(1992) 02 RAJ CK 0033

In the Rajasthan High Court

Case No : C.W.P. No. 4930/90

Kailash Chand Agarwal APPELLANT

Vs

The State of Rajasthan and Others RESPONDENT

Date of Decision : 27-02-1992

Acts Referred:

- Constitution of India, 1950 — Article 226
- Mineral Concession Rules, 1960 — Rule 29, 29(1)
- Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 30

Citation : AIR 1992 Raj 129 : (1992) 1 RLW 394 : (1992) 2 WLC 458

Hon'ble Judges : N.C. Kochhar, J

Bench : Single Bench

Advocate : Ajeet Bhandari, for the Appellant; K.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

N.C. Kochhar, J.—The petitioner was granted mining lease for extraction of soapstone and quartz over an area of 258.15 hectares near village Amloda Tehsil Bairath District Jaipur for a period of 20 years w.e.f. 16-8-1976, vide Annexures Nos. 1 and 2 dated 3-6-1976 and 19-2-1977 respectively. Out of the above said area, the petitioner surrendered an area of 61.248 hectares and the surrender was accepted by the State Government vide order dated 14-7-1978 (Annxure-3) w.e.f. 2-2-1978. Vide letter dated 9-6-1987 (Annexure-4), the petitioner wrote to the State Government that he had conducted the mining operation in the area under his lease and had found that the minerals extracted therefrom were of inferior quality and the mining operation therein was not financially beneficial to him and stating that he wanted to surrender the lease of the area in question with immediate effect and requested that the surrender of the lease be so accepted. Vide letter dated 9-2-1988 (An-nexure-6), the petitioner wrote to the State Government that he had been informed vide letter dated 23-12-1987 issued by the Mining Engineer, Jaipur that his application for surrender of the lease had not been considered as he had not deposited the land tax due from him and stated that the recovery of the land tax had been stayed by the Hon''ble

Supreme Court. He requested that his lease be taken to have been surrendered w.e.f. 9-6-1987 and stated that he had paid all the dues up to the said date. On 14-6-1989, the State Government issued order (Annexure-11) stating that vide letter dated 9-6-1987 the petitioner had desired that his surrender of the lease be accepted w.e.f. 9-6-1987 but a sum of Rs. 8143.57 p. was due from the petitioner by way of land tax and his surrender was accepted w.e.f. 9-6-1988. Vide notice dated 14-8-1989 (Annexure-7) the Asstt. Mining Engineer informed the petitioner that a sum of Rs. 6672.07 p. was due from him and asked him to pay the same within 15 days of the receipt of the said notice. Vide notice dated 7-11-1989 (Annexure-8), the Asstt. Mining Engineer informed the petitioner that a sum of Rs. 26578.68 p. was due from him as revised fee for the period from 5-5-1987 to 8-6-1988 and asked him to pay the same within 15 days of the receipt of the said notice. Vide letter dated 27-11-1989 (Annexure-9), the petitioner wrote to the Mining Engineer, Jaipur that vide letter dated 9-6-1987 (Annexure-4) he had requested that the surrender of his lease be accepted with immediate effect and that vide letter dated 23-12-1987 he had been informed that land tax amounting to Rs.8143.57p. was due from him which should be deposited but vide letter dated 9-2-1988 (Annexure-6) he had replied that the Hon''ble Supreme Court had stayed the recovery of the land tax and had prayed that the surrender be accepted as prayed in the letter but he had not received any intimation. In reply dated 27-12-1989 (Annexure-10) the Mining Engineer, Jaipur wrote to the petitioner that vide order dated 14-6-1989 the State Government had accepted the surrender of the lease w.e.f. 9-6-1988 and a copy of the said order had already been sent to him and directed him to pay the dues. The petitioner thereafter filed this writ petition under Article 226 of the Constitution of India.

