

(2003) 07 JH CK 0101
In the Jharkhand High Court
Case No : CWJC No. 1841 of 1994 (R)

Minerals and Minerals Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-07-2003

Acts Referred:

Mineral Concession Rules, 1960 — Rule 22, 54

Citation : AIR 2004 Jhar 14 : (2003) AIR Jhar HCR 905 : (2003) 3 JCR 265 : (2003) 2 JLJR 750

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : G.P. IV, M.M. Banerjee and S. Sen, for the Appellant; P.K. Prasad and Shekhar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner M/s Minerals and Minerals Ltd. prays for issuance of appropriate writ directing the respondents to grant mining lease to the petitioner as directed by respondent No. 2, Revisional Authority and further for an order restraining respondent No. 3 from doing any mining activities in respect of the aforesaid land pursuant to order passed by Sub-ordinate Judge, 1 Gumla in Title Suit No. 28 of 1992.

2. The case of the petitioner in brief is that pursuant to a notification issued by Government of Bihar dated 19.10.1968, petitioner applied under Rule 22 of the Minerals Concession Rules, 1960 (in short the Rules) for grant of mining lease for Bauxite over an area of 1475 acres in village Blmrla, Barang, Manatu, Korla, Chagra in the district of Ranchi (now Gumla). The said application which was filed on 23.12.68 was not disposed of within 12 months and consequently petitioner filed revision application on 15.4.1970 before the Central Government under Rule 54 of the said Rules against the deemed refusal to grant mining lease. The said revision application was rejected by the Central Government on the ground that by notification dated 6.5.1970 the Government of Bihar reserved the entire

Bauxite bearing area in the district of Ranchi and Palamau for prospecting and exploration in the Public Sector and no area was available for grant of mining lease. Petitioner aggrieved by the said order filed writ petition under Article 226 of the Constitution of India before the Delhi High Court being CWJC No. 332 of 1970. The Delhi High Court passed interim order dated 24.7.1972 directing the State Government not to grant any lease in respect of the area applied for by the petitioner to any other private applicant until further order of the Court and the said interim order was confirmed by judgment dated 7.2.1985. The writ petition was allowed and the order passed by the Central Government was quashed and the matter was remanded to the Central Government to hear and decide afresh the revision application of the petitioner.

3. Petitioner's further case is that in the meanwhile, by notification dated 20.12.1982 published in Bihar Gazette dated 12.1.1983, the Government of Bihar dereserved the aforesaid Bauxite bearing area and it was made available for re-grant to the interested persons. Thereafter, the revision application of the petitioner was disposed off by the Central Government by Order dated 21.2.89 remanding the matter to the State Government for decision on the application filed by the petitioner for grant of mining lease. But in view of the order obtained by respondent No. 3 from Calcutta High Court allowing him to operate Bauxite Mining Area the State Government could not dispose off application of the petitioner. It is contended by the petitioner that the petitioner approached the Calcutta High Court by filing application for being impleaded as party respondent and the same was allowed and ultimately writ petition filed by respondent No. 3 in the Calcutta High Court was dismissed. Petitioner's case is that the State Government is not considering the application of the petitioner for grant of mining lease.

4. Respondent No. 3 on the other hand stated that as far back as in 1948 Maharaja of Chotanagpur granted a lease in respect of 173 Sq. miles areas in different villages situated in the district of Ranchi for a period of 90 years. On the basis of the said lease of 1948 respondent No. 3 has been exercising its right of mining and winning mineral over an area of 2198.25 acres out of total area. Subsequently, in the year 1950 after coming into force of the Bihar Land Reforms Act, 1950, although respondent No. 3 became a statutory lessee the controller of mining lease illegally reduced the area to 2198.25 acres. The lease deed was executed in respect of the said area. The case of respondent No. 3 is that on 12.2.68, the District Mining Officer, Ranchi illegally decided the area for the grant of mining lease which was challenged before the Calcutta High Court and subsequently the suit was filed and the injunction was granted by the Court restraining the Government from interfering with their mining activities.

5. Mr. Anand Sen, learned counsel for the petitioner mainly contended that the State Government is bound to consider the application of the petitioner for grant of mining lease in terms of the order passed by Central Government on the revision application in the light of the direction of the Calcutta High Court.

6. Mr. P.K. Prasad, learned counsel for respondent No. 3 vehemently argued the maintainability of the writ petition. Learned counsel drawn my attention to Section 10 of the Bihar Land Reforms Act and relied upon the decision of the Supreme Court in the case of Bihar Mines Ltd. Vs. Union of India (UOI), . and submitted that the entire action of the respondents in reducing the area of the mining lease after the said Act came into force is absolutely illegal and wholly without jurisdiction. Learned counsel submitted that respondent no. 3 has become statutory lessee in respect of the entire area and compromise was entered between respondent No. 3 and the Government for reduction of mining area was against the law and that cannot be given effect to. Learned counsel further submitted that the question whether respondent N. 3 became statutory lessee under the provision of Section 10 of the said Act is pure question of law and merely because some concession was made earlier by respondent No. 3 will not debar him from his right as a statutory lessee in respect of the entire area.

