(2021) 07 GAU CK 0112

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3270 Of 2021

Palashi Nath Mazumder APPELLANT

Vs

State Of Assam And 4 Ors RESPONDENT

Date of Decision : 27-07-2021

Acts Referred:

Assam Minor Mineral Concession Rues, 2013 — Rule 8, 18, 18(3), 19, 19(1), 20, 21, 22, 22(1), 23, 32, 32(1), 33, 33(1), 34, 35, 36, 37
Mines and Minerals (Development and Regulation) Act, 1957 — Section 3(e), 5, 6, 7, 8, 8A, 8A(6), 9, 10, 11, 12, 13, 14, 15(1), 23C
Forest Act, 1927 — Section 4, 20

Citation : (2021) 07 GAU CK 0112

Hon'ble Judges : Prasanta Kumar Deka, J

Bench : Single Bench

Advocate : T A Choudhury

Final Decision : Disposed Of

Judgement

Heard Mr. AY Choudhury, learned counsel for the petitioner. Also heard Mr. P N Goswami, learned Additional Advocate General, Assam assisted

by Mr. R Gogoi, learned standing counsel for the Forest Department.

The petitioner is the settlement holder/ lessee of Dhaleswari Sand Mining Contract Unit No. 01,2 and Katakhal Sand Mining Contract Unit No. 04

under the Assam Minor Mineral Concession Rules, 2013 (hereinafter referred as Rules 2013) and to that effect an agreement for mining contract

under Rule 18 (3), 22 (1) of the Rules 2013 was executed by the petitioner and the Divisional Forest Officer, Hailakandi Division i.e. respondent no. 5.

The said contract was on the basis of a sale notice dated 27.08.2013 issued under Rules 32 (1) and 33(1) of the Rules, 2013. During the subsistence of

the contract and as per the terms of the agreement, the petitioner paid in advance 25th and 26th quarterly installments (kist) which commenced from

1st of April 2020 and 1st of June, 2022 respectively vide challans dated 20.04.2020 and 10.07.2020. It is submitted by the learned counsel for the

petitioner that due to the situation arising out of pandemic Covid-19, the respondent authority in compliance of the protocol of the Government stopped

the operation of the said sand Mahal. It is also submitted that the lockdown was imposed while the extraction of minor minerals against the 24th kist

money was in operation and as such though as per the term of the contract the kist money for the 25th and 26th kists were deposited in advance

however, the mineral against the said kist value could not be extracted as there was no requisite order granted by the respondent authority due to the

situation arising out of the Covid pandemic. As per the term of the settlement the contract period was over on 12.05.2021. Prior to the said expiry of

the said contract, anticipating no further improvement in the situation, the petitioner submitted representations one after another to the respondents for

extension of the time period for extraction of the minerals as against the kist value already deposited and to be deposited in future.

It is contended that without paying heed to the representation of the petitioner there was demand made by the respondents for payment of the

installment/ kist money. In between, the petitioner moved this court thereby filing three writ petitions being WP(C) 268/2021, WP(C) 279/2021 and

WP(C) 372/2021 which were disposed of on various dates by holding as follows:

â??In view of the factual matrix in the present writ petition, this writ petition stands disposed of in similar line thereby directing the petitioner to submit

appropriate representation before the Divisional Forest Officer, Hailakandi and upon such representation being submitted, the Divisional Forest

Officer, Hailakandi Division, Hailakandi shall pass a reasoned order thereon within a period of three months from the date of receipt of such

representation. Upon the deposits being made and accepted, it is reiterated that no coercive action shall be taken against the petitioner.â??

In terms of the said orders, the petitioner submitted the representation on 25.02.2021 to the Principal Chief Conservator of Forest, Assam with a

prayer to provide all necessary permits and accept the kist money from the month of December, 2020 as current kist permitting to extract minerals

and pending extraction against 25th and 26th kist to be considered by extending the time period at the end of the contractual period i.e. on 12.05.2021.

While the petitioner was expecting for reply as against the said representation dated 25.02.2021, the impugned notice thereby calling for e-auction

under Rules 32, 33, 34, 35, 36 and 37 of the Rules, 2013 seeking for online biddings from interested persons including Dhaleswari Sand Mining

Contract Unit No. 01,2 and Katakhal Sand Mining Contract Unit No. 04 was issued. The said mining contract units were settled with the petitioner

and the term of which expired on 12.05.2021. The said notice was issued on 29.06.2021. Being aggrieved, the petitioner filed this writ petition seeking

for setting aside the impugned tender notice dated 29.06.2021 and for compliance of the order passed by this court referred hereinabove.

