
(1998) 01 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1513, 1514 and 1515 of 1996

Daya Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-01-1998

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15
Rajasthan Minor Mineral Concession Rules, 1986 — Rule 4(5)

Citation : AIR 1999 Raj 8 : (1998) 2 RLW 777 : (1998) 2 WLC 732 : (1998) 1 WLN 43

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Advocate : V.A. Bobde, Chitale and Dinesh Maheshwari, for the Appellant; D.S. Shishodia Manish Shishodia and R.L. Jangid, Govt. Panel Lawyer for Mines Deptt., for the Respondent

Final Decision : Dismissed

Judgement

P.P. Naolekar, J.—Questions of facts and law involved in all these petitions are analogous and, therefore, the order passed in S.B. Civil Writ Petition No. 1513/96 shall govern the other S.B. Civil Writ Petitions No. 1514/96 and 1515/96.

2. The brief facts in S.B. Civil Writ Petition No. 1513/96 are that the petitioner submitted an application for grant of mining lease to the Mining Engineer, Rajsamand for plots Nos. 14, 15, 21 and 22 for mineral marble at an area situated near village Morwad in Tehsil and District Rajsamand. The petitioner deposited the requisite application fees along with the application. The application submitted by the petitioner was rejected by the Mining Engineer, Rajsamand by order dated 5-9-1991 on the ground that the area in question is grazing land and thus, no mining lease can be granted. The petitioner being aggrieved by the order of the Mining Engineer, preferred an appeal before the Addl. Director, Udaipur and submitted that there was no prohibition in granting "mining lease to the petitioner and the impugned order was wholly arbitrary and

discriminatory. The Addl. Director rejected the appeal. The petitioner preferred further appeal before the Govt. of Rajasthan. This appeal was also dismissed by order dated 6-12-93 by the Deputy Secretary. It was observed in the judgment that without the prior permission of the State Govt., no lease could be granted in view of Rule 4(5) of the Rajasthan Minor Mineral Concession Rules, 1986 (for short "the Rules" hereinafter) nor the mining department is competent to grant lease without such prior permission. Thus, the petitioner's application was rejected on the ground that prior permission of the Revenue Department has not been obtained.

3. The petitioner being aggrieved by the order filed a writ petition before the High Court of Rajasthan challenging the order passed by the Govt. in appeal dated 6-12-1993. The writ petition was registered as S.B Civil Writ Petition No. 1507/94. In that writ petition, it was mainly contended on behalf of the petitioner that the prohibition under Rule 4(5) of the Rules applies only in cases where a particular land is notified as reserved by the State Govt. for its own purpose or local bodies purpose or for any public or special purpose. It was further alleged that if the No Objection Certificate was required from the Revenue Department for grant of mining lease in grazing land, it was the duty of the Mining Department to forward the application of the petitioner to the Revenue Department for grant of necessary No Objection Certificate enabling the Mining Department to sanction the mining lease in favour of the petitioner for the area applied for by the petitioner. It is further alleged that persons similarly situated have been granted mining lease in the same area whereas the petitioner is being denied the equal treatment in not sanctioning the mining lease in favour of the petitioner. A prayer was made that by an appropriate writ, order or direction, the impugned orders passed by the Mining Engineer the Addl. Director and the Secretary to the Govt. of Rajasthan be quashed and set aside and further the respondents be directed to grant a mining lease for the area applied for by the petitioner without delay and to allow the petitioner to carry out the mining operation in accordance with law. It was prayed in the alternative that the respondents be directed to send the matter for approval/ sanction/permission to the Revenue Department and the Revenue Department be directed to accord permission after hearing the petitioner.

4. The petitioner's writ petition was disposed of by a learned single Judge by order dated 4-8-1995 giving direction to the Revenue Department to dispose of the application moved for No Objection. It may be mentioned here that the New Marble Policy, 1994 of the State of Rajasthan came into effect from 6-10-1994. The petitioner moved for No Objection Certificate in pursuance of the orders issued by the learned single Judge in S.B. Civil Writ Petition No. 1507/94 and No Objection Certificate was given by the Revenue Department. The petitioner made representation before the Secretary, Mining Department, Govt. of Rajasthan and made a complaint that despite No Objection Certificate being granted by the Revenue Department, he has not been granted mining lease. Thereafter the petitioner approached the High Court in contempt petition for non-compliance of

