

(2010) 05 AHC CK 0040
In the Allahabad High Court
Case No : C.M.W.P No. 27820 of 2008

Smt. Ram Lali Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Mines and Minerals (Development and Regulation) Act, 1957 — Section 19, 6
Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 2(2), 71, 72, 78, 8

Citation : AIR 2010 All 154

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The Petitioner, in whose favour ten lease deeds were executed on 9th January, 2007 pursuant to the notice dated 6th May, 2006 issued under Rule 72 of the U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as the "Rules"), has sought the quashing of the order dated 12th May, 2008 by which the said lease deeds have been cancelled by Section 6, only that reconnaissance the State Government exercising suo motu revisional powers under Rule 78 of the Rules. The Petitioner has sought a further direction upon the Respondents to permit the mining as per the ten registered lease deeds and to extend the period of contract since the Petitioner was not permitted to mine from November, 2007 for a certain period.

2. It is stated that an advertisement was published by the District Magistrate, Sant Ravi Das Nagar on 6th May, 2006 inviting applications under Rule 72 of the Rules for granting mining leases for the ten sites in various villages of Tehsil Gyanpur.

3. The Petitioner and other persons submitted applications for grant of mining lease. The District Magistrate sent a letter dated 7th July, 2006 to the Director, Geology and Mining forwarding the proposals for granting mining lease in favour

of the Petitioner for ten sites. Thereafter, the Special Secretary of the State Government sent a communication dated 3rd October, 2006 to the District Magistrate, Sant Ravi Das Nagar conveying the prior approval of the State Government for these ten sites but it was also mentioned that before granting the leases or executing the deeds, it should be ensured that the provisions of the Rules and Government Orders issued from time to time had been complied with. The In-charge Officer (Mines), Sant Ravi Das Nagar, Bhadohi then issued the order dated 20th November, 2006 approving the grant of the ten leases to the Petitioner for a period of three years subject to certain conditions made in the order. The lease deeds were thereafter executed on 9th January, 2007 by the In-charge Officer (Mines).

4. Rule 8 of the Rules provides that the State Government or the authority authorised by it in this behalf may subject to the provisions of the Rules and after making such further enquiry as it may consider necessary in case of application for grant of a mining lease refuse or grant the mining lease for the whole or part of the area applied for and for such period as it may consider proper and in the case of application for renewal of a mining lease, refuse or renew the mining lease for the whole or part of the area applied for and for such period, not exceeding the period of the original lease, as it may consider proper.

5. Rule 71 of the Rules, empowers the State Government to delegate its powers to any authority or officer subordinate to it. Accordingly, the State Government, in due exercise of the powers conferred upon it under Rule 71 of the Rules, by means of the notification dated 5th June, 1997, delegated its powers for granting and renewing the mining lease to the District Magistrate.

6. It is the case of the Petitioner that Form MM-11 was not given to the Petitioner as a result of which the Petitioner could not carry out any mining. Various representations were, therefore, sent by the Petitioner to the District Magistrate as also the State Government.

7. However, a notice dated 25th February, 2008 was issued to the Petitioner by the State Government under Rule 78 of the Rules in respect of the ten lease deeds executed in favour of the Petitioner requiring the Petitioner to show-cause by 26th March, 2008 as to why all the ten lease deeds may not be cancelled.

8. This order was challenged by the Petitioner in Writ Petition No. 13950 of 2008 in which the following order was passed on 1st April, 2008:

The Petitioner is lessee of minor minerals. She has challenged the show-cause notice issued by the State Government dated 25.2.2008 calling upon her to explain as to why her leases be not cancelled inasmuch as the order on the basis of which leases were granted in favour of the Petitioner by the In-charge, Mines Officer/S.D.M., Sant Ravi Das Nagar, Bhadohi who is lower in rank to the authority competent to pass the order namely, the District Magistrate.

Sri M.K. Gupta, counsel for the Petitioner states that the Petitioner will file

objection before the State Government within a period of one week from today. If any such objections are filed within the period mentioned above, the same shall be disposed of expeditiously, preferably within a period of three weeks from the date of objections alongwith a certified copy are filed.

