022) 11 GAU CK 0032

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 7411 Of 2019

Ashit Chandra Dey And 2 Ors.

APPELLANT

Vs

State Of Assam And 6 Ors.

RESPONDENT

Date of Decision : 15-11-2022

Acts Referred:

Citation : (2022) 11 GAU CK 0032

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : P. Borah, K.P. Pathak

Final Decision : Dismissed

Judgement

1. Heard Mr. P. Borah, learned counsel for the petitioners. Also heard Mr. K.P. Pathak, learned counsel for the respondent nos.1, 2, 3, 6 & 7. No one appears for the respondent nos.4, 5 & 8.

2. The petitioners' case is that the respondent no.8, who was given a contract for construction of roads by the PWD (Roads) Division, Government of Assam, had authorised the petitioners to make a Mining Plan for extraction of stones to be used in the road works to be undertaken by the respondent no.8. The petitioners thereafter submitting a Mining Plan to the authorities on behalf of the respondent no.8. The petitioners' grievance is that out of 8000 cubic metres (CUM) of stones that were extracted by the petitioners, 3000 CUM were lifted by the Government contractors with permission and knowledge of the petitioners. However, the balance 5000 CUM were lifted by Government contractors, without the knowledge and permission of the petitioners.

3. The petitioners' counsel submits that the lifting of 5000 CUM of stones extracted by the petitioners could only have been done with the knowledge of the State respondents, as royalty would have to be paid for the same. He submits that the State Government should make an enquiry with respect to the lifting of the stones extracted by the petitioners and direct the State respondents

to pay the petitioners the cost of the extracted stones.

4. Mr. K.P. Pathak, learned counsel for the respondent nos.1, 2, 3, 6 & 7 submits that the Office of the Executive Engineer, PWD Silchar Rural Road Division had written various letters to the Divisional Forest Officer, Karimganj, requesting him to issue necessary forest permit for extraction of stones for the respondent no.8. Thereafter, on the basis of the authority given by the respondent no.8 to the petitioners to make a Mining Plan for extraction of stones, the Divisional Forest Officer, Karimganj had requested the petitioners to submit the Mining Plan for extraction of stones, which was to be used/ required for repair and rehabilitation of various roads under the Silchar PWD Rural Road Division.

5. The counsel for the respondent nos.1, 2, 3, 6 & 7 submits that the petitioners could have extracted the stones only for the purpose of repair and rehabilitation of the road contracts on behalf of the respondent no.8 and not for the purpose of selling the same for profit. He further submits that the stone mining area in which the petitioners had apparently extracted the stones was visited by the Forest Department to make a verification. However, though the petitioners were requested to be present, the petitioners failed to appear in the stone mining area on designated dates, even after repeated reminders were given to them. In any event, as per the letter dated 27.04.2019 issued by the Range Forest Officer, Kalain Range, Kalain to the Divisional Forest Officer, Karimganj Division, Karimganj, the respondents did not find any stone material lying in the permit area.

6. Mr. K.P. Pathak also submits that as the petitioners' only role was to prepare a Mining Plan for the respondent no.8, the petitioners cannot make any claim for payment of the stones allegedly extracted by them and allegedly taken by other Government contractors.

7. I have heard the learned counsels for the parties.

8. As can be seen from the records, the petitioners were only asked to make a Mining Plan on behalf of the respondent no. 8. The stones that were extracted were to be used for the road works undertaken by the respondent no.8 under the Silchar PWD Rural Road Division. There is nothing in the writ petition to show that the petitioners had been given any mining permit or licence to extract stones for the purpose of selling the same. There is no document to show that any licence had been given by the State respondents to the petitioners, for extraction of stones by the petitioners on behalf of the respondent no. 8. The affidavit-in-opposition filed by the respondents also shows that no royalty was deposited by the respondent no. 8, for extraction or lifting of stones and it is not understood as to how the petitioners could extract stones, when they themselves did not pay any royalty to the State respondents.

9. In the present case, there is nothing to show that respondent no. 8 required the alleged 5000 CUM of stones for his contract work. As the Mining Plan had been made on behalf of the respondent no.8 by the petitioners and the stones to

be extracted were to be used by the respondent no. 8, there is no basis for the petitioners to claim payment for the 5000 CUM stones extracted by them. At best the stones could have been used only for the road works to be done by the respondent no. 8. Further, there is nothing to show that any particular Government contractor had lifted the 5000 CUM stones extracted by the petitioners. As stated earlier, the petitioners did not have any right to extract or sell the stones for profit. If the respondent no.8 has not made any demand for further stones for his contract work, there is no question of the petitioners having any ground to charge any person, for allegedly lifting the stones that may have been allegedly extracted by them, as the same can only be used for the road contract/s undertaken by the respondent No. 8. As stated earlier, no permit has been given by the State respondents to the petitioners to use the stones, except for the road works undertaken by the respondent No. 8. As such, it is not understood as to how any loss has been caused to the petitioners, which needs to be compensated. Further, this writ Court cannot decide issues involving disputed questions of fact. In view of the reasons stated above, this Court does not find any reason to direct the respondents to make payment to the petitioners due to the lifting of extracted stones by unidentified Government contractors.

10. The writ petition is accordingly dismissed.