7. I shall first deal with the point raised by Mr. P.K. prasad on behalf of respondent No. 3.

8. Maharaja of Chotanagpur granted a mining lease in favour of respondent No. 3 for an area of 173.60 Sq. Miles covered in the aforementioned village in the district of Gumla for 99 years. After the Bihar Land Reforms Act came into effect, a deed of compromise was arrived at in between the State of Bihar and respondent No. 3 on condition that parties will abide by the decision of the Controller of Mining Lease for India. On 11.5.64 the controller passed the order to the effect that the State of Bihar will pay compensation for the area to be surrendered by respondent No. 3 and fresh lease in respect of 2198.25 acres would be executed for 20 years subject to renewal of lease which was to expire on 6.1.68. After the expiry of the period of lease, a notification was issued by the State Government inviting application for the grant of mining lease for the reduced area as mentioned above. Petitioner applied for the mining lease under Rule 22 of the said Rules and when application was not disposed off within Six months, a revision was filed by the petitioner before the Central Government under Rule 54 of the said Rule. The revisional authority rejected the revision application of the petitioner. Thereafter, in 1982 Government of Bihar dereserved the Bauxite bearing area. Respondent No. 3 then for the first time moved Calcutta High Court against the aforesaid notification and obtained an interim order allowing respondent No. 3 to operate Bauxite bearing area. However, the said writ petition was ultimately dismissed on 15.12.89 holding that Calcutta High Court had no territorial jurisdiction to entertain the matter. Respondent No. 3 then filed a writ petition before the Ranchi Bench of the Patna High Court being CWJC No. 36 of 1999(R) challenging the validity and legality of the notification dated 20.12.1982, whereby mining area was dereserved. The said writ petition was dismissed on 19.2.90 by a Division Bench of this Court. It is worth to quote the entire order passed by the Division Bench which reads as under :

"The petitioners have challenged the validity of the notification dated 20th

December, 1982 published in the Bihar Gazette on 12th January, 1983 issued under the Rule 59 of the Mineral Concession Rules, 1960 reserving the areas of bauxite mineral in Ranchi and Palamau district except those areas in respect of which mining leases have been accepted by the State Government and Annexure-8 dated 23.11.89 by which the petitioners were informed that they had no right to mine bauxite in view of the order passed by the Calcutta High Court in the writ petition filed by the petitioner vacating the order of the stay of Annexure-2 whereby area of mining lease of the petitioners was reduced as also the period of mining lease was reduced from 99 years to 20 years.

It was submitted on behalf of the petitioner that controller of Mining Leases for India by order as contained in Annexure-2 dated 11.5.64 could not have reduced the period of lease to 20 years computing from 7.1.48. It was submitted that notwithstanding Annexure-2 the petitioner went on paying royalty and cess which are evidenced from Annexure-4 series and 9 series. It was urged that since the order as contained in Annexure-2 was without jurisdiction and petitioners continued to operate the mine by paying royalty and cess, the petitioners are entitled to challenge the same as also the validity of Annexure-8.

A mining lease for winning and mining Bauxite was executed by the then proprietor in favour of the petitioner on 7.1.48 for a period 99 years. According to the petitioner's own showing by Annexure-2 the period was reduced to 20 years and the area was also reduced. In pursuance of the same, a registered instrument was executed by the parties. On behalf of the petitioners it was conceded that the reduction of the area was acted upon. No law prohibits parties to reduce the period of lease by an agreement. We are satisfied there was no infirmity in the order as contained in Annexure-2 which was followed up by the parties by a registered instrument. Even assuming that the order could not have been passed in purported exercise of Rule 6 of the Mining Lease (Modification of Terms) Amendment Rule 1961, in view of the fact that the petitioner agreed to reduce the period from 99 years to 20 years and which period has expired, we are not inclined to allow the petitioner to challenge Annexure-8. Further it appears that the petitioner had moved the Calcutta High Court challenging Annexure-2 and obtained an order of stay on 10.4.84. The petitioners filed the writ petition in Calcutta High Court although that Court had no jurisdiction to entertain it. On the basis of the stay order they operated the mine from April, 1984 and paid royalty and cess. There is no document on record to show that the petitioners had paid any, royalty and cess for the period May, 1964 to March 1984, i.e. the date of Annexure-2 and order of stay passed by Calcutta High Court. The petitioner succeeded in keeping the matter pending in Calcutta High Court for more than 5 years and enjoyed the order of stay. We are not inclined to allow the petitioner to challenge the validity of Annexure-8. This is in fact follow up action of Annexure-2 and was issued by the State Government in view of the fact that the order of stay passed by the Calcutta High Court was vacated by it in December while holding that it had no jurisdiction to entertain the case.

This writ petition is dismissed."

9. Respondent No. 3 did not challenge the aforesaid judgment and order passed by the Division Bench holding that there was no illegality in reducing the area of the lease rather filed a suit in the Court of Sub-ordinate Judge, Gumla being Title Suit No. 28 of 1992 for declaration that respondent No. 3 is a statutory lessee under the State of Bihar and is in possession from the date of execution of the deed by the ex-proprietor in respect of the entire are. In the said suit petitioner obtained temporary injunction on 21.9.92.

