
(2010) 03 OHC CK 0033

In the Orissa High Court

Case No : Writ Petition (C) No. 15386 of 2009

National Enterprises

APPELLANT

Vs

Government of Orissa and Others

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2, 2(1)

Mines and Minerals (Development and Regulation) Act, 1957 — Section 5(2)

Citation : (2010) 110 CLT 172

Hon'ble Judges : I.M. Quddusi, Acting C.J.; Sanju Panda, J

Bench : Division Bench

Judgement

Sanju Panda, J.—In this writ application, the Petitioner has challenged the letter dated 22.8.2009 issued by the Divisional. Forest Officer, Bonai Division to stop mining operation over the lease-hold area for which the lease was granted to the Petitioner from 2000 to 2020 as, per its renewal application over an area of 175.24 acres or 70.917 hcts. in village San-Indupur under Bonai Sub-Division in the district of Sundargarh.

2. The facts as narrated in this writ application are as follows:

The Petitioner is a registered proprietorship concern which deals in mining of Iron & Manganese within the State of Orissa. In the year 1980, the Petitioner's application for grant of mining lease was allowed & the Petitioner-company got a lease in respect of an area of 75.00 hects or 185.33 acres in Village San-Indupur for mining of Iron & Manganese ores for 20 years with effect from 10.9.1980 to 9.9.2000. Surface right has been granted by the Collector, Sundargarh from time to time. Since then, the Petitioner is operating the mining work in the said area. Before expiry of the said lease period, a renewal application was filed for an area of 175.24 acres or 70.917 hects by excluding 10.09 acres from the originally applied area. Because as per the DLC proceeding, Plot No. 383 & part Plot No. ,398 were unbroken & covered under the forest area, the Petitioner excluded those areas in its renewal application. On 28.11.1999, the DFO, Bonai Division

intimated the Additional District Magistrate, Sundargarh that in case revised map for grant of renewal for the balance area of 175.24 acres is accepted, he has no objection for grant of renewal application for the said balance area subject to deposit of royalty of forest growth by the lessee after due enumeration by the Forest Department. The DFO also intimated the Forest Officer, Koira Range that the lessee may be allowed to continue mining operation in the entire broken land area of 156.00 acres only upto the end of the lease period without felling of existing trees growth subject to fulfilment of the terms & conditions of the Mining Act as from the said total broken area, an area of 134.00 acres had since been broken prior to 12.12.1996. In W.P.(C) No. 202 of 1995 (T.N. Godavarman v. Union of India), the Apex Court has held as follows:

The word "FOREST" must be understood according to its dictionary meaning. This description over all statutorily recognised forest, whether designated as reserved, protected or otherwise for the purpose of Section 2(1) of the Forest (Conservation) Act. The term "Forest Land" occurring in Section 2, will not only include "Forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest (Conservation) Act, 1980 for the conservation of forests & the matter connected therewith must apply clearly apply to all forests so understood so understood irrespective of the ownership or classification thereof.

? All on going activities within forest without prior approval of Central Government to be ceased.

? Felling trees in Forests to remain suspended except in accordance with working plans of state Government as approved by the Central Government.

? State Governments to constitute expert committees for identification of forest areas which were earlier forests areas covered by plantation trees etc.

xxx xxx xxx

Thereafter, the District Level Committees (DLCs) under the Chairmanship & respective Collectors were constituted for identification of the forest land. On a joint verification conducted on 14.10.1998, it was found that an area of 156.00 acres or 63.131 hec. was broken prior to 12.12.1996. The Kissan of lands are Hill, Goda-I & Goda-II, etc. As per the said joint verification, a map was also prepared. The Collector accordingly recommended for grant of renewal mining lease in favour of the Petitioner as the area was not coming under the reserved or protected forest. The Director of Mines, Bhubaneswar also recommended on 30.6.2000 for renewal of the mining lease. Further, the Deputy Director of Mines in his letter dated 19.1.2001 also stated that non-forest Plot No's. 398, 383, 403, 404, 647, 649 & 663 of village San-Indupur in the original mining lease area measuring to total area of 144.49 acres or 58.615 hec. having forest growth have been declared as forest land & the same were included in the

