
(2016) 03 JH CK 0152
In the Jharkhand High Court
Case No : W.P.(C) Case No. 5632 of 2015

M/s. Joysri Enterprises

APPELLANT

Vs

State of Jharkhand and others

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Jharkhand Minor Mineral Concession Rules, 2004 — Rule 62

Citation : (2016) 162 AIC 765 : (2016) 3 JBCJ 353 : (2016) 3 JCR 380

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Indrajit Sinha and Krishanu Ray, Advocates, for the Appellant; Rajiv Ranjan and Rahul Kumar, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.— Heard learned counsel for the parties.

2. The genesis of this litigation is a inter-se dispute between the persons who claim to be partner of reconstituted firm. The petitioner-firm, now represented through lady-wife seek annulment of transfer of the lease of Minor Mineral (Stone quarry) executed by the same firm on permission from the competent authority of the State but through the 2 partners, Alok Talukdar, her husband and Somnath Karmakar. The said challenge has been declined by the Revisional authority, Court of Mines Commissioner, Ranchi in Revision Case No. 58 of 2012 by order dated 6.10.2015 impugned here in bearing memo no. 946 dated 23.10.2015 (Annexure-6). The Mines Commissioner after hearing the parties and after obtaining report from the District Mining Officer, Deoghar and private respondent has proceeded to hold that revision is not in accordance with the provisions of Rule 62 of Jharkhand Minor Mineral Concession Rules, 2004 as the petitioner was not a party in the grant and transfer of the said lease. The reconstitution of the partnership deed of the firm is a civil dispute which cannot be resolved before this Court of Mines Commissioner. He therefore refused to

revoke the transfer deed of mining lease.

3. The brief facts sans unnecessary details are being referred herein after for arriving at adjudication on issue involved. M/s Kali Agro Chemicals Ltd was the original lessee of the minor mineral situate at plot no. 446 Mauza-Barguina, District Deoghar entered on 15.9.2000 for a period of 10 years. The lease was transferred by M/s Kali Agro Chemicals Ltd in favour of M/s Joysri Enterprises on 13.5.2008. It is not in dispute that M/s Joysri Enterprises on 13.5.2008 comprised of two partner, Alok Talukdar and Somnath Karmakar as per the partnership deed dated 1.4.2007. The lease was to expire on 14.9.2010. These two partners applied before the Deputy Commissioner, Deoghar for renewal of the lease dead and was accordingly granted on 15.9.2010. These two partners executed the lease deed with the Deputy Commissioner, Deoghar on 11.9.2011 in the name of M/s Joysri Enterprises for a period of 10 years up to 14.9.2020. These two partners applied for transfer of the mining lease for the rest of the period in favour of the private respondent on 27.9.2011, which is at page 85 of the supplementary affidavit filed by the petitioner. The Deputy Commissioner, Deoghar approved the transfer of the lease on 14.10.2011 in terms of Rule 24 of the Jharkhand Minor Mineral Concession Rules, 2004, which was communicated by the District Mining Officer through memo bearing no. 1112 dated 15.10.2011 (Annexure-R4/D to the counter affidavit of respondent no.4). Consequent to the approval of transfer, these two partner Alok Talukdar and Somnath Karmakar executed the deed of transfer on behalf of the firm on 17.10.2011 in favour of the private respondent, which is at Annexure-V to the supplementary affidavit of the petitioner. These two partners also got refund of the security deposit in the form of National Savings Certificates on their application after execution of the deed of transfer in favour of the private respondent. The firm M/s Joysri Enterprises thereafter through one Joly Talukdar @ Joly Majumdar, daughter of Late Satya Ranjan Majumdar instituted revision case no 58 of 2012 alleging that the transfer of the lease has been effected without the consent of all the partners. It was alleged that M/s Joysri Enterprises partnership firm got reconstituted with 4 partners, two original i.e. Alok Talukdar and Somnath Karmakar and two new partners i.e. Joly Talukdar @ Joly Majumdar and Savtia Majumdar. These reconstitution of the firm was said to have made on 1.4.2009 and it is stated that intimation of the reconstitution was given to the Deputy Commissioner, Deoghar. This factum of intimation of reconstitution of the firm with 4 partners has been specifically denied by the State-respondent in their counter affidavit at para 15 and 19 after due enquiry.

4. It is evident from the sequence of facts borne on record that petitioner have not been able to dispel that the entire exercise of renewal of lease deed in September, 2010 and transfer of lease deed in favour of the private respondents were made by the two partners Alok Talukdar and Somnath Karmakar, as the only partners of M/s Joysri Enterprises at that point of time. It is also apparent that the renewal of the lease deed and its transfer in favour of the private respondent was executed on the part of two partners i.e. Alok Talukdar and

Somnath Karmakar and at that point of time, Joly Talukdar @ Jolly Majumdar and Savita Majumdar, who have espoused the instant lis claiming themselves to be newly inducted partners of the reconstituted firm, deed registered on 1.4.2009, never took any initiative or overt steps to object. It is not in dispute that the firm is not a registered firm with the Registrar of Firm under the Partnership Act. The reconstitution of the partnership firm with addition of these two partners have not been acknowledged by the State-respondents at the time of execution of the lease deed or its transfer. All acts undertaken during the aforesaid renewal and transfer have been executed by the partners, Alok Talukdar and Somnath Karmakar.

