

(2015) 03 GAU CK 0056
In the Gauhati High Court
Case No : Writ Petition (C) No. 702 of 2015

Jadab Chandra Deb and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule 1(3)
Constitution of India, 1950 — Article 21, 226, 32

Citation : (2015) 2 GLT 249

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : D. Chakraborty, for the Appellant; R.K. Borah, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Arup Kumar Goswami, J.—Heard Mr. D. Chakraborty, learned counsel for the petitioners. Also heard Mr. R.K. Bora, learned Standing counsel, Forest Department, Assam, appearing for respondent Nos. 1 to 5. This writ petition is filed by the petitioners praying for a direction not to finalize the settlement of mining contract in respect of Boleswar Minor Mineral Unit 1 and 2 (stone) in favour of anyone pursuant to the tenders opened on 23.12.2014 in terms of the Re-Sale Notice dated 26.11.2014, and also for a direction to allow the petitioners to extract individually 2,500 cubic meters of stone.

2. The petitioners had submitted a joint application to the respondent No. 2 praying for allotment of permit for extraction of stone minerals from Boleswar Stone Quarry under the Assam Minor Mineral Concession Rules, 1994.

3. It is not in dispute that Boleswar Stone Quarry is now re-named as Boleswar Minor Mineral Unit No. 1 and 2.

4. By an order dated 03.01.2007, issued by respondent No. 4, the petitioners were individually allowed to extract 2,500 cubic meters of stone (boulder) at the

royalty rate of Rs. 170/- per cubic meter from the Boleswar Stone Quarry. The petitioners were aggrieved by the fixing of the rate of royalty of Rs. 170/- per cubic meter. This prompted them to file a writ petition, which was registered as W.P. (C) No. 769/2007. During the pendency of the writ petition, the rate was revised from Rs. 170/- to Rs. 146/- per cubic meter. Accordingly, the writ petition was disposed of on 10.10.2007. Subsequent thereto, by a letter dated 28.01.2008 issued by the respondent No. 5, the petitioners were allowed to collect specified quantity of stone. However, subsequently, by letter dated 03.03.2008, the earlier order dated 28.01.2008 was cancelled. The petitioners challenged the said order dated 03.03.2008 in W.P. (C) 219/2009. Contempt petition, being Cont. (C) Petition No. 194/2008, was also filed. Subsequently, W.P. (C) No. 219/2009 was dismissed on withdrawal. The contempt case was also not pressed by the petitioners and, accordingly, the same was also closed by order dated 20.02.2009.

5. A Sale Notice, dated 20.08.2013, was issued by the respondent authorities and the petitioners approached this Court by filing a writ petition, being W.P. (C) 5669/2013, challenging the said Sale Notice and this Court, by way of interim measure, directed the respondent authorities by order dated 27.09.2013 not to finalize the sale of Boleswar Minor Mineral Unit No. 1 and 2 (Stone). The said writ petition was also dismissed, on withdrawal, by an order dated 29.08.2014.

6. The respondents issued Re-Sale Notice dated 26.11.2014 notifying that the tenders would be opened on 23.12.2014. The petitioner No. 3 filed a writ petition, being W.P. (C) 6755/2014, challenging the said Re-Sale Notice and also praying for a direction to the respondent authorities to allow him to extract 2,500 cubic meters of stone at the royalty rate of Rs. 140/- per cubic meter from the quarry. The aforesaid writ petition is pending adjudication and it is to be noted that the Court had declined the prayer made by the petitioner No. 3 for an interim order.

7. The petitioner No. 5 had also filed a writ petition, being W.P. (C) 6229/2014, challenging a proposal of the Divisional Forest Officer, Karimganj, sent to the Deputy Commissioner, Cachar, seeking No-Objection Certificate for the purpose of granting permit for collection and removal of stone materials from Boleswar Stone Minor Mineral area.

8. Similar writ petition was filed by petitioner Nos. 1 and 4 challenging the said proposal and their writ petition was numbered as W.P. (C) 3915/2014.

9. It is to be noted that there is no dispute that the petitioners had not deposited any amount towards extraction of stone pursuant to the permit granted in the year 2007. On a query raised by the Court, Mr. Chakraborty has submitted that in W.P. (C) 5669/2013, apart from challenging the Sale Notice dated 20.08.2013, a prayer was also made for issuing direction to the respondent authorities to consider permitting each of the petitioners to extract 2,500 cubic meters of stone.

10. Mr. Bora, learned Standing counsel, Forest Department, has submitted that in

the Assam Minor Mineral Concession Rules, 2013, there is no provision for grant of permit unlike in the case of Assam Minor Mineral Concession Rules, 1994.

11. It is not in dispute that W.P. (C) 5669/2013 was dismissed on withdrawal without any liberty to file a fresh writ petition.

12. With a view to prevent a litigant from abusing the process of the Court by instituting suits again and again in the same cause of action without any good and valid reason, the Civil Procedure Code, 1908, provides that a litigant should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in Order 23 Rule 1(3). The principle underlying the above rule is founded on public policy. The principle underlying Rule 1 of Order 23 is also applicable in the interest of administration of justice to cases of withdrawal of writ petition. There cannot be any justifiable reason to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 once again after withdrawal of the writ petition without obtaining any liberty. In view of the above, the petitioners' same prayer for a direction to the respondent authorities to consider their cases for permitting them to extract 2,500 cubic meters of stone cannot be considered.

13. In *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, AIR 1987 SC 88 : (1986) JT 808 : (1986) 2 SCALE 757 : (1987) 1 SCC 5 : (1987) 1 SCR 200 : (1987) 1 UJ 28 , the Apex Court had held that a petitioner, after withdrawing a writ petition filed by him in the High Court under Article 226 without the permission to institute a fresh petition, cannot file a fresh writ petition in respect of the same cause of action in the High Court. It was, however, held that while the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 since such withdrawal does not amount to *res judicata*, the remedy under Article 226 should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ. The above rule is also held to be not applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21, since such a case stands on a different footing altogether.

14. Almost seven years have gone by and, therefore, even otherwise, I do not consider it to be a fit case to exercise this Court's discretionary power under Article 226 of the Constitution, more so, when the petitioners had not made any investment or deposited any money and have not suffered any prejudice. Accordingly, the writ petition is dismissed in limine. No cost.