affidavit filed before the Apex Court as forest land as per the direction of the Apex Court dated 12.12.1996. However, an area of 134.40 acres was recorded as "Forest" out of the said 144.49 acres since broken up by the lessee prior to 12.12.1996. The balance area of 10.09 acres of non-forest land having forest growth in Plot Nos. 398 (P) & 393 was not broken & had been excluded in the revised applied area by the applicant. The DFO, Bonai had also granted "No Objection Certificate". Therefore, grant of RML over 175.24 acres or 70.917 hec. may be considered in favour of the Petitioner. Accordingly, the State Government on 25.1.2001 renewed the mining lease & the Central Government also on 27.2.2001 approved the renewal mining plan of the Petitioner vide Annexures-9 & 10 respectively for San-Indupur Iron & Manganese Mine. However, in Clause-4 of the said approval it was specifically stated that the attention of the Petitioner was invited to the Order Dated 12.12.1996 passed by the Apex Court in W.P.(C) No. 202 of 1995 for compliance. The approval of the mining plan was, therefore, issued without prejudice to & subject to the said directions of the Apex Court. Thereafter, the Petitioner carried out mining operation.

3. While the matter stood thus, on 11.8.2009, the Forest Range Officer, Koira stated that during the joint verification, the following irregularities were noticed:

1. The mining operation has been done in D.L.C. Plot No. 404 (Part) & 47 (Part) in addition to the Non-Forest area.

2. The hutting is also located in D.L.C. Plot No. 647.

3. Dumped the O.B. & in D.L.C. Plot No. 647 (Part) & 649 (Part).

4. The lease Boundary/intermediate pillars like D1, D2 & D3 are missing in the field.

5 The pillars separating the D.L.C. broken up land with the Non-forest land have neither posted properly nor painted with approved colour &

6. Some of the safety zone pillars are found missing in the field & instructed the Petitioner to comply with the same within seven days. The D.F.O., Bonai Division on 22.8.2009 requested the Petitioner to stop mining operation in the D.L.C. land immediately. He alleged that the Petitioner was carrying out mining operation in the D.L.C. area in Plot Nos. 404 (Part) & 647 (Part) violating Section 2 of the Forest (Conservation) Act, 1980 & issued a show cause notice to the Petitioner. In response to the said show cause notice, on 28.8.2009 the Petitioner filed its show cause stating therein that after obtaining surface right, the mining operation has been started by virtue of the lease granted in the year 1980. Since then, it was operating the mines & the broken up area was carved out prior to 12.12.1996 & denied any forest growth in the broken lease area also. Thereafter, since the authorities did not intimate the Petitioner anything, the Petitioner approached this Court by filing the present writ application with a prayer to continue its mining operation in the renewed mining lease area which was broken

up prior to 12.12.1996.

4. Learned Counsel for the Petitioner submitted that the categories of the land in question within the leasehold area are "Gada-I, Gada-II & Hill, etc. None of the categories of the land is "forest" or "reserved forest" & it has been broken for mining purpose prior to 12.12.1996. Mere inclusion of the same in the D.L.C. report cannot be the sole basis for stoppage of mining operation in the broken up area which has been broken during the initial mining lease period & further, no forest growth is available in the broken up area. Therefore, the authorities should have permitted the Petitioner for carrying on the mining operation as its lease is valid upto 2020.

5. Opp. Party Nos. 2 & 6 filed their counter affidavit stating therein that pursuant to the Apex Court's direction in W.P.(C) No. 202 of 1995, the District Level Committee was formed in the Sundargarh district for identification of forest land. The D.L.C. report was prepared as per the criteria laid down in the order & lease Plot Nos. 398/P, 403/P, 404/P, 648/P & 663/P total measuring 134.42 acres or 54.399 hecets were included in the said report treated as forest land. The said report has been filed before the Apex Court & the Apex Court's order is still continuing. As per the said order, the Forest (Conservation) Act, 1980 is applicable to notified forests & such area was identified by the District Level Committee as forest. Prior approval of the Central Government u/s 2 of the Forest (Conservation) Act, 1980 is necessary to continue mining operation in any forest land. Since the Petitioner had not obtained the said prior approval from the Central Government, direction was issued to the Petitioner to stop mining operation. They have taken a specific stand that the Petitioner was allowed to carry on mining operation over the broken up area vide office letter dated 28.11.1999 prior to the issuance of clarification by the Central Government on 31.8.2005 & after issuance of such direction by the Central Government, the term granted for mining operation in the broken up area prior to 2005 was No. longer valid & the Petitioner had to obtain prior approval from the Central Government since the area has been included in the D.L.C. report. Hence, the notice to stop the mining operation has rightly been issued.

