

(2019) 07 PAT CK 0336

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9200 Of 2018

Ravishankar Bhatt

APPELLANT

Vs

State Of Bihar Through The Chief Secretary And Ors

RESPONDENT

Date of Decision : 23-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Bihar Minor Mineral Concession Rules, 1972 — Rule 11(6), 11(A)(6), 45(2)

Citation : (2019) 07 PAT CK 0336

Hon'ble Judges : Sanjay Priya, J

Bench : Single Bench

Advocate : Bindhyachal Singh, Prashant Sinha, Ram Binod Singh, Gyan Prakash Ojha, Naresh Dikshit, Sanjeev Ranjan

Final Decision : Dismissed

Judgement

1. This writ petition has been filed by the petitioner seeking following reliefs:

a) For issuance of appropriate writ/writs order directing the respondent authorities particularly the Collector, Kishanganj, to act in accordance with Rules and Regulations of Bihar Minor Mineral Concession Rules, 1972 and Bihar Minor Mineral Concession (Amendment) Rules, 2014.

b) For direction upon the respondent authorities particularly upon respondent Nos. 5 to 7 for settlement of Ghats for Mining of sand in the District of Kishanganj in favour of the petitioner for the remaining period till 31.12.2019 as due to non- settlement of Mining Ghats, the State Government is suffering Revenue loss due to inaction on the part of its authorities.

c) For quashing the order dated 19.2.2018 passed by the Mines Commissioner, Bihar, in Revision Case No. 05 of 2018 whereby and whereunder the Revision filed by the Private Respondent has been allowed and he was directed to resume Mining in the settled area for the remaining period of the lease with certain conditions. The Collector of the District has been directed to issue work order.

2. Heard Mr. Bindhyachal Singh, learned counsel for the petitioner, Mr. Naresh Dikshit, Special P.P. Mines, Mr. Gyan Prakash Ojha, G.A-7 and Mr. Sanjeev Ranjan, counsel appearing on behalf of the Private Respondent No.8.

3. Counsel for the petitioner submits that petitioner is registered contractor for Mining of sand in the District of Kishanganj. The tender was floated for Mining of sand in the District of Kishanganj for the period 01.01.2015 to 31.12.2109. In that tender, several persons have filed their bid including petitioner. After completion of formalities, tender cum auction was held on 13.01.2015 in which one Md. Israil (Respondent No. 8) was found to be highest bidder. Petitioner was declared second highest bidder. The agreement was entered into between Md. Israil (Respondent No. 8) and competent authority of the State for the period 1.1.2015 to 31.12.2019 for the Mining in the entire District of each Rivers/Ghats. The agreement was entered into on 7.7.2015 and document was registered in the office of Registering Officer, Kishanganj, on 8.7.2015.

4. The competent authority cum Mines Inspector vide letter No. 779 dated 15.7.2015 directed the aforesaid Settlee to give Environment Clearance Certificate which was not deposited by him. The petitioner was warned to make Mining strictly as per Mining Plan. The petitioner was again warned by the competent authority on 29.1.2016 for violation of terms and condition of lease agreement as Settlee was found doing Mining beyond the area as mentioned in the Mining Plan.

5. The Settlee Md. Israil (Respondent No. 8) in spite of several warnings did not mend his ways. The legal notice was issued by the Collector of the District on 4.9.2017 giving formal and final show cause. The Three Members Committee set up by the Mines Commissioner had enquired the matter and directed the Collector, Kishanganj, to take action against Respondent No. 8 for committing several irregularities by him.

6. The Collector in compliance of direction, issued legal notice to the Settlee. The Mining lease of the Respondent No. 8 was cancelled by order dated 16.12.2017 (Annexure-4 series). The petitioner who was second highest bidder in the auction/tender filed representation and claimed the right for his settlement of Mining lease for the remaining period of entire District of Kishanganj after cancellation of Settlement of Respondent No. 8. The petitioner has specifically stated that as per rule, Settlee was required to deposit the amount within time preferably after completion of every six months, but Settlee failed in that and last installment which was to be deposited by him till 15.12.2017 was not deposited by him, for which, Settlement was cancelled.

