

(2007) 04 OHC CK 0038
In the Orissa High Court

Prabodh Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:

Citation : AIR 2007 Ori 135 : (2007) 104 CLT 163 : (2007) 1 OLR 686

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.
2. This writ application has been filed with a prayer to direct the Deputy Director of Mines, Koira (opposite party No. 3) and Divisional Forest Officer, Bonai Division, Bonai (opposite party No. 4) to issue the lifting permission in favour of the petitioner for removal of the balance stock of Iron and Bauxite Ores of different grades and sizes from the lease hold area of KJST (Jaldihi) Iron, Manganese and Bauxite Mines as per the joint verification report which is under Annexure-7.
3. This writ petition has been heard at length and at the admission stage the same is disposed of finally.
4. The petitioner's mining lease was granted on 20.01.1987 for a period of 20 years and the same is to expire on 19.01.2007. There is no dispute about these dates.
5. Twelve months prior to such expiry, the petitioner made an application for renewal on 6.12.2005. This was done in terms of Rule 24A(1) of Mineral Concession Rules, 1960. Since the opposite parties could not dispose of the petitioner's application for renewal, the provision of Rule 24A(6) is automatically attracted. The provision of Rule 24A(6) is set out below:

If an application for renewal of a mining lease made within the time referred to in

Sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government passes order thereon.

6. Learned Counsel for the petitioner submits that in view of the aforesaid statutory provision, the petitioner's mining lease must be treated to have been extended by the deeming provision under Rule 24A(6). Learned Counsel for the petitioner further submits that within the original duration period of the lease, the petitioner has extracted certain Iron Ores and Bauxite as would appear from Annexure-2 of the writ petition.

7. In the counter affidavit at paragraph-13 filed by opposite parties 1 to 3, it has been admitted that during joint verification it was found that different grades of iron ores and bauxite have been stacked in the lease hold area. It has been stated that no royalty has been paid by the petitioner before the expiry of the lease period.

8. That a joint verification has taken place appears from Annexure-5 which is a communication from the Deputy Director of Mines, Koira to the Divisional Forest Officer, Bonai Division, Bonai. It transpires from that communication that before closure of mining operation from 20.1.2007 in the D.L.C. Forest area, there is a quantity of Bauxite of 23217.479 MT, iron ore lump of + 65 Fe of 2297.713 MT iron ore lump - 65% Fe of 55,584.567 MT, iron blue dust of +65% Fe of 55470.940 MT and iron ore lump of - 60% Fe of 1092.350 MT and sub grade iron ore of 62% Fe of 24174.150 MT lying at mine site which were raised and stacked by S.N. Mohanty. In the concluding paragraph of the said communication request was made by the Deputy Director of Mines, Koira to the Divisional Forest Officer, Bonai Division, Bonai to accord permission for lifting iron ore stocks which was stated to be lying at broken up D.L.C. forest area in the K.J.S.T. (Jaldihi) Mines of S.N.Mohanty. For removal of the same removal permission is to be issued to the petitioner against those stocks of iron ore and the same was applied by him as per verification report.

9. In this connection it may also be mentioned that there is a communication from the Deputy Director of Mines to the Divisional Forest Officer, Bonai Division, Bonai to the effect that there is joint verification of the ores, which have been lifted. The said report was prepared in the presence of Mining Officer, Koira, Ranger, Barusuan Range Office and Manager KJST (Jaldihi) Mines.

10. Learned Counsel for the State on the other hand states that since the original period of lease has expired, the petitioner is not entitled to lift the said material even on payment of royalty. Learned Counsel for the State has relied on Rule 26 of the Mineral Concession Rules, 1960 and relying upon the said rule the stand which has been taken in the counter affidavit is that the government has the right to reject the renewal application from the date of the expiry of the lease period. In the counter affidavit, it has been admitted in paragraph 9 that Government has not taken any decision for renewal of lease and therefore the

petitioner is not entitled to lift the materials and it has also been stated that there is a direction to stop mining operation and such direction has been given in consonance with the prevailing rules as per the conditions stipulated in Form-K. However, in the counter it has not been denied that in respect of the ores which have been extracted prior to 20.1.2007 a joint verification has taken place.

