

(2024) 03 OHC CK 0031
In the Orissa High Court
Case No : Writ Petition (C) No. 10384 Of 2021

Narayan Nayak

APPELLANT

Vs

State Of Orissa & Others

RESPONDENT

Date of Decision : 05-03-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Minor Minerals Concession Rules, 2016 — Rule 8(4)

Citation : (2024) 03 OHC CK 0031

Hon'ble Judges : Dr B.R. Sarangi, J;G. Satapathy, J

Bench : Division Bench

Advocate : S.S.Das, P.P.Mohanty

Final Decision : Dismissed

Judgement

G. Satapathy, J.

1. The petitioner herein not only challenges the legality of order passed by opposite party Nos. 3 and 4 under Annexures-8 & 9 respectively, but also prays thereby to set aside such orders along with grant of extension of lease beyond the tenure for the non-operational period of 321 days from the source in the Tarpur-Achhutipur-Gokulpur Mahanadi Sand Sairat in conformity with Sub-Rule 4 of Rule 8 of the Orissa Minor Minerals Concession Rules, 2016 (in short the "Rules") in an application under Articles 226 & 227 of the Constitution of India.

2. The short facts involved in this writ are that the petitioner was awarded with the lease in Tarpur-Achhutipur-Gokulpur Mahanandi Sand Sairat under Raghunathpur Tahasil on a long term basis for five years from 2015-16 to 2019-20 vide Registered Lease Agreement No. 10761500602 and as per the mining plan, the lessee-petitioner was required to produce 97975 cubic metre sand during the lease tenure of five years, but the lease in question was determined by opposite party No.4 on 13.01.2017 which persuaded the petitioner to take shelter in the Court in W.P.(C) No. 7837 of 2016 which was

disposed of by this Court quashing the lease determination order dated 13.01.2017 with the observation that the liability of the party to deposit any demand relating to royalty or additional charges in advance would arise only from the date of execution of lease deed and not prior to that date, but during pendency of such writ petition, the petitioner could not operate the Sand Sairat due to determination of lease with effect from 13.01.2017 to 13.04.2017 in which period the payment of any such demand was exempted. According to the petitioner, due to non-issuance of R- Form and determination of lease, he was unable to operate the source(quarry) from 09.09.2016 to 28.04.2017 in which period he was eligible for exemption from paying the demand including the royalty or additional charges. In terms of order passed in W.P.(C) No. 7837 of 2016, the petitioner approached for restoration of lease and exemption from paying the demand through letters to opposite party No.4 who was supposed to pass a speaking order complying the order of this Court passed in the aforesaid writ petition, but as no order was passed, the petitioner made representation to opposite party No.4 on 24.12.2019 by providing a copy thereof to opposite party Nos. 2 & 3 praying therein from exemption of payment of royalty and other additional dues for the entire non-operational period, however, when the authority paid a deaf ear to such representation, the petitioner again approached this Court in W.P.(C) No. 838 of 2020 and during the pendency of such writ petition, the petitioner by way of another representation had prayed for extension of lease tenure against the non-operational period in conformity with Sub-Rule 4 of Rule 8 of the Rules. The above writ petition was accordingly disposed of by this Court directing the opposite party No.4 to consider such representation of the petitioner in accordance with law and take a decision by a speaking order and consequent upon such order passed in such writ petition, the opposite party No.4 disposed of the representation of the petitioner by holding that the lessee(petitioner) had no good ground for exemption from payment of dues or for extending the lease period. Being aggrieved, the petitioner approached opposite party No.3 in an appeal under Rule 46(1) of the Rules against the order passed by opposite party No.4 on 27.11.2020 in Misc. Case No. 15 of 2020 which was initiated on the representation of the petitioner, but opposite party No.3 dismissed the appeal by its order passed on 23.02.2021 in Misc. Appeal No. 08 of 2020, which order according to the petitioner was being passed arbitrarily by opposite party No.3 without taking note of the fact in true perspective. According to the petitioner, he could not operate the Sand Sairat with effect from 09.09.2016 to 28.04.2017 due to non-submission of R-Form and determination of lease till it was restored on 28.04.2017 and from 20.03.2020 to 26.05.2020, but he was only granted exemption for the period 13.01.2017 to 13.04.2017 for pendency of the writ petition and there was no fault on the part of the petitioner for not being able to operate the source for the aforesaid reason in addition to the fact that the petitioner could not operate the Sand Sairat from 20.03.2020 to 26.05.2020 on account of COVID pandemic during which rectified lease agreement was executed and registered on 26.05.2020. Further, the petitioner was not allowed to carry on the operation of the quarry with effect