2. In this writ petition, the petitioner has stated that on 9-6-1987 he Had made enquiry in the Mining Department and was intimated that a sum of Rs. 3722.39 p. was due from him and, as such, he had deposited the said amount vide Annexure-5 had submitted the application for surrender of the lease with immediate effect. He has further pleaded that the Federation of the Mining Association of Rajasthan had challenged the imposition of land tax and, in the interim order passed on 23-3-1987 in DB Special Appeal (Writ) No. 78/87, the recovery of land tax had been stayed by this Court. He has further pleaded that the legality of the land tax was under challenge in D. B. Civil Special Appeal No. 89/87 "Rangilal v. State of Rajasthan" and in those proceedings also the recovery of the land tax had been stayed. The petitioner claimed to be the member of the Federation of Mining Association of Rajasthan and contended that the land tax was not recoverable by the State Government, who was bound to accept the surrender w.e.f. 9-6-1987. He has thus prayed that the order dated 14-6-1989 (Annexure-11) whereby the lease of the petitioner has been accepted from 9-6-1988 be set aside and the surrender of the petitioner may be accepted w.e.f. 9-6-1987 and further that the demand notices dated 18-4-1989 and 7-11-1989 (Annexures-7 and 8 respectively) be quashed.

3. The writ petition has been opposed by the respondents, who have pleaded that the dead rent in respect of the land in question had been revised in accordance with the rules w.e.f. 5-5-1987 and that a sum of Rs. 33246:75 p. was due from the petitioner on this account which the petitioner did not pay and further that the petitioner was liable to pay the dead rent/land tax amounting to Rs. 8143.57 p. for the period ending 9-6-1987 and, as such, there was no question of accepting the surrender with immediate effect on receipt of his notice dated 9-6-1987. It has also been stated that the surrender has been rightly accepted w.e.f. 9-6-1988 in accordance with the Rule 29(1) of the Mineral Concession Rules, 1960 (the Rules) which provides that the lessee cannot surrender a mining lease except by giving 12 months'' notice. It is also stated that there is nothing to show that the petitioner was a member of the Federation of Mining Association of Rajasthan and further that the interim stay granted by the Court stood vacated and that the petitioner never filed any writ petition challenging the validity of land tax and could not claim any benefit from the orders passed in the said writ petitions. It has also been pleaded that the petitioner could have challenged the order of the State Government by filing a revision petition u/s 30 of the Mines and Minerals (Regulation & Development) Act, 1957 (the Act) and he having not availed of the said remedy, this writ petition could not be filed by him.

4. I have heard the learned counsel for the parties and have also perused the record of the case.

5. The first point to be seen in this case is as to whether the petitioner had an effective alternative remedy and he having approached this Court without exhausting that remedy can be allowed to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution. All mining leases and mining operations are regulated and controlled by the Act and in exercise of the powers vested in it u/s 13 of the Act the Central Government has framed the rules in respect of the minerals. Sub-rule (1) of Rule 29 of the Rules deal with the conditions on which the State Government may accept the surrender of the mining lease by the lessee. Section 30 of the Act confers powers of revision upon the Central Government and reads as under:--

"30. Power of revision of Central Government.-- The Central Government may, of its own motion on application made within the prescribed time by an aggrieved party, revise any order made by a State Government or other authority in exercise of the powers conferred on it by or under this Act."

6. It is not disputed that the petitioner is claiming his right under Sub-rule (1) of Rule 29 of the Rules in contending that the Government ought to have accepted the surrender with immediate effect and it cannot be disputed that the order accepting the surrender with effect from 9-6-1988 has been passed under this rule, framed under the Act. The petitioner could very well challenge the order in question by filing a revision petition before the Central Government and no explanation is coming forward in the writ petition as to why that remedy was not

availed by the petitioner before filing this writ petition. The petitioner having not availed of the said remedy, cannot be allowed to invoke the extraordinary jurisdiction vested in this Court under Article 226 of the Constitution. My view finds support from the decisions of this Court in cases Champalal Vs. The State of Rajasthan and Others, and Udaram v. State of Rajasthan 1977 WLN (UC) 230. This writ petition, therefore, deserves to be dismissed on this short ground.