List this case alongwith the file of writ petition No. 10279/08 in the week commencing 1.5.2008.

9. The Petitioner filed detailed objections on 9th April, 2008 and thereafter the State Government passed the order on 12th May, 2008 cancelling the ten lease deeds executed in favour of the Petitioner. It is this order that has been impugned in the present petition.

10. The State Government found that the lease deeds had been executed in contravention of Section 19 of "The Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the "Act") and were not valid as the District Magistrate had neither granted the approval to the grant of mining leases in favour of the Petitioner and nor had the lease deeds been executed by the District Magistrate. Thus, exercising suo motu revisional powers under Rule 78 of the Rules, the State Government cancelled the lease deeds executed in favour of the Petitioner.

11. On 9th June, 2008, when the petition was presented, the Court passed the following order:

Heard Sri C.L. Pandey learned Senior Counsel assisted by Sri L.K, Dwivedi learned Counsel for the Petitioner and learned Standing Counsel who has put in appearance on behalf of Respondents.

Learned Standing Counsel prays for and is allowed one week's time to file counter affidavit. Rejoinder affidavit be filed by the learned Counsel for the Petitioner within one week's thereafter.

The case be listed on 1.7.2008 for admission/hearing.

Sri C.L. Pandey learned Counsel for the Petitioner has emphasized that the Petitioner has been continuing with the mining operation for the last more than one year. As per learned Senior counsel, the Petitioner was granted mining lease after completing necessary formalities which have been operating since 7th June, 2007 and the lease is expired within 11th June, 2008.

Learned standing counsel has submitted that the granting of lease was itself invalid and illegal. The licence was not granted by the Competent Authority and there was clear violation of Section 19 of Mines and Mineral Act, 1957.

In rejoinder, learned senior counsel has submitted that substantial period has now elapsed and Respondents are now taking turn around after a substantial period of time. As the Petitioner has been continuing with the mining operation since 7.1.2007 and there is no reason to roll back the earlier decision. The auction is wholly arbitrary and mala fide.

In fact, mining lease was duly approved by the State Government and there is no illegality in granting the mining lease.

In view of above as an interim measure it is provided that the Petitioner shall be allowed to continue with the mining operations till the next date of listing and necessary forms MM-11 shall be issued in favour of the Petitioner.

Till the next date of listing the operation of the impugned order dated 12.5.2008 shall remain stayed.

12. Subsequently, a modification application dated 29th November, 2009 was filed by the Petitioner on 30th November, 2009 with the following prayer:

It is, therefore, Most Respectfully prayed that the interim order dated 09.06.2008 passed by the Hon"ble Rakesh Sharma, J. may kindly be modified and the lease period may be correctly mentioned as 09.01.2007 to 09.01.2010 and the lease may be extended upto 09.01.2010 for compensating period of 9 months, otherwise the Petitioner will suffer irreparable loss and injury as she has deposited full amount of royalty even for un-operation period.

13. On the said modification application, the following order was passed by the Court on 6th January, 2010: ""

Heard Shri C.L. Pandey, learned Senior Counsel for the Petitioner and learned Standing Counsel for the Respondent Nos. 1 to 4.

Learned counsel for the Petitioner has submitted that mining lease for excavation of sand is expiring on 8.1.2010. Initially the mining lease was granted on 9.1.2007 for a period of three years. Because of an action on the part of the Respondents, the Petitioner was not allowed to excavate sand in furtherance of the lease granted. He had to approach this Court, who had granted an interim order on 9.1.2008. Thus, according to Shri C.L. Pandey, learned Senior Counsel, the Petitioner was prevented to excavate the sand for a period of nine months. He has placed reliance on a judgement rendered by the Apex Court reported in Beg Raj Singh Vs. State of U.P. and Others, . in support of his submissions that if the contractor is prevented to excavate sand for no fault of his, he may be given benefit for the period during which he was prevented to excavate sand. Learned Counsel for the Petitioner laid much stress that lease may be extended for the period during which he was prevented to work.

