

(2012) 09 JH CK 0087

In the Jharkhand High Court

Case No : Writ Petition (C) . No. 2104 of 2006

Sadhan Chandra Ghosh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Minor Mineral Concession Rules, 1972 — Rule 27(5)

Citation : (2013) 1 JLJR 68

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rohit Roy, for the Appellant; M.S. Akhtar, S.C. Mines and Mr. Arvind Kr. Mehta, J.C. to S.C. Mines, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.

I.A. No. 2566 of 2012

1. By way of this interlocutory application, petitioner seeks addition of the prayer in para 1 of the main writ petition as stated in para 3 of the instant interlocutory application seeking quashing of the order dated 21.6.2004/24.6.2004 passed by the Deputy Commissioner, Dumka in which the mining lease of the petitioner was terminated prematurely and also for quashing of subsequent demands raised against the petitioner in pursuance to the aforesaid order. It is submitted on behalf of the petitioner that only on the basis of the averments made in the counter affidavit filed by the respondents the petitioner could come to know that lease of the petitioner itself has been terminated by the order dated 21.6.2004/24.6.2004 annexed as Annexure-I to the first supplementary counter affidavit. It is submitted by the learned counsel for the petitioner that the order was never served upon him and now it has been brought on record. The petitioner seeks to impugn the same in the main writ application since, in the main writ application the original relief is in relation to quashing of demand in

respect of the said land in question raised after passing of the order of termination of lease. Petitioner prays for allowing the interlocutory application, since the aforesaid amendment in the main writ petition will not change the nature of the writ petition and it will also avoid the multiplicity of the proceeding.

2. Learned counsel for the respondent has objected to the same and submitted that petitioner was aware of the aforesaid order but has not impugned the same in original writ petition. However, from the submission of the parties, it appears that the prayer sought to be amended is related to the same lease for which demand was made in the present writ application and the lease itself stood terminated, which has been brought on record by way of Annexure-I to the first supplementary counter affidavit filed by the respondent-State. It would, therefore, not prejudice the other side if the said amendment is allowed to be incorporated in the main writ petition.

3. Accordingly, learned counsel for the petitioner is allowed to incorporate the amendment in the prayer portion as well as in the relevant place in the main petition by making necessary correction in red ink.

I.A. No. 2566 of 2012 stands disposed of.

W.P.(C) No. 2104 of 2006

4. Heard learned counsel for the parties.

5. The instant writ petition has been preferred by the Petitioner for quashing the memo No. 1418 dated 12.8.2004 signed by the District Mining Officer, Dumka, whereby a demand of Rs. 15,69,100/- has been raised based upon the inspection carried out on the leasehold land of the petitioner, but according to him the same has been carried out behind his back without any notice. Petitioner has further sought for quashing of the order of termination of the lease by order dated 21.6.2004 / 24.6.2004 passed by the Deputy Commissioner, annexed as Annexure-I to the first supplementary counter affidavit, which has been permitted to be impugned by allowing I.A. No. 2566 of 2012, preferred by the petitioner.

6. The case of the petitioner is that he was granted mining lease under the relevant provision of Mines and Mineral (Development and Regulation) Act, 1957 and under the Bihar Minor Mineral Concession Rules, 1972 in the year 1994 for quarry of stone initially for a period of 5 years which was extended for further 10 years in the year 1999 over an area of 1.07 acres in mauza Kulkulidanga P.S. Sikaripara, Dumka. It is the case of the petitioner that he kept on paying royalty and other dues without any delay. However, petitioner was suddenly served with notice dated 15.4.2004 (Annexure-2) asking him to show cause for certain irregularities, which were found during inspection carried out by the Mining Inspector over the leasehold area of the petitioner alleged to be in presence of one Sudhir Bhattacharjee and Bikash Ghosh. It was alleged in the said notice that no boundary wall was found in the leased area, books of records like

transport challan etc. were not found and the mining work was found to be carried out outside the south western side of the leased area by extracting the mineral stone which were valued at Rs. 7,84,550/-. It is the case of the petitioner that he has stated categorically that the persons named to be present during the inspection were not his agent or servant. It is stated on the part of the petitioner that inspection was not carried out by proper notice served upon him rather it was done behind his back and, therefore, the allegations made against the petitioner are wholly unfounded. It is further submitted that petitioner is ready and willing to submit all the relevant documents as and when fresh inspection is carried out in his presence. Petitioner has annexed the demand notices, which were served upon him as Annexure-4 and 5. However, it is categorical case of the petitioner that no notice of the said inspection was ever served upon him and the whole exercise of raising demand are carried out behind his back without any proper notice. Hence, petitioner is left with no option but to move this court by way of this writ petition.

7. Respondents have appeared and filed their counter affidavit in which they have stated that inspection was done after notice vide letter dated 7.1.2004 issued by the District Mining Officer, Dumka. The inspection was conducted on serious allegation having come to the light that the petitioner had excavated stone beyond the leased area. However, it was also stated in the first counter affidavit filed on their behalf that the petitioner has paid royalty and other dues for which he was granted mining lease for excavation in 1.07 acres in plot No. 321 and 326. It is also submitted on the part of respondent- State that on account of such violation of terms and conditions of land excavation beyond the leased area petitioner was served with show cause notice time and again, which he failed to respond and, thereafter, impugned demand has been raised against the petitioner. It is further submitted that the inspection was done and measurement was taken by the Mining Inspector, Dumka in presence of authorized managers of petitioner, namely Sudhir Bhattacharjee and Bikash Ghosh. On inspection the aforesaid facts were found to be true that the petitioner had excavated stone beyond the area of mining lease granted to him to the extent of 0.68 acres.

