

(1993) 09 PAT CK 0019
In the Patna High Court
Case No : C.W.J.C. No. 2030 of 1993 (R)

Khanna Construction

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 04-09-1993

Acts Referred:

Forest (Conservation) Act, 1980 — Section 1, 2, 3, 3A, 4
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21

Citation : (1994) 42 BLJR 586 : (1994) 1 PLJR 62

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

Bench : Division Bench

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This application is directed against a demand dated 3-6-1993 (Annexure-3) whereby the petitioner has been directed to deposit a sum of Rs 2,44,600 by the respondent No. 2 in purported exercise of his powers conferred upon him under the provisions of the Forest (Conservation) Act, 1980 (hereinafter referred to for the sake of brevity as "the said Act").

2. The fact of the matter is not in dispute. The petitioner was granted a mining lease on 15-10-1976 in plot No. 1605 for a period of four years. The said deed of lease is contained in Annexure-1 to this application. The petitioner's lease was renewed on 3-7-1980.

3. According to the petitioner, by a letter dated 1-12-1984, the petitioner's lease was further renewed for four years with effect from 3-7-1984. The petitioner allegedly upon execution of the said lease, started working the lease-hold and paid all cesses, royalty and other statutory dues.

After expiry of the period of the said lease, he prayed for further renewal of the lease, but the same was refused with effect from 2-7-1988. As such from the said date, the petitioner has no longer been carrying on any mining operation in the said plot. According to the petitioner, he had paid all cess, royalty and other

statutory dues to the State of Bihar.

4. By order dated 3-6-1993, the respondent No. 2 as noticed hereinbefore, directed the petitioner to pay the aforesaid dues of Rs. 2,44,600.

5. The petitioner has contended that no provision exists in the said Act for payment of any damages whatsoever. The petitioner has further been directed to pay a sum of Rs. 90,297 by reason of a demand notice as contained in Annexure-4 to this application which was issued in terms of the provisions of Section 4 of the Bihar Restoration and Improvement of Degraded Forest Land Taxation Ordinance, 1992 for the period upto 27-12-1992.

6. In this case, a counter-affidavit has been filed on behalf of the respondent wherein it was, inter alia, stated as follows:

Thus it is amply clear that the Legislature wanted to halt the rapid process of deforestation which in turn is endangering the life of the individual and the community. In order to achieve this goal, the State have devised different procedures and one of such procedure is that the user of the forest land for a non-forestry purpose should be suitably charged so that other individuals as well as the community do not suffer. It is in this spirit that the Government have issued the following directions.

(a) Land and money for compensatory afforestation on a non-forest land equivalent to the forest area being directed for non-forestry use to be realised from the user. The State Government, under the directions of the Central Government and with the concurrence of the Comptroller General of Accounts, have opened a new budget head for this purpose.

It was submitted that after the said Act came into force, the petitioner could not have been granted any mining lease within the reserve forest without obtaining prior approval of the Central Government.

7. Mr. A.K. Sinha, learned Counsel appearing on behalf of the petitioner has raised a short question in support of this application.

The learned Counsel submitted that from perusal of the provisions contained in the said Act, it would be evident that the same does not contain any provision for payment of damages whatsoever. According to the learned Counsel, even the rules framed u/s 4(1) of the said Act known as the Forest (Conservation) Rules, 1981, does not empower the State to realise any dues in terms of the provisions thereof. It was further submitted that the said notice appears to be mala fide one inasmuch as from perusal of the impugned notice (Annexure-3) it will appear that the petitioner in course of mining operation did not fell any tree and thus question of payment of compensation to the respondent by the petitioner on that account does not arise.

8. The learned Advocate-General, on the other hand, relied upon Section 3 of the said Act and Rule 5 of the Rules. He also submitted that in terms of Section 2(iii)

of the Mines and Minerals (Regulation and Development) Act, 1957, the respondent No. 2 is the competent authority and thus he had the jurisdiction to issue the impugned notice in terms of Rule 15 of the Bihar Minor and Mineral Concession Rules. The learned Advocate-General further drew our attention to para 3 of Annexure-A to the counter-affidavit as also Clause (c) of Annexure-B thereof.

9. The said Act contains only five sections. Section 1 of the said Act imposes a restriction on de-afforestation and de-reservation of forest of use of forest land for non-forest purposes without prior approval or consent of the Central Government.

10. Section 3 of the said Act deals with the powers of the advisory committee.

Section 3A of the said Act deals with penalty.

Rule 5 of the said Forest Conservation Rules, 1981 reads thus:

5. Committee to advise on proposals received by the Central Government--(1) The Central Government shall refer every proposal received by it under Sub-rule (1) of Rule 4 to the Committee for its advice thereon;

(2) The committee shall have due regard to all or any of the following matters while tendering its advice on the proposals referred to it under Sub-rule (1), namely:

(a) Whether the forest land proposed to be used for nonforest purpose forms part of a nature reserve, national park, wild like sanctuary, biosphere reserve or forms part of the habitat of any endangered or threatened species of flora and fauna or of an area lying in severally eroded catchment;

(b) Whether the use of any forest land is for agricultural purpose or for the rehabilitation of persons displaced from their residences by reason of any river valley or hydro-electric project.