Learned Standing Counsel strongly resisted the application. He has submitted that the Petitioner has been defaulted in making payment. He did not deposit the royalty within a stipulated period. Shri C.L. Pandey submits that total Rs. 96,2,342/- was deposited by the Petitioner by 16/30.11.2009. He is not defaulter. Learned Standing Counsel has drawn the attention of the court to various pleas taken in the supplementary counter affidavit and submitted that the Petitioner has no legal right to operate beyond the stipulated period of lease i.e. 8.1.2010.

Let the matter be listed for hearing on 13.1.2010.

Till the next date of listing, Petitioner may be allowed to operate on the site excavating sand as per the lease granted. He shall deposit the royalty for the period commencing 9.1.2010 till he continues to excavate the sand on the site. He shall deposit the royalty by 12.1.2010 in the concerned account. Form MM-11 may be issued for the above said period. It is made clear that the benefit of this order shall be available to the Petitioner till 13.1.2010 only i.e. the next date of hearing.

14. When the matter was next taken up on 13th January, 2010, the following order was passed:

Put up on 21.1.2010.

The Petitioner will deposit Rs. 1,00,000/- by the next date of listing.

Till then, interim order granted earlier shall continue.

15. On 21st January, 2010, the Court released the matter and directed it to be listed before the appropriate Court dealing with such matters and the interim order was extended till the next date of listing.

16. In the meantime, an impleadment application was filed on 18th January, 2010 by one Arvind Kumar Nishad for impleadment as Respondent No,5 with the following averments:

2. That the aforesaid writ petition has been preferred before this Hon"ble Court against the order, dated 12thl May, 2008 by which the mining lease of the Petitioner has been declared void under the provision of Section 19 of Mines and Minerals (Regulation and Development) Act, 1957 because the authority executed the lease deed dated 09.1.2007 in favour of the Petitioner is not authorize under Rule 8(1) of the U.P. Mines Minerals (Concession) Rules, 1963.

3. That the applicant alongwith Ram Sagar Nishad son of Daya Ram and Umesh Kumar Bind son of Ram Rati Bind alongwith the Petitioner have applied for lease in view of advertisement dated 06.05.2006 but the Petitioner's application have found suitable and the lease has been executed in his favour by the officer who is not the district officer as defined under Rule 2(2) of the Rule aforesaid, thus, the lease become void.

4. That apart from the above, the other regularities has" also take place in the mine operation by the Petitioner, thus a complaint has been moved and inquiry has been conducted by the Respondents, thereafter, show cause notice has been issued on 25.02.2008 and the lease of the Petitioner has been cancelled as void vide impugned order dated 12th May, 2008.

5. That as per version of the Petitioner as lease deed annexed as Annexure No. 5 to the writ petition, the lease expired on 08.01.2010 and the Petitioner is operating the mine in view of the Hon"ble Court's stay order, whenever the lease

itself is not in accordance with law. The Petitioner is using MM Form-11 in forged manner and misusing the stay order of the Hon''ble Court. The original series of the Form 11 is AAB (Form MM 11 dated 18.12.2009) but the Petitioner is using series LAC (Form MM 11 dated 22.12.2009, 23.12.2009 and 24.12.2009).

6. That the Petitioner has got the extension of the stay order by the Hon''ble Court in view of the judgment of Begraj Singh v. State of U.P. and Ors. (2003) SCC 726, which is not applicable in the case of the Petitioner because in the present writ petition the genuineness of the lease deed is under changed as the order passed by Respondent dated 12 May, 2008 on the ground that the lease has not been executed by the competent officer in Begraj case the lease is not challenged but initially the lease was executed for the one year, whenever, as per the policy of the State in the Government Order dated 25.05.1995 the lease may be 3- 5 years thus the time was extended, as such the Begraj case is not applicable in the case of the Petitioner.

7. That, the Petitioner has not applied for renewal of the lease which admittedly to be expired on-08.01.2010 and the petition is not entitled to be benefited of the judgment of Begraj case, thus the applicant has locus to apply the lease after 8.10.2010 and has locus to be impleaded in the array of Respondents when the mines is illegally operated by the Petitioner on the basis of void lease. 8. That in view of above this Hon''ble Court may be pleased to allow the present application and permit the applicant to be impleaded in the array of Respondents as Respondent No. 5 and contest the case in the interest of justice.