8. Learned counsel for the petitioner seriously objected to the contention of the respondent that notice was served upon him by categorically stating in his rejoinder that neither Sudhir Bhattacharjee and Bikash Ghosh are his employees nor the petitioner was ever served with the memo No. 666 dated 15.4.2004.

9. Respondents, thereafter, filed another counter affidavit reiterating the contention made earlier stating that the raising of the demand was made after measurement vide order dated 2.1.2004, memo No. 396/m dated 28.2.2004 and further memo No. 1216 dated 5.7.2004 were sent for payment of royalty and legal dues, but petitioner failed to do the same. Respondents- State was allowed to bring on record the proof of such service of notice for inspection carried out against the petitioner in the leasehold area of the petitioner, which the petitioner

had seriously disputed. By way of supplementary counter affidavit brought on record, learned counsel for the respondent- State submitted that the letter No. 18/ m dated 7.1.2004 was sent to the writ petitioner on 8.1.2004 under the certificate of posting annexed as Annexure-J to the said supplementary counter affidavit. It was stated in para 8 of the said affidavit that petitioner was served with letters/memos issued by the District Mining Officer, Dumka i.e. memo No. 396/m dated 28.2.2004 which was issued under certificate of posting, which is also part of Annexure-J. It is further submitted that further demand notice were served by registered post having postal receipt No. 2099 dated 5.7.2004 and memo No. 1418/m dated 12.8.2004, which is Annexure-4 and 5 to the writ petition.

10. However, learned counsel for the petitioner once again submitted by referring to the rejoinder as well as the averments to the supplementary counter affidavit that the two letters dated 5.7.2004 and 12.8.2004 were duly received by the petitioner, which related to the issuance of the demand, but the copy of the memo No. 396/m dated 28.2.2004 said to have been sent under certificate of posting, which the respondent claim to be the statutory notice as required under Rule 27(5) of the Minor Mineral Concession Rules before termination of lease was actually never served upon the petitioner. The service of notice for inspection and statutory notice for termination of lease has been categorically denied by the petitioner by way of rejoinder to the supplementary counter affidavit as per the submissions made in para 6 and 7. Learned counsel for the petitioner has also relied upon the judgment of the Hon''ble Supreme Court in the case of State of Maharashtra Vs. Rashid Babubhai Mulani, in support of his contention that the service of notice under the certificate of posting is not a full proof mode of service of notice upon certain party in the manner of communication compared to the service of notice through registered post. The relevant para 17 of the said judgment is quoted herein below:-

Para 17:- A certificate of posting obtained by a sender is not comparable to a receipt for sending a communication by registered post. When a letter is sent by registered post, a receipt with serial number is issued and a record is maintained by the post office. But when a mere certificate of posting is sought, no record is maintained by the post office either about the receipt of the letter or the certificate issued. The ease with which such certificates can be procured by affixing antedated seal with the connivance of any employee of the post office is a matter of concern. The Department of Posts may have to evolve some procedure whereby a record in regard to the issuance of certificate is regularly maintained showing a serial number, date, sender's name and addressee's name to avoid misuse. In the absence of such a record, a certificate of posting may be of very little assistance, where the dispatch of such communications is disputed or denied as in this case. Be that as it may

11. I have heard counsel for the parties and gone through the record including the demand notice, order of termination of lease and other relevant materials

brought on record. On perusal of the relevant materials on the record it is apparent that the 2 notices i.e. 7.1.2004 and 28.2.2004, both were issued under the certificate of posting, which the petitioner has vehemently disputed to have ever received on his part. On the basis of the first notice inspection was carried out which is said to be behind the back of the petitioner and petitioner has also completely denied that the persons in whose presence measurement was taken were his authorized representatives or staffs. It is the requirement of law that before termination of mining lease of a lessee, statutory notice, as contained in the relevant provision i.e. u/s 21(5) of the Minor Mineral Concession Rules, 1972 as adopted by the State of Jharkhand must be validly service upon the lessee before proceeding for termination of lease after completion of statutory period of 30 days. Since, the petitioner has categorically denied service of 2 notices upon him, which is also supported by the legal position in respect of service of notice under certificate of posting in the judgment delivered by the Hon'ble Supreme Court in the case of State of Maharashtra Vrs. Rashid B. Mulani(Supra), the impugned action based upon the notice dated 7.1.2004 as well as issuance of the statutory notice dated 28.2.2004, therefore, appears to be not in consonance with the law. It appears that the petitioner have been denied proper opportunity to show cause before the impugned action raising demand as well as termination of lease has been taken by the respondent authorities.

12. In the wake of the aforesaid finding the impugned demand contained in Annexure 4 and 5 and the order of termination of lease contained in Annexure - I to the counter affidavit filed by the respondent are wholly unsustainable in law and are accordingly, quashed. The writ petition is allowed with the aforesaid terms. However, it will be open for the respondent to proceed afresh in accordance with law by giving opportunity to the petitioner.