

(2012) 03 OHC CK 0019

In the Orissa High Court

Case No : Writ Petition (C) No's. 889, 890, 891 and 892 of 2012

Duryodhan Singh and Others

APPELLANT

Vs

Sub-Collector, Panposh, Rourkela and Another

RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Citation : (2012) 114 CLT 253 : (2012) 2 EFLT 940

Hon'ble Judges : V. Gopala Gowda, C.J;B.N. Mahapatra, J

Bench : Division Bench

Advocate : Asim Amitay Das, M.B. Ray, A.K. Behera, B.K. Parida and S. Mohanty, for the Appellant;

Judgement

V. Gopala Gowda, C.J.—The Petitioners in all these cases who are the lease holders for extraction of sand & stone from the sairats in question are before this Court placing reliance, upon Rule 36 of the Orissa Minor Mineral Concession Rules, 2004, (for short, "the MMC Rules, 2004") for extending the period of lease by 3 months 3 days, 3 months 96 days, 3 months 4 days & 2 months 15 days respectively in respect of the leases covered in all these Writ Petitions contending that there was delay in confirmation of the bid submitted by the Petitioners calling upon the Petitioners to deposit 75% of the bid amount. Further, the Petitioners were compelled to come before this Court seeking for issuance of a writ of certiorari to quash the notices issued by the competent authority insisting upon the Petitioners to pay the stamp duty. So, the delay in executing the agreement of lease of sand & stone sairats is attributable to the competent authority. As per Rule 36 of the Rules, the lease will be for a period of one year from the date of execution of the lease agreement in favour of the lessee. The lesser period of lease from the date of execution of the agreement expires on 31st March, 2012 on the basis of the time stipulated in the lease agreements & on the basis of the which the leases of sand & stone sairats have been awarded in favour of the Petitioners for extraction of sand & stone from the sairats & quarry in question. It is further stated by the Learned Counsel for the Petitioners

that the delay caused as mentioned above in each one of the petitions is not at the instance of the Petitioners but at the instance of the competent authority in sending late confirmation of the bids & further insisting upon the Petitioners to get the lease deeds registered before the registering authority. The same have been quashed at the instance of the Petitioners. Therefore, the delay of nearly about two months in getting quashed the notices issued to the Petitioners calling upon them to get the lease agreements registered cannot be attributed against the competent authority. Learned Government Advocate Mr. R.K. Mohapatra submits that the Petitioners are not entitled to any relief extension of period of lease on the basis of placing reliance upon Rule 36 of the Rules., Rule 36 cannot be applicable to the fact situation of the case for the reason that the Petitioners have agreed to the terms & conditions of the agreement & thereafter coming before this Court seeking for extension of the lease period of one from the date of execution of the lease agreements year as provided under Rule 36 but not by end of 31st March, 2012 is not permissible in law as they have agreed upon the terms & conditions of the lease agreement.

2. It is further contended by him that the competent authority as per the practice which was prevalent at the relevant point of time insisted upon the Petitioners to get the lease agreements registered for which the delay, if any, caused in getting that notices quashed by this Court cannot be attributed to the competent authority as the competent authority bona fide believed that registration of the lease agreement in law is necessary, &, therefore he insisted upon the Petitioners to get the lease agreements registered in respect of the (sic) & stone sairats for extraction of minor minerals in question. After quashing the notices issued to the Petitioners by this Court, the lease agreements are registered in favour of the Petitioners specifying the period of operation of the sairats in question. Therefore, Learned Government Advocate prays for dismissal of the Writ Petitions contending that the Petitioners are neither entitled to extension of the period of leases nor refund of the bid amount on pro rata basis.

3. With reference to the above rival factual & legal contentions urged on behalf of the parties it would be just & proper for us to refer to Rules, 36, 48 & 53 of the OMMC Rules, 2004 which read thus:

Rule 36 : Validity of auction - The auction shall be valid for a maximum period of one year from the date of execution of auction agreement.

Rule 48: Payment of bid amount - The successful bidder on receipt of confirmation shall deposit the balance seventy five percent of the bid amount within thirty days from the date of confirmation of the bid.

Rule 53 : Agreement - An agreement containing the terms & conditions of auction sale, quarrying operations, etc., shall be executed by the successful bidders & the competent authority as per the provisions of the Registration Act, 1908 & the Stamp Act, 1899 within seven days from the date of payment of bid amount in full.

4. It is an undisputed fact that in issuing confirmation of the bid notices to the Petitioners there was delay of one month at the instance of the competent authority. It is also an undisputed fact that the said sand & the stone sairats were auctioned by the competent authority & thereafter highest bids of the Petitioners were accepted & leases awarded for extraction of the minor minerals from the sairats in question. Then Rule 36 of the Rules, 2004 is applicable to the fact situation & the lease of extraction of minor mineral from the sairats in question shall be valid for a maximum period of one year from the date of execution of the agreement, which has not been done in the instant case by the competent authority. The period of lease is reduced as referred to supra in the agreements. Instead of mentioning the period of one year in the agreements, it is mentioned that the lease period will expire on 31.3.2012. Further, the delay caused in issuing the confirmation of bid notices to the Petitioners in respect of the sairats to quarry minor minerals is attributable to the Petitioners, which should not have been included in the lease agreements. Further, insisting upon the lease agreements to be registered by paying the stamp duty as provided under the Stamp Act & registering the lease deeds under the Registration Act, 1908 & stamp duty to be paid as provided under the, the Indian Stamp Act, 1899 is quashed by this Court applying the provisions of the Stamp Act holding that for registration of the agreements for extraction of minor minerals the provisions of the Stamp Act are not applicable. Therefore, the delay caused is attributable to the competent authority. The contention urged by the Learned Government Advocate that the competent authority bona fide believes that as per the practice prevalent at the relevant point of time for registration of the lease agreements under the Registration Act after collecting the stamp duty payable under the Stamp Act, 1899 cannot be accepted as the competent authority is expected to act in law & therefore he should not have insisted the Petitioners for registration of the lease agreements & payment of stamp duty as the provisions prescribed under Rule 53 of the Rules would run contrary to the Stamp Act. Therefore, question of registration & payment of stamp duty upon the lease agreements are wholly unnecessary. Therefore, the legal plea taken in the writ proceedings questioning the notices issued to the Petitioners calling upon them to get the lease agreements registered cannot be said to be delay on the part of the Petitioners. Their legal rights were to pursue by filing the Writ Petitions to get the said, notices quashed & therefore the period taken to get the notices registered shall not be attributed to the Petitioners to reduce the period of lease of sairats in question.

5. For the reasons stated supra, the period of delay in executing the lease documents shall be excluded from the period of lease. As per Rule 36 of the Rules, 2004, the lease period of one year from the date of agreement shall be given effect to. Hence, that period shall be added to the agreement & the Petitioners shall be permitted to extract minor minerals from the sairats in question for a period of one year from the date of agreements. Therefore, it is open for the competent authority either to allow the Petitioners to extract the

minor minerals for a period of one year from the date of agreements or to refund the bid amount to the Petitioners on pro rata basis.

With the aforesaid observation/directions the Writ Petitions are disposed of.

B.N. Mahapatra, J.

I agree.