17. On 23rd April, 2010, the learned Judge nominated to hear the matter by Hon''ble The Chief Justice directed that the matter may be listed before another Bench after taking nomination from Hon''ble The Chief Justice and on 27th April, 2010 the matter was nominated to this Court by Hon''ble The Chief Justice.

18. I have heard Sri C.L. Pandey, learned Senior Counsel for the Petitioner assisted by Sri L.K. Dwivedi. Learned Standing Counsel has made submissions on behalf of Respondent Nos. 1 to 4 while Sri U.N. Sharma, learned Senior Counsel assisted by Sri Chandan Sharma, learned Counsel has made submissions on behalf of Arvind Kumar Nishad who has filed the impleadment application.

19. Sri C.L. Pandey, learned Senior Counsel for the Petitioner submitted that though the petition was filed for quashing the order dated 12th May, 2008 passed by the State Government cancelling the lease deeds executed in favour of the Petitioner for three years, but now, as the term of three years has expired, appropriate direction should be issued by this Court for extending the term of the contract by nine months upto 9th October, 2010 since the Petitioner was not permitted to carry out mining from November, 2007 to 30th July, 2008. He pointed out that the Petitioner has continued to do mining under the interim orders of this Court and has also deposited the entire amount for the period of three years which has been accepted by the State Government and so the State Government is under an obligation to permit the Petitioner to carry out mining

for three years and also extend it by such period for which the Petitioner could not carry out mining because of the fault of the State Government. In support of his contention, he has placed reliance upon the decision of the Supreme Court in Beg Raj Singh Vs. State of U.P. and Others,

20. He further submitted that the order dated 12th May, 2008 passed by the State Government deserves to be set aside since the District Magistrate had sought approval of the State Government for granting mining lease in favour of the Petitioner and when the State Government had granted such approval, the signing of the mining lease deed was merely a ministerial act which was performed by the In-charge Officer (Mining). It is, therefore, his submission that the State Government was not justified in cancelling the lease deeds by the order dated 12th May, 2008 while exercising suo motu revisional powers under Rule 78 of the Rules.

21. Learned Senior Counsel for the Petitioner further submitted that the State Government could not have exercised suo motu Revisional powers under Rule 78 of the Rules since the matter was initiated on the complaint made by one Ram Aasrey Nishad and when the State Government found that the said complaint was made after 90 days, it initiated proceedings under Rule 78 of the Rules in a mala fide manner. It is, therefore, his submission that the said proceedings suffer from malice in law and the impugned order deserves to be set aside on this ground also.

22. Learned Standing Counsel, on the other hand, submitted that the order passed by the State Government does not suffer from any infirmity since the lease deeds were not executed by the District Magistrate and were void in view of the provisions of Section 19 of the Act. He further submitted that the State Government was justified in assuming suo motu Revisional powers under Rule 78 of the Rules and that once the leases had been cancelled by the State Government, there was no occasion to extend the leases after three years. It is his submission that the decision of the Supreme Court in Beg Raj Singh (supra) does not apply to the facts of the case.

23. Sri U.N. Sharma, learned Senior Counsel appearing for Arvind Kumar Nishad, who has filed the impleadment application, submitted that Arvind Kumar Nishad had also submitted an application for grant of lease pursuant to the advertisement issued on 6th May, 2006 and he had pointed out the illegality in the execution of the lease deeds in favour of the Petitioner and so the impleadment application deserves to be allowed. He further submitted that after cancellation of the lease deeds, it was necessary to settle them in accordance with the provisions of Rule 72 of the Rules and the Petitioner, who had earlier submitted the application pursuant to the notice dated 6th May, 2006, is an interested person as he will get an opportunity to apply.

24. The impleadment application, filed by Arvind Kumar Nishad, in view of the submissions advanced by the learned Senior Counsel for the applicant, deserves

to be allowed. It is to be noticed that the said applicant had also filed an application along with the Petitioner for grant of lease pursuant to the advertisement issued on 6th May, 2006 and will get a right to apply afresh when an advertisement is issued. The impleadment application is, accordingly, allowed.

