

(2016) 07 PAT CK 0115

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.3024 of 2014

M/s. Dhanpat Prasad

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 11-07-2016

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 4, Section 6

Citation : (2017) 1 BBCJ 150 : (2016) 4 PLJR 621

Hon'ble Judges : Mr. Vikash Jain, J.

Bench : Single Bench

Advocate : Mr. Rajendra Narain, Senior Advocate and Mr. Manish Sahay, Advocate, for the Petitioner; Mr. D.K. Sinha, Senior Counsel Mines and Mr. Rajendra Prasad, Spl.P.P. Mines, for the Respondents

Final Decision : Allowed

Judgement

Mr. Vikash Jain, J.(Oral) - Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for quashing the certificate under Section 4 and 6 of the Bihar & Orissa Public Demands Recovery Act, 1914 (for short "the PDR Act") arising out of demand/requisition no. 01/2012-13 dated 13.09.2013 as well as notice issued under section 7 of the PDR Act vide memo no. 27 dated 14.09.2013 by the respondent no. 5 (the Certificate Officer, Mines & Geology, Munger Circle, Munger) arising out of Certificate Case No. 01 of 2012-13 for recovery of Rs. 85,13,000/- from the petitioner (Annexure-7 series), and for connected reliefs.

3. According to the petitioner, a partnership firm, a mining lease was executed on 21.09.2007 for the area at Mauza Hazratpur Madro, Registration District Sheikhpura, Sub Registration District Sheikhpura and Thana Ariari bearing Cadastral Survey Nos. 2068(P) containing an area of 2.00 Acres between the petitioner and the Mining Development Officer, Sheikhpura (Respondent No. 4)

The mining lease was made for a period of five years and, inter alia, Part V of the lease deed provided for payment of the bid amount in equal instalments on annual basis together with cess, taxes and local taxes. It further provided for payment of 24% simple interest for delayed payment of instalments vide clause 5 of Part VI thereof. Clause 4 of Part VIII also granted liberty to the lessee to determine, surrender or relinquish any part of the lease. The anticipated royalty was stated to be for Rs. 16,00,000/- vide Clause 9 of Part IX. For the sake of ready reference, the aforesaid relevant portions of the lease deed are reproduced hereunder :-

"PART-V

Rents and Royalties reserved by this lease.

1. Mode of payment of settlement: The bid amount shall be deposited on yearly basis in equal instalments and each instalment shall be deposited before 31st January,
2. That lessee/ the settlee shall duly and regularly pay to the appropriate authority all cess, taxes and local taxes dues in respect of the leased area, the said minerals or the working of the mines in addition to the rent and rent and royalty so payable as aforesaid.

PART - V

5. Course of action if rent and royalties are not paid in time.

If any instalment not deposited before prescribed period, 24% simple interest shall be charged upto two months and after that action for cancellation shall be taken.

There rights shall be without prejudiced to the Collector to realise the dues under the Bihar Public Demand Recovery Act or any statutory Act or Rules thereof for the time being in force.

PART VIII

4. Liberty to determine surrender or relinquish any part of the lessee/the settlee are

The lessee/the settlee may at any time determine this lease by giving not less than six calendar months notice in writing to the collector and upon and expiration such notice, provided that the lessee/the settlee shall pay bid money, compensation for damage and other money which may then be due and payable under these present to the collector but for this State Government's will be required or any other person or persons and shall deliver up these presents to the collector then this present lease and the said term and the liberties, powers and privileges hereby granted shall absolutely cease and determine by without prejudice to any right or remedy of any breach of any of the covenants for agreements contained in these presents.

PART-IX

9. Anticipated royalty for the purpose of stamp duty:

For the purpose of stamp duty the anticipated royalty is Rs. 16,00,000/- (Rupees sixteen lakhs) only."

