

(2021) 08 GAU CK 0087

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4053 Of 2021

Biju Changmai

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 24-08-2021

Acts Referred:

Assam Minor Mineral Concession Rules, 2013 — Rule 19(1)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 5, 8A, 13, 14, 15(1), 23C

Citation : (2021) 08 GAU CK 0087

Hon'ble Judges : Prasanta Kumar Deka, J

Bench : Single Bench

Advocate : U Deka

Final Decision : Disposed Of

Judgement

Heard Mr. NK Kalita, learned counsel for the petitioner. Also heard Mr. PN Goswami, learned Additional Advocate General, Assam assisted by Mr.

D Gogoi, learned standing counsel for the Forest Department, Assam.

The petitioner is the settlement holder of the mining contract area DIG-9(A) under the Divisional Forest Officer, Digboi Division. The said contract

area was under the settlement as per the mining contract agreement dated 21.10.2014 entered into with the Divisional Forest Officer, Digboi and the

petitioner. The petitioner could not extract the permitted amount of sand that is 35,000 cubic meter within the stipulated contract period of 7 years due

to various reasons. Accordingly, an application dated 28.10.2020 was submitted before the Divisional Forest Officer, Digboi Forest Division through

the Range Forest Officer, Lekhapani Range under Digboi Division, Tinsukia with a prayer for extension of contract period for another 12 months

commencing from 21.10.2021 as the present contractual period is going to be expired on 21.10.2021. The said representation for extension is yet not decided by the respondents. Accordingly, the petitioner is before this court seeking for the extension of the said mining contract in respect of the said mining contract area DIG-9(A).

Mr. Goswami, learned Additional Advocate General vehemently objected to the submission of the learned counsel for the petitioner regarding the extension of the contract period. It is submitted that the petitioner is not entitled for the said benefit as there are no specific provision under the Assam Minor Mineral Concession Rules, 2013 for such extension of the lease period. In support of the said submission Mr. Goswami relied order dated 27.07.2021 passed in WP(C) 3270/2021 wherein a similar issue was decided by this court.

I have perused the order dated 27.07.2021 and the relevant portion is extracted hereinbelow:

“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 contract 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. However, the petitioner is granted the liberty to participate in the tender process arising out of e-tender notice dated 29.06.2021 and in addition to that the petitioner is also given the liberty to file appropriate application for remission of the kist money and other reliefs as entitled under the provision of Rules, 2013. In order to allow the petitioner to participate in the said e-auction process the respondents shall make necessary arrangement to that effect if the process is yet to be completed. Further it is ordered that no coercive measures shall be initiated by the respondent authority till the representation for remission of the petitioner is disposed of.

With the said observation, this writ petition stands disposed of.â??

Accordingly, in the light of the aforesaid observation and finding this writ petition stands dismissed. However, the petitioner is granted liberty to file

appropriate application for remission of kist money and other reliefs as entitled under the provision of Rules, 2013 and the petitioner is also granted the

leave to participate in any subsequent tender notice for resale of the said mining contract area under the Divisional Forest Officer, Digboi.

With the said observation and direction, this writ petition stands disposed of.