

(1999) 10 AHC CK 0038

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16506 of 1997

Ashok Kumar

APPELLANT

Vs

District Magistrate Allahabad and Others

RESPONDENT

Date of Decision : 06-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 10 AHC CK 0038

Hon'ble Judges : G.P.Mathur, J and Sushil Harkauli, J

Judgement

Sushil Harkauli, J.—The facts relevant for decision of this writ petition, as appearing from the record are that the petitioner was granted a lease for excavation of sand from Zone number 5 of the river Yamuna for an area of 452 acres. Pursuant to the auction by which the lease was settled with the petitioner, an agreement between the State and the petitioner dated 1321994 was entered into, a copy of the agreement has been filed as Annexure1 to this writ petition.

2. The period of lease was from 1321994 till 3091994. The total amount of royalty/lease money was Rs. 15,05,700/out of which Rs. 7,52,850/ was deposited immediately by the petitioner at the time of execution of the agreement in Form number MM6 in accordance with Rule 39 of U.P. Minor Mineral (Concession) Rules. The balance amount of Rs. 7,52,850/ was required by the agreement to be deposited in two installments of Rs. 3,76,425/ each on or before 3041994 and 3171994. The petitioner started work of excavation but did not deposit the first installment of Rs. 3,76,425/ which was to be deposited by 3041994. The petitioner has alleged that by letter dated 471994 the officer in charge of Kumbh Mela required the petitioner to stop excavation work immediately.

3. According to the counteraffidavit, the document, which has been filed as Annexure5, which bears the date 471994, but it has been referred to in para 11 of the writ petition as dated 21 71994, as accurate copy. However, it is admitted in Para 15 of the counteraffidavit that wireless message No. 104/Khadan dated

2071994 to stop mining work due to non depositing royalty installments, was sent. It is not the case in the counter affidavit that the petitioner continued with excavation work after the wireless message. On the contrary it is alleged in Para 15 of the counter affidavit that the Tehsildar reported after the wireless message that no excavation work in Zone number 5 was being done and no stock of sand was deposited by the lease holder at the time of inspection. Therefore, it is admitted case of the parties that before the date of expiry of contract i.e. 3091994 could arrive the petitioner was stopped from excavation work with effect from 2071994.

4. By the impugned order in this writ petition the recovery certificate for the entire balance amount of Rs. 7.5 lacs has been issued for realisation as arrears of land revenue.

5. The learned counsel for the petitioner has argued that since the petitioner was not allowed to work during the entire contract period, therefore, the whole amount of lease, cannot be demanded or recovered from the petitioner. The learned Standing counsel appearing for the respondent has not been able to point out the provisions in the agreement or any provision of law under which the respondents would be entitled to recover the entire lease money when they have not permitted the petitioner to operate the lease for the entire period.

6. However, the learned counsel for the petitioner has further submitted that this Court should direct deduction in the lease money sought to be recovered proportional to the period by which the lease period was cut short.

7. We are unable to accept this submission of the learned counsel for the petitioner because it is common knowledge that in excavation of sand the period before the rains set in causing the river to swell is the peak period for excavation of sand and when excavation area gets inundated by expanding the river water, excavation of sand from the river bed reduces. Therefore, the deduction of lease rent can not be made in proportion to unexpired period of lease. For determining the proportion of lease rent which should be reduced several questions of facts would have to be determined. These questions would include the time when rainy season started in that particular year, the time and extent of any inundation of excavation area etc. In nut shell it would have to be examined for how much of the period between 2071994 and 3091994 the petitioner could not have excavated sand due to natural causes.

8. Another question which would have to be examined is whether by non deposit of the installments due on 3041994 the petitioner committed breach of the contract and whether the respondents took necessary legal action pursuant to the alleged breach by the petitioner.

9. These questions of fact would require evidence and therefore cannot be adjudicated under Article 226 of the Constitution of India.

10. In the circumstances we are of the opinion that the entire lease money can

not be realised from the petitioner when he was not allowed to operate the lease for the entire period of the agreement.

11. We, however, allow this writ petition and quash the impugned demand and recovery of the entire balance lease rent/royalty.

12. The respondent No. 1, District Magistrate, Allahabad, will examine the matter after giving opportunity of hearing to the petitioner and will decide how much reduction in the lease rent should be given to the petitioner. If the petitioner is not satisfied with the decision of the District Magistrate, he will have the liberty to approach the Civil Court by way of suit for determination of the aforesaid question of fact and he will not approach this Court under Article 226 of the Constitution because of the reasons given above.

13. Any of the parties will also be at liberty to approach the Civil Court for determination of the damages/compensation by breach of the contract by the other side and the Civil Court will decide the said question in accordance with law.

14. By an interim order passed in this Writ Petition on 2051997 the petitioner was required to deposit the installment of 3041994 amounting to Rs. 3,76,425/ with the respondents along with interest. The amount is alleged to have been deposited. Since the total period of lease from 1321994 to 3091994 was about seven and half months, out of which the petitioner was free to operate lease upto 3071994 for more than five months, which is roughly 75 per cent of the total lease period and in view of the fact that major excavation is done prior to the rainy season. Therefore, the deposit already made by the petitioner, which represents 75 per cent of the lease money, is due to the respondents and therefore, the deposit made by the petitioner will not have to be refunded. It is made clear that this deposit is of lease rent and it has no connection with the compensation/damages, which may be determined by the Civil Court.

15. The writ petition is allowed, as above. However there will be no order as to costs.