(c) Whether the State Government or the other authority has certified that it has considered all other alternatives and that no other alternatives in the circumstances are feasible and that the required area is the minimum needed for the purpose; and

(d) Whether the State Government or the other authority undertakes to provide at its cost for the acquisition of land of an equivalent area and afforestation thereof.

(3) While tendering the advice, the Committee may also suggest any conditions or restrictions on the use of any forest land for any non-forest purpose which, in its opinion, would minimise adverse environmental impact.

11. From a conjoint reading of the said Act and Rules framed thereunder, it is evident that the said Act merely deals with powers and procedures for obtaining approval of the Central Government before grant of any land within the reserve

forest is made with any person for non-forest purposes.

12. There can be no doubt that renewal of lease accounts to a fresh grant and even for grant of renewal of lease, the State Government was bound to obtain prior approval of the Central Government in terms of Section 2 of the said Act, if the lease hold area in favour of the petitioner fell within the reserve forest.

13. The said Act, however, does not contain any provision for realisation of damages whatsoever. If any person contravenes the provisions of the said Act, he can be prosecuted in terms of Section 3(A) thereof.

Rule 5 of the Rules upon which strong reliance has been placed by the learned Advocate General is not applicable, inasmuch as the said Rule merely provides that a committee constituted for the purpose of recommending to the Central Government for the purpose of grant of approval may take into consideration the factors enumerated therein.

14. According to the respondents, thus, although the lease hold fell within the area of reserved forest, prior approval of the Cent at Government Was not obtained. In this view of the matter, the question of taking recourse to Rule 5 of the said Rule did not arise, inasmuch as it is not the case of the respondents that at the time of grant of approval, the Central Government had imposed Certain conditions as per the recommendations of the committee in consonance with the aforementioned Rule 5 of the said Rule.

15. So far as the submission of the learned Advocate-General based on Section 2(iii) of the Mines and Minerals (Regulation and Development) Act, 1957, and Rule 15 of the Bihar Minor and Mineral Concession Rule is concerned, the same is misconceived.

16. It is not a case that a quarrying permit was granted in favour of the petitioner. The petitioner has specifically contended, and the same has not been denied or disputed by the respondents in the counter-affidavit that a mining lease was granted in terms of the Bihar Minerals Concession Rules. In the Mines and Minerals (Regulation and Development) Act, 1957 and the Bihar Minor and Mineral Concession Rules, different provisions exist for grant of mining lease and quarrying permits. The scope, purport and object of grant of mining lease and quarrying permits are also different.

Reference in this connection has been made to Rules 50 and 51 of the Bihar Concession Rules from perusal of which it would be evident that the lease has to pay damages for use of the surface land belonging to a third party. In case of any dispute with regard to the amount of compensation payable by a mining lessee to a third party, recourse to the provision thereof can be taken.

17. For the purpose of fixing the quantum of damages payable by the mining lessee in terms of Rules 50 and 51 of the Bihar Concession Rules, evidently, the respondent No. 2 is not the competent authority. The learned Advocate-General also does not dispute this position of law.

18. There cannot be any doubt that if renewal of the mining lease in favour of the petitioner made after coming into force of the said was illegal, the petitioner could have been prosecuted under the said Act and/or u/s 21 of the Mines and Minerals (Regulation and Development) Act, 1957.

19. If the petitioner has illegally damaged the surface belonging to the State of Bihar, it could have sued the petitioner for damages or taken recourse to the provisions of the terms and conditions of the lease, but the respondent No. 2 evidently had no jurisdiction to direct payment of any compensation in terms of the provisions of the said Act or otherwise. The action on the part of the respondent No. 2 also appears to be mala fide inasmuch as from a perusal of the impugned notice as contained in Annexure-3 to this application, it appears that the petitioner has not felled any tree for carrying out the mining operation.

20. Reliance upon Annexures-A and B to the counter-affidavit by the learned Advocate-General is also misplaced. Annexure-A is merely a policy decision of the State of Bihar as to in which account the damages paid by the mining lessee pursuant to any condition for grant of any approval are to be deposited. Annexure-A, therefore, by itself does not create any law, nor the same has any statutory force. In any event, by reason of Annexure-A to the counter-affidavit, no power is conferred upon the respondent No. 2 to claim damages from a person in whose favour no mining lease was granted in the eyes of law, but a person who did not fell any tree.

A perusal of Annexure-B to the counter-affidavit shows that the same again refers to policy decision of the State in respect of compensation of damages in relation to timber, bamboo, Kendu leaves and other forest produce. Annexure-B to the counter-affidavit, thus, ex facie, has no application to the case in hand.

21. In view of the foregoing discussions, there is no doubt that the impugned notice as contained in Annexure-3 to the writ application has been issued by the respondent No. 2 without any jurisdiction.

22. However, it goes without saying that in the event it is held that the grant of renewal of mining lease in favour of the petitioner was illegal, it would be open to the State of Bihar to take such action as against the petitioner, as may be permissible in law. In such an event, the respondents shall be at liberty to take action also against the officer(s) responsible for passing of the order of renewal of the mining lease of the petitioner and execution of the deed of lease in his favour.

23. This application is, therefore, allowed and the impugned notice as contained in Annexure-3 to the application is quashed with costs, which is quantified at Rs. 2500 (rupees two thousand and five hundred) only.

Narayan Rao, J.

24. I agree.