4. After working the mines for some time, the petitioner took a decision to surrender the lease in view of shortage of minerals like stone and consequently the unviability of running the business which was resulting in losses to the petitioner. Accordingly by its two letters, both dated 13.03.2009, addressed separately to the District Magistrate, Sheikhpura (Respondent No. 3) and the Mining Development Officer, Sheikhpura (Respondent No. 4) and each despatched through registered post, the petitioner informed that its business had failed and the unit had closed down. The mining lease was accordingly surrendered with a request for making payment of the Government dues for the period from 21.09.2007 upto 18.03.2009 in instalments. A reminder was once again given by the petitioner by registered letter dated 18.09.2009 to the Mining Development Officer, Sheikhpura (Respondent No. 4). The respondent no. 4 on his part however, continued to raise demands for payment without passing any order accepting the petitioner's surrender of the lease, despite repeated objections vide letters dated 03.08.2011, 19.03.2012 and 19.07.2012, all despatched by registered post. Ultimately, the respondents initiated recovery proceedings under the PDR Act for an amount of Rs. 85,13,000/-, pursuant to which the impugned certificate dated 13.09.2013 has been drawn and notice under Section 7 dated 14.09.2013 issued against the petitioner.

5. Learned senior counsel Mr. Rajendra Narain appearing on behalf of the petitioner submits that the respondents have acted arbitrarily and in an unfair exercise of power to defeat the terms of the contract. The petitioner was entitled to surrender the lease in terms of Clause 4 Part VIII of the mining lease, a right of which was duly exercised by the petitioner as far back as on 18.03.2009 itself. Besides, the respondents themselves were bound to take action for cancellation of the lease deed after two months of default in payment of rent and royalty as provided in clause 5 of Part V, whereas the respondents have instead allowed time to run far beyond only with a view to raise the unjustified demand for the entire lease period. It is stated that according to a rough calculation of the petitioner, there would be total liability of about Rs. 24,00,000/- towards rent and royalty for the period between 21.09.2007 and 18.03.2009 during which the leased area had been used by the petitioner. Payment of an aggregate amount of Rs. 23,60,200/- had already been made through treasury challans from time to time right from 30.07.2007 to 22.02.2011, but rather than closing the matter, the respondent no. 4 has consistently ignored the registered letters of the petitioner and instead taken coercive action by institution of certificate proceedings for realisation of an exorbitant amount of Rs. 85,13,000/- which is manifestly not due from the petitioner.

6. Learned counsel for the respondents opposes the writ petition, placing reliance on para 14 of the counter affidavit to point out the falsity of the petitioner's claim that stone was not available in the mine. The petitioner had continued to carry on extraction for which transportation passes had been issued on the request of the petitioner on several occasions. A categorical statement has also been made in para 16 of the counter affidavit to the effect that the respondents had no knowledge of the surrender letter and reminders thereof sent by the petitioner. The denial of knowledge of the surrender and reminder letters has been reiterated in para 9 of the supplementary counter affidavit categorically stating that "no registered post has been received in the office of the respondents with regard to the surrender of leased area on 18.03.2009 and reminders letters thereafter."

7. In reply, it is submitted on behalf of the petitioner that the transportation passes subsequently issued on requests were not for carrying on business rather merely to carry away the stone already extracted during the period when the petitioner had used the mine. It is evident from the very fact that such transportation was made against challans during a very short period falling between 18.12.2010 and 04.03.2011, that is less than three months in all.

8. More significantly, learned counsel for the petitioner refers to the respondent's letter No. 1168 dated 09.07.2012 (Annexure-E) which refers to the petitioner's letter dated 19.03.2012 with reference to surrender of the lease. According to the petitioner, the reference to the petitioner's letter dated 19.03.2012 completely demolishes the respondents' stand of not having received any of the petitioner's registered letters. A doubt is also sought to be created by the petitioner that the latter part of the sentence where the petitioner's letter dated 19.03.2012 has been acknowledged, is interpolated by adding the words "thatha na hi aisi koyi soochna karyalay abhilekh mei hai", the word "thadha" being an overwriting where the sentence had originally ended.

