
(2015) 04 MP CK 0041
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1127/2014

Omji Associates

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 04 MP CK 0041

Hon'ble Judges : A.M. Khanwilkar, C.J.;Rohit Arya, J.

Bench : Division Bench

Advocate : Amit Mishra, for the Appellant

Final Decision : Disposed off

Judgement

1. Heard counsel for the parties on admission.
2. This petition filed under Article 226 of the Constitution of India takes exception to the order passed by respondent No. 2 dated 12th September, 2008 of allotment of land for prospecting bearing Khasra Nos. 376/2 to 376/5 ad-measuring 2.343 hectares situated at village Bathiya, District Satna, to respondent No. 4. The second order assailed in this writ petition is dated 18th December, 2013 passed by the respondent No. 1 (Revisional Authority) rejecting the revision application filed by the petitioner against the decision dated 12th September, 2008. The revision application has been dismissed for non-prosecution.
3. Reverting to the order dated 12th September, 2008, we fail to understand as to how the petitioner can be allowed to challenge the same when the petitioner partnership firm came into existence only on 27th August, 2012. In other words, the petitioner firm was not even formed when the respondent No. 4 had applied for grant of prospecting license in respect of subject land vide application dated 16th October, 2007 which was accepted by the Appropriate Authority on 12th September, 2008.

4. The respondent No. 5 claims to be the owner of portion of the subject land. Admittedly, the respondent No. 5, in his capacity as owner, did not file revision against the decision of the Appropriate Authority dated 12th September, 2008 for reasons best known to him. The petitioner cannot be permitted to challenge the validity of the said order which the respondent No. 5 had acquiesced of by not challenging the same. The respondent No. 5 has not filed the revision application nor has chosen to be the petitioner in the present writ petition. No reason is forthcoming as to what prevented the respondent No. 5 in his capacity as owner of the subject land to challenge the decision dated 12th September, 2008.

5. Suffice it to observe that the petitioner-partnership firm which has come into existence much later on 27th August, 2012, cannot be permitted to argue about the correctness of the decision on the ground that it is contrary to Rule 9 of the Mineral Concession Rules. That argument could be advanced only by the owner which he could have pursued in the proceedings before the Appropriate Authority, before passing of the order dated 12th September, 2008 or at least by filing revision soon after passing of the said order. The respondent No. 5 having failed to do so, as aforesaid, had acquiesced of the said decision and for which reason, it will be binding on the petitioner (which has come into existence on 27th August, 2012) and also because it is claiming through the respondent No. 5. The challenge to the order dated 18th December, 2013, therefore, ought to fail on this count alone. Thus, no fruitful purpose will be served by relegating the petitioner before the Revisional Authority assuming that we were to accept the cause shown by the petitioner for default caused before the Revisional Authority.

6. For the reasons already recorded, we would decline to exercise writ jurisdiction to question the validity of order dated 12th September, 2008 passed by the respondent No. 2 - Appropriate Authority and the consequential order dated 18th December, 2013 passed by the Revisional Authority that too at the instance of the petitioner.

7. The counsel for the respondent Nos. 5 and 6 was at pains to persuade us to take the view that the said respondents should also be heard and the grievance made by the petitioner should be treated as grievance made by the respondent No. 5 - the owner as well in the present writ petition. For, the said respondents were supporting the cause of the petitioner being partners in the petitioner - partnership firm.

8. The petitioner as well as the respondent Nos. 5 and 6, in our opinion, have been well advised to pursue remedy by way of revision only in the name of the partnership firm before the Revisional Authority and not to join as applicants in the revision application. For the same reason, they have chosen not to be impleaded as petitioners in the present writ petition. The fact that the respondent No. 5 is represented through Advocate for the first time today, does not mean that respondent No. 5 can be permitted to question the validity of order dated 12th September, 2008 without any sufficient cause whatsoever merely because the petitioner filed revision in 2013, having himself failed to

immediately resort to revision after the passing of the order dated 12th September, 2008.

9. In our opinion, for the view already taken that respondent No. 5 acquiesced of the order dated 12th September, 2008 by allowing the respondent No. 4 to enter upon the land in question, in furtherance of the prospecting license granted on 12th September, 2008 and to carry on the related activities thereon until 2013, cannot be permitted to raise any grievance about the grant of prospecting license to the respondent No. 4 at this distance of time. The respondent No. 5 having chosen to remain as respondents in the writ petition and not challenged the orders along with the petitioners in the present writ petition, is also indicative of the conduct of putting the petitioner partnership firm in the forefront to pursue the grounds which the respondent No. 5 himself as owner could have pursued before the Appropriate Authority and objected to passing of the order dated 12th September, 2008 by the said Authority and more so by way of revision before the Revisional Authority soon thereafter. Having failed to do that, the said respondents also cannot be permitted to raise the grievance about non-compliance of Rule 9 at this belated stage. That grievance not only is barred by limitation to pursue by way of revision; and for the same reason cannot be countenanced by way of writ petition under Article 226, on the ground of laches.

10. The counsel for the respondent No. 4, in our opinion, justly pointed out that the application for grant of reconnaissance permit, prospecting license or a mining lease in respect of selfsame area which is already allotted to respondent No. 4, would be premature in terms of Rule 60 of the Rules. The petitioner having filed the application for that purpose, therefore, could not have been entertained, in law.

11. Learned counsel for the respondent No. 4 also invited our attention to the legislative changes brought about by amendment in the year 2015 by introducing Section 10A, in particular, Clause (1) thereof, which has made all applications received prior to the date of Ordinance as ineligible. If any application has been made by respondent No. 5 as owner or by the petitioner, as a partnership firm and is pending before any Appropriate Authority, will have to be treated as ineligible in terms of this legislative change. It is not necessary for us to elaborate any further on this contention, for the reasons already recorded hitherto.

12. Taking overall view of the matter, we reject this writ petition being devoid of merits. We place on record that this petition is pending at the stage of admission after issuance of notice on 11th February, 2014 and has not been formally admitted though the order dated 6th January, 2015 incorrectly mentions that the petition must proceed for final hearing under appropriate caption as per its turn. That observation has been made on the basis of the office remarks submitted by the Registry on the mentioning slip produced by the petitioner on 5th January, 2015 for listing of the matter.

13. Counsel for the petitioner was at pains to persuade the Court either to remand the matter or permit the petitioner to make a fresh application. For the view that we have already taken, we hold that there is no reason to make such observation.

14. Accordingly, this petition is disposed of and as a consequence thereof pending interim applications are also disposed of on the same terms.