6. From the record & the submissions made by the Counsel for the parties, it appears that the Government of India vide its letter dated 27.2.2001 approved mining plan over an area 70.917 hectares in village San-Indupur, within the district of Sundargarh in exercise of the powers conferred by Section 5(2)(b) of the Mines & Minerals (Development & Regulation) Act, 1957 read with Government of India Order No. S.O.445(E) dated 28.4.1987. The said approval is subject to the condition that the Petitioner will follow the Order Dated 12.12.1996 passed by the Apex Court in W.P.(C) No. 202 of 1995.

7. It appears from Annexure-5, the proceeding of the joint verification held on 14.10.1998 by the team consisting of R.F.O., Koira, Forester, Sr. Surveyor & Mines Manager, that out of the total area of 185.33 acres, an area of 156.00 acres had already been broken up prior to 12.12.1996. However, the DFO, Bonai

on 28.11.1999 intimated that an area of 134.40 acres of non-forest land having forest growth included in the affidavit. The Deputy Director of Mines, Koira vide his letter dated 19.1.2001 intimated the Collector, Sundargarh with reference to the renewal of mining lease of the Petitioner that the area has since been broken by the lessee prior to 12.12.1996. The directive of the Apex Court will not be applicable as the said area was broken up prior to 12.12.1996. Considering the facts & circumstances, the State Government by Order Dated 25.1.2001 (Annex-9) ordered for grant of R.M.L in respect of the area over 70.917 in village San-Indupur in favour of the Petitioner for twenty years subject to the conditions laid down in the State Government letter No. 907/SM. Dated 17.1.2001. The Government of India, Ministry of Mines by letter dated 27.2.2001 (Annex-10) accorded approval to the mining plan over the area in question. While the matter stood thus, it appears from the letter dated 11.8.2009 (Annexure-12) of the Range Officer, Koira Forest Range that a joint inspection of the mining area of the Petitioner was made which could not be completed due to the defects pointed out therein. The main defects pointed out therein are missing of boundary/intermediate pillars, the pillars separating the D.L.C. broken up land from non-forest land not posted properly nor painted with approved colour, missing of safety zone pillars etc. By his letter dated 12.8.2009 (Annexure-13) the Deputy Director of Mines, Koira asked the Petitioner to comply with the defects pointed out in the joint inspection held on 11.8.2009 failing which violations of the provisions shall be initiated & intimation will be sent to the proper authorities for onward action in this matter. It does not appear from the record as to what reply the Petitioner gave with reference to Annexure-13 but by letter dated 22.8.2009 (Anx-14), the Divisional Forest Officer, Bonai Division directed the Petitioner to stop mining operation & called upon him to show cause within seven days from the date of receipt of the aforesaid letter why he should not be prosecuted for violation of Forest Conservation Act, 1980, pursuant to the letter dated 22.8.2009 (Anx- 14), the Petitioner submitted his reply.

8. As the Divisional Forest Officer, Bonai had already written that as per the joint verification report dated 14.10.1998 an area of 156.00 acres has since been broken up by the lessee prior to 12.12.1996 & the Petitioner has been allowed to undertake mining operation over the said area the directive of the Hon''ble Supreme Court will not be applicable to the said broken up area & the Director of Mines vide letter dated 30.6.2000 (Annexure-7) while recommending for grant of renewal of mining lease over the non-forest land over 70.917 hectrs in favour of the Petitioner observed that the lessee has worked the mine in a skilled & workman like manner in due observance of the stipulation of approved mining plan & lease conditions, we direct that the Petitioner shall be allowed to operate the mine within the area broken'' prior to 12.12.1996. We further direct that Opp. Party No. 4 shall consider the show cause dated 28.8.2009 filed by the Petitioner & take a decision in accordance with law.

The Writ Petition is accordingly disposed of.

I.M. Quddusi, A.C.J.

9. I agree.