

(1995) 08 AHC CK 0023
In the Allahabad High Court
Case No : C.M.W.P. No. 2178 of 1987

Babu Lal and Others

APPELLANT

Vs

Collector and District Magistrate and Others

RESPONDENT

Date of Decision : 16-08-1995

Acts Referred:

Citation : (1996) AWC 406 Supp : (1996) RD 497

Hon'ble Judges : N.L. Ganguly, J

Bench : Single Bench

Advocate : U.S. Awasthi, for the Appellant;

Final Decision : Allowed

Judgement

N.L. Ganguly, J.—Writ petition is directed against the orders of the Mines Tribunal dated 16.10.86 and 10.11.86 (Annexures 2 and 3 to the writ petition), by which the amount of dead rent and royalty was demanded from the Petitioners. The Petitioners had gone to the Mines Tribunal challenging the demand of rent and royalty at the revised rates. The learned Counsel for the Petitioner, Sri U. S. Awasthy submitted that the earlier rent which was prevailing was enormously enhanced. He submitted that the admitted position is that the rate of rent and royalty was enhanced by the State Government. The question for consideration is that whether the enhanced rate of royalty and dead rent could be recovered from the Petitioner without notice, as required under the U.P. Minor Minerals (Concession) Rules, 1963. The learned Counsel for the Petitioners placed Part II of the said Rules, which is quoted below:

(2) Subject to the provisions of clause (1) of this Part during the subsistence of the lease, the lessee/lessees shall pay. to the State Government annual dead rent at the following rate/rates, or at such revised rate/rates which may be communicated in writing to the lessee/lessees by the State Government, per mineral per acre of the lands demised and described in Part I of this Schedule:

----- Name of

Dead rent payable	Area of	Dead rent	Total dead	Mineral fixed	per acre	demised land
		rent	in	a		year
						1.

2.

3. -----

The dead rent shall be payable to the State Government annually within one month of completion of the lease year by deposit in Government treasury at the headquarters of the district the leasehold is situated under the head as may be specified from time to time.

The learned Counsel for the Petitioners has quoted the revised rate and mode of payment of rent as under:

----- Existing			
second Schedule	Second Schedule	as hereby (Rule 22)	substituted (Rule 22)
----- Area			
Dead rent per	Area	Dead rent per	acre per annum
acre	per annum	acre	per annum

Min. Max. Min. Max.

1. Upto 10 acre 50 100 1. Upto 10 acres 500 1000

2. More than 10 35 75 2. More than 10 350 700 acres but not more than 30 more than 30 acres. acres

3. More than 30 20 40 3. More than 30 200 400. acres acres

2. The submission of the learned Counsel is that the revised rates were never communicated to the Petitioner. This fact has been specifically stated in para 21 of the writ petition. A counter-affidavit has been filed by the State Government. in para 13, the state has stated that notification has been made which was published in the Government Gazette. It is no where stated that the revised rates were ever communicated to the Petitioner. The learned Counsel for the Petitioner cited a decision reported in 1984 Allahabad Law Journal 61. The facts of the said case and the present writ petition are identical. The rates revised were mentioned. It was not communicated either in that case or in the present case that the State Government has ever applied its mind and fixed any revised rate for the Petitioners" case. The argument that the revised rates were published in the Gazette was sufficient notice to the Petitioners was also raised in the said decision and the Division Bench had repelled the said argument. The revised rates do not fix any particular rate but provide maximum and minimum. Thus, the State Government has to apply Its mind and fix a specified amount and then serve a notice to the Petitioners, as required under Rules, which was not done in the present case. in these circumstances, there is no option but to allow the writ petition and quash the orders and judgments, Annexures 2 and 3 to the writ

petition, dated 16.10.86 and 10.11.86 passed by the Mines Tribunal. The Respondents are at liberty to communicate the revised rate of amount of dead rent to the Petitioners and proceed afresh, according to rules, if so advised.

3. The writ petition is allowed. The parties to bear costs.