10. Curiously enough, from perusal of the order of injunction dated 21.9.92, it does not appear that either respondent No. 3 brought to the notice of Sub-ordinate Judge regarding dismissal of the writ petition or the Sub-ordinate Judge took notice of the dismissal of the writ petition while granting order of injunction. Surprisingly, Sub-ordinate Judge inspite of the judgment and order passed by the Division Bench held that the plaintiff was granted lease by Maharaja of Chotanagpur for 99 years and it became statutory lessee and therefore entitled to grant injunction. Petitioner immediately intervened in the said suit by filing application under Order 1 Rule 10 which was allowed by the trial Court and thereafter revision application was filed before this Court being Civil Revision No. 515 of 1992. The said revision application was admitted and the order of injunction was stayed.

11. Mr. P.K. Prasad, learned counsel appearing for respondent No. 3 put heavy reliance on the decision of the Supreme Court in the case of Bihar Mines Limited v. The Union of India and Ors. (Supra). The fact of the case was that one Raja Ram Bahadur Singh of Palganj executed a lease with respect to certain area of his estate in favour of Babu Tribang Murari Chakravarti of Assansol for a period 49 years for the purpose of carrying out mining operations in the said area. Chakravatri, the head lessee, executed a sub-lease in favour of Deoji Jairam Solanki. Solanki, in his turn granted sub-lease in respect of the same area in favour of M/s Hirji Premji Parmar in 1934. In 1954 M/s Hirji Premji Parmar assigned their right, title and interest in the said area in favour of the appellants, the Bihar Mines Ltd. for a period of 19 years. After coming into force of the Mines and Mineral (Regulation and development) Act, 1948 and the Bihar Land Reforms Act, 1950, the Controller of Mines took a decision for the modification of the head lease and the sub-leases and notices were issued to appellants of the proposed notification. The appellants, however, did not admit the modification and raised objection. The Controller of mines modified the lease. The matter ultimately came for consideration before the Supreme Court. In the facts of that case, the Supreme Court observed :

"The terms and conditions of the lease were also subject to the proviso to Sub-section (2) of Section 10 which said that nothing in that sub-section would be deemed to prevent any modifications being made in the terms and conditions of the lease in accordance with the provisions if any Central Act for the time being in force regulating the modification of existing mining leases. This means that

the statutory lease could be modified in accordance with the provisions of the 1948 or the 1957 Act. The 1956 rules provided for the modification of the leases granted before October 25, 1949. It follows that in pursuance of the proviso to Section 10, the terms of the statutory lease could not be modified when the lease be held to be a new lease from the date of vesting."

12. In the instant case, as noticed above, after coming into force of the Bihar Land Reforms Act and Regulation and Development Act and the Rules a deed of compromise was arrived at in between the State of Bihar and respondent No. 3 pursuant to that the lease of the mining area of respondent No. 3 reduced to 2198.25 acres and fresh lease in respect of the said area was executed by and between the Government and the respondent No. 3 for 20 years subject to renewal of lease. Admittedly, during the subsistence of the fresh lease respondent No. 3 did not challenge the validity of the decision of the controller of mining lease or validity of the fresh lease. Even after the expiry of the period of fresh lease, respondent No. 3 did not challenge the same. It was only after when the notification dated 20.12.1982 was issued by the Government, respondent No. 3 filed writ petition in the Calcutta High Court which was ultimately dismissed. Respondent No. 3, thereafter filed writ petition in Patna the High Court, which was dismissed on merit in terms of judgment and order dated 19.12.1990. From the said judgment quoted herein above, it is clear that the Division Bench of this Court categorically held that respondent No. 3 agreed to reduce the period from 99 years to 20 years which period also expired and therefore there is no question of challenging the validity of the notification. Suppressing the aforesaid judgment, respondent No. 3 filed suit and obtained order of injunction which was ultimately stayed by this Court. In that view of the matter, in my considered opinion respondent No. 3 has no right to claim any right title or interest over the land in question or carry on any mining activity in the said area.

13. So far relief sought for by the petitioner is concerned, I am of the opinion that the same is misconceived. As noticed above, petitioner filed application in the year 1968 for grant of mining lease and against the deemed refusal he moved the Central Government by way of revision and the Central Government directed the State Government by order dated 21.2.89 to take fresh decision in the matter of grant of lease. Much water flown from the Ganges after 1989 inasmuch as Forest Conservation Act, 1990 came into force and in the year 2000 new State namely, State of Jharkhand came into existence.

14. In my opinion, therefore, petitioner if so advised may file fresh application for the grant of mining lease which shall be considered by the State Government in accordance with law and in compliance of the provision of Forest Conservation Act. No relief can be granted to the petitioner by directing the State Government to consider his application which was filed as far back as in the year 1968.

15. For the aforesaid reasons, there is no merit in this writ application, which is accordingly dismissed.