7. The other point to be seen is as to whether the petitioner has any merit in his favour. Rule 29 of the Rules, which deals with the restriction on determination of mining leases, reads as under:--

"29. Restriction on determination of lease.-- (1) The lessee shall not determine the lease except after notice in writing of not less than twelve calendar months to the State Government or to such officer or authority as the State Government may specify in this behalf:

(Provided that where a lessee holding a mining lease for a group of minerals applies for the surrender of any mineral from the lease on the ground that deposits of that mineral have since exhausted or depleted to such an extent that it is no longer economical to work the mineral, the State Government may permit the lessee to surrender the mineral, subject to the following conditions namely :--

(a) the lessee applies for such surrender of mineral at lease 6 months before the intended date of surrender; and

(b) the lessee gives an undertaking that he will not cause any hindrance in the working of the mineral so surrendered by any other person who is subsequently granted a mining lease in respect of that mineral:)

(Provided further that where a lessee applies for the surrender of the whole or a part of lease hold area on the ground that such area is barren or the deposits of mineral have since exhausted or depleted to such an extent that it is no longer economical to work such area, the State Government shall permit the lessee, from the date of receipt of the application, to surrender that area if the following conditions are satisfied, namely:--

(a) the lease hold area to be surrendered has been properly surveyed and is contiguous;

(b) the lessee has paid all the dues payable to the Government under the lease up to the date of application; and

(c) surrender of the area by the lessee has not already permitted for more than once.)

(2) Every application for the surrender of a part of lease-hold area in accordance with the provisions of Sub-rule (1), shall be accompanied by a deposit of two hundred rupees for meeting the expenditure for the purpose of survey and demarcation of the area to be surrendered:

Provided that the lessee shall deposit such further amount, not exceeding two hundred rupees, as may be demanded by the State Government for meeting any additional expenditure for the said purpose within one month from the date of demand of such deposit:

Provided further that where the whole or any part of the amount deposited has not been expended, it shall be refunded to the lessee."

8. Bare reading of the above said rule makes it clear that, ordinarily, a lessee cannot be allowed to determine the lease except after serving a notice in writing of not less than twelve months'' and it is only where the lessee applies for the surrender of the lease-hold area on the ground that such area is barren or the deposits of minerals have since exhausted or depleted to such an extent that it is no longer economical to work such area that the State Government shall permit the lessee to surrender that area from the date of the receipt of his application but before this power is exercised by the Government one of the conditions to be satisfied is that the lessee has paid all the dues payable to the Government under the lease up to the date of the application (see Proviso (2) to Sub-rule (1) of Rule 29 and condition (b) attached thereto). Even if the ground mentione in the Proviso (2) to Sub-rule (1) of Rule 29 of the Rules exists, the immediate surrender cannot be permitted by the State Government unless the lessee has paid all the dues payable to the State Government under the lease up to the date of the application and even if he has paid all such dues to the Government no lessee can be permitted to surrender the same unless the ground mentioned in the said proviso exists. As noted above, in the application dated 9-6-1987 (Annx. 4) the petitioner had sought the acceptance of the surrender of the area in question with immediate effect on [he ground that the minerals extracted therefrom were found to be of inferior quality and not on the ground that the area was barren or that the deposits of minerals had since exhausted or had depleted to such an extent that it was no longer economical for him to work the area. The application (Annx. 4) thus did not make out the ground mentioned in proviso (2) to Sub-rule (1) of Rule 29 of the Rules, quoted above. It may also be noticed that it is not disputed that, according to the rules, the petitioner was liable to pay the land tax and even if the petitioner could take benefit of the stay on recovery of the land tax granted in the writ petitions filed by some other persons, it cannot be said that the amount though may not be recoverable under the orders of the Court, was not due on the date that the application was moved. The stay order only debarred the recovery of the amount in question which otherwise was recoverable as arrears of land revenue in view of Section 25 of the Act. The petitioner thus had no right to ask the Government to accept the surrender with immediate effect, firstly, for the reason that the ground mentioned in proviso (2) of Sub-rule (1) of Rule 29 of the Rules was not available to him and, secondly, because the amount due from him on the date of the application had not been paid by him. The petitioner, therefore, has no case even on merits.

9. For the reasons mentioned above, I find this writ petition to be without any merit and dismiss it with costs.

