

(2003) 12 JH CK 0021

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2933 of 2003

Nilamber Sahu and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 623

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A.R. Chaudhary, for the Appellant; G.P. II, for the Respondent

Judgement

M.Y. Eqbal, J.—Heard the parties.

2. In 1966 the petitioners applied before the Assistant Mining Officer, Gumla for granting mining lease of minor mineral of plot No. 3708 of Village, Baghima. P.O. Baghima, P.S. Palkot, Dist. Gumla. It appears that on application the Circle Officer, Palkot conducted a legal inspection and vide letter dated 8.2.1996 and 29.10.1996 address to respondent No. 4, Assistant Mining Officer reported that the land is outside the forest area. The Divisional Forest Officer vide letter dated 29.2.1996 and 3.2.1997 informed the Mining Officer that the plot for which the petitioners have applied for mining lease is outside the forest area and further informed that the mining lease could be given to the petitioners.

3. The petitioners case is that after completing all the formalities mining lease in respect of the aforesaid plot was granted in 1996 and lease agreement was executed by the respondents giving the Mining lease for a period of 10 years. However, in 1999 the petitioners were served with show cause notice dated 30.11.1999 from the office of the District Mining Officer, Gumla asking the petitioner to show cause as to why their mining lease be not terminated as the Divisional Forest Officer informed the said authority that the mining area of the petitioners falls within the forest area. Pursuant to the aforesaid show cause

notice the petitioners filed their show cause stating inter alia that the land in question does not fall within the forest area and before granting the lease, no objection from the Forest Department was also issued by the Divisional Forest Officer. The petitioners then received second show cause notice in 2003 whereby the petitioners were again asked to show cause as to how the lease for the rest of the period be not terminated as the Mining area falls under the Forest Area. The petitioners again filed their show cause reiterating that the land does not fall within the forest area. All of a sudden the impugned letters were issued informing the petitioners that the mining lease has been cancelled.

4. The main issue raised by the petitioner in this writ application is that the cancellation of mining lease is illegal and arbitrary in as much as the land does not fall within the Wild Life Sanctuary.

5. Two counter affidavits have been filed, one by the Deputy Commissioner and another by the Assistant Mining Officer. In the counter affidavit filed by the Assistant Mining Officer it is stated that the lease land falls within the area of Wild Life Sanctuary and therefore, the lease has been rightly cancelled by the respondents. In the counter affidavit filed by the Deputy Commissioner it has been stated that the Mining Officer found that the land in question falls under Palkot Wild Life Sanctuary as notified by the Bihar Government. On 6.11.2003 this Court after hearing the parties passed the following order :

"The petitioner has challenged the letter dated 29.5.2003 and 4.6.2003 whereby the petitioners were informed that their mining lease has been cancelled pursuant to the order dated 24.5.2003 passed by the Deputy Commissioner, Gumla. The order of the Deputy Commissioner, Gumla was not Communicated to the petitioners.

In the counter-affidavit filed by the respondents it is stated that the mining lease was terminated on the ground that the lease area falls within Wild Life Sanctuary and is violative of the provisions of Wild Life Sanctuary, 1972.

From the counter-affidavit which has been filed by the respondent Nos. 2 to 4 it appears that neither the order passed by the Deputy Commissioner has been annexed nor it has been shown that the area falls within the Wild Life Sanctuary. By filing such a perfunctory affidavit the State Government is unnecessarily wasting Court's time. Before disposal of this case, the Deputy Commissioner, Gumla is directed to file a personal affidavit showing this Court by bringing all necessary documents on record as to how the termination of mining lease was justified.

Put up this matter on 18th November, 2003."

6. The matter was again heard on 18.11.2003 and this Court found that although the Deputy Commissioner filed affidavit but he has not annexed the notification showing that the land has been included in the Wild Life Sanctuary. Having no alternative this Court directed the Secretary, Department of Forest and

Secretary, Mines of Govt. of Jharkhand to produce to this Court the notification by which the land in question has been declared Sanctuary in the aforesaid Act. Today instead of filing notification, learned JC to GP II produce before me a statement of fact/comment prepared by the Divisional Forest Officer dated 7.12.2003 wherein he has said that the lease land of the petitioner is not a notified forest land. It shows that the Deputy Commissioner, Gumla and Mr. Ramesh Chandra Burnwal, Assistant Mining Officer have filed false affidavit before this Court. In my view therefore, they are liable to be prosecuted by initiating criminal action against them. However before passing final order for their prosecution for swearing false affidavit, I direct both the officers to appear in person before this Court on 6th January. 2004.

7. So far the merit of the instant case is concerned, having regard to the facts aforesaid the impugned order cancelling the mining lease of the petitioner cannot be sustained in law and the same are accordingly quashed.

8. Put up this case on 6th January, 2004.