from 22.08.2020. Accordingly, the total non-operational period was calculated by petitioner for 320 days which according to the petitioner was not attributable to him in any way and thereby, the petitioner could not able to lift the required quantity of 97975 of Cubic metre sand during the entire lease period. According to the petitioner, the Authority can grant the quarry lease for a period which shall not exceed ten years with minimum period of five years and thereby, the Authority can still extend his lease for the aforesaid non-operational period, but ignoring those facts, the Appellate Authority-cum-Opposite Party No.3 had dismissed the appeal by observing inter alia that the petitioner has not submitted any evidence in support of his claim that he has not operated the source for a period of 321 days. On the aforesaid substance of averments, the petitioner has knocked the door of this Court in this writ petition for the relief indicated in the preceding paragraph.

3. In response to the notice of the writ petition, the Opposite Party Nos. 2 & 3 have jointly filed their counter affidavit stating inter alia that the petitioner has not produced any evidence in support of his claim for not operating the source for 321 days, but Opposite Party Nos. 3 & 4 had duly addressed to the grievance made over to them in the form of representation of the petitioner and had passed orders inconformity with the Rules. It is also stated in the counter affidavit that the Opposite Party No.4 has no jurisdiction to extend the lease tenure, so also there is no provision in the Rules for extension of lease tenure. While denying the averments alleged against them, the Opposite Party Nos. 2 & 3 have claimed in the counter affidavit that the petitioner is not entitled to any relief and the writ petition being devoid of merit is liable to be dismissed.

4. In response to the counter affidavit of Opposite Party Nos. 2 & 3, the petitioner has filed his rejoinder only reiterating his claim made in the writ petition and inter alia stating that he was not able to operate the source for about 321 days within the tenure of lease period, but he has deposited the entire dues payable by him under the lease agreement and the petitioner was deprived for operating the source for the above period without his fault, rather the same was on account of laches of the competent authority for not issuing R-Form, terminating lease and due to COVID pandemic.

5. In the course of hearing of the writ petition, Mr. S.S. Das, learned Senior Counsel appearing for the petitioner has submitted that although the petitioner was not at fault for not operating the Sand Sairat for 321 days which was on account of laches of Government, but ignoring these facts, the petitioner was deprived of his legitimate claim, which can be made good by allowing the petitioner to operate the quarry for a further period of 321 days by extending the lease period. In drawing attention of the Court to paragraphs 5 & 6 of the counter affidavit, learned Senior Counsel has submitted that the Opposite Parties in fact have not seriously disputed the averments of the petitioner and they have also acknowledged the non-operational period of quarry for 321 days by the petitioner and therefore, the lease of the petitioner should have been extended

for another 321 days, but Opposite Party Nos. 3 & 4 ignoring these facts have refused to consider the representations of the petitioner for extending the lease period. Mr. Das by taking this Court through the provision of Rule-8(4) of the Rules has submitted that the maximum period for which the quarry lease may be granted shall not exceed ten years and the minimum period for which such lease may be granted shall be five years and therefore, the petitioner being deprived to complete the five years lease tenure on account of the laches of Opposite Parties, there would not be any impediment on the part of the Authority to extend the lease period of the petitioner in consonance with the literal meaning of the aforesaid Rules. While relying upon the decision in Beg Raj Singh vs. State of U.P. and Others; 2003 (1) SCC 726, Mr. Das, learned Senior Counsel has submitted that since no action has yet been taken with regard to the quarry and no third party interest having created thereon, the Sand Sairat having remained un-operated by the petitioner for 321 days which is the short fall period, out of the granted lease period, the petitioner's lease period may kindly be extended for the aforesaid period in the interest of justice and equity.