the directions given by the High Court in its order dated 4-8-95. Notice was issued and thereafter the contempt petition was disposed of. On 14-3-1996 a communication was made by the Mining Engineer to the petitioner, inter alia, stating that after receiving the No Objection Certificate from the Department, the Mining Department had to take a decision under Clause 9 of the New Marble Policy. However, in view of the stay orders of various Courts, the said decision could not be taken and the application has been kept pending. The petitioner challenged this communication by filing a writ petition in the High Court for quashing the order/communication dated 14-3-1996 and for direction to respondents Nos. 1 to 4 to grant mining lease in favour of the petitioner. During the pendency of the petition in the High Court, the application for grant of mining lease of the petitioner was rejected on 28-5-1996 by the respondents No. 1 to 4 on the ground that the orders passed by different Courts for maintaining status quo are no more in existence and in the light of clause 9 of the New Marble Policy, 1994, the pending application of the petitioner for granting mining lease stand rejected. In the light of the changed circumstances rejection of the petitioner's application for grant of mining lease, the petitioner moved an amendment application to the writ petition, challenging the order dated 28-5-1996 rejecting the petitioner's application. The learned single Judge of the High Court Hon"ble Mr. Justice B.J. Sethna by order dated 26-9-1996 rejected the amendment application as well as the writ petition filed by the petitioner on the ground that it has become infructuous in view of Clause 9 of the New Marble Policy. Against this order, an appeal was filed before the Division Bench and the matter was remanded by the Division Bench, setting aside the order of the learned single Judge dated 26-9-1996 allowing the amendment application and that is how the matter is placed for hearing.

5. It is contended by the counsel for the petitioner that the true import of the judgment of the High Court dated 4-8-1995 has the effect of giving directions for grant of mining lease as it is cardinal principle of interpretation that the exercise should aim to give a fair and just meaning to the language used. This canon of statutory interpretation applies with far greater force while construing a judgment of a Court. A Court, whose main function is to do justice, may properly assume that in an earlier judgment the Court intended to do justice. There is no warrant for reading the judgment like a statute nor for reading it in a pedantic manner. Instead of being astute to give a meaning which defeats the ends of justice the Court must do its best to hold that an earlier judgment set at rest the controversy in the case so that the litigant does not have to go through the judicial process all over again. The ends of justice must be secured rather than defeated.

In an earlier writ petition the petitioner had complained about denial of a lease in a situation where the State itself found no objection to the grant of lease in the absence of a No Objection Certificate. It was demonstrated to the Court that the State had acted illegally and in a discriminatory manner in refusing lease to the petitioner. The judgment of the Court cannot be so read as to mean that only

consideration of grant of No Objection Certificate was directed and then nothing whatsoever was to be done by the State. It is apparent that since there was no other impediment to the grant of lease, the Court directed grant of No Objection Certificate as well as its consequence -- the grant of lease.

6. On the other hand, it is contended by the counsel for the respondents that the direction of the High Court in its order dated 4-8-1995 is only confined to consideration of the application of the petitioner for grant of No Objection Certificate and thereafter the law as in force would be applicable for consideration of the application of the petitioner for grant of mining lease. By no stretch of imagination, the direction issued by the High Court can be stretched to the extent of construing it to be an order for grant of a mining lease. As the petitioner's application was pending consideration for grant of mining lease, the application was considered in accordance with the New Marble Policy and was rightly rejected.

7. It would be appropriate at the stage to quote in extenso the order passed by the High Court in Writ Petition No. 1507/94, which is as under:--

"Mr. Maheshwari submits that the language used in Annexure 4 is to be read down in the manner that the persons applying for such type of plots their applications have to be forwarded by the Mining Department to the Revenue Department for proper sanction and thus the learned counsel proceeds to submit that since he had already made an application and if according to the Mining Department the same was to be considered by the Revenue agencies it should have been forwarded to them for proper sanction.

Mr. Jangid learned counsel appearing for the respondents says that the Mining Department shall have no objection in forwarding the applications filed by the petitioner for grant of a mining lease to the Revenue Department.

After hearing the learned counsel for the parties I direct that the respondents shall forward the application filed by the petitioner to the Revenue Department for appropriate sanction and in case the Revenue Department finds that the application is in order and applications filed by other similarly circumstanced persons have been allowed the petitioner shall not be denied that treatment. Respondents Nos. 1 to 4 are further directed to forward the application within six weeks from today and the same is further directed to be disposed of finally at the hands of respondent No. 5 or any other authorised officer of the Revenue Department within eight weeks from the receipt thereof. In the meantime, the area for which the prayer has been made by the applicant may not be allotted to any other persons."

A bare reading of the order indicates that it is confined to the limited purpose namely, that the respondents shall forward the application filed by the petitioner to the Revenue Department for appropriate sanction within a stipulated period. Nothing has been said in the order that after the receipt of such No Objection Certificate, sanction will be accorded for grant of mining lease in favour of the

