

(2015) 06 AHC CK 0020

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 35036 of 2015

Himanshu Chikara

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Citation : (2015) 6 ADJ 707 : (2015) 5 FLT 803 : (2015) 128 RD 479

Hon'ble Judges : Arun Tandon, J;Sunita Agarwal, J

Bench : Division Bench

Advocate : D.P. Shukla, for the Appellant; D.B. Mukherjee, Advocates for the Respondent

Judgement

1. Vakalatnama filed by Sri D.B. Mukherjee on behalf of respondent No. 5 is taken on record. It appears that in the State of U.P., the law laid down under the judgments passed by the High Court carry little or no weight for the officers of the State specifically in the matter of grant of leases/minor minerals under the U.P. Pradesh Minor Minerals (concession) Rules, 1963 (herein after referred to as Rules, 1963).

2. A Division Bench of this Court in the case of Nar Narain Mishra v. State of U.P. and others, 2013 (2) ADJ 166 (DB), had held that all the applications for renewal of mining leases which were pending as on 31st May, 2012 should be treated as rejected as the provisions of Chapter IV of the Rules 1963 where made applicable in respect of vacant areas under the Government Order dated 31st May, 2012.

3. The State came out with another Government Order said to be a clarificatory order dated 26th February, 2013. It was provided that the renewal applications in respect of which approval had been granted by the competent authority prior to 5th September, 2012 would, for the purposes of renewal, be treated as valid.

4. This Government Order came up for consideration before another Division Bench hearing Public Interest Litigation (PIL) No. 31643 of 2014. The Division

Bench vide judgment and order dated 12.9.2014 held that the clarification order of the State Government dated 26th February, 2013 does not and cannot detract from the plain legal position which emerges from the notification issued under Rule 23 of the U.P. Minor Minerals (Concession) Rules, 1963 making the provisions of Chapter IV of the Rules applicable.

5. Subsequent thereto, there have been at least three to four Division Bench judgments of this Court, to similar effect wherein it has been observed that subsequent to 31st May, 2012, there cannot be any renewal of any lease under any circumstance.

6. Do the State Government officials understand the legal position or not is the moot question which is to be settled in the facts of the present writ petition.

7. We find that on 9th December, 2012, the District Magistrate, Ghaziabad wrote a letter asking the petitioner to obtain the environmental clearance so that the lease of the plots allotted in his favour may be executed. After 1 & 1/2 year of the said order a clarification was sought by the District Magistrate i.e. on 17.12.2013 from the State Government. Subsequent thereto an order dated 4.3.2014 was passed by the District Magistrate, Ghaziabad with reference to the order of the State Government dated 4.2.2014 for renewal of the lease earlier granted in favour of the petitioner with the condition that if in future, any adverse order is passed by any Court of law that would be binding upon the lease holder.

8. In our opinion both, the order of the State Government dated 4.2.2014, and the letter of the District Magistrate dated 17.12.2013 are in teeth of the decisions of this Court referred herein above.

9. So far as the order of the District Magistrate dated 4.3.2014 is concerned, we have been informed that the orders are being passed continuously at the behest of the State Government in defiance of the law declared by the Court in the Case of Nar Narain Mishra and Sukhan Singh (supra). This fact is also apparent from the number of similar petitions which are on the fresh list and as per the statement of the counsels in the petitions.

10. We are, therefore, of the opinion that this petition be treated as a Public Interest Litigation.

11. The petitioner is directed to make necessary corrections in the cause title and the office is directed to allocate a new number.

12. We direct the Chief Secretary of the State to file his personal affidavit indicating as to how many such orders of renewal of the leases have been issued subsequent to the notification dated 31.5.2012 and further to see that appropriate action is taken in all such matters as per the law declared by this Court.

13. The Chief Secretary shall issue a Government Order categorically directing all

the District Magistrates that there should be strict compliance of the judgments of the High Court in the case of Nar Narain Mishra and Sukhan Singh referred herein above, at all level in the matters of grant of leases for minor minerals.

14. The Secretary concerned, who had issued the letter dated 4.2.2014, and the District Magistrate, Ghaziabad, who had forwarded the letter dated 17.12.2013, and dated 4.3.2014 shall also file their personal affidavits explaining as to how these letters and orders are justified and why this Court may not recommend action against them.

15. We are not granting any interim order as on date as we leave it open to the Chief Secretary to make necessary amendments on his own. The steps taken for dealing with such matters of renewal of lease in defiance to the judgments of this Court must be brought on record before the Court by the next date fixed.

16. The matter shall come up on 10th July, 2015 before the appropriate Bench.

17. All the respondents may file counter-affidavit by the next date fixed. A copy of this order be forwarded by the Standing Counsel to the Chief Secretary who shall issue necessary directions to the District Magistrates throughout the State of U.P., accordingly.