7. Sub Rule 6 of Rule 11A of Bihar Minor Mineral Concession Rules 1972 (hereinafter to be referred as Rules) provides that in case the highest bidder fails to submit the duly approved Mining Plan and/or the Environmental Clearance as referred to in sub-rule 1(e) and 1(f) or fails to deposit the required Security Deposit and the advance installment amount along with other payable taxes

within time limit as referred to in the prevailing notification of the State Government in this regard, his Security Deposit shall be forfeited and the Collector so authorized by the State Government shall give an opportunity to the second highest bidder to deposit his respective bid amount and submit the required documents within prescribed time limit as referred to in the above said notification. On failure of the second bidder to comply with the same, his Security Deposit too shall be forfeited and a fresh settlement process for the concerned sand Ghat unit through public auction shall be initiated.

8. In the instant case, the Settlee did not furnish Mining Plan within 90 days. He further submits that against the order dated 16.12.2017 passed by the Collector, Respondent No. 8 has filed CWJC No. 283 of 2018 which was dismissed as withdrawn. Respondent No. 8 got order dated 19.2.2018 from the Court of Mines Commissioner whereby the Mines Commissioner has allowed the Revision application (Annexure-9) in favour of Respondent No. 8.

9. During pendency of this writ application, I.A. No. 1 of 2019 was filed by the petitioner making prayer for necessary direction to Respondent authorities to settle the Sand Ghats of Kishanganj District in favour of petitioner as he was the second highest bidder and settlement made in favour of original allottee has already been cancelled vide order contained in Memo No. 204 dated 2.2.2019 issued by the District Magistrate, Kishanganj, and the remaining period of the settlement is only upto 31.12.2019. In paragraph-14 of the I.A. No. 1 of 2019 it is mentioned that District Magistrate/Collector, Kishanganj, vide order dated 29.1.2019 passed in Case No. 01 of 2018 (Mining) has cancelled the settlement made in favour of Respondent No. 8 and directed for initiation of fresh process of tender.

10. The Respondent No. 8 has challenged the order dated 29.1.2019 passed by the Collector, Kishanganj, before the Mines Commissioner in Revision Case No. 4 of 2019. The learned Mines Commissioner has set aside the order of Collector by order dated 3.5.2019 and remitted back the matter to the Collector for reconsideration of matter in the light of the order passed by the Commissioner.

11. Petitioner has filed second I.A. No. 2 of 2019 challenging the aforesaid order dated 3.5.2019 passed by the Mines Commissioner, Bihar, in Revision Case No. 4 of 2019.

12. Counter affidavit has been filed on behalf of the Respondent No. 8 stating therein that in consequence of the order passed by the Mines Commissioner dated 3.5.2019 (Revision Case No. 4 of 2019) as stated in paragraph-25 of the counter affidavit, the Collector by order dated 8.6.2019 passed in Mines Case No. 1 of 2019, has exonerated the Respondent No. 8 of all charges, and found the allegation made by 3 member enquiry team and enquiry report to be baseless and frivolous. The said order of the Collector dated 8.6.2019 has been enclosed as Annexure R/8-I of the counter affidavit.

13. Respondent No. 8 further submits that settlement has already been restored

in his favour. The petitioner has no locus standi to challenge the aforesaid settlement.

14. It has further been submitted in the counter affidavit that petitioner cannot be said to be second bidder because he has written letter to the Mines Inspector cum competent Officer on 15.1.2015 for return of earnest money and having accepted the return of earnest money amount, the petitioner ceased to have a status of a bidder or second bidder to move the Respondent authorities to invoke the power under Rule 11A(6) of Bihar Minor Mineral Concession Rules purportedly on a non-existence claim of second bidder for failure to highest bidder to comply with the mining plan or environmental clearance. Thus a person who had ceased to be a bidder on 15.1.2015 two days after auction is staking his claim as a second bidder after three years in 2018 even though, he had ceased to be a bidder, for grant of relief, which is not maintainable for want of locus. Secondly, the Rule 11(6) of the Rules does not envisage a situation for consideration of claim of second bidder after cancellation of settlement of Settlee holding valid settlement after three years for carrying out mining operation in violation of the provision of the Rules and after setting aside the order of cancellation by the Revisional authority, the settlement stood restored and there is no occurrence of vacancy for the petitioner to exercise his claim.