6. In reply, Mr. P.P. Mohanty, learned Addl. Government Advocate has submitted that Rule-8(4) of the Rules only provides for maximum or minimum period of lease, but the petitioner having granted quarry lease for five years which is the prescribed minimum period, he cannot claim as right for extension of lease period merely because the maximum lease period provided in the Rules is ten years, especially when he has already availed up the minimum lease period of five years. Further, Mr. Mohanty by drawing attention of the Court to the prayer clause of the petitioner has submitted that the prayer as advanced by the petitioner is not maintainable in view of the fact that there is no provision for extension of lease in the Rules. Mr. Mohanty has also submitted that Rule-2(aa) defines "specified minor minerals" as all minor minerals including decorative stones other than the minor minerals listed at serial No.2 of Schedule-III which includes ordinary sand other than used for industrial and prescribed purposes and thereby, it does not come under "specified minor minerals", but Rule-8 provides for periods of mining lease and quarry lease for the "specified minor minerals" and thereby Rule-8(4) of the Rules has no application to the petitioner. Mr. Mohanty has further submitted that the decision in Beg Raj Singh (supra) is not applicable in this case in view of the fact that the aforesaid decision has been rendered in a dispute relating to termination of lease before the expiry of lease period, but the present case of the petitioner is for extension of lease after expiry of the lease period and that too, the Rules does not provide for extension of lease and therefore, the lease period cannot be extended. In relying upon the decision of the Apex Court in Dharmendra Kumar Singh vs. State of Uttar Pradesh & Others in Civil Appeal No.12202 of 2018 disposed of on 28.10.2020 and the decision of this Court in the case of Ramesh Prasad Sao vs. State of Odisha & Others in W.P.(C) No.21564 of 2019 disposed of on 19.11.2019, Mr.Mohanty has prayed to dismiss the writ petition.

7. After having bestowed an anxious and careful consideration to the pleadings

and documents produced by the rival parties in support of their individual claim keeping in view the rival submissions, admittedly there appears no dispute that the petitioner-Narayan Nayak was granted with lease of Tarpur-Acchutpur-Gokulpur Mahanadi Sand Sairat under Raghunathpur Tahasil on long terms basis for five years 2015-16 to 2019-20 and he accordingly, entered into lease agreement vide registered Lease Agreement No. 10761500602 on 11.09.2015. Indisputably, the lease deed was executed on 22.08.2015, but registered on 11.09.2015. Thus, the period of lease is to be reckoned from the date of its execution, which is from 22.08.2015 and therefore, in terms of the lease, it would remain valid till 21.08.2020. The dispute between the parties lies in the narrow compass of non-operational period of 321 days as claimed by the petitioner and therefore, the question required to be considered in this writ petition is whether the lease can be renewed/extended for a period of 321 days after the determination of the lease. The basis of claim of the petitioner is that he was not provided to operate the quarry due to non-issuance of R-Form for the period with effect from 09.09.2016 to 28.04.2017, out of which, he was provided exemption for the period 13.01.2017 to 13.04.2017 as his lease was erroneously determined on 13.01.2017 which was restored by the order of this Court passed in W.P.(C) No. 7837 of 2016 on 13.04.2017. In addition, the petitioner also claims for exemption for the period 20.03.2020 to 26.05.2020 on account of non-issuance of Y-Form due to COVID pandemic and from 22.08.2020 to 10.09.2020 for not allowing him to operate the quarry and thereby, his claim is for total period of 321 days.

8. It is also not in dispute that the petitioner had made representation to Tahasildar, but the same was rejected by the Tahasildar, Raghunathpur under order at Annexure-8 which was unsuccessfully challenged by the petitioner before the Sub-Collector in an appeal under Rule 46(1) of the Rules in Misc(Sairat) Appeal No. 08 of 2020 which was dismissed vide order under Annexure-9. Albeit, the petitioner claims for extension of lease/exemption from payment for non-operational period of quarry for 321 days, but it is to be decided by the contour of the lease and the statutory provisions governing the terms of lease between the parties. Mr.Das, learned Senior Counsel has of course urged before this Court to consider that the period of lease can be extended by taking this Court through the provision of Sub-Rule 4 of Rule 8 of the Rules which provides for, "the maximum period for which a quarry lease can be granted shall not exceed ten years and shall be subject to such terms and conditions as may be specified by the competent authority"; provided that the minimum period of any such lease may be granted shall be five years. Mr.P.P.Mohanty, learned Additional Government Advocate, however, by taking this Court through the provision of Rule 8 of the Rules has submitted that the provisions of this Rule shall only be attracted in respect of quarry lease for "specified minor minerals" which has been defined in Rule 2(aa) of the Rules as, "all minor minerals including decorative stones other than the minor minerals listed at serial No.2 of Schedule-III" which provides for exclusion of ordinary sand, but such contention

