(2003) 04 OHC CK 0023

In the Orissa High Court

Case No : O.J.C. No''s. 9432 of 2001 and 1247 of 2002 and W.P. (C) No. 2809 of 2002

Aswini Kumar Panda APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 02-04-2003

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15
Orissa Minor Minerals Concession Rules, 1990 — Rule 14, 14(4), 22, 28

Citation : AIR 2003 Ori 175 : (2003) 1 OLR 658

Hon'ble Judges : P.K. Misra, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : B. Misra, for the Appellant; M.K. Mohanty, Additional Government Advocate and A.R. Dash, (for intervenor), for the Respondent

Judgement

A.K. Patnaik, J.—The petitioner in all these three writ petitions is one and the same. By auction notice dated 16-3-2001, the Tahasildar, Jaleswar in Sairat Lease Misc. Case No. 35 of 2001 notified that sairat sand quarry of Sekasarai would be put to auction for the year 2001-2002. In the said auction notice dated 16-3-2001, the details of the said sairat source were indicated as Plot No. 2 in Khata No. 142 measuring an area Ac. 86.0 dec. Thereafter, auction of the said sairat source was held on 30-3-2001.

2. The case of the petitioner in O.J.C. No. 9432 of 2001 is that the entire area of Ac. 86.90 in Plot No. 2. Khata No. 142 was put to auction. The petitioner offered the highest bid of Rs. 2,50,000/- and the bid was knocked in his favour. Subsequently, however, the Tahasildar, Jaleswar took a stand that only Ac, 30.00 in plot No. 2/1 of Khata No. 142 has been auctioned in favour of the petitioner. Thereafter, fresh auction notice dated 16-7-2001 was published by the Tahasildar in Sairat Misc. Case No. 18/ 2001-2002 for auction of Ac. 30.00 dec. out of the land in Khata No. 142 numbered as Plot No. 2/3. Aggrieved, the petitioner filed writ petition (OJC No. 9432 of 2001) with a prayer to quash the said auction notice dated 16-7-2001 in Sairat Misc. Case No. 18 of 2001-2002.

3. Mr. P.K. Rath, learned counsel appearing for the petitioner submitted that it would be clear from the auction notice dated 16-3-2001 in Annexure-1 to the writ petition that the Sairat source was indicated as Plot No. 2 in Khata No. 142 measuring an area Ac. 86.90 dec. The auction took place on 30-3-2001, in which the petitioner offered the highest bid of Rs. 2,50,000/- and the auction was knocked in favour of the petitioner for the entire area of Ac. 86.90 dec. in Plot No. 2, Khata No. 142. Accprding to Mr. Rath, at a later stage, the authorities cannot back out and say that the auction was confined only an area Ac. 30.00 in Plot No. 2/1, Khata No. 142 In support of his aforesaid contention, he referred to the copies of the R. O. Rs. of the said Khata No. 142 annexed to the writ petition as Annexure-6 as well as the certificate furnished by the Tahasildar to show that there is no such plot as Plot No. 2/1 in Khata No. 142.

4. Mr. M.K. Mohanty, learned Additional Government Advocate, on the other hand, submitted that the auction notice dated 16-3-2001 was for the entire area of Ac. 86.90 dec. in Plot No. 2, Khata No. 142. Subsequently, on 28-3-2001 the Sub-Collector, Balasore directed that the auction should be only for an area of Ac. 30.00 and separate auction notices were to be issued after breaking the entire Plot No. 2 to three plots. He further submitted that the petitioner was duly informed that the auction would be confined to Ac. 30.00 only in Khata No. 142 as would be evident from the order dated 28-3-2001 and 30-3-2001 of the said Sairat Case No. 35 of 2001. Mr. Mohanty, further argued that, in fact, when this decision was taken by the Sub-Collector, Balasore, on 28-3-2001, the petitioner himself was present and was informed that the auction was confined to Ac. 30.00 dec. only and he put his signature in the order-sheet.