5. Learned counsel for the petitioner strenuously made efforts to impress that after intimation to the respondent-authorities relating to reconstitution of the firm on 1.4.2009 it was not a legal obligation on the part of other partners of the reconstituted firm to represent before the respondent-authorities when renewal of lease deed was done. It is alleged that the transfer of the lease deed involved some foul play and has been done at the back of these two partners, Joly Talukdar and Savita Majumdar. They have therefore chosen to question the transfer of the lease in favour of the private respondents in the revision petition which has wrongly been declined on the ground that they were nowhere involved in the grant and transfer of the said lease. It is asserted that under Rule 62 of the Jharkhand Minor Mineral Concession Rules, 2004 any person aggrieved of the order of the competent authority granting approval of lease or transfer can prefer revision petition which should have been entertained on merit instead of rejecting it on those grounds. Learned counsel for the petitioner has therefore submitted that the Revisional authority is required to be directed to decide the dispute on merit.

6. Respondent-State and the private respondent, both have appeared and filed their counter affidavit. Respondent-State has defended the decision taken to renew the lease in favour of M/s Joysri Enterprises on the application of the 2 partners, Alok Talukdar and Somnath Karmakar. They have not acknowledged any intimation of the reconstitution of the partnership firm. They also assert presence of two partners at all point of time in the process of renewal of lease and its transfer as also execution of the lease deed for renewal and transfer on the relevant date i.e. 11.9.2011 and 17.10.2011 respectively.

7. Learned counsel for the respondent-State submits that the controversy being sought to be raised now at the behest of the persons who claim to be partners of the reconstituted firm is wholly unwarranted and untenable. Partners, if at all have any grievance can agitate it against the other partners in the competent Court of law based upon the partnership deed and all other material evidence that are required to be adduced by the rival parties. The action of the State-respondent do not suffer from legal infirmity, perversity to permit revocation of transfer of lease.

8. Learned counsel for the private respondent has on the strength of the

averments made in the counter affidavit also come out with the same stand. It is their case that none of the acts performed by the two partners, Alok Talukdar and Somnath Karmakar in the renewal of the lease and transfer to the private respondents suffer from any such legal infirmity which could be annulled at the behest of the present petitioners, who allege to be partners of the same partnership firm though seemingly represented through another person. It is submitted that by way of unnecessary controversy, the work of the mines have been withheld for all these time due to pendency of the revision petition and present writ petition where also interim order was passed on 10.12.2015. It is submitted that if acts of State authorities have not been shown to be suffering from any illegality, irregularity or perversity, simply because partners of the reconstituted firm may have inter-se dispute, the validly executed lease deed should not be annulled or revoked. The writ petition therefore deserves dismissal.

9. I have considered the submission of the parties in detail and gone through relevant materials placed on their part. As the sequence of fact narrated herein above discloses, the partnership firm M/s Joysri Enterprises comprised of two partners, Alok Talukdar and Somnath Karmakar, who got the lease of minor mineral (stone quarry) transferred through a proper and valid order of the respondent-Deputy Commissioner, Deoghar on 13.5.2008 from M/s Kali Agro Chemicals Ltd, the original lessee. These were the two partners who made application for renewal of lease on September, 2010 before the respondent-authorities, which was duly accorded for next 10 years up to 14.9.2020. These are the two partners who also made application for transfer of the lease in favour of the private respondent before the competent authority in 27.9.2011. On their application and on being satisfied of the requisite conditions, the Deputy Commissioner, Deoghar approved the transfer of lease of stone quarry in favour of the private respondents on 14.10.2011, which was communicated by the District Mining Officer through memo bearing no. 1112 dated 15.10.2011(Annexure-R4/D to the counter affidavit of respondent no.4). The lease deed also got executed on the part of these two partners in favour of the private respondents in the presence of District Mining Officer.

10. In the wake of all these facts, the intimation of the reconstitution of the firms comprising also of these two ladies i.e. Joly Talukdar @ Jolly Majumdar and Savita Majumdar is being squarely disputed after inquiry from the concerned staffs by the respondent-State in their counter affidavit in para 15 and 19. In such circumstances, the decision of the respondent-authorities for renewal of the lease and its transfer in the name of private respondent on being satisfied of fulfilment of all required conditions cannot be said to suffer from legal infirmity, which warrant interference by the revisional authority at the behest of the present deponent of M/s Joysri Enterprises. He called for a report and after considering the fact that these two persons were also authorised in the original partnership deed to effect any such act of transfer, did not find any reason to annul the transfer of the lease deed at the behest of the present deponent. Learned counsel for the petitioner though has referred to rule 62 of the 2004

Rules to allege that matter has not been decided on merit, but on conspectus of entire facts and perusal of the impugned order, it is evident that the Mines Commissioner did not dismiss the revision petition on the ground of maintainability alone rather satisfied itself on merit after hearing the parties and also upon perusal of the inquiry report submitted by the District Mining Officer, Deoghar. He did not find any illegality or infirmity in the grant of renewal or transfer of the lease by the two partners of M/s Joysri Enterprises in favour of the private respondent. If the present deponent has a inter-se dispute with the other partners of the firm, who she claims now comprises 4 partners after reconstitution, it is always open to the aggrieved partner to approach the competent authority of law for adjudication of the dispute arising out of the alleged violation of the terms and conditions of the partnership agreement. However, the act undertaken by the respondent-authorities as also the order of Revisional authority do not suffer from illegality warranting interference in exercise of writ jurisdiction.

11. In view of the detailed discussion made herein above and the reasons recorded, I do not find any ground to interfere in the writ application. The writ application is dismissed accordingly. Interim order dated 10.12.2015 stands vacated. However, it is also made clear that the respondent-authorities of the State would see that working of the Mines is done in accordance with law and on satisfaction of the required conditions including the environmental clearance.