
(2016) 10 RAJ CK 0008
In the Rajasthan High Court
Case No : Civil Writ (CW) No. 7463 of 2009

Ghanshyam

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Rajasthan Minor Mineral Concession Rules, 1986 — Rule 4(5)(12), Rule 48, Rule 8

Citation : (2016) 4 WLN 375

Hon'ble Judges : Mr. Sangeet Lodha, J.

Bench : Single Bench

Advocate : Ms. Suman Porwal, Advocate, for the Respondent; Mr. Harish Purohit with Mr. Harsvardhan Singh, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Sangeet Lodha, J. - By way of this writ petition, the petitioner is seeking directions to the respondents to issue the license in his favour for quarry no.657 situated in Keru Mining Area, Jodhpur.

2. The relevant facts are that on an application being made by the petitioner, he was allotted quarry no.657 in Mining Area Keru, vide order dated 26.6.99 issued by the Mining Engineer, Jodhpur. However, the orders allotting the quarry inter alia in favour of the petitioner were reviewed by the State Government suo moto on the ground that the allotted quarries fall within the catchment area of the traditional water resources and vide order dated 25.1.05 issued by the Deputy Secretary, Department of Mines, Government Rajasthan, the matter was remanded to the Additional Director, Mines, for review of the allotment made, keeping in view the report submitted by the committee headed by the District Collector, Jodhpur. According to the petitioner, vide order dated 4.5.07 passed by the Additional Director, the allotment of the quarry made in his favour was directed to be restored and therefore, the respondents were under an obligation to issue the quarry license pursuant thereto. But the fact remains that no quarry

license has been issued in favour of the petitioner, yet he started mining operation unauthorisedly. That apart, admittedly, the petitioner has already preferred a civil suit for permanent injunction accompanied by an application under Order 39, Rule 1 & 2, CPC before the Additional Civil Judge, Jodhpur District, Jodhpur, seeking injunction in terms that the excavation of mineral undertaken by him in quarry no.657 may not be interfered with.

3. A reply to the writ petition has been filed on behalf of the respondents, taking the stand that mere allotment order being issued, does not create any right in favour of the allottees to undertake the mining. It is submitted that after the allotment, the mining area is required to be demarcated and the allottee is required to deposit the requisite charges within a period of one month and thereafter the quarry license to operate the mine is issued. It is submitted that the petitioner failed to do so and no quarry license was issued in his favour. It is submitted that the petitioner has started mining operation unauthorisedly and therefore, the proceedings have been initiated against him by issuing a notice dated 9.7.06.

4. Learned counsel appearing for the petitioner contended that the allotment of the mining area in favour of the petitioner having attained finality, the respondents are under an obligation to issue the quarry license in favour of the petitioner. Learned counsel submitted that the Additional Director having issued directions to restore the allotment made in favour of the petitioner, the Mining Engineer cannot refuse to issue the license in defiance thereof. However, on being asked by the court as to without issuance of the quarry license by the competent authority, how the petitioner has undertaken the mining operation, the learned counsel had no answer.

5. On the other hand, the counsel appearing for the respondents submitted that the allotment of the mining area in question in favour of the petitioner and his likes was reviewed by the State Government, keeping in view the fact that the mining area in question falls within the catchment area. Drawing the attention of the court to the order of the Additional Director, Mines, learned counsel submitted that it is not in dispute that the land in question falls within the catchment area but the Additional Director, Mines, has proceeded to direct the restoration of the allotment made observing that the catchment area stands damaged. Learned counsel submitted that in any case, without the license being issued, the petitioner could not have undertaken the excavation of mineral and thus, taking into consideration the act of the petitioner in undertaking mining unauthorisedly, the appropriate proceedings have already been initiated against him. Learned counsel submitted that the petitioner, who is guilty of undertaking the mining unauthorisedly, is not entitled for issuance of the license. Learned counsel urged that the petitioner has already preferred a civil suit in respect of the mining operation undertaken by him without license being issued in his favour, which is pending before the civil court of competent jurisdiction and therefore, he cannot be permitted to invoke the extra ordinary jurisdiction of this

court under Article 226 of the Constitution of India simultaneously.

6. I have considered the rival submissions and perused the material on record.

7. Indisputably, pursuant to the allotment order issued, no quarry license was issued in favour of the petitioner and in the meantime, the allotment made was reviewed by the State Government keeping in view the fact that the mining area in question falls within the catchment area of the traditional water resources. It is true that the State Government remanded the matter to the Additional Director, Mines, to take the appropriate decision afresh taking into consideration the report submitted by the committee headed by the District Collector but in any case, the Additional Director, Mines, was not authorised to grant the mining lease in the catchment area. A perusal of the order passed by the Additional Director, Mines, dated 4.5.07 reveals that even the committee headed by the District Collector has found that the mining area in question falls within the catchment area, however, the Additional Director, has restored the allotment made in favour of the petitioner, observing that the catchment area covered by 12 quarries, stands damaged.

8. It is to be noticed that in the matter of "Abdul Rahman v. State", 2005 RRT 59, a Bench of this court has issued direction to the State Government to remove encroachment in the catchment area of the water bodies. That apart, in "Suo Motu v. State of Rajasthan" (S.B.C. Writ Petition No.11153/11), disposed of by Jaipur Bench of this court vide order dated 29.5.12, specific directions are issued restraining allotment of the land falling in catchment areas of water reservoirs like Johar, Nala, Tank, River, Pond etc. and it is further directed that the appropriate action shall be taken for cancellation of the allotment made in defiance of Section 16 of the Act of 1955.

9. In the considered opinion of this court if the catchment area has been damaged, the appropriate measures needs to be taken for reparation and restoration thereof and it should not be permitted to be further damaged by undertaking the mining operation. Thus, the Additional Director was not justified in restoring the mining operation in the catchment area observing that it already stands damaged.

10. In any case, admittedly, the petitioner was never issued the quarry license pursuant to the allotment made yet, he proceeded to undertake the mining unauthorisedly and for this reason, the respondents have already initiated appropriate proceedings against the petitioner and therefore, the question of this court granting indulgence to the petitioner, who has undertaken the mining unauthorisedly, in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India does not arise, more so, when aggrieved by the action sought to be taken by the respondents against the mining operation undertaken by the petitioner unauthorisedly, the petitioner has already availed the remedy of suit seeking injunction before the civil court of competent jurisdiction.

11. In the result, the petition fails, it is hereby dismissed. No order as to costs.