5. We have perused the certified copy of the order sheet of the court of the Tahasildar, Jaleswar in Sairat Case No. 35 of 2001 and we find from the said order sheet that initially on 16-3-2001 the Tahasildar, Jaleswar issued notice for auction of the entire area of Ac 86.90, but thereafter, on 28-3-2001, when the petition and one Prasanta Kumar Palai were present to participate in the auction sale, the Sub-Collector, Balasore directed the Tahasildar to prepare trace map attached in the case record and proposed to hold auction for Ac. 30.00 in Plot No. 2. It further appears from the order sheet dated 30-3-2001 that the bid for the auction sale was knocked down at Rs. 2,50,000/- in favour of the petitioner for an area Ac. 30.00 in Plot No. 2 of village Seksarei. In view of the aforesaid facts mentioned in the orders dated 28-3-2001 and 30-3-2001 in Sairat Case No. 35 of 2001, we are not in a position to hold that the auction held on 30-3-2001 in favour of the petitioner was for the entire area of As. 86.90 in Plot No. 2, Khata No. 142. That apart, whether auction was held for the area of Ac. 86.90 dec. or for an area of Ac. 30.00 only, is a disputed question of fact, which cannot be gone into by this court in a writ petition. If the case of the petitioner is that the auction was for the entire area of Ac. 86.90 and not for Ac. 30.00 dec. only, the appropriate remedy for him is to file a suit. Accordingly, O. J. C. No. 9432 of 2001 stands disposed of.

6. The petitioner''s grievance in O. J. C. No. 1247 of 2002 is that after the said auction, the petitioner was allowed to operate in the area auctioned in his favour only up to 27-12-2001 and was not issued with transit permit in form-K under the Orissa Minor Mineral Concession Rules, 1990, (for short, ''the Rules'') beyond 27-12-2001 on the ground that he had not filed returns in form-G as required under Rule 14(14) of the said Rules.

7. Mr. Rath, learned counsel for the petitioner submitted that Rule 14 is located in chapter-II (Grant of Quarry Lease) and is, therefore, applicable to lease and not auctions. He submitted that the auction in favour of the petitioner was held as per Rule 22 located in the said Chapter-IV of the Rules. According to Mr. Rath, since sale or disposal of sand in favour of the petitioner by the auction held on 30-3-2001 was by public auction and not by lease, he was not required to furnish any return in Form-G as required under Rule 14(14) as the said Rule is applicable to leases only. Mr. Rath further submitted that since the petitioner was not issued with transit permit in Form-K under Rule 28 of the aforesaid Rules, he could not lift the sand for a period of three months, i.e., from 28-12-2001 to 31-3-2002. Relying on the decision of the Supreme Court in Beg Raj Singh Vs. State of U.P. and Others, Mr. Rath submitted that this Court can grant relief to the petitioner by directing the opposite parties to issue transit permit in Form-K under Rule 28 of the Rules and allow the petitioner to lift sand for the said period of three months. He explained that since no auction has been held in respect of Ac. 30.00 of sand sairat, which was auctioned in favour of the petitioner on 30-3-2001, and no third party has acquired rights as yet, there will be no difficulty for the Court to issue such direction to the opposite parties.

8. Mr. Mohanty, learned Additional Government Advocate, on the other hand, vehemently argued that Rule 28 of the Rules is applicable to lessees, permit-holder and auction purchasers and Sub-rule (5) of the said Rule 28 provides that the concerned Deputy directors of Mines and the Mining Officers in the case of rocks used for decorative, industrial and export purposes including dimension stones and the respective Controlling Authorities in the case of other minor minerals, shall send an annual return in Form-L showing production and dispatch of minor minerals and the revenue earned therefrom to the Director to enable him to assess the total income derived by the State and to furnish such information to the Indian Bureau of Mines. He argued that if the petitioner, who is an auction purchaser, does not file return in Form-G under Rule 14 of the Rules, the Deputy Director of Mines and the Mining Officer will not be able to discharge the statutory obligation under Sub-rule (5) of Rule 28 of the Rules.

9. Mr. A.R. Das, learned counsel appearing for the intervenor while adopting the submission of Mr. Mohanty further submitted that the auction purchaser is also a lessee and the provisions of Rule 14(14) of the Rules which are applicable to a lessee are also applicable to a auction purchaser. He cited the decision of the Supreme Court in Sri Tarkeshwar Sio Thakur Jiu Vs. Dar Dass Dey and Co. and Others, for the proposition that the expressions ''lease'' or ''auction'' are not

relevant but the substance of the transaction is relevant to find out as to whether an auction purchaser in a given case is also a lessee or not.

