

(2014) 04 RAJ CK 0134

In the Rajasthan High Court

Case No : Civil Writ Petition (PIL) No. 17179/2011

Prem Kathat and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Citation : (2014) 04 RAJ CK 0134

Hon'ble Judges : Amitava Roy, C.J.;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : J.P. Gupta, Advocate for the Appellant; G.S. Gill, Additional Advocate General, Mr. Akshat Choudhary and Mr. Ashwani Chobisa, Advocate for the Respondent

Judgement

Amitava Roy, C.J.—Heard Mr. J.P. Gupta, learned counsel for the petitioners and Mr. G.S. Gill, learned Additional Advocate General, Rajasthan with Mr. Akshat Choudhary & Mr. Ashwini Chobisa for the respondents. The instant petition has been laid to register a public interest litigation for cancellation of a mining lease granted in favour of the respondent No. 8 alleging that the same is not only illegal, but the execution thereof as well, has exposed the local inhabitants and the institutions in the proximity thereof to serious risks and hazards, having the potential of causing loss of life and property.

2. Briefly stated, the pleaded case of the petitioners, who claim themselves to be residents of villages Banola, Nadi, Dhandhiya and Jhak Mat Ka Badiya within the territorial limits of Gram Panchayat, Jhak, Tehsil Masuda in the District of Ajmer is that the respondents No. 4 & 5 i.e. Superintendent Mining Engineer, Jaipur Circle, Jaipur Mines and Geology, Khanij Bhawan, Jaipur and Mining Engineer, Mines and Geology, Khanij Bhawan, Ajmer had issued a mining lease bearing M.L. No. 159/08 dated 22.2.2011 in favour of respondent No. 8 for excavating mineral quartz feldspar near Village Balotann Ka Badiya, Gram Panchayat, Jhak. According to the petitioners, the official respondents did not inspect the site before issuing the said lease, as the same (site) was located within the restricted

area mentioned in Part-III of the said lease deed. The petitioners averred that in August, 2011, when the mining operation started, the villagers could come to learn of the lease and the issue was discussed in the meeting of the jurisdictional Gram Sabha. The Headmasters of Government Upper Primary School and Sartaj Public Upper Primary School in the locality also wrote letters to the Sarpanch, Gram Panchayat, Jhak that the public way for coming to the schools pass through the mining lease area, and thus, the blasting caused would endanger the life of the students, and that, being apprehensive of such consequence, they have stopped coming to school. The villagers, according to the petitioners, followed up by submitting a representation on 11.9.2011 before the District Collector, Ajmer apprising the said authority of the said developments and contending inter alia that in the related map/site plan, though permanent pillars have been shown to identify the area of mining lease, in fact, such pillars were not available at the site. That adjacent to the mining lease, government upper primary school is situated, and that, public way thereto is adjacent to the mining lease area, thereby exposing the students to grave risk, in view of the mining activities, were underlined. The Sub Divisional Officer, Masuda, to whom this representation was forwarded, sought for a report from the Patwari Halka, who inspected the site and submitted the same. The report disclosed inter alia that neither the site pillars nor any board indicating subsistence of any mining lease was visible at the location, which was adjacent to public kachcha way, burial ground of Village Nadi and Kalawaton and Samota Ka Talab. It was mentioned further that the abadi area was situated at a distance of 500 metres therefrom, and that, the agricultural fields and 6/7 wells of the villagers were also adjacent thereto. The report further disclosed that the Temple of Bheru Ji was also located nearby, and that, at about 100 metres therefrom (mining lease area), there was a cremation ground. Referring to Part-III of the lease deed, the petitioners have also averred that the mining site is situated within the restricted area, and thus, the lease, on that count, is invalid in law. They further asserted that before issuing the mining lease, the official respondents also did not take any "No-objection Certificate" either from the revenue authorities or from the gram panchayat, and that, they approved the mining plan without inspecting the site. As inspite of several representations for remedial interventions, no meaningful or effecting steps have been taken, the petitioners have approached this Court seeking judicial intervention.

3. The respondents No. 1, 6 & 7 i.e. State of Rajasthan through Secretary Revenue, Rajasthan State Secretariat, Jaipur, the District Collector, Ajmer and the Tehsildar, Masuda, District Ajmer, in their joint reply, while not disputing the disclosures made in the report of the Patwari Halka, denied that the Office of the Tehsildar, Masuda had granted permission for cutting trees, as alleged. They clarified that the area of the mining lease does not fall within the reserve forest area and indicated that there was indeed no provision for mining within 50 metres from any public utility area. Referring to the findings in the report of Patwari halka, the answering respondents however, insisted that there was no

violation of any provision of law and categorically denied that no action, as warranted, had been taken by them, as imputed.

