

(1993) 09 PAT CK 0035

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1840 of 1993 (R)

Gladstone Mineral Industries

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-09-1993

Acts Referred:

Citation : (1994) 2 PLJR 513

Hon'ble Judges : S.B. Sinha, J; Narayan Roy, J

Bench : Division Bench

Advocate : P.S. Dayal, for the Appellant; M.Y. Eqbal, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha and Narayan Roy, JJ.—This application is directed against an order dated 15.6.1993 as contained in Annexure 9 to the writ application whereby the Petitioner has been directed to pay compensation in terms of the provisions of the Forest Act.

2. The fact of the matter lies in a very narrow compass.

3. A mining lease was granted in respect of an area of 53 acres of land of village Ghagra for a period of 20 years. According to the Petitioner, it was granted permission to carry on mining operation inter alia on the following conditions:

(i) The lessee has to pay one year's pay and C.C.A.

(ii) One year's pay of a Muharir.

The Petitioner allegedly deposited a sum of Rs. 1000/-. The Petitioner has contended that in relation to Bokaro Steel Ltd. which was carrying on mining operation at Bhawanathpur, the Forest department has computed Rs. 55/- per acre as royalty and five times thereof as compensation for doing mining works in the forest area. The same rate was applied to the Petitioner by letter dated 22.6.1978. It was further submitted that forest coup Nos. 6, 7, 12 and 13 fall in

the area of lease granted in favour of the Petitioner. The leasehold is covered by the forest coups aforementioned. Allegedly the aforementioned coups had been settled with different parties and the forest produces had been uprooted by the said settlees. The Petitioner has contended that it has been carrying on mining operation over an area of 8 acres of land as would be evident from the letter dated 3.1.1984 and 29.7.1987 as contained in Annexures 3 and 3/1 to the writ application. According to the Petitioner the Ministry of Forest and Environment has also directed by a letter dated 7.4.1991 as contained in Annexure 4 to the writ application that renewal of mining lease can be allowed imposing the condition that the lessee shall confine its activities of mining for quarrying in respect of the broken up area only. According to the Petitioner it has deposited a sum of Rs. 21,550.50 paise on 9.6.1990. The Petitioner was thereafter asked to put pillars for defining the area of operation which it did. The Petitioner thereafter by a letter dated 30.9.1992 was asked to deposit a sum of Rs. 1,92,595.84 paise to which the Petitioner protested by its letter dated 1.8.1993. According to the Petitioner, however, by a letter dated 22.4.1993, the Divisional Forest Officer has informed the Conservator of Forest that as the Petitioner had been working on only 8 acres of land, it was liable to pay royalty at the rate of Rs. 500/- per acre and subsequently compensation 5 times of royalty and thus after adjustment of sum already deposited by the Petitioner it should be asked to pay Rs. 40,000/- only. However, according to the Petitioner despite the same a sum of Rs. 1,92,595.84 paise has been demanded, from it. The Petitioner has extended that while issuing the aforementioned notice, it has not been considered that in fact the Petitioner had been carrying on mining activities on 8 acres of land only.

4. In this case a counter affidavit has been filed on behalf of Respondent No. 3 in which it has inter alia been contended that the demand upon the Petitioner has been made in terms of the Government decision dated 11th December, 1973 as contained in Annexure R-3/A to the counter affidavit. It has been contended that the Petitioner has not surrendered any area and as such the demand of royalty for the entire 53 acres of land and compensation at the rate of five times is Valid. It has been submitted that the Petitioner has damaged the Coup which was reported from time to time by the Range Officer and as per Circular letter issued by the State a demand was made on 17.7.1989 as contained in Annexure R-3/D to the counter affidavit.

5. In the counter affidavit it was stated thus:

After promulgation of Forest Conservation Act, 1980, the broken area of lease was measured and it was demarcated with the pillars and it was found that the Petitioner has only worked in 8 acres of land as such, he was allowed to work within the broken up area.

It is reiterated that after the promulgation of the Act, the prior approval of the Central Government has to be obtained for breaking afresh or for non-forestry activities and the State Government has nothing to do in this regard but simply

to forward the application for approval before the Central Government.

6. From the facts as noticed hereinbefore, it appears that there is a controversy as to whether the Petitioner has carried on mining operation on 8 acres of land or not. In the counter affidavit filed on behalf of the State it has not been asserted that the statements made by the Petitioner to the effect that the Forest department had settled various works in favour of the third party which was within the entire leasehold of the Petitioner namely, 53 acres of land is incorrect. According to the Petitioner as noticed hereinbefore, its area had not been kept confined to only 8 acres of land and the said area is demarcated by pillars. The statement made by the Petitioner, as noticed hereinbefore, has not been controverted in the counter affidavit.

7. In this view of the matter, in our opinion, the Petitioner is at least entitled to an opportunity of hearing before the impugned demand could be raised as against the Petitioner. So far as the quantum of royalty and compensation is concerned, the same depends upon the agreement entered into by and between the Petitioner and the State of Bihar. The State cannot claim any amount higher than the amount to be paid by the Petitioner since it had already been accepted by the State Government. Further, if the Petitioner had carried on mining works within 8 acres of land, the question of payment of any royalty by the Petitioner in respect of any other area would not arise as the payment of royalty and damages to the Forest department would arise only, in the event the Petitioner has been permitted to carry on mining activities beyond 8 acres of land.

8. So far the contention raised in the counter affidavit to the effect that the Petitioner has not surrendered the rest area is concerned, in our opinion, the same does not have any substance. If the assertion of the Petitioner to the effect that the Forest department in-fact, had settled the forest coups in favour of the Petitioner for the aforementioned area, such a surrender must be held to be implicit as the Petitioner's mining activities have been confined to 8 acres of land only and he was not permitted to work beyond the same.

9. For the reasons aforementioned, this application is allowed and the impugned order as contained in Annexure 9 is quashed and the Respondents are hereby directed to consider the matter afresh after giving an opportunity to the Petitioner to produce all relevant documents and after giving an opportunity of hearing to it. Respondent No. 3 shall, thereafter upon taking into consideration all the materials on record pass a speaking order.