
(2007) 03 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Special Appeal No. 464 of 1996

J.K. Cement Works

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 2 WLN 118

Hon'ble Judges : S.N. Jha, C.J.;Govind Mathur, J

Bench : Division Bench

Judgement

S.N. Jha, C.J.—This special appeal is directed against the order of the learned Single Judge dismissing the writ petition of the appellant on the ground of laches.

2. The appellant had filed writ petition inter alia for the following reliefs:

(i) for quashing the notification dt. 07.12.1993.

(ii) for direction to allow the appellant to carry on mining operation over the area of 192 hectares comprising mining lease No. 4/ 80.

(iii) for direction to restore the surrendered area of 150 hectares pertaining to mining lease No. 4/80 to the appellant.

3. Brief facts of the case are that a mining lease with respect to 192 hectares of land was granted to the appellant-company for excavating china clay on or about 03.03.1982. The leasehold area included 150 hectares of village Rajputon Ki Dhani within Jaitaran Tehsil of Pali District. On 23.07.1990, the appellant submitted application surrendering the said 150 hectares of land of village Rajputon Ki Dhani retaining the remaining 42. As circumstance would have it, no decision was taken/communicated to the appellant and it continued to operate the lease and pay rent, royalty etc. to the State. Finally, on 07.09.1993 vide Annexure-7 to the writ petition, it was informed that the partial surrender of 150 hectare of land had been accepted. Soon after, on 07.12.1993, the impugned

notification was issued which is in the form of communique or advertisement inviting applications for grant of mining lease of various chunks of land including the aforementioned 150 hectares of land of village Rajputon Ki Dhani.

4. The appellant filed representation, Annexures-8 and 9, objecting to the advertisement. Therein it contended that as the surrender had not been accepted by the Government for a long time and as a matter of fact, rent, royalty etc had been realised from the appellant, it remained under the impression that the surrender application had been rejected. In the circumstances, the advertisement inviting applications for grant of mining lease treating the land as vacant land was not legal.

5. The date of Annexure-8 is not disclosed but from reference to different events mentioned therein, it is clear that it was sent at least after 17.02.1994. The date of Annexure-9 is clearly mentioned as 06.03.1995. In other words, the said representations/letters were sent after issuance of the impugned advertisement on 07.12.1993. The writ petition was filed on or about 06.07.1996, that is, after about three years of the advertisement. Dismissal of the writ petition on the ground of delay and laches therefore does not appear to be wrong.

6. We do not find any substance in the contention that the appellant is not required to explain the delay on the analogy of Section 5 of the Limitation Act. It may be that Section 5 of the Limitation Act in terms is not applicable to proceedings under Articles 226/227 of the Constitution of India but the jurisdiction conferred on the High Court thereunder is extraordinary and equitable and it is well settled rule of exercise of the writ jurisdiction that the Court may decline to grant relief where petition is not filed within reasonable time, that is, on the ground of delay and laches.

7. As a matter of fact, we do not find any substance in the case of the appellant on merit either. The facts of the case stated hereinabove do not appear to be in dispute. The fact that surrender was not accepted for about three years cannot be used as the foundation to build a case that the surrender had been rejected. The application seeking surrender of part of leasehold area was in the nature of offer, and the moment it was accepted by the Government, may be after three years, the surrender became complete. The stand of the Government treating the land to be vacant and inviting applications for grant of fresh lease of the entire area therefore cannot be said to be illegal and arbitrary.

8. Counsel for the appellant laid emphasis on the fact that the appellant paid rent, royalty etc. for the intervening period but this fact does not help the appellant in the context of the controversy involved. Until acceptance of the surrender, the appellant continued to remain lessee of the entire area of 192 hectares and it was obliged to pay rent, royalty etc. for the entire area.

9. The thrust of the appellant's case is that the land may be restored to the appellant on account of the fact that it continued to operate the area and pay rent, royalty etc upto 1993. As already observed above, on acceptance of the

offer of surrender, the surrender became complete and there is no question of restoration of the status quo much less at this stage after 13 years.

10. In the above view of the matter, we find no merit in the case of the appellant. The learned Single Judge therefore did not commit any error in dismissing the writ petition.

11. The appeal stands dismissed.