
(2010) 01 AHC CK 0054
In the Allahabad High Court

Sant Ram Verma	Vs	APPELLANT
D.M. Faizabad and Others		RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Minor Mineral Concession Act, 1963 — Section 29
Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 7

Citation : (2010) 01 AHC CK 0054

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Mr. J.C. Srivastava, learned Counsel appearing for the petitioner and learned Standing Counsel and perused the record.

2. Writ petition under Article 226 of the Constitution of India has been preferred against the impugned notice dated 24.7.1989, contained in Annexure No. 2 to the writ petition.

3. It has been submitted by the learned Counsel for the petitioner that on March 27, 1982, an auction was held for seven lots for excavating sand in Tehsil Tanda, District Faizabad. The petitioner submitted the certificate of solvency to the amount of Rs. 1,25,000/- and being the highest bidder for lot No. 4, he was sanctioned licence for the period of one year commencing 31.3.1983. Being highest bidder, the petitioner has deposited an amount of Rs. 25,050/- on the same date, i.e. 27.3.1982 which is the half of the total earnest amount of Rs. 50,100/-. After finalisation of lease, the State Government was required to give the possession of lot No. 4 in pursuance to the provisions contained in Rule 7 of the U.P Minor Mineral Concession Act, 1963. The State was also required to execute a lease deed in favour of the petitioner u/s 29 but the same was not done though the petitioner had submitted stamps worth Rs. 2,130/-. The petitioner has also filed writ petition No. 1206 of 1983 for issuance of a writ of

mandamus to direct the State Government for demarcation of the land and give possession for which he is entitled. By an interim order, the opposite parties were required to demarcate the land under Rule 17. In spite of the order passed by this Court, it has been stated that no demarcation was done by the respondents. The writ petition filed by the petitioner was dismissed on 26.3.1985 with the finding that since the period of lease expired, hence it calls for no interference under extraordinary remedy available under Article 226 of the Constitution of India. A copy of the judgment and order dated 26.3.1985 has been filed as Annexure No. 1 to the writ petition. While dismissing the writ petition, this Court has given liberty to the petitioner to file a Civil Suit for breach of contract and for refund of amount deposited by him and claim damage.

4. The submission of the petitioner's counsel is that in spite of the fact that the land was not demarcated and the possession for mining work was not given, by the impugned notice, the respondents have directed to pay the balance amount. While filing counter affidavit, it has been stated that since the petitioner has not deposited the total instalments of royalty before 24.7.1989, hence the impugned notice was sent to the petitioner requiring him to deposit the amount of Rs. 25,050/-. However, it has nowhere been stated that the respondents have taken steps to execute the lease deed in favour of the petitioner and also deliver the possession of lot No. 4 to proceed with the mining work. The judgment and order dated 26.3.1985, passed by the Division Bench of this Court also indicates that at no stage the respondents have indicated that the demarcation of land in question was done and the possession was delivered. In view of above, the respondents do not seem to be justified in issuing the impugned notice for recovery of remaining dues. The respondents have been failed to discharge their statutory duty to hand over the possession in accordance with law for mining work though stamp for agreement was deposited.

5. The writ petition is accordingly allowed. A writ of certiorari is issued quashing the impugned notice dated 24.7.1989, contained in Annexure No. 2 to the writ petition, with consequential benefits.

6. No order as to costs.