(1969) 01 OHC CK 0002

In the Orissa High Court

Case No : O.J.C. No. 22 of 1964 with O.S.No. 1 of 1965

Nandram Hunatram APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 14-01-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 256, 257, 299
Mineral Concession Rules, 1960 — Rule 31, 54, 55
Mines and Minerals (Development and Regulation) Act, 1957 — Section 28

Citation : AIR 1969 Ori 165

Hon'ble Judges : S. Barman, C.J;S.K. Ray, J

Bench : Division Bench

Advocate : M. Mohanty and C.K. Duphtary, in O.J.C. No. 22 of 1964 and S. Mohanty and N.V. Ramdas, in O.S. No. 1 of 1965, for the Appellant; A.G. and Govt. Advocate in O.J.C. No. 22 of 1964 and M. Mohanty and C.K. Duphtary, in O.S. No. 1 of 1965, for the Respondent

Judgement

Barman, C.J.—In these matters --the writ petition filed by the petitioner Messrs. Nandram Hunatram and the suit filed by the State of Orissa against the petitioner which on transfer was heard along with the writ petition the point involved is whether under Rules 54 and 55 of the Mineral Concessions Rules, 1960 made u/s 28 of the Mines and Minerals (Regulation and Development) Act, 1957 the State of Orissa is bound to carry out the order dated July 20, 1963 passed by the Central Government on the applications for revision filed by the petitioner under the said Rules directing the State Government to execute a mining lease with the petitioner for iron ore over an area of 1245 acres in Tomka area in the district of Cuttack incorporating the various conditions which the State Government had stipulated and were accepted by the petitioner after getting the area demarcated by the Official Surveyor.

2. The impugned order of the State Government dated January 20, 1964 as communicated to the petitioner so far as material reads as follows:

"I am directed to say that the area of 1245 acres in Tomka in Cuttack district forms a part of the area of 95.75 sq. miles in Cuttack district covering the Daitari-Tomka region which has been reserved by the State Government for exploitation in the public sector. The State Government do not, therefore, propose to grant any mining lease, which has not so far, been executed, for any rea- son. As the State Government have decided as a matter of policy to work this entire area including the 1245 acres Tomka area which you are now unauthorisedly working without any valid mining lease, in the public sector in the public interest the State Government are not in a position to comply with the direction of the Central Government contained in their communication referred to above to execute the mining lease with you over the Tomka area of 1245 acres, fcr iron ore. I am therefore to ask you to vacate the area immediately and hand over possession of it to the Collector, Cuttack within 15 days from the date of receipt of this letter failing which further necessary action will be taken by the State Government to evict you from the area."

3. In the course of hearing, the learned Adovcate General appearing for the State Government conceded that by virtue of Articles 256 and 257 of the Constitution the State Government was bound to carry out the direction of the Central Government. While making this concession, it was however, contended on behalf of the State Government that they are not in a position to comply with the direction of the Central Government contained in their communication, because the contract made in exercise of the executive power of the State is to be executed on behalf of the Governor in the prescribed manner as required by Article 299 of the Constitution. The point of the State Government is that in the absence of such a contract on behalf of the Governor or by a person in such manner as the Government may direct or authorise, the State Government is not in a position to comply with the direction of the Central Government to execute a mining lease with the petitioner. In support of this contention the State Government relied on the decision of the Supreme Court in K.P. Chowdhary Vs. State of Madhya Pradesh and Others, where it was held that if the contract between Government and another person is not in full compliance with Article 299(1) of the Constitution, it will be no contract at all and could not be enforced either by Government or by the other person to the contract; that in view of the mandatory terms of Article 299(1) no implied contract could bp spelled out between the Government and the other party (the appellant) in that case.

4. In our opinion, assuming that Article 299 has application, even so in the present case the requirements of Article 299 have been complied with in that, here, there is a formal contract made on behalf of the Governor dated August 31, 1961, the material portion of which reads as follows:

"Whereas M/s. Nandram Hunatram has/ have applied to the State Government in accordance with the Mineral Concession Rules, 1949 for grant of a mining lease by his/their application read above.

Whereas the mineral in the land in respect of which the mining lease has been applied for belongs to Government and the land is at their disposal;

Whereas the applicant holds a valid certificate of approval from the State Government.

Whereas the applicant being a partnership firm is an Indian national;

Whereas the applicant by himself or with any person joint in interest with him does not, in respsct of iron or related group of minerals, hold such area in the State as with the area over which the mining lease has now been asked for will exceed ton square miles in the aggregate;

And whereas the Government do not consider it expedient to reserve these areas for exploitation by the State, the State Government are hereby pleased to order that a mining lease in respect of the land applied for be granted to Messrs. Nandram Hunatram provided that the conditions which the State -Government propose to incorporate in the lease deed and of which the applicant will be apprised are accepted by him.

By order of the Governor D.L. Purakayastha Secretary to Government."

5. That apart, the lease deed is ultimately to be executed in Form K or in a form as near thereto as the circumstances of each case may require, as provided in Rule 31. The material portion of the Model Form of Mining Lease in Form K, is set out as follows:

"This Indenture made this ...... day of .....19 between the Governor of .... /the President of India (hereinafter referred to as "the State Government" which expression shall where the context so admits be deemed to include the successors and assigns) of the one part and ......(name of preson with address and occupation) (hereinafter referred to as "the lessee" which expression shall where the context so admits be deemed to include his heirs, executors, administrators, representatives and permitted assigns)

* * * * ** * * * * Witnesseth that in consideration of the rents and royalties, covenants and agreements by and in these presents and the Schedule hereunder written, reserved and contained, and on the part of the lessee/ lessees to be paid, observed and performed, the State Government (with the ap- proval of the Central Government) hereby grants and demises unto lessee/lessees to be All those mines ....

* * * * ** *"

The mining lease executed in such prescribed form is sufficient compliance with the provisions of Article 299 of the Constitution.

6. There is also one other aspect of the matter which requires consideration, namely what is the nature and effect of an order passed by the Central Government on the revision applications filed by the petitioner. In disposing of the application for revision under Rule 54 the Central Government acts as a

quasi-judicial authority; therefore, the State Government as an inferior authority is bound to carry out the direction of the Central Government contained in the order disposing of the revision petition. If the order of the Central Government has not been complied with by the State Government, an application will lie under Articles 226 and 227 of the Constitution for a direction to the State Government commanding it to carry out the order of the Central Government and directing it to grant the lease. This view is supported by the decision of the Madhya Pradesh High Court in Narsinghdas Jankidas Mohta Vs. The State of Madhya Pradesh, .

7. In the view that we have taken, on the concession made on behalf of State Government and on the facts of this case, the impugned order of the State Government dated January 20, 1964 is quashed; the State Government shall comply with the direction of the Central Government to execute the mining lease with the petitioner. The State Government is not entitled to get any relief in the Original Suit No. 1 of 1965 filed by the State Government for eviction of the petitioner and for a mandatory injunction against the petitioner directing him to remove structures, machinery, equipment and other fixtures from the suit land.

8. the result. O. S. No. 1 of 1965 filed by the State against the petitioner is dismissed without costs; and the writ petition of the petitioner is allowed with costs; hearing fee Rs. 200.00 (Rupees two hundred only).

Ray, J.

9. I agree.