10. We find a lot of force in the submission of Mr. Dash that the nomenclature of transaction will not be decisive and in each case the Court will have to look into the substance of transaction to find out as to whether the transaction in question is a lease or not. But in this case, the question is whether Rule 14(14) of the Rules was applicable to the auction purchaser or was only confined to a lessee. For deciding this question, we have to look into the provisions of the said Rules and find out whether a distinction has been made between a lessee and an auction purchaser and if any such distinction has been maintained by the Rules, whether an auction purchaser will be liable to furnish correct accounts of the minor minerals quarried and dispatched in the return in Form-G under Rule 14(14) of the Rules. For interpreting the Rules, the Court may have regard to the language used in the. Act and the Rules, but the Court cannot possibly look into the transaction and interpret the meaning of the expression used in the Act and Rules. This is because the legislative intent is to be found out from the language used in the Act and the Rules and not from the language used in any agreement or transaction or document executed between the parties. Bearing in mind this principle of interpretation, we may look at the provisions of the Rules.

; 11. Chapter-II of the Rules has been titled as "Grant of Quarry lease" and Rule 14 has been located in Chapter-11 relating to grant of quarry lease. Rule 14 is titled as "Conditions of quarry lease". Sub-rule (14) of said Rule 14 reads as follows :

"(14) The lessee shall keep correct accounts of minor minerals quarried and dispatched and shall furnish a return in form ''G''

(a) to the Deputy Director of Mines or Mining Officer having jurisdiction and also to the Director, if such minerals are rocks used for decorative, industrial or export purpose including dimension stones, or

(b) to the Competent Authority and the Director in the case of other minor minerals."

The aforesaid language of Rule 14(14) makes it clear that an obligation has been cast only on a lessee to keep correct accounts of minor minerals quarried and dispatched and to furnish return in Form-G. Chapter-Ill of the Rules is titled "Grant of Quarry Permits" and Rule 20 located in the said Chapter-Ill is titled as "Conditions of quarry permit". The provisions mentioned therein are different from those mentioned in Rule 14. Chapter-IV of the Rules is titled as ''Auction''. There is only one rule, namely. Rule 22 in the said chapter-IV with several Sub-rules. There is no mention in any of the sub-rules of Rule 22 requiring the successful bidder or auction purchaser to furnish accounts in Form-G as provided in Sub-rule (14) of Rule 14. Sub-rule (1) of Rule 22 however reads as follows :

"22(1) Notwithstanding anything mentioned in these Rules, minor minerals can be sold or disposed of by public auction as may be prescribed by the concerned Controlling Authority on such terms and conditions as may be specified in the auction sale notice."

Thus, Rule 22(1) provides that minor minerals can be sold or disposed of by the auction purchaser as may be prescribed by the concerned Controlling Authority on such terms and conditions as may be specified in the auction sale notice. There is no term and condition in the auction sale notice that the petitioner will have to furnish return in Form-G. The auction sale notice however states that the auction purchaser will be bound to produce before the competent authorities in the prescribed form the accounts of quantity of minerals lifted and dispatched out during the auction period.

12. Chapter-V of the Rules is titled as ''Miscellaneous'' and the heading of Rule 28 located in the said Chapter-V is also ''Miscellaneous''. The said Rule 28 is quoted hereinbelow:

"28. Miscellaneous.-- (1) No lessee or permit holder or auction purchaser shall dispatch any minor minerals from an area without a Valid Transit Permit issued by -

(a) time Deputy Director of Mines or the Mining Officer having jurisdiction in the case of rocks used for decorative, industrial or export purpose including dimension stones, or

(b) The Competent Authority in case of other minor minerals. In Form ''K'' printed and machine numbered, which shall be supplied by the respective authority as aforesaid on payment of the cost thereof; and

(2) No authority in charge of execution of public work shall pass any bill for reimbursement of royalty paid on any minor minerals unless the person claiming such reimbursement produces the Transit Pass referred to in Sub-rule (1)

(3) The provisions of Sub-rule (2) shall apply mutatis mutandis to cases where any bill claiming the reimbursement of the cost for purchase of any minor mineral is submitted before any authority in-charge of execution of public work. Such authority shall not pass the bill unless the receipt for the amounts so paid is produced.

(4) Where an authority referred to in Sub-rule (2) or Sub-rule (3) is requested by a Competent Authority or a Controlling Authority to furnish information on quantity of minor minerals supplied to him he shall furnish such information without delay.