15. Counsel for the petitioner submits that he was not given opportunity of hearing before the Mines Commissioner in Revision Case No. 4 of 2019. The order was passed without hearing him. He further submits that he has filed necessary petition before the Mines Commissioner for impleading him as party, but no order has been passed.

16. He has further submitted that petitioner being the second bidder was necessary party to be impleaded in revision application. The order passed by Revisional Authority without giving opportunity of hearing to the petitioner is bad in law.

17. Counsel for the Respondent No. 8 submits that petitioner has no locus standi to be impleaded as party in the Revision Case No. 4 of 2019. The Respondent No. 8 was aggrieved party. Therefore, he had filed Revision Application.

18. The counsel for Respondent No. 8 has referred to Provisions of Section 45(2) of Bihar Minor and Mineral Concession Rules, 1972 in support of his argument.

19. Counsel for the Respondent No. 8 has also relied on a decision reported in AIR 2012 SC Page 1339 (Ravi Yashwant Bhoir Vrs. District Collector, Raigad & Ors.) and (2013) 4 SCC Page 465 (Ayaubkhan Noorkhan Pathan Vrs. State of Maharashtra and Ors.) in support of his argument. He further submits that writ petition is not maintainable on account of delay. The settlement was done in the year 2015 and this writ petition has been filed in the year 2019.

20. Having heard the parties and going through the averments in the writ application, counter affidavit filed on behalf of the Respondents and also the I.A.

Nos. 1 and 2 of 2019 filed by the petitioner, this Court finds that petitioner and Respondent No. 8 have filed a bid along with other persons in a tender for Mining of Sand Ghats in the District of Kishanganj for the period 01.01.2015 to 31.12.2019. The Respondent No. 8 was found to be the highest bidder. The petitioner was declared second highest bidder. Since Respondent No. 8 was found to be highest bidder, an agreement was entered into between Respondent No. 8 and competent authority of the State for the period 1.1.2015 to 31.12.2019 for sand Mining in the entire District of each Rivers/Ghats. The agreement was entered into on 7.7.2015 and document in this regard was registered in the office of Registering Officer, Kishanganj on 8.7.2015. Thereafter, the Respondent No. 8 started Mining of the Sand Ghats. During his work, certain irregularities have been found for which legal notice was issued to Respondent No. 8 and then his settlement was cancelled on 16.12.2017 by the order of the Collector.

21. The Respondent No. 8 has filed Revision before the Mines Commissioner, Bihar, Patna, vide Revision Case No. 5 of 2018. The Mines Commissioner, vide order dated 19.2.2018 (Annexure-9) has set aside the order of the Collector, Kishanganj directing him to issue work order to the Settlee on the terms and conditions as mentioned in the aforesaid order.

22. The settlement of the Respondent No. 8 was again cancelled by the Collector on 29.01.2019 on certain complains made against him regarding illegal Mining. The Respondent No. 8 filed Revision against the aforesaid order dated 29.1.2019 passed by the Collector vide Revision Case No. 4 of 2019 before the Mines Commissioner, which was allowed by order dated 3.5.2019 and order of Collector dated 29.01.2019 was set aside by the Mines Commissioner. The matter was remanded back to the Collector. The Collector in pursuance of the order passed by the Mines Commissioner in Revision Case No. 4 of 2019 exonerated the Respondent No. 8 of all the charges and restored the settlement in favour of Respondent No. 8 by order dated 8.6.2019 (Annexure R/8-I of counter affidavit filed on behalf of Respondent No. 8.)

23. The petitioner is aggrieved by the order of the Commissioner dated 3.5.2019 passed in Revision Case No. 4 of 2019. He has submitted that aforesaid order was passed without giving him opportunity of hearing. He had filed petition for impleading him as party in the aforesaid Revision Case but no order was passed by the Commissioner.

24. Section 45(2) of Bihar Minor Minerals Concessions Rules, 1972 is quoted below:

"45(1) xxx xxx xxx

45(2). In every proceeding under sub-rule (1) against the order of Collector refusing to grant or renew mining lease, any person to whom a mining lease was granted or whose lease was renewed in respect of the same area or for a part thereto, shall be impleaded as a party."