4. The respondent No. 8, the lessee, in his reply, has insisted that the mining lease is valid in law, and that, the operation thereof is not causing any injury to anybody. He alleged that the instant petition is not to espouse any public cause, and instead, the petitioners, for personal gain, have indulged in this venture to reap undue benefit. He even alleged that the petitioners had been demanding money from him, and that, he, having refused to oblige them, they have elected for this course of action to harass and intimidate him. The answering respondent also has alleged that the petitioners are in the habit of extending threats to persons who carry out mining operations in the area, and also mentioned about a report on one of their complaints submitted by the jurisdictional Sub Divisional Magistrate that no illegal mining operation was being pursued. According to him, the mining lease had been made in compliance of the Mineral Concession Rules, 1960 and asserted that the joint demarcation report, that was prepared in connection therewith, would demonstrate that the area involved was far away from any of the prohibited areas, as contemplated in law. He averred further that before the execution of the mining lease, inspection of the area had been made by the concerned mining engineer and the boundary pillars, to ascertain the same, had been fixed at the prescribed places. He asserted further that all documents, as required under the Rules, were submitted with his application, and that, having regard to the nature of the land i.e. government siwaichak land, there was no need to obtain "No-objection Certificate" from the gram panchayat or the government authorities. He denied that the Temple of Bheru Ji was situated in the mining lease area, or that, the public road, burial ground or taalab was located within the prohibited distance. That he was not carrying out any mining operation within 50 metres of any public road or water reservoir, has been averred. He denied as well that no inspection of the area was made before the mining lease was sanctioned in his favour. The answering respondent stated as well that the schools referred to in the petition were also located at a distant place from the area of operation, and that, the road to the schools was not connected with the one, to the mining area. Referring to a site report dated 1.10.2011 prepared by the Tehsildar, Masuda, the respondent has pleaded as well that the mining operations were confined within the lease area, and not beyond.

5. The respondent No. 5, in his reply, averred that there was no provision under the Mines & Minerals Regulation and Development Act, 1957 or the rules framed thereunder for obtaining a "No-objection Certificate" or consent from the gram panchayat before the sanction of any mining lease. While clarifying that such a certificate was mandatory only if the land belongs to the gram panchayat, the answering respondent stated that as the land involved belongs to the State, the plea of the petitioners based thereon is wholly misconceived. Reference was made to a circular dated 29.12.1994 of the Government of Rajasthan to the effect that no consent was required to be obtained before sanctioning mining

lease qua government land. It has been further averred that M.L. No. 169/08 situated in khasra No. 7705 is located within the government waste land, and this had been ascertained in course of the joint demarcation thereof conducted on 16.6.2009 and 29.8.2009 by the Patwari halka and senior mining foreman. That an eco-friendly inspection was conducted on 10.4.2010 to ensure that no river, naala, pond etc. were included within the mining area, has been stated. The respondent also asserted that there was no public place within a distance of 50 metres from the mining area, and that, there was no temple, shamshan or school within the prohibited distance. The respondent has averred as well that after the sanction of the lease, the lease map, alongwith the revenue records, had been sent to the District Collector on 29.12.2010, and no objection had been received within the period of 60 days, as prescribed by the circular dated 29.12.1994. It has been stated as well that the operations are conducted as per opencast manual method, for which shallow drilling and short blasting is involved.

6. Referring to Rule 27(h) of the Mineral Concession Rules, 1960, the respondent has clarified that the lessee cannot carry on any mining activity within 50 metres from any public place/work. Referring to a representation alleging contravention of the Rules in carrying out such mining operations, the answering respondent has averred that in course of the inspection, that was made, it was found that the mining was being conducted within the leased area. However, as it was detected that there was no pillar or board at the site, the lessee was directed to comply with the said requirements. It has been pleaded further that a field inspection was conducted on 24.11.2011 thereafter, revealed that such pillars, as directed, had been erected. The respondent disclosed further that the abadi area of Balotann Ka Bariya Village is located at a distance of 240 metres from the boundary of the mining lease, and Village Nadi is situated at a distance of 348 metres therefrom. That two schools were located at a distance of more than 160 and 388 metres from the lease area, and that, the cremation ground is at a distance of 50 metres from the Mining Lease boundary and 100 metres from the pit, where mining activity was conducted, have been stated. It has been averred as well that the pond in question is located at a distance of 60 metres from the boundary of the mining lease. It has been asserted in categorical terms that the mining area is not within the restricted sites envisaged in Part-III of the lease deed.

7. Whereas Mr. Gupta has emphatically argued that in view of the revelations from the records, the mining lease sanctioned and being operated, is in violation of the Rules, and that thus, having regard to the hazards to which the local inhabitants are exposed to, judicial intervention in the instant petition by treating it to be a public interest litigation is warranted, learned counsel for the respondents have pleaded to the contrary. According to them, not only the mining lease is in conformity with the Rules, the mining area is not within the restricted locations set out in Part-III of the lease deed, and that, the mining activities are also being carried on in strict adherence to the mandates of the relevant laws. Upon hearing the learned counsel for the parties and on an

analytical consideration of the materials on record, we are of the considered opinion that no intervention in the instant petition, by treating it to be a public interest litigation, is called for, in the attendant facts and circumstances. The pleaded facts do not unimpeachably demonstrate any violation of the Rules either in the grant of the mining lease or the operation thereof. Apart from the fact that the pleaded assertions give rise to disputed and contentious facts, we are left unpersuaded by the imputations of violations and contraventions, as made in the instant petition. We therefore, are disinclined to intervene. The petition is, as such, closed. We however, part with the observation that the official respondents would keep a constant vigil on the mining operations and take immediate steps, as and when any contravention of the rules or of the mining lease is noticed. We hope and believe that this observation of ours would be taken in the right spirit, and that, this Court would not, in future, encounter any allegation of the type, as made in the instant petition.