

(2017) 01 GUJ CK 0009
In the Gujarat High Court
Case No : 96 of 2017

ORIENT ABRASIVES LIMITED

APPELLANT

Vs

STATE OF GUJARAT & ORS.

RESPONDENT

Date of Decision : 07-01-2017

Acts Referred:

[Mines And Minerals \(Development And Regulation\) Act, 1957](#), Section 10, Section 10A, Section 10A(2) -
Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concessions Rules, 2016, Rule 8(4)

Citation : (2017) 01 GUJ CK 0009

Hon'ble Judges : BIREN VAISHNAV

Bench : Single Bench

Advocate : S N THAKKAR, SNUSHA JOSHI

Judgement

1. This petition has been mentioned for urgent circulation today and has been taken up for hearing in the court today. Heard Mr. Satyen Thakkar, learned advocate for the petitioner and Ms. Snusha Joshi, learned Assistant Government Pleader for the respondent - State of Gujarat.

2. This petition has been filed by the petitioner seeking execution of the lease deed granted to the petitioner for mining lease for Bauxite. The petitioner had applied for grant of mining lease for Bauxite to the Industries, Mines and Energy Department, State of Gujarat in the year 1992. In response to the application so made, a Letter of Intent (LOI) was issued to the petitioner on 18.12.2004 (Annexure E, Page 47). The petitioner deposited the requisite fees for survey and demarcation and accordingly, on 18.04.2016, an order was

passed (Annexure N, Page 66) granting mining lease to the petitioner for a period of 20 years. This was done in exercise of powers under section 10 of the Mines and Minerals (Development and Regulation) Act, 1957(hereinafter referred to as "the Act"). However, the Act was amended on 12.01.2015 and Section 10A was inserted (hereinafter referred to as "the Amended Act").

3. Mr. Satyen Thakkar, learned advocate appearing for the petitioner submitted that in accordance with the amended Act i.e. section 10A of the Act, all applications received prior to the date of commencement of the Amended Act will become ineligible. However, certain applications would remain eligible for a period of two years from the date of commencement of the Act in view of the provisions of clause (c) of sub section 2 of section 10A of the Act. According to Mr. Satyen Thakkar, learned advocate for the petitioner, in view of the fact that the letter of intent has been granted to the petitioner on 18.12.2004 i.e. before 12.01.2015 when the Amended Act came into force, his case is squarely covered by clause (c) of sub-section 2 of Section 10A and his application therefore continues to remain eligible. It is the case of the petitioner that the lease therefore has to be executed on or before 11.01.2017 in view of the amendment of the Act on 12.01.2015.

4. It is required to be mentioned that on the basis of the proposal made by the Commissioner, Geology and Mining Department, State of Gujarat for alteration in the lease period from 20 years to 50 years, the Deputy Secretary, Industries

26.12.2016 (Page 115 of the paper book) extended the lease for a period of 50 years and other terms and conditions of the order granting mining lease dated 18.04.2016 remained unchanged.

5. Mr. Thakkar states that the lease deed needs to be executed on or before 11.01.2017 in view of the provisions of Rule 8(4) of The Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concessions Rules, 2016. He has invited my attention to the provisions of Rule 8(4) of The Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concessions Rules, 2016 which provides that in the event an order for grant of mining lease has been issued under sub rule 2, the lease deed shall be executed with the applicant on or before 11.01.2017. This is so because clause (c) of sub section 2 of Section 10A provides that those lease holders who have an order in their favour and have remained eligible by virtue of this provision have to fulfill the conditions of executing the lease within a period of two years from the date of commencement of the Amended Act of 2015.

6. It is the case of the petitioner that the lease deed was ready to be executed in form K (Page 77 of the paper book) and needed to be signed by the Collector and order accordingly was also issued on 26.12.2016 (Annexure AA Page 115) by virtue of which the Collector as the Executant of the lease deed ought to have signed the lease deed on or before 11.01.2017. Mr. Thakkar submits that though repeated reminders have been sent to the Collector to come forth and execute the lease deed, the Collector is not acting and coming forward to execute the lease. In the event such lease deed is

not signed by the Collector on or before 11.01.2017, the lease shall stand forfeited. He submitted that the petitioner has on several occasions visited the office of respondent no. 4 for execution of the lease deed but to no avail.

7. Mr. Satyen Thakkar, learned advocate appearing for the petitioner further states that an identical petition being Special Civil Application No. 7 of 2017 had come up for hearing before the regular court on 03.01.2017 where notice has been issued by this court making it returnable on 09.01.2017. Hence, the present petition be heard with Special Civil Application No. 7 of 2017.

8. Ms. Snusha Joshi, learned Assistant Government Pleader opposes the petition as well as grant of interim relief in view of the fact that in the event a direction is issued to the Collector to sign the lease deed on or before 11.01.2017, it shall amount to granting final relief to the petitioner and submitted that since the other petition is coming up before the regular court on 09.01.2017, no mandatory order be passed.

9. Having heard learned advocates for both the sides, this court is of the view that prima facie the case of the petitioner deserves consideration. Hence, issue Notice returnable on 09.01.2017. The respondent no. 4 - Collector, Devbhoomi Dwarka is directed to execute the lease deed in question on or before 11.01.2017 in accordance with the order dated 26.12.2016, if he is satisfied that the petitioner has complied with the conditions of the order dated 18.12.2016. In the event, respondent no. 4 is not satisfied with the compliance of

the conditions of the order dated 18.12.2016 or for any other reason, he shall file suitable reply before the court on 09.01.2017 stating the reasons therein.

10. Direct service is permitted today. The Registry shall forthwith communicate this order to the Collector by way of fax. To be heard with Special Civil Application No. 7 of 2017.