

(2021) 08 GAU CK 0026

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2265 Of 2021

Bijon Kumar Das And Anr

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 06-08-2021

Acts Referred:

Mines And Minerals (Development And Regulation) Act, 1957 — Section 5, 6, 7, 8, 8A, 9, 10, 11, 12, 13, 14, 15, 15(1), 23C

Citation : (2021) 08 GAU CK 0026

Hon'ble Judges : Prasanta Kumar Deka, J

Bench : Single Bench

Advocate : A Y Choudhury

Final Decision : Disposed Of

Judgement

Heard Mr. AY Choudhury, learned counsel for the petitioners. Also heard Mr. D Gogoi, learned standing counsel for the Forest Department, Assam.

The respondent No. 5, Divisional Forest Officer, Hailakandi Division, Hailakandi issued a sale notice for granting of mining contract of Lalacherra

sand mining contract unit and Ramchandi sand mining contract unit for collection of sand on tender sale basis. Letter of intent in favour of the

petitioners were issued vide letter dated 19.09.2017 and 17.08.2017 respectively. The petitioners entered into contract agreement with the respondent

No. 5. The petitioners submitted their respective first quarterly installment commencing from 1st December, 2019. The respondent authority issued

work order on 26.02.2020. Lockdown was imposed by the District Administration due to Covid-19. Petitioners submitted their representation for

extension of the time for extraction in connection to their first kist money and the 2nd kist money of the said mining units to a period after lockdown is

withdrawn. The respondent No. 6 AMTRON demanded the kist amount within due time. WP(C) 5742 was filed by the petitioner which was disposed

of on 04.01.2021 with a direction to the petitioners to submit representation before the respondent No. 2 i.e. Principal Chief Conservator of Forest,

Assam and with a further direction to the said Chief Conservator to pass a reasoned order in respect of the claim of the petitioners. In terms of the

said order of this Honâ??ble Court representation dated 08.01.2021 and 27.02.2021 through e-mail were submitted to the respondent No. 2. The

petitioners while awaiting for reasoned order in terms of the order passed in WP(C) 5742/2021, on 27.02.2021 the respondent No. 5 issued the notice

under Memo No. HKD/DFO (T).Mining Genl. 618-623 dated 09.03.2021 thereby terminating the contract of the said mining units. Being aggrieved,

the petitioners have filed this writ petition for the following reliefs:

â??(a) To set-aside the impugned notice Memo No. HKD/DFO (T). Mining Genl.618-623 dated 09.03.2021 issued by the respondent No. 5.

(b) to comply with the order dated 04.01.2021 passed in WP(C) No. 5742/2021.

(c) to direct the respondent No. 5, to receive the petitioner upcoming kist i.e. 6th kist money through treasury challan.

(d) to consider the petitioners representation dated 08.01.2021.

And on perusal of record and hearing of both the parties make the rule absolute and/ or pass such further order/ orders as your Lordships

may deem fit and proper in the interest of justice;

And

In the interim your Lordship may be pleased to stay the action of impugned notice Memo No. HKD/DFO (T).Mining Genl.618-623 dated

09.03.2021 and/ or pass such further order/ orders as your Lordships may deem fit and proper in the interest of justice.â??

Mr. Gogoi submitted that this court in WP(C) 3270/21 vide order dated 27.07.2021 held that once the termination against the contract area was issued

the same cannot be restored back considering the violation of the terms of the settlement. Moreover, setting aside of the impugned notice dated

09.03.2021 would amount extension of the lease period on the face of default on the part of the petitioners. Referring to the representation dated

08.01.2021 to the Chief Conservator of Forest, respondent No. 2 it is submitted by Mr. Gogoi that the petitioners sought for extending the time period

after accepting the kist for the month of December, 2020 beyond the period of the settlement tenure. The said extension cannot be granted and to that

effect it has been decided by this court and as such the writ petition is liable to be dismissed.

I have given due consideration to the submissions of the learned counsel. In a similar case which was disposed of vide order dated 27.07.2021 in

WP(C) 3270/2021 it was held as follows:

“On perusal of the contract annexed to this writ petition entered into by the petitioner and the Divisional Forest Officer, Hailakandi

nowhere any clause/ clauses are stipulated thereby providing for extension of the extract period. Rather under part 4 of the contract it is

the manner for suspension or termination of the contract and the determination, penalty etc. which are stipulated. Under such

circumstances, the prayer for extension of the contract period must flow from the statutory provision. In the present case in hand, the Rules,

2013 has its statutory force inasmuch as the said Rules are framed on the basis of the power conferred by sub-section (1) of Section 15 and

Section 23 C of Mines and Minerals (Development and Regulation) Act, 1957 and on perusal of the various Rules under Chapter 4 there is

no provision for extension of the contract period rather there is a provision for the renewal of the mining contract and for that purpose the

petitioner/ contractor is required to seek for renewal prior to 18 months from the date of expiry of the contract. Whether the term

“renewal” and “extension” of a lease have the same meaning. Normally “renewal” amounts to renewal of the lease after the

term of its subsistence is over and the lessor has the right to introduce new terms of lease and the lessee must be agreeable to it. On the

other hand “extension” of lease amounts to extension of the period of subsistence but with same terms and conditions. So extension of

the lease period must be carried out during the subsistence of the lease and renewal must be carried out after the lease period comes to an

end by efflux of time. Rule 19(1) of the Rules 2013 stipulates renewal only but not extension. As per Black’s Law Dictionary 9th Edition

the term “renewal” means re-creation of a legal relationship or the replacement of an old contract with a new contract as opposed to

mere extension of previous contract. So in my considered opinion there is no provision of extension of the contract period under Rules

2013. For renewal, Rule 19(1) stipulates a condition that the same must be sought for prior to 18 months from the date of completion of the

contract period. Accordingly, the Rules 2013 are silent in respect of extension of period of contract and on the other hand question of

applicability of Rule 19(1) does not arise as there was no such application for renewal. The submission of Mr. Choudhury in respect of

applicability of Section 8A of the Act, 1957 cannot be considered as Section 14 of the said Act, 1957 specifically stipulates about the non

applicability of the Sections 5 to 13 (inclusive) of the Act, 1957 in case of minor minerals. Thus neither the contract nor the statute

authorizes the court to extend the contract period.

In view of the aforesaid ratio in Dharmendra Kumar Singh (Supra) and there being no specific provision for extension of the contract

period, I am of the considered view that the prayer made by the writ petitioner in this writ petition cannot be entertained and as a result this

writ petition stands dismissed.â??

Accordingly the question of extension of the settlement period does not come and the petitioners are not entitled for the said relief. However, the

petitioners are granted the liberty to file application for remission of the kist money along with further prayer to set off the remaining contract period

from its original tenure without taking any further coercive measures on the said petitioners and the respondent No. 2 shall pass appropriate order on

the basis of the representations considering the prayer for remission and the other reliefs sought for in the representation by passing a speaking order.

With the said observation this writ petition stands disposed of.