
(2019) 08 GAU CK 0061
In the Gauhati High Court
Case No : WRIT APPEAL NO.157 OF 2019

Babul Chandra Dey @ Ashit Chandra Dey	APPELLANT
Vs	
State Of Assam And Ors	RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Citation : (2019) 08 GAU CK 0061

Hon'ble Judges : A.K. Goswami, J; Manish Choudhury, J

Bench : Division Bench

Advocate : H.R.A. Choudhury, R. Mazumdar, S. Biswas

Final Decision : Dismissed

Judgement

A.K. Goswami, j

1. Heard Mr. H.R.A. Choudhury, learned senior counsel assisted by Mr. R. Mazumdar, learned counsel for the appellants. Also heard Mr. S. Biswas, learned Standing Counsel, Forest Department appearing for the respondents.

2. This intra-court appeal is directed against the order dated 02.05.2019 passed in WP(C) No.949/2019 dismissing the writ petition filed by the appellants and also imposing a cost of ` 5,000/-.

3. It is the case of the appellants that the appellants, along with two others including one Smti. Pompa Endow had applied to the Principal Chief Conservator of Forests, Assam for grant of Forest Trade Permit under Assam Minor Mineral Concessions Rule, 1994 (for short, "the 1994 Rules"), for the purpose of extracting stone from a quarry called 'Baleswar Stone Quarry', which is under Kalain Range of Karimganj Forest Division. Consequent thereto, each of the appellants were allowed to extract 2500 cubic meters of stone on 30.01.2007 (date is wrongly recorded in the writ petition at Paragraph 2, should have been 03.01.2007) on payment of forest royalty at the rate of ` 170/- per cubic meter for issuance of formal order. The fixation of royalty at the rate of ` 170/- per

cubic meter was the subject matter of dispute in WP(C) No.769/2007. The said writ petition was disposed of on 10.10.2007.

4. We will revert back to this order dated 10.10.2007 a little later.

5. It appears that the Additional District Magistrate, Karimganj had passed an order dated 31.08.2015 directing the Divisional Forest Officer, Karimganj to consider the prayer of the petitioners. As the prayer was not appropriately considered, WP(C) No.5385/2016 was filed before this Court and the said writ petition was disposed of by the order dated 9. 09.2016 directing the State respondents to consider the representation filed by the petitioners therein.

6. By then, the Assam Minor Mineral Concessions Rules, 2013 (for short, "the 2013 Rules"), came into effect from 16.03.2013.

7. It is to be noted at this juncture that Baleswar Stone Quarry was subsequently bifurcated into Baleswar Minor Mineral Unit No.1 and Baleswar Minor Mineral Unit No.2. Baleswar Minor Mineral Unit No.1 came to be closed on account of environmental issues.

8. A sale notice dated 25.02.2017 was issued by the Divisional Forest Officer, Karimganj Division for settlement of Baleswar Minor Mineral Unit No.2. Writ petition being WP(C) No.1609/2017 came to be instituted challenging the said sale notice. While the said writ petition was pending, the appellants filed the present writ petition, out of which this appeal has arisen, praying for a Writ of Mandamus to the respondents for allowing to extract 2500 cubic meters of stone from Baleswar Minor Mineral Unit No.1 and Unit No.2 at the existing government royalty of ` 200/- per cubic meter on the basis of the letter dated 31. 08.2015 passed by the Additional District Magistrate, Cachar and allotment letter dated 3. 01.2007 till extraction of allotted stone material of 10,000 cubic meters.

9. The learned Single Judge recorded a finding that the appellant Nos.3 and 4 were minors at the time when the allotment was given and, therefore, they are not entitled to a favourable consideration of the prayers made in the writ petition. It was also noted that the present petitioners were not the petitioners in WP(C) No.769/2007 in which fixation of forest royalty at the rate of ` 170/- per cubic meter was put to challenge and, therefore, the very foundation of the writ petition is highly questionable. It was further observed that as 1994 Rules have been repealed and the 2013 Rules, which now holds the field, provide for a completely different methodology for settlement/extraction of minor minerals, after lapse of 12 years from the date of initial allotment, prayers made by the petitioners cannot be granted. On the impression gathered by the learned Single Judge that the petition was not filed bonafide, cost of ` 5,000/- was imposed on the writ petitioners to be paid to the Gauhati High Court Legal Services Committee.

10. Mr. Choudhury submits that the learned Single Judge committed manifest error of law in holding that in WP(C) No.769/2007 only Shri Paplu Dutt and Shri

Partha Pratim Dutta were the writ petitioners and not the present petitioners. By drawing attention of the Court to Page-167, he points out that except Arpita Dey, all were writ petitioners in the said writ petition. He also submits that in view of the order dated 10.10.2007 passed in WP(C) No.769/2007, the appellants are entitled to operate the Mahal at ` 146/- per cubic meter, but since the present rate of royalty is ` 200/- per cubic meter, the appellants are praying for allowing them to operate at the rate of ` 200/- per cubic meter. It is also submitted that coming into effect of 2013 Rules will not have any impact in the present fact situation.

