

(2018) 04 RAJ CK 0172

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7374 of 2006

Rudra Kumar @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 11-04-2018

Acts Referred:

Citation : (2018) 04 RAJ CK 0172

Hon'ble Judges : NIRMALJIT KAUR, J

Bench : Single Bench

Advocate : D.L.R. Vyas, Suman Porwal

Final Decision : Allowed

Judgement

The present writ petition has been preferred against the impugned Order dated 14.10.2005 passed by the Mining Engineer, Jodhpur vide which the

sanction for mining lease granted in favour of the petitioners was revoked without granting any opportunity of hearing.

As per the facts, the petitioners applied for grant of mining leases for mineral masonry stone in Khasra No. 138, Village Daijar, Tehsil and District

Jodhpur and submitted the applications in the office of the Mining Engineer, Jodhpur. The land on which the mining leases were applied for was

reserved and recorded in the revenue entries for mining operations and the same is vested in the Mining Department. In this Khasra No. 138,

number of mining leases granted by the Mining Department are already in operation. The pre-demarcation of the area was conducted by the mining

authorities in the presence of Patwari of the area concerned on 15.01.2003 and both the authorities found that there is no hurdle in grant of mining

lease as the area does not fall either in the forest or in catchment etc. The Assistant Engineer, P.H.E.D. Division Mandore, District Jodhpur also

issued the Certificate dated 13.03.2003 that if mining leases are granted in the

aforesaid Khasra No. 138 of Daijar, the Department has no objection as it is not going to cause any damage to any pipeline or any of its other functions.Â The Divisional Forest Officer, Jodhpur also issued the Certificate dated 26.02.2004 to the effect that the area applied for by the petitioners does not fall in the forest and therefore, if the mining leases are granted, the department cannot have any objection.Â After examining the technical aspects of the matter, the Senior Town Planner also issued the Certificates dated 24.04.2002 /26.02.2002 to the effect that if the mining leases are granted in the area, the Department would have no objection.Â The Geologist of the Mines & Geologist Department, Jodhpur also inspected the site on 16.11.2002 and found that the area in question has rich deposits of mineral masonry stone.Â Thereafter, the Tehsildar, Jodhpur wrote the Letter dated 03.11.2003 to the District Collector to the effect that the area in question does not fall in the forest and the P.H.E.D. has no objection, the Town Planner has also given no objection and that apart, the matter has been examined at all angles and there is no impediment in the grant of mining leases.Â Taking all precautions in public interest, the petitioners got the area surveyed personally also by an approved Geologist, who after complete survey and examination of the area gave out his conclusions and observations as under :-

â??OBSERVATION â?" After geological investigation and study of reduced levels of various places around the mining area, we find that ;

(1) The present mining area is about 850 meter away from Surpura Feeder Canal and situated at Northern side of the canal.

(2) The topography of the area showing that general slope of the mining area is towards North and North East side.Â Slope does not going towards Surpura feeder canal.

(3) The safety wall of Surpura feeder canal lying East West side and canal going west to east side and mining area situated North side of the canal.

(4) Catchments area of the canal is spread over South and Southwest side near around Beriganga.Â The catchments area is abrupt opposite side of the mining area.

CONCLUSION

(1) Mining area does not fall in the catchments area of Surpura Feeder canal.

(2) There are no possibilities of obstacle in flowing water towards Surpura feeder canal due to mining activities because there is about 850 meter

distance between mining area and the canal and slope of the mining area is not going towards Surpura feeder canal.

(3) Catchments area of the canal is far away and have separate network of water supply of water from Beriganga area.

(4) There is not any direct or indirect connection of mining area with catchments area of Surpura feeder canal.??

After considering all the pros and cons of the matter and finding that there is indeed no hurdle in grant of mining leases, the Mining Engineer, Jodhpur

sanctioned the mining leases in favour of the petitioners on 16.04.2004 and directed the petitioners to complete certain formalities, in compliance of

which the petitioners deposited Rs. 1,250/- as installment of the deadrent, demarcation fees of Rs. 500/-, map fees of Rs. 160/-, security amount of

Rs. 1,250/- in the form of NSC, non-judicial stamp of Rs. 1,350/- for the execution of the agreement and thus, a total amount of Rs. 60,000/- was

spent by the petitioners. After sanction of the mining leases, the copies of the sanction orders were sent to the District Collector, Jodhpur for issuing

no objection certificate.

The petitioners were, thereafter, shocked to receive the Order dated 14.10.2005 vide which the Mining Engineer had revoked the sanction of mining

leases granted in favour of the petitioners without giving any notice simply on the ground that the Collector had refused to grant the NOC.

Reply has been filed. In the reply, the facts are not disputed but the reason for revoking the sanction is stated to be joint survey of Executive

Engineer, Irrigation and the Tehsildar concerned in pursuance to the directions of the District Collector vide Letter dated 27.07.2004 to enquire as to

whether the same was likely to affect the collection of water in the Surpura dam. The report was stated to be positive.

Be that as it may, it is not denied that no opportunity of hearing was granted to the petitioners before revoking the sanction of mining leases granted in

their favour. This Court in the case of Kum. Lalita Chaudhary Vs. State of Rajasthan and others reported in 2012 (1) WLN 258 (Raj.) in almost

similar facts set aside impugned order by holding that a right accrues to the person in whose favour the sanction was granted and confers civil right in

favour of the incumbent and therefore, any order revoking the said sanction without hearing the person in whose favour the sanction order was passed amounts to violation of the principles of natural justice.Â

In the case of Kum. Lalita Chaudhary (supra), the competent authority had in fact held a post decisional hearing but the Court concluded that any post

decisional hearing does not cure the illegality.Â In the present case, leave alone a personal hearing, even a notice was not issued to the petitioners

before revoking the sanction.Â No opportunity at all in the eyes of law was granted before passing impugned order.Â In fact, the failure to grant the

NOC within 30 days of the matter having been sent to the District Collector draws the presumption that the NOC is deemed to have been granted.

In view of the above, the present writ petition is allowed. The impugned Order dated 14.10.2005 having been passed by the Mining Engineer, Jodhpur

without following the principles of natural justice is set aside.Â However, the respondents are at liberty to pass afresh order in accordance with law

after following the principles of natural justice.