25. An advertisement dated 6th May, 2006 was issued by the District Magistrate under Rule 72 of the Rules for grant of lease for the 10 sites. The Rules are a complete Code and govern the mining operations of minor minerals in the State of Uttar Pradesh. The Rules relevant for the purposes of the controversy involved in the present petition are quoted below:

2(2) "District Officer" means the Collector or Deputy Commissioner of the District in which the land is situate.

3. Mining operations to be under a mining lease or mining permit.-(1) No person shall undertake any mining operations in any area within the State of any minor mineral to which these rules are applicable except under and in accordance with the terms and conditions of a mining lease or mining permit granted under these rules:

Provided that nothing shall affect any mining operations undertaken in accordance with the terms and conditions of a mining lease or permit duly granted before the commencement of these rules.

(2) No mining lease of mining permit shall be granted otherwise than in accordance with the provisions of these rules.

8. Disposal of application.-(1) The State Government or the authority authorised by it in this behalf may subject to the provisions of these Rules and after making such further enquiry as it may consider necessary:

(a) in case of application for grant of a mining lease refuse or grant the mining lease for the whole or part of the area applied for and for such period as it may consider proper.

(b) in the case of application for renewal of a mining lease, refuse or renew the mining lease for the whole or part of the area applied for and for such period, not exceeding the period of the original lease, as it may consider proper:

Provided that where an application for grant of renewal of a mining lease is refused or the area is reduced, reasons therefore shall be recorded and communicated to the applicant.

71. Delegation.-The State Government may, by notification direct that any power exercisable by it under these rules may in relation to such matters and subject to such conditions, as may be specified in the notification, be exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification.

78. Revisions.-The State Government may either suo motu at any time or on an

application made within ninety days from the date of communication of the order, call for an examination of the record relating to any order passed proceeding taken by the District Officer Committee, Director or the Divisional Commissioner under these rules and pass such orders as it may think fit.

26. Reference also needs to be made to Section 19 of the Act which is as follows:

19. Prospecting licence and mining leases to be void if in contravention of Act.- Any reconnaissance permit prospecting licence or mining lease renewed, or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect.

Explanation-Where a person has acquired more than one reconnaissance permit prospecting licence or mining lease and the aggregate area covered by such permit licence or lease, as the case may be, exceeds the maximum area permissible u/s 6, only that reconnaissance permit prospecting licence or mining lease the acquisition of which has resulted in such maximum area being exceeded shall be deemed to be void.

27. It is stated that in accordance with Rule 71 of the Rules, the State Government issued the notification dated 5th June, 1997 and delegated its powers for grant of lease under Rule 8(1) to the District Magistrate.

28. In the present case, the approval for granting leases for the ten sites in favour of the Petitioner was not given by the District Magistrate but by the In-charge Officer (Mines) who is much below the rank of the District Magistrate. The lease deeds were also not executed by the District Magistrate but by the In-charge Officer (Mines). A complaint was filed by one Ram Asarey Nishad for cancellation of the lease deeds granted in favour of the Petitioner since they were not approved or executed by the competent officer. The State Government forwarded the complaint to the Director (Geology and Mining), Lucknow for conducting an inquiry. In the meantime the Director (Geology and Mining), Lucknow also submitted a report to the State Government on 30th October, 2007 that the ten lease deeds executed in favour of the Petitioner should be cancelled by exercising suo motu revisional powers under Rule 78 of the Rules. Accordingly, a show cause notice dated 30th October, 2007 was issued by the State Government to the Petitioner under Rule 78 of the Rules for cancellation of the lease deeds. The objections filed by the Petitioner dated 9th April, 2008 were considered by the State Government and by the order dated 12th May, 2008, the State Government cancelled all the ten lease deeds executed in favour of the Petitioner. The State Government has placed reliance upon the decision of a Division Bench of the Lucknow Bench of this Court in Writ Petition No. 2330 (MB) of 2006 (Smt. Parul Goel v. State of U.P. and Ors.) connected with other writ petitions decided on 22nd December, 2006 and has cancelled the lease deeds since they were not issued by the District Magistrate and were, therefore, void u/s 19 of the Act.

