

(2021) 02 GUJ CK 0013

In the Gujarat High Court

Case No : R/Special Civil Application No. 16166 Of 2020

Rama Lakha Kuchhdiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Gujarat Minor Mineral Concessions Rules, 2017 — Rule 29, 29(2), 29(3), 64

Citation : (2021) 02 GUJ CK 0013

Hon'ble Judges : Vipul M. Pancholi, J

Bench : Single Bench

Advocate : Namrata J Shah, Ronak Raval

Final Decision : Allowed

Judgement

Vipul M. Pancholi, J

1. Heard learned advocate Ms. Namrata J. Shah for the petitioner and Learned Assistant Government Pleader Mr. Ronak Raval for the respondents.

2. In this petition, which is filed under Article 226 of the Constitution of India, petitioners have prayed that the concerned respondent authorities be

directed to grant the quarry lease permission and execute the mining lease agreement in pursuance of the LOI dated 19.03.2016 issued by the

respondent No.3 in favour of the petitioners in respect of the private Non-Agricultural land in question on certain terms and conditions.

3. Looking to the issue involved in the present petition, learned advocates appearing for the parties jointly requested that this petition be disposed of at admission stage.

4. Learned Advocate for the petitioner submitted that the petitioner had succeeded in getting permission for conducting mining activities as per the

provision of Mines and Minerals (Regulation and Development) Act, 1957 and Gujarat Minor Mineral Concessions Rules, 2017. Pursuant to which,

LOI was executed on 19/03/2016. Under the LOI, two conditions viz. Environmental clearance and approved mining plan from the competent

authorities were necessary. It is submitted that mining of mineral, which the petitioners intended to, was limestone from the land bearing Survey

No.131/2 & 134/1 admeasuring 1.17.37 Hectar situated at village Moya, Taluka & District Porbandar.

4. It is submitted that peculiar situation has arisen on account of the decision of the NGT with regard to the constitution of the Committee, which is

responsible for issuing necessary sanction and therefore, as time limit prescribed under the relevant rules for the period of two years is to expire, the

present petitions are filed.

5. Learned Advocate for the petitioner draws attention of this Court to relevant Rule No.29, wherein sub-rule(3) provides for the Government to

issue an order in writing for grant of quarry lease to the holder of LOI upon following of certain conditions prescribed within a period of two years

from the date of commencement of the Rules. It is submitted that the Rules came into effect from 24/05/2017 and therefore, period of two years is

to expire on 23/05/2019. However, on account of the condition as mentioned, the matter did not progress beyond the LOI and no order for grant of

quarry lease was passed in favour of the petitioner.

6. It is submitted that provisions itself make it clear that within two years of the Rules coming into effect, if necessary formalities like grant of order

for quarry lease is not passed, in that eventuality, the grant of quarry lease in favour of the petitioner would automatically forfeit. It is submitted that

for no fault of the petitioner, the petitioner would stand to lose grant of quarry lease, which is already decided in favour of the petitioner by the State

Government.

7. Learned Advocate for petitioner draws attention of this Court to the decision of this Court in Civil Application No. 1 of 2018 in Special Civil

Application No. 417 of 2017, where, in the case of major mineral an identical situation had arisen. The Division Bench of this Court directed the

respondent to execute the mining lease without any further delay and upon the petitioner following certain conditions. He also refers to the decision of

this Court in Special Civil Application No. 7 of 2017 where, in identical set of circumstances, the Court had proceeded to issue the direction to execute the lease deed on certain conditions prescribed.

8. It is submitted that the petitioner is also ready and willing to abide by the conditions as well as give an undertaking before this Court that till the necessary formalities are not concluded, the petitioner will not enter into any mining activities.

9. On the other hand, learned Assistant Government Pleader appearing for the respondent authorities has opposed this petition and submitted that LOI

was executed after observing all the necessary requirements and on account of peculiar situation, which arose on account of time line mentioned in

Rule 29(3) of the Rules of 2017, the State has also undertaken necessary steps. It is submitted that if this Court is inclined to consider the case of the

petitioner on the basis of the similar orders passed by the Coordinate Bench of this Court in similar type of matters, necessary conditions may be

imposed.