(5) "The concerned Deputy Directors of Mines and the Mining Officers in the case of rocks used for decorative, industrial and export purposes including dimension stones and the respective Controlling Authorities in the case of other minor minerals shall send an annual return in Form ''L'' showing production and dispatch of minor minerals and the revenue earned therefrom to the Director to

enable him to assess the total income derived by the State and to furnish such information to the Indian Bureau of Mines."

Sub-rule (1) of Rule 28 provides that no lessee or permit holder or auction purchaser shall dispatch any minor minerals from an area without a Valid Transit Permit issued by the authorities mentioned therein in Form-K. Thus, the said Rule 28(1) is applicable to all the three categories, namely, lessee, permit holder and auction purchaser, and each of the aforesaid categories, namely, lessee, permit holder or auction purchaser, is required to obtain a valid transit permit in Form-K from the concerned authority for transportation of minor minerals. The aforesaid Sub-rule (1) of Rule 28 thus makes a distinction between a lessee and an auction purchaser and makes it clear that a lessee does not include an auction purchaser.

13. The aforesaid analysis of the Rules would show that the contention of Mr. Mohanty and Mr. Dash that the expression ''lessee'' in Sub-rule 14(14) of the Rules will include auction purchaser, is misconceived. It is true that the officers mentioned in Sub-rule (5) of Rule 28 of the Rules are required to send annual return in form L showing production and dispatch of minor minerals and to furnish such information to the Indian Bureau of Mines and unless such Officers get the relevant information about dispatch of minor minerals by the auction purchaser from the respective areas auctioned to them, they will not be able to send correct returns in Form-L. But in the auction sale notice a condition can be stipulated requiring the auction purchaser to give account of production and dispatch of the minor mineral to the concerned officers during the auction period as has been done in the present case. In any case, there is no provision in the rules showing that the authorities can refuse to issue valid transit permit in Form-K in favour of the auction purchaser on the ground that he has not filed return in Form-G. Therefore, the action of the authorities in not issuing the permit to the petitioner in form-K for transportation of the sand extracted from the auctioned area of Ac. 30.00 on the ground that he has not furnished the return in form-G is illegal and without authority of law.

14. In Beg Raj Singh Vs. State of U.P. and Others, cited by Mr. Rath the Supreme Court has held as follows (Para 6) :

"x x x x The ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and right to relief should be decided by reference to the date on which the petitioner entered the portals of the Court. A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events, i.e., the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment. Third party interest may have been created or allowing relief to the claimant may result in unjust enrichment on account of events happening in between. Else the relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi-judicial forum and for no fault of the petitioner. A plaintiff or petitioner having been found entitled to a right to relief, the Court would as an ordinary rule try to place the successful party in the same position which he would have been if the wrong complained against would not have been done to him.

xxx xxx xxx xxx xxx"

It is clear from the aforesaid judgment of the Supreme Court that where the petitioner is found entitled to a right of relief, the Court as an ordinary rule will try to place the successful party in the same position, which he would have been if the wrong complained against would not have been done to him. In the present case, an area of Ac. 30.00 auctioned to the petitioner has not been auctioned subsequently to any third party and thus, no right has been created in favour of any 3rd party as yet. Pursuant to the auction, the petitioner would have been entitled to extract sand for a period of one year from the date of auction. Sub-rule (2) of Rule 22 also provides that the auction shall be valid for a maximum period of one year from the date of auction. The petitioner has been allowed to extract sand from the area Ac. 30.00 auctioned in his favour for a period of 9 months up to 27-12-2002. Hence, he is entitled to extract sand from the said sairat source measuring Ac. 30.00 for the balance period of three months.

15. We, accordingly, direct that the Tahasildar, Jaleswar will allow the petitioner to extract sand for the balance period of three months counted from 15th April, 2003 and will issue valid transit permit in form-K for transportation of the said sand extracted during the aforesaid period and at the end of the said three months, the petitioner will furnish to the Tahasildar, Jaleswar an account of the total quantity of sand lifted and dispatched during the auction period in terms of the auction sale notice. With the aforesaid observation and directions, O. J. C. No. 1247 of 2002 stands disposed of.

16. Mr. P.K. Rath, learned counsel appearing for the petitioner submitted that since the relief sought for in W. P. (C) No. 2809 of 2002 has become infructuous, the petitioner does not want to press the said writ petition.

P.K. Misra, J.

17. I agree.

