
(2013) 05 JH CK 0015
In the Jharkhand High Court
Case No : L.P.A. No. 120 of 2013

M/s. Shree Balaji Enterprises

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-05-2013

Acts Referred:

Citation : (2013) 05 JH CK 0015

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Anoop Kumar Mehta, Ananda Sen, Ranjan Kumar, Nagmani Tiwari and Kautav Panda, for the Appellant; Ajit Kumar, A.A.G. and Mr. Vikash Kumar, J.C. to AAG, for the Respondent

Final Decision : Allowed

Judgement

1. Defects ignored. Heard learned counsel for the parties on the merit of the case.
2. The petitioner-appellant who is a lessee of the mining area was aggrieved against Revisional Court's order dated 29.12.2012 passed in Revision Case No. 130 of 2012 whereunder the Revisional Authority held that the petitioner without obtaining the environmental clearance had indulged in mining operation for the year 2010-11, 2011-12 and 2012-13 and directions were issued for taking steps for realization of the cost of the material i.e., of about Rs. 34 crores, for which a certificate proceeding has been initiated. The petitioner has challenged that order in the writ petition, W.P. (C) No. 194 of 2013.
3. According to learned counsel for the petitioner-appellant, the petitioner was aggrieved against the revisional order and, therefore, preferred writ petition and at the same time another issue for consideration in the writ petition was with respect to the delay in giving certain clearance by the Central Government as well as against the non renewal of the mining lease. It is submitted by learned counsel for the petitioner-appellant that before the learned Single Judge the petitioner pressed both the points but the learned Single Judge took note of the

one issue, that is petitioner has applied for the renewal of the lease and sought environmental clearance which are pending consideration before the respondents. It is submitted by learned counsel for the appellant that the learned Single Judge impressed by the short point of renewal of lease and environmental clearance and decided the writ petition vide impugned order dated 23.01.2013 and issued directions to the Central Government to take appropriate decision on the application seeking environmental clearance as well as for renewal of lease in accordance with law within two months. Then learned Single Judge directed both the parties to maintain status quo on the spot and no third party interest shall be created by the parties. Finding this the petitioner-appellant submitted a Civil Review Petition No. 05 of 2013, which was decided by another Single Judge on 3.04.2013. The Review Petition of the petitioner also dismissed on the ground that learned Single Judge has taken note of the contention of the learned counsel for the petitioner and accordingly decided the matter.

4. Learned counsel for the State, Mr. Ajit Kumar, A.A.G. submitted that from the language of the order dated 23.01.2013, it is clear that this order appears to be consent order and the petitioner sought only the consideration of renewal of his mining lease and issuance of environmental clearance certificate.

5. After going through the facts of the case, we are of the considered opinion that once the petitioner has approached this court against the revisional order wherein it has been held that petitioner was involved in illegal mining in the year 2010-11, 2011-12 and 2012-13 and huge liability of crores of rupees has been created by this revisional order and that order whether is dependent upon the subsequent renewal of mining lease and environmental clearance is also an issue and according to petitioner-appellant's contention the mineral have been excavated during the currency of the mining lease and for which, the petitioner also has paid the royalty in that situation even if, the petitioner's mining lease is not renewed for any reason or petitioner is not granted any further environmental clearance in that situation also the petitioner who excavated the minerals during currency of the mining lease lawfully and paid the royalty has right to remove the minerals and whether excavation was illegal are independent issues. If these issues are decided in favour of the petitioner, no demand, as has been raised, can be sustained. In that fact situation when two issues are independent and separate and one issue has been decided in that situation, unless and until decision is given on core issues, we are of the considered opinion that may be because of the inadvertent mistake the petitioner cannot be denied hearing as the issue requires to be decided independently. In view of the above reasons for that purpose, the matter is remitted to the learned Single Judge for deciding the writ petition on the issues other than the issue which has been decided vide order dated 23.1.2013 and without disturbing directions given by the learned Single Judge in order dated 23.01.2013.

The L.P.A. is allowed accordingly.