29. In the aforesaid Division Bench decision of this Court in Smt. Parul Goel

(supra), the Court while dealing with the powers of the State Government to delegate its powers under Rule 71 of the Rules and the validity of the lease deeds executed by an authority to whom the power has not been delegated, observed:

A bare perusal of the aforesaid Sub-rule (1) makes it clear that the State Government or the authority authorised by it, namely, the State Government, in this behalf, may either grant or refuse the grant of mining lease and so is the case in the case of renewal. The aforesaid provision in unequivocal terms and unambiguously confers power upon the State Government to grant or renew lease or to refuse the same. This power can also be exercised by an authority authorised by the State Government in this behalf, but it cannot be exercised by an authority or officer, who has not been authorised in this behalf by the State Government. The authorization to the authority by the State Government has to be specific and in clear terms of Sub-rule (1). The words "in this behalf after the words "authority authorised by it" mandatorily require that the State Government has to authorize the authority for the purpose of granting or renewal of lease, as the phrase "in this behalf necessarily means the power to grant or renew the lease under Chapter II. How this authorization has to be done by the State Government can be found in rule 71, which reads as under:

The aforesaid power of delegation also requires that the State Government will specify by means of a notification the power, which is otherwise exercisable by the State Government under these rules may in relation to such matters and subject to such conditions, would be exercisable also by the officer or authority subordinate to the State Government, as may be specified in the notification. This means that when the State Government decides to delegate its own power to an officer or authority subordinate to the State Government, it has to specify the matter for which the power is being delegated. The State Government in exercise of the powers under Rule 71 issued a notification bearing No-2380/18-11-97-601-67 on 5th June, 1997 and delegated its powers for the grant of lease under Sub-rule (1) of Rule 8 to the District Officer with respect to the areas falling within the district but not within the forest area. The said notification has conferred power upon the District Officer/Collector even under Rule 9 with respect to the areas within the district, which are not covered by the forest. This notification has not been superseded or modified nor has been disputed by the State Government nor any other notification has been produced. The CDO obviously is not the "District Officer" as defined under the Rules nor he has been authorised nor he can be treated to be the officer authorised under Rule 8(1) in the absence of any such notification having been issued in his favour conferring power for grant of renewal of lease.

...

In view of the admitted position that the CDO was never authorised by the State Government, as per the provisions aforesaid, under the Rules, he cannot be treated to be the District Officer nor was competent to finalize the

recommendations and send the same to the State Government nor was competent to grant lease after the approval was granted by the State Government. The entire procedure thus for making recommendations for approval to the State Government and thereafter the manner in which the State Government considered those recommendations and subsequently grant of lease by the CDO under his own signatures and consequently execution of the lease deeds are all without jurisdiction and contrary to the Rules. The entire transaction, therefore, is non est.

(Emphasis supplied)

30. It is the submission of Sri C.L. Pandey, learned Counsel for the Petitioner that the District Magistrate had sent recommendations to the State Government which had granted its approval by the letter dated 3rd October, 2006 and as only ministerial act was required to be done, the execution of the lease deeds by the In-charge Officer (Mining) cannot be said to be bad in law and, therefore, the State Government was not justified in cancelling the lease deeds merely because the District Magistrate had not executed the lease deeds.

31. This submission cannot be accepted. As noticed hereinabove, the State Government in exercise of the powers conferred upon it under Rule 71 of the Rules, delegated its powers to the District Magistrate by the notification dated 5th June, 1997. The Division Bench of this Court in Smt. Parul Goel (supra), while considering the said notification and the execution of the lease deeds by the Chief Development Officer, held that the Chief Development Officer is not a District Officer nor was he an officer authorised under the notification and, therefore, the grant of lease by the Chief Development Officer under his own signatures and consequent execution of the lease deeds by him are all without jurisdiction and contrary to the Rules. In the present case also, the In-charge Officer (Mines) was not authorised under the notification dated 5th June, 1997 and nor he is a "District Officer". The District Magistrate had neither granted approval to the grant of the lease deeds in favour of the Petitioner and nor were the lease deeds executed by him. As the records show, it was the In-charge Officer (Mines) who had granted approval to the grant of leases in favour of the Petitioner and the lease deeds were also executed by him. The In-charge Officer (Mines) was not authorised to do so under the notification dated 5th June, 1997. Thus, in view of the aforesaid decision of the Court in Smt. Parul Goel (supra) and the provisions of Section 19 of the Act, there is no infirmity in the decision taken by the State Government to cancel the lease deeds executed in favour of the Petitioner by the In-charge Officer (Mines).