9. Having heard the parties and on a careful consideration of the materials on record, this Court finds considerable merit in the writ petition. The surrender letter dated 18.03.2009 followed by numerous letters dated 18.09.2009, 03.08.2011, 19.03.2012 and 19.07.2012 were all sent by the petitioner through registered post and copies of the relevant postal receipts have been brought on record. None of such receipts has been doubted by the respondents and on the contrary the petitioner has obtained a certificate from the post office to establish the genuineness thereof as having been issued from the concerned post office and not returned undelivered (Annexure-8 series). Apart from the preponderance and probability of delivery of the letters to the respondents, no satisfactory reply has come forth from them to explain the circumstances in which their letter No. 1168 dated 09.07.2012 (Annexure-E) came to refer to the petitioner's registered letter dated 19.03.2012 sent by registered post, receipt of which is otherwise denied. With a view to verifying the basic fact of delivery of the petitioner's several letters in the office of respondent no. 4, this Court by its order dated

19.04.2016 required the respondents to produce the dispatch and receipt register in original containing entries for the entire period in question between March, 2009 and onwards till the end of the year 2012. In the second supplementary counter affidavit, the respondent no. 4 has taken the stand that the incoming register is not available in the office since 2009 to 2012. This Court is unable to appreciate such stand of the respondent no. 4. Even though maintenance of receipt and despatch register in normal course has not been denied, it is surprising that such inward register has gone missing precisely for the period during which the registered letters had been despatched by the petitioner. Respondent no. 4 has also not stated what steps were taken by way of attempts to trace and recover the inward receipt register or the nature of any action as may have been taken against the concerned officials who may have been responsible or negligent for such loss. What is even more unacceptable is the respondent's categorical statement of denial of receipt of the petitioner's registered letters unequivocally in para 9 of the supplementary counter affidavit that "no registered post has been received in the office of the respondents with regard to the surrender of leased area on 18.03.2009 and reminders letters thereafter." Such supplementary counter affidavit has been sworn on 29.02.2016 and filed in this Court on 15.03.2016, and para 9 is stated to have been made on the basis of information derived from the records of the case. Soon thereafter, pursuant to the order of this Court dated 19.04.2016, a second supplementary counter affidavit has been sworn on 18.05.2016 and filed before this Court on 20.06.2016 stating that the inward register for the period 2009 to 2012 was not available in the office, as earlier the office was situated in a residential house on rental basis and later on it was shifted to a Government building from 2011, and thus only the despatch register starting from 2012 is available. This Court is at a complete loss to appreciate the stand taken by Respondent no. 4 who has been unable to reconcile the apparent conflict therein. If according to the respondent no. 4 the record by way of the inward receipt register went missing in 2011 during the shifting process, then the statement in para 9 of the supplementary counter affidavit stated to have been made on the basis of information derived from the records of the case has not correctly been made. The failure to explain how the petitioner's letter dated 19.03.2012 came to be referred in the respondent's letter No. 1168 dated 09.07.2012 (Annexure-E) must also be borne in mind.

10. This Court therefore, finds the stand of the respondent no. 4 to be thoroughly unreliable and remains unsubstantiated, leaving little scope for doubt that the registered letters of the petitioner were in fact received by the Respondent No. 4. It follows therefore, that the petitioner's claim has a sound basis as the lease was surrendered in exercise of the petitioner's right in terms of the lease contract. In such circumstances, the arbitrary demand of Rs. 85,13,000/- sought to be recovered through recovery proceedings initiated against the petitioner under the PDR Act cannot be sustained.

11. The impugned certificate dated 13.09.2013 and the notice dated 14.09.2013

issued under the PDR Act are hereby quashed and the writ petition is allowed with imposition of cost of Rs. 5,000/- to be paid personally by the Mining Development Officer, Sheikhpura (Respondent no. 4) who has sworn the supplementary counter affidavit on 29.02.2016 and he shall not be entitled to be reimbursed on that account by the State. Such amount shall be paid to the petitioner within a period of eight weeks from the date of receipt/production of a copy of this judgment, acknowledgement receipt whereof must be filed before this court within a further period of two weeks of payment.

12. It is made clear that the dues of the petitioner shall be recalculated with reference to the period between 21.09.2007 and 18.03.2009 and after quantification, credit shall be given for the payments made against such liability and only the balance amount, if any, shall remain payable by the petitioner. In case any amount is found to have been paid in excess of the liability as determined, it shall naturally be refunded to the petitioner.

13. The writ petition stands allowed as above.