Learned AGP is not in a position to dispute the fact that in similar type of matters, the Coordinate Bench of this Court has considered the case of

other similarly situated petitioners.

10. Rule 29 of the Rules 2017 reads as under:

29. Existing applications and right of holder of letter of intent.

(1) All applications for grant of a quarry lease received prior to the date of commencement of these rules shall become ineligible.

(2) Without prejudice to sub-rule(1), where the Government has communicated a prior written approval for grant of quarry lease or if a letter of

intent has been issued in writing by the Government to grant a quarry lease, before the commencement of these rules, the quarry lease shall be

granted in accordance with the provisions of sub-rules (3) to (6) (inclusive).

(3) The Government shall issue an order in writing for grant of a quarry lease to the holder of a letter of intent upon satisfaction of the following

conditions within a period of two years from the date of commencement of these rules, failing which the right of such an applicant for grant of quarry

lease shall be forfeited automatically and in such cases, the Government would not be required to issue any order for this purpose:

- (a) fulfillment of the conditions of the prior approval or the letter of intent;
- (b) the holder of letter of intent having obtained all consents, approvals, permits, no objections and the like as may be required under applicable laws for commencement of mining operations;
- (c) the holder of letter of intent having satisfied the conditions specified in CHAPTER VIII with respect to a mining plan (including the mine closure plan);
- (d) furnishing financial assurance as specified in rule 64:

Provided that upon receipt of a written application, stating reasons for non fulfillment of the conditions within a period of two years, the Government may, for reasons recorded in writing extend the period of two years by an additional period of not more than six months:

Provided further that, save for the right to receive a quarry lease pursuant to the prior approval or the letter of intent, these rules shall apply to quarry lease granted pursuant to the prior approval or the letter of intent.

10.1. Notification of 9th March, 2018 reads as under:

9. In the said rules, in rule 29, for sub rule (2), the following sub rule shall be substituted, namely:—

(2) Without prejudice to sub rule (1), where before the commencement of these rules, the Government has communicated a prior written

approval for grant of quarry lease to an applicant; or if a letter of intent has been issued in writing to an applicant by the Government to grant a quarry

lease, the quarry lease shall be granted in accordance with the provisions of sub rules (3) to (6) (inclusive): Provided that, if an applicant has applied

for and obtained: (a) an environmental clearance; or (b) an approval for change in land use to non agricultural purposes; or (c) an approval for mining

plan, for conducting mining operations over the proposed lease area governed by these rules, prior to the commencement of these rules:

Provided further that, such person shall make a written representation before the Government with relevant documents and if Government deems fit,

shall issue letter of intent, which shall entitle such person to obtain a quarry lease, in the same manner as if such letter of intent was issued before the

commencement of these rules.

11. Considering the aforesaid facts and circumstances and having satisfied that

the petitioner has in his favour, LOI to grant of quarry lease and that is also prior to the commencement of Rules, 2017, which are given effect from 24-05-2017 under Sub-rule(3). It is for the Government to issue an order in writing for grant of quarry lease to the petitioner. It is only after such order, the petitioner is required to undertake necessary formalities and provide necessary sanction/ clearances from the Authorities within a stipulated period. Upon failure to pass an order for grant of quarry lease, it would not be possible for the petitioner to provide such necessary clearances and that too within a stipulated period, which otherwise lead to forfeiture of their rights under the quarry lease.

12. In view of the aforesaid, it is directed that the Government shall pass an order in writing within a period of six weeks from the date of receipt of this order, for grant of quarry lease to the petitioner in accordance with the Condition mentioned in the LOI with further condition as under:

(I) The petitioner shall file an undertaking before the District Collector, Porbandar within a period of two weeks from today to the effect that the petitioner shall not commence or carry out any mining activity in the area in question till the environmental clearance and other conditions as mentioned in the letter of Intent are fulfilled, as provided under the Mines and Minerals (Development and Regulation) Amendment Act, 2015 is obtained by the petitioner.

16. The petition is allowed in the aforesaid terms. Direct service is permitted.