Mr. Choudhury, learned counsel for the petitioner besides submitting the compelling circumstances on the basis of which the petitioner had to file

representation for extension of the contract period also relied Section 8A Sub-section 6 of the Mines and Minerals (Development and Regulation) Act,

1957 (hereafter referred as Act, 1957) . Referring to the said provision it is submitted by Mr. Choudhury that the respondent authority has the

jurisdiction to extend the period of lease granted and further renew the lease period.

The said submission of Mr. Choudhury is strongly objected by Mr. Goswami. Distinguishing the applicability of Section 8A referred by the learned

counsel for the petitioner and in support of his submission, Mr. Goswami referred Rule 8 Chapter 3 and Rule 18 of Chapter 4 under part-II (Grant of

Mineral Concession) of the said Rules 2013. It is submitted that Rule 8 governs of grant of mining lease. On the other hand Rule 18 under Chapter 4

governs grant of mining contract and Rule 23 under Chapter 5 governs grant of mining permits. It is also submitted by Mr. Goswami referring Section

14 of the Act of 1957 that Sections 5 to 13 of the said Act 1957 does not apply to any lease in respect of minor minerals which covers building stones,

ordinary sand prescribed as per Section 3(e) of the said Act of 1957. Submitting that the present contract is governed by Chapter 4 of Rules 2013 and

from Rules 18 to 22 nowhere under the said Rules authorizes extension of contract period but for Rule 19 which speaks of renewal of mining contract

by the competent authority only upon an application made 18 months prior to the date of expiry of the contract period. In the present case in hand no such application was filed by the petitioner for renewal of the mining contract. It is not evisaged under the Rules 2013 Chapter 4 nor in the Act 1957

any extension of mining contract and in support of the said contention Mr. Goswami relied Dharmendra Kumar Singh Vs State of Uttar Pradesh and

Others reported in (2021) 1 SCC 93 wherein it was held that the right to extension of lease either flows from a statutory provision or from the terms of

the lease between the parties concerned. Beyond that, as submitted by Mr. Goswami the contractor has no right to seek extension of lease even there

is an obstructed period by reason of even a judicial interdict. Relying the said ratio it is submitted by Mr. Goswami that the submission of the learned

counsel for the petitioner cannot be entertained by this court. However, the petitioner is at liberty to file application for remission of the kist money

what he had already paid. According to Mr. Goswami, the writ petition is liable to be dismissed.

I have heard both the learned counsel and as agreed by both the learned counsel I am taking up this writ petition for its disposal at the motion stage.

Admittedly, the petitioner was settled with the mining contract in respect of the Dhaleswari Sand Mining Contract Unit No. 01,2 and Katakhal Sand

Mining Contract Unit No. 04 which are the subject matters of the e-tender notice dated 29.06.2021 issued by the Divisional Forest Officer, Hailakandi

Division and impugned in this writ petition. The cause of action for seeking setting aside of the impugned e-tender notice is on the ground that the

petitioner during the subsistence of the mining contract could not extract the minerals as against the kist money for 25th and 26th kist which were

already deposited. Further the petitioner by his representation sought for extension of further period after 12.05.2021 (the date of expiry of the

contract) in order to extract minerals of the two quarters as against the 25th and 26th kist money already deposited after allowing to extract the

minerals on deposit of the 27th and 28th kist money. In other words the petitioner sought for extension of the contract period beyond 12.05.2021 as the

main relief and as a consequential relief the petitioner sought for cancellation of the e-tender notice dated 29.06.2021. There is no dispute of the fact

that the petitioner as the settlement holder of mining contract as against the said mining area/units has a right to seek for extension of the contract

period. However, so far the authority is concerned they are governed by the Assam Minor Mineral Concession Rules, 2013 as on the basis of the relevant provision of said Rules 2013 the sale notice dated 27.08.2013 was issued and as a consequence of the petitioner being a successful bidder the

settlement of the said mining areas were confirmed with the petitioner. The terms of the settlement was executed in the mining contract as required

under the provisions of Rules 2013.

Mr. Goswami rightly pointed out that the mining contract of the present petitioner is covered by Chapter 4 of the said Rules 2013. Rule 18 (1)

stipulates when the authority decided to grant the mineral in respect of mining contract area, the same may be granted for a specified period ordinarily

for 7 years but not exceeding 10 years. Rule 19 (1) speaks of renewal of the mining contract subject to application by the contractor 18 months prior

to the date of expiry of the contract period. To what extent the said Rules referred hereinabove, can be expanded for the purpose of extension of the

mining contract period let me examine the ratio laid down in Dharmendra Kumar Singh (Supra).

The fact in the said case is relevant. Mining leases were granted to projects in the district of Sonbhadra in the State of UP way back in the year 1989.