petitioner. In Writ-Petition No. 1507/94 specific reliefs were claimed for quashing the orders passed by the subordinate authorities and that of the State Govt. Not only that a further direction was sought for grant of mining lease to the petitioner for the area applied for by the petitioner without delay and to allow the petitioner to carry out the mining operation in accordance with law. But these two prayers were giving up and the prayer was confined to the relief that the petitioner's application be forwarded by the Mining Department to the Revenue Department for proper sanction. In view of the specific relief claimed by the Counsel for the petitioner, it is difficult for me to read in the order that the relief although specifically claimed in the petition but not pressed into service, would be deemed to have been granted by the High Court. The High Court has directed the respondents to forward the application filed by the petitioner to the Revenue Department for appropriate sanction and in case the Revenue Department finds that the application is in order and the applications filed by similarly circumstanced persons have been allowed, the petitioner shall not be denied that treatment. The directions were issued, specifically to the Revenue Department to consider the application of the petitioner for No Objection, keeping in view similarly circumstanced people, keeping in view similarly circumstanced people. The Revenue Department alone could exercise power in regard to giving of No Objection Certificate. The Revenue Department has no jurisdiction or authority to grant mining lease, authority to grant mining lease vests with the Mining Department. There is no mention of the Mining Department or Mining authorities in the order much less issuance of direction to them, in regard to grant of mining lease. Only direction given to the Mining Department is to forward the petitioner's application to the Revenue Department for its consideration. The matter has been sent to the Revenue Department for adjudication and if found fit for grant of No Objection Certificate. The order does not spell out direction to the Revenue Department to give No Objection Certificate to the petitioner, the order directs consideration of the petitioner's application for grant of No Objection Certificate. When the matter was directed to be forwarded to the Revenue Department for consideration, legally the revenue authority is well within its right to refuse the No Objection Certificate to the petitioner. Stage of grant of mining lease comes after revenue authority gives No Objection Certificate. When the first stage of giving No Objection Certificate is left to the discretion of the revenue authority, how can it be assumed that High Court has given direction to the mining authority to grant mining lease, which would be second stage in the process, depending on the first stage, namely grant of No Objection Certificate. Reading the order with all its ramification cannot lead to the conclusion that direction was issued by the High Court as submitted by the petitioner. The plain and simple reading of the order of the High Court is that, directions were given to the Mining Department to forward the application of the petitioner for consideration by the Revenue Department for grant of No Objection Certificate. When the No Objection Certificate was given, the application was placed for consideration, in the meantime New Marble Policy came into effect and the application was considered under the New Marble Policy. The New Marble Policy

provides that an application, which has not been disposed of till the date of issue of the Marble Policy, shall be rejected and the application fees shall be refunded. The petitioner's pending application was disposed of applying the Marble Policy.

8. In the case *State of Tamil Nadu Vs. Hind Stone and Others*, the Supreme Court while considering an application pending consideration, has held as under (at p. 721 of AIR):--

"No one has a vested right to the grant of renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt within a particular way, by applying particular provision. In the absence of any vested right in any one, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal of leases made long prior to the date of G.O.Ms. No. 1312 should be dealt with as if Rule 8-C did not exist."

Thus, the application, which was pending consideration was rightly disposed of in accordance with the Marble Policy.

9. The matter can be looked at with a different angle. When the orders of the High Court were passed on 4-8-1995, the Marble Policy already came into effect from 6-10-1994 and it could not be presumed that the High Court would pass an order for grant of a mining lease in favour of the petitioner without taking into consideration the effect of the New Marble Policy of 1994. In a case reported in *Alankar Granites Industries and Others Vs. P.G.R. Scindia, MLA and Others*, the Supreme Court had an occasion to consider the grant of lease for quarrying granites in Govt. lands under Rule 3 of the Karnataka Minor Mineral Concession Rules, 1969 contrary to the prohibition contained in Rule 3-A therein. In that case, the Govt. amended Rule 3-A by which the absolute restriction on the grant of lease of Govt. lands for quarrying granites in favour of private parties was relaxed in favour of certain categories of persons specified therein and then by a notification dated 4-1-91 a further amendment in Rule 3-A was made. A challenge to the validity of the amendment made in Rule 3-A in 1990 and 1991 was made in certain writ petitions wherein the High Court granted a stay in favour of the petitioners therein. During the stay the Govt. of Karnataka issued an order granting quarry lease for granite under the original Rule 3. Fresh mining lease contrary to Rule 3-A was challenged in the High Court and it was submitted before the Court that in view of the stay granted by the High Court in earlier writ petitions challenging the further amendments made in Rule 3-A, the power under Rule 3(1) was available for making these grants with the prior approval of the Govt. The Supreme Court negated the contention holding that the said order in the earlier writ petitions merely had the effect of requiring the applications of the petitioners in those writ petitions to be disposed of without reference to Rule 3-A but the validity of the grant made to those petitioners had to be adjudicated with reference to Rule 3-A unless Rule 3-A was struck down leading to its obliteration.

The validity of the grant, if any. made even in favour of those petitioners had to be decided with reference to Rule 3-A. Applying the same analogy it is to be construed that the High Court's order is in fact and law gave direction of consideration of the petitioner's application subject to the New Marble Policy of 1994. The Marble Policy of the Govt. is in explicit terms, requires application pending consideration till date shall be rejected and the application fees shall be refunded. After the enforcement of the Marble Policy, which came into force w.e.f. 6-10-94 all kinds of mining leases/quarry licences for mineral marble shall be governed by the provisions contained in the said policy and the High Court's order would be required to be construed in consonance with the Marble Policy, the policy being declared valid by a Division Bench of this Court in the case of Rajsamand Chambers of Commerce and Industry v. State of Rajasthan 1995 DNJ 356.

10. In view of the aforesaid discussion, the petitions fail and are-dismissed. However, there shall be no order as to costs.