11. Now coming to examine the submissions made by learned Counsel for the State, we find that Form-K is a statutory form for grant of mining lease under Rule 31 of Mineral Concessions Rules, 1960. In fact the same is a standard form of lease deed. Learned Counsel for the State relied on Clause 5 which is under Part IX of Form-K and the same is set out below:

5. The lessee/lessees having first paid discharged rents, rates and royalties payable by virtue of these presents may at the expiration of sooner determination of the said term or within six calendar months thereafter (unless the lease shall be determined under Clauses 1 and 2 of this Part and in that case at any time not less than three calendar months nor more than six calendar months after such determination) take down and remove for his/their own benefit all or any (ore minerals excavated during the currency of lease) engines, machinery, plant, buildings, structures, tramways, railways and other works, erections and conveniences which may have been erected, set up or placed by the lessee/ lessees in or upon the said lands and which the lessee/lessees is/are not bound to deliver to the State Government under Clause 20 of Part VII of this Schedule and which the State Government shall not desire to purchase.

12. On perusal of the said Clause-5, it would show that under that particular clause the rights of lessee on expiry of the lease have been dealt with. Here, we are not dealing with that situation. Here admittedly the lease period of the petitioner has been extended by deeming provision referred to herein above.

13. When a deeming provision is in operation, the Court is to keep in mind the principle of interpretation of a deeming clause. Whenever a deeming clause occurs in a statute and the Court is called upon to interpret the same, the Court has to first ascertain the purpose for which such deeming clause has been incorporated. Normally a deeming clause is created by way of a legal fiction. Therefore, the Court is to first ascertain the purpose behind the legal fiction. Here the deeming provisions in Rule 24A(6) have been introduced with the purpose to keep the validity period of the lease alive in view of the time taken by the Government to scrutinize an application for renewal. The benefit of deeming provision is available to a lessee only if he applies 12 months before the expiry of the lease period. This shows that a lessee, applying for renewal when less than twelve months are left before expiry, will not get the benefit of the deeming provision. Therefore, the purpose of the deeming provision is to give the lessee the benefit of an extended period of lease if he has applied well before the period of expiry of his lease. The probable reason, may be that the continuation of lease should not be disrupted in view of the time taken by the Government to process the renewal application, provided the renewal has been applied well in advance

and in terms of the statutory requirement.

14. After ascertaining the purpose, the Court must assume those consequences, which are incidental and inevitable corollaries for giving effect to such legal fiction. The dictum of Lord Asquith in *East End Dwelling Co. Ltd. v. Finsbury Borough Council* reported in (1951) 2 All ER 587 is very pertinent in this regard. The learned Law Lord held at page 599 of the report:

...If one is bidden to treat an imaginary state of affairs as real, one must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it....It does not say that, having done so, one must cause or permit one's imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

15. The said observation has been accepted by the Hon'ble Apex Court as the correct interpretation of the deeming provision in a number of cases. (See : (1) *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, and (2) *Commissioner of Income Tax, Delhi Vs. S. Teja Singh*,).

16. Applying the said principle, the Court has to construe that in the instant case, the lease period of the petitioner has not expired. Therefore, Clause 5 of Part IX of Form-K cannot apply to the present situation. The reference to Rule 26 of the said rule is equally inappropriate inasmuch as Rule 26 reserves the right to the State Government to refuse renewal. Such right has to be exercised after giving the lessee an opportunity of hearing and such refusal has to be on the basis of a reasoned order. But there is no refusal of renewal in the instant case.

17. It is also well settled that against such right of refusal by the State Government revision lies and the Revisional Authority has power to grant a stay.

18. Be that as it may, it is clear from the statutory provision that refusal to grant lease takes the character of a quasi judicial proceeding. At the present moment those questions are not relevant since the petitioner's prayer for renewal of lease has not been rejected by the State Government and the same is pending. Therefore, the period of lease of the petitioner is deemed to have been extended by virtue of Rule 24-A(6).

19. So, in that situation, the petitioner's prayer for lifting the ores which have been extracted prior to 20.1.2007 possibly cannot be refused.

20. In a somewhat similar situation we have granted such prayer on certain conditions and one of the condition is that such removal has to be made upon notice to the statutory authority and upon payment of royalty.

21. We are of the opinion that in the facts and situation of the present case, similar order should be passed permitting the petitioner to remove the extracted quantity of iron ore and bauxite on the following terms and conditions.

(i) The ores which have already been extracted and are lying stacked as on date,

can be lifted by the petitioner upon proper notice to the Mining Authorities.

(ii) On getting such notice, the Mining authorities shall depute a Competent Officer who shall remain present at the time of such lifting.

(iii) Such lifting will take place in accordance with Law and upon payment of required royalty to the State.

(iv) The lifting operation must be completed within a period of six weeks from the date of approval of procedure of lifting by the Mining Authorities.

22. The writ petition is allowed to the extent indicated above. There is no order as to cost.