A party filed an application before the National Green Tribunal, New Delhi being OA No. 429/2016 seeking direction for immediate prohibition of

alleged illegal mining in the district of Sonbhadra within which the aforesaid mining leases were granted in view of an order passed on 04.05.2016 in

T.N. Godavarman Thirumulpad vs Union of India by way of which the NGT directed the State of UP to cancel all mining leases on areas notified

under Section 4 of the Forest Act, 1927. Finally the NGT directed the State of UP to cancel all the mining leases and all other mining activities in the

aforesaid notified area under Section 4 of the Forest Act, 1927 vide order dated 13.07.2018. The leaseholders of the mining leases were not made

parties before the proceedings in the NGT and they suffered the consequences of the order dated 13.07.2018. Accordingly the District Magistrate

concerned issued administrative orders in presence of the order dated 13.07.2018 prohibiting mining and transportation of boulders which led to halt of

the mining activities. The affected parties preferred appeal before the NGT. Finally the mining areas were treated as non forest lands after various

litigations and to that effect notification under Section 20 of the Forest Act was issued by the UP Govt. The issue before the Apex Court to be decided was with regard to the extension of leases for the period for which the mining leases of the appellants were not permitted to operate. The

Apex Court considered the provisions of Section 4 to 8.A and Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. Therein

it was held as follows:

â??We do find ourselves in agreement with the submission of the learned counsel for the State that the right to extension of lease either flows from a

statutory provision or from the terms of the lease between the parties concerned. If there has been an obstructed period by reason of a judiucial

interdict, that itself will not give window to extend the lease by not following the statutory provisions, especially when the terms of the lease do not

provide for any consequences thereofâ??

On perusal of the contract annexed to this writ petition entered into by the petitioner and the Divisional Forest Officer, Hailakandi nowhere any clause/

clauses are stipulated thereby providing for extension of the extract period. Rather under part 4 of the contract it is the manner for suspension or

termination of the contract and the determination, penalty etc. which are stipulated. Under such circumstances, the prayer for extension of the

contract period must flow from the statutory provision. In the present case in hand, the Rules, 2013 has its statutory force inasmuch as the said Rules

are framed on the basis of the power conferred by sub-section (1) of Section 15 and Section 23 C of Mines and Minerals (Development and

Regulation) Act, 1957 and on perusal of the various Rules under Chapter 4 there is no provision for extension of the contract period rather there is a

provision for the renewal of the mining contract and for that purpose the petitioner/ contractor is required to seek for renewal prior to 18 months from

the date of expiry of the contract. Whether the term â??renewalâ? and â??extensionâ? of a lease have the same meaning. Normally â??renewalâ?

amounts to renewal of the lease after the term of its subsistence is over and the lessor has the right to introduce new terms of lease and the lessee

must be agreeable to it. On the other hand â??extensionâ? of lease amounts to extension of the period of subsistence but with same terms and

conditions. So extension of the lease period must be carried out during the subsistence of the lease and renewal must be carried out after the lease

period comes to an end by efflux of time. Rule 19(1) of the Rules 2013 stipulates renewal only but not extension. As per Blackâ??s Law Dictionary

9th Edition the term â??renewalâ?? means re-creation of a legal relationship or the replacement of an old contract with a new contract as opposed to

mere extension of previous contract. So in my considered opinion there is no provision of extension of the contract period under Rules 2013. For

renewal, Rule 19(1) stipulates a condition that the same must be sought for prior to 18 months from the date of completion of the contract period.

Accordingly, the Rules 2013 are silent in respect of extension of period of contract and on the other hand question of applicability of Rule 19(1) does

not arise as there was no such application for renewal. The submission of Mr. Choudhury in respect of applicability of Section 8A of the Act, 1957

cannot be considered as Section 14 of the said Act, 1957 specifically stipulates about the non applicability of the Sections 5 to 13 (inclusive) of the Act,

1957 in case of minor minerals. Thus neither the contract nor the statue authorizes the court to extend the contract period.

In view of the aforesaid ratio in Dharmendra Kumar Singh (Supra) and there being no specific provision for extension of the contract period, I am of

the considered view that the prayer made by the writ petitioner in this writ petition cannot be entertained and as a result this writ petition stands

dismissed. However, the petitioner is granted the liberty to participate in the tender process arising out of e-tender notice dated 29.06.2021 and in

addition to that the petitioner is also given the liberty to file appropriate application for remission of the kist money and other reliefs as entitled under

the provision of Rules, 2013. In order to allow the petitioner to participate in the said e-auction process the respondents shall make necessary

arrangement to that effect if the process is yet to be completed. Further it is ordered that no coercive measures shall be initiated by the respondent

authority till the representation for remission of the petitioner is disposed of.

With the said observation, this writ petition stands disposed of.