of learned Additional Government Advocate has been seriously disputed by the learned counsel for the petitioner by contending inter alia that serial No.2 of Schedule-III has been incorporated in the definition of "specified minor minerals" by way of amendment with effect from 19.07.2017, but the lease of the petitioner being entered into prior to such date, the provision of Section 2(aa) could not be attracted. Even otherwise, a plain reading of Rule 8(4) of the Rules would reveal only about the maximum and minimum period of lease, but what is most important is that such lease shall be subject to "such terms and conditions as may be specified by the competent authority". A careful perusal of the terms and conditions of the registered lease agreement, copy of which was annexed to by the petitioner vide Annexure-1, nowhere it provides for extension of lease. Besides, on a careful consideration of the entire Rules, this Court does not find any provision governing the extension of lease. It therefore, very clear that neither is there any provision in the Rules nor do the contents of lease agreement provides for extension of lease period.

9. On a respectful consideration of the decision in *Beg Raj Singh*(supra) as has been relied on for the relief claimed by the petitioner, it is found distinguishable from the facts of the present case since the lease was determined before expiry of its tenure by the order of the Government in the decision relied on by the petitioner, but the petitioner in this case seeks for extension of lease after expiry of the lease agreement. At the cost of repetition, it is to be reminded that the dispute between the parties in respect of lease has to be determined by the contours of the lease and the Rules governing the lease, but neither there is any terms and conditions in the lease agreement for extension of lease on happening of any event nor the Rules provides for extension of such lease. Moreover, the petitioner having accepted the terms and conditions of lease agreement without any demur in the year 2015 by getting it registered on 11.09.2015, he thereafter is estopped to raise any objection for the period of lease after determination of the lease period. Had he any difficulty in operating the quarry on account of failure of opposite party Nos. 3 & 4, he could have raised such issues before determination of the lease before the competent authority. Further, since there is no terms and conditions provided in the lease to govern as to how the period for which the petitioner would not able to operate the quarry due to negligence on the part of the Authority, the petitioner cannot unilaterally asked for extension of lease. If the petitioner could not operate the quarry for the aforesaid period due to negligence of concerned authorities, he can seek appropriate remedy before appropriate forum in accordance with law, but his claim for extension of lease in exercise of extra ordinary jurisdiction of writ jurisdiction in the circumstance is thoroughly misconceived.

10. Moreover, it has been held by the Apex Court in *Dharemendra Kumar Singh*(supra) that the right to extension of lease either flow from a statutory provision or from the terms of lease between the concerned parties. It is, therefore, very clear that the lease could have been extended, had there been statutory provisions for it or had there been any clause for extension in the

terms and conditions of the lease between the parties. Additionally, in absence of any provisions in the Rules or in the terms of agreement of lease, the petitioner cannot legitimately advanced any claim for extension of lease merely because he was prevented for operating the quarry on account of any situations which are of course required to be established by clear and cogent materials. In this case, the petitioner has only claimed that he could not operate the quarry due to non-issuance of R-Form, Y-Form in COVID pandemic and authority not allowing him to operate the quarry after 22.08.2020, but he has not produced any materials or documents to establish such facts, no matter the petitioner cannot claim for operating the quarry after expiry of the lease period which expired on 22.08.2020.

11. On a careful conspectus of materials placed on record and on critical analysis of discussions made hereinabove, this Court does not find any logic or reason to accede to the claim of the petitioner for extension of lease in his favour and therefore, the writ petition merits no consideration.

Resultantly, the writ petition being devoid of merit stands dismissed on contest, but no order as to costs.

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