25. In this manner, in terms of Section 45(2) of the aforesaid Rules, the petitioner is not necessary party to be impleaded. Petitioner is not aggrieved by the order of the Collector dated 29.1.2019 because settlement was not in his favour.

26. The Hon'ble Supreme Court in a Judgment reported in AIR 2012 Supreme Court Page 1339 (Ravi Yashwant Bhoir Vrs. District Collector, Raigad & Ors.) has held in paragraph 44 as follows:

"... Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called *damnum sine injuria*. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a *lis*. A fanciful or sentimental grievance may not be sufficient to confer a *locus standi* to sue upon the individual. There must be *injuria* or a legal grievance which can be appreciated and not a *stat pro ratione voluntas* reasons i.e. a claim devoid of reasons. A person having a remote interest cannot be permitted to become a party in the *lis*, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party."

27. Similarly, the Hon'ble Supreme Court in another Judgment reported in (2013) 4 SCC Page 465 (Ayaubkhan Noorkhan Pathan Vrs. State of Maharashtra) & Others) has held in paragraph 9 that;

"It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or, when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to."

28. In this manner, in the instant writ petition, the Respondent No. 8 being the highest bidder has entered into agreement with the competent authority of the State for the period 1.1.2015 to 31.12.2019 for the sand mining in the each Rivers/Ghats. The aforesaid agreement was cancelled two times for some irregularities found by the competent authority as mentioned above. Both the cancellation orders were challenged by Respondent No. 8 by filing revision before Mines Commissioner and they were set aside.

29. The settlement of Respondent No. 8 was last cancelled by Collector on 29.1.2019. The Respondent No. 8 preferred Revision Case No. 4 of 2019 before the Mines Commissioner who by order dated 3.5.2019 after setting aside the order of cancellation dated 29.1.2019 remanded back the matter to the Collector. The Collector has restored the settlement in favour of Respondent No. 8 by order dated 8.6.2019. The Respondent No. 8 is still continuing as Settlee of aforesaid Sand Ghats.

30. Therefore, the claim of petitioner for allotment of Sand Ghats on the basis of second highest bidder is totally misconceived.

31. The Provisions of Sub Rule 6 of Rule 11-A of Bihar Minor Mineral Concession Rules, 1972, is quoted below:

"(6) Failure on the part of the highest bidder. - In case the highest bidder fails to submit the duly approved mining plan and/or the environmental clearance as referred to in sub-rule 1(e) and 1(f) or fails to deposit the required security deposit and the advance installment amount along with other payable taxes within the prescribed time limit as referred to in the prevailing notification of the State Government in this regard, his security deposit shall be forfeited and the Collector/Officer so authorised by the State Government shall give an opportunity to the second highest bidder to deposit his respective bid amount and submit the required documents within the prescribed time limit as referred to in the above said notification. On failure of the second bidder to comply with the same, his security deposit too shall be forfeited and a fresh settlement process for the concerned sand ghat unit through public auction shall be initiated."

32. In the instant case no action was ever taken by the competent authority of the State against the respondent No. 8 in terms of Sub Rule 6 of Rule 11(a) of Bihar Minor Mineral Concession Rules, 1972 to forfeit the Security Deposit of Respondent No. 8. Therefore, the petitioner was not the necessary party to be impleaded in revision application filed by Respondent No. 8, before the Mines Commissioner.

33. In the facts and circumstances stated above, the Revisional Authority has not committed any illegality in passing the impugned order dated 3.5.2019 passed in Revision Case No. 04 of 2019 without hearing the petitioner. The petitioner was not necessary party in the aforesaid Revision Case in terms of Rule 45(2) of Bihar Minor Mineral Concession Rules, 1972. The learned Collector has in compliance of the order passed by the Mines Commissioner in Revision Case No. 4 of 2019 already restored the settlement of the aforesaid Sand Ghats to Respondent No. 8 by order dated 8.6.2019 passed in Case No. 01 of 2019 (Mining), copy of which has been enclosed as Annexure- R/8-I of the counter affidavit filed on behalf of the Respondent No. 8.

34. Therefore, the petitioner is not entitled for any relief claimed in this writ petition.

35. This writ petition is accordingly dismissed.