11. Mr. S. Biswas, on the other hand, submits that the very foundation of the case is fallacious as at no point of time there was any order in favour of the present petitioners permitting them to extract stone at the rate of ` 146/- per cubic meter. It is submitted that the order dated 10.10.2007 does not relate to the Baleswar Stone Mahal.

12. We have considered the submission of the learned counsel for the parties and have perused the materials on record.

13. At the very outset, we would observe that the learned Single Judge was not justified in holding that the present petitioners were not parties in WP(C) No.769/2007. It is, however, true that the present petitioner No.4 was not a party to the said writ petition. The position becomes manifestly clear from a perusal of the order sheet in WP(C) No.769/2007, which is available at Page 167 and 168. However, what is significant is to note that in the letter dated 03.01.2007 (Annexure1 at Page 89 of the appeal papers), names of only appellant No.1, appellant No.2, appellant No.4 and that of one Paplu Dutta were mentioned. Name of appellant No.3, Amit Dey, who is son of appellant No.1, was not there.

14. The order dated 10.10.2007 passed in WP(C) No.769 of 2007, reads as follows:

"Heard Mr. R.P. Sarma, learned Sr. Counsel, assisted by Mr. SMT Chistie, learned counsel for the petitioner as well as Ms. R. Chakraborty, learned State Counsel for the respondents.

It is submitted by Mr. Sarma, learned Sr. Counsel that the writ petition can be disposed of in terms of the averments made in paragraph 5 of the affidavit-in-opposition filed by the respondents, which is quoted below:

'5. That with regard to the statements made in paragraphs 5, 6, 7, 8, 9, 10, 11 and 12 of the writ petition, the deponent begs to state that vide letter No.FRS 98/2003/104 dated 28.2.2007 issued by the Govt. of Assam in Environment and Forest Department stating that in the application filed by Shri Ashit Ch. Dey and two others for reducing the per cu.m rate, the Governor of Assam was pleased to reduce the rate in terms of Assam Mines and Mineral Concession Rule, 1994 and the rate has been fixed at Rs.146/-per cu.meter to permit holder. As such the

prayer of the petitioner was considered and hence on this ground alone the instant petition is liable to be dismissed.'

In view of the above submissions made by the learned counsel for the petitioner, the writ petition is disposed of in terms of the respondents in paragraph 5 of the affidavit-in-opposition.

Writ petition is disposed of".

15. The letter No.FRS 98/2003/104 dated 28.02.2007, which is referred to in the said order dated 10.10.2007 is available at Page 172 of the appeal papers. The said letter was addressed by the Deputy Secretary, Government of Assam, Environment and Forests Department to the Chief Conservator of Forests (Territorial) Assam. It will be appropriate to extract the contents of the said letter:

"In inviting a reference to your letter on the subject cited above, I am directed to say that after careful examination of the reports submitted by you and the petition dated 31.01.07 submitted by Shri Ashit Ch. Dey and two others praying for reducing the per cum rate for extraction of permit from Lakhidharra Nalah, Cachar Division, Governor of Assam is pleased to state that the rate shall be fixed at par with the rate of nearest mahal as per Assam Minor Mineral Concession Rule 1994 and hence the rate has been fixed at Rs.146/- per cum to the permit holder."

16. A perusal of the letter, as extracted above, demonstrates unequivocally that the rate of forest royalty fixed at ` 146/- per cubic meter was in respect of Lakhidharra Nalah and there is no reference to Baleswar Stone Mahal in the said letter. A perusal of the order dated 10.10.2007 goes to show that the learned counsel appearing for the petitioners therein prayed for disposal of the writ petition in terms of the averments made in paragraph-5 of the affidavit-in-opposition, which contains a reference to this letter dated 28.02.2007. May be, the learned counsel for the petitioners was under a mistaken belief that the letter dated 28.02.2007 pertains to Baleswar Stone Mahal. The order dated 10.10.2007 passed in WP(C) No.769/2007 does not take the case of the appellants any further and, therefore, the entire edifice that is sought to be built is without any foundation. The order dated 31.08.2015, which is available at page 105 of the appeal papers, on the basis of which the claim is now made for extracting stone, has its roots in the order dated 10.10.2007 passed in WP(C) No.769/2007 and, therefore, the said order cannot enure to the benefit of the petitioners. The learned senior counsel appearing for the appellants has not been able to place on record or before us any subsisting formal order permitting the appellants to extract stone either at the rate of ` 170/- per cubic meter or ` 146/- per cubic meter.

17. In the aforesaid background as unfolded, we see no reason to interfere with the order passed by the learned Single Judge and, accordingly, finding no merit, this appeal is dismissed. However, since there was a factual error in the order

passed by the learned Single Judge in the sense that it was construed that the petitioners were not party in WP(C) No.769/2007 and which primarily was the basis for imposition of cost, we are inclined to set aside that part of the order. Accordingly, while upholding the order of dismissal of the writ petition passed by the learned Single Judge, we exempt the appellants from payment of cost as directed by the learned Single Judge.