32. The submission of the learned Senior Counsel for the Petitioner that the grant of approval by the In-charge Officer (Mines) or the execution of the lease deeds was only a ministerial act, cannot be accepted for the reason that not only had the State Government, while granting approval, directed the District Magistrate to ensure that the Rules and the Government Orders issued from time to time had been complied with, but even otherwise under the notification dated

5th June, 1997, it was the District Magistrate who had been empowered to grant the lease. He alone, therefore, could have granted approval to the grant of leases in favour of the Petitioner and he alone could have executed the lease deeds.

33. It is also the contention of the learned Senior Counsel for the Petitioner that since the proceedings had been initiated on the complaint filed by Ram Asarey Nishad, the State Government was not justified in exercising suo motu revisional powers when it found that no action could be taken on the complaint since it was filed beyond 90 days.

34. This contention cannot also be accepted. There is no period prescribed under the Rules for taking suo motu action by the State Government and nothing prevented the State Government from exercising its revisional powers suo motu even if Ram Asarey Nishad had brought this fact to the notice of the State Government. It is seen that the State Government, on the basis of the report submitted by the Director (Geology and Mining) on 30th October, 2007, decided to issue notice to the Petitioner under Rule 78 of the Rules and it is after consideration of the reply submitted by the Petitioner that the order was passed by the State Government. The submission of the learned Senior Counsel for the Petitioner that the order suffers from malice in law, therefore, cannot be accepted.

35. There is, therefore, no infirmity in the impugned order dated 12th May, 2008 passed by the State Government.

36. The contention of the learned Senior Counsel for the Petitioner that the term of the lease deeds should be extended by nine months after the expiry of the stipulated period of three years, now needs to be examined.

37. It is the contention of the learned Senior Counsel for the Petitioner that though the lease deeds were cancelled by the State Government by the order dated 12th May, 2008, but the Petitioner has continued to do mining under the lease deeds for the full period of three years under the interim order dated 9th June, 2008 passed by the Court and after the expiry of the period of three years, he has also done mining in terms of the interim order dated 6th January, 2010. He has pointed that since the Petitioner could not do the mining from November, 2007 to 30th July, 2008 because of the fault of the State Government/District Magistrate, the term of the contract should be extended by such period and in support of this connection, he has placed reliance upon the decision of the Supreme Court in Beg Raj Singh Vs. State of U.P. and Others, wherein it has been observed:

...The operation had to be stopped because of the order of the State Government intervening which order has been found unsustainable in accordance with stipulations contained in the mining lease consistent with the G.O. issued by the State of Uttar Pradesh. Merely because a little higher revenue can be earned by the State Government that cannot be a ground for not enforcing the obligation of the State Government which it has incurred in accordance with its own policy

decision.

For the foregoing reasons, the petition is allowed with costs. The impugned order of the High Court, dismissing the petition filed by the Petitioner, is set aside. Instead, it is directed that the Petitioner shall be allowed to operate mine for a full period of three years subject to adjustment for the period for which he has already operated. The Petitioner shall remain liable to pay royalty and make other payments to the State Government in accordance with the terms of the lease. The petition stands disposed of in the abovesaid terms.

(Emphasis supplied)

38. The aforesaid decision of the Supreme Court does not help the Petitioner. In the said decision it was found that the order of the State Government was unsustainable but in the present case the order passed by the State Government has been found to be in accordance with law. Once it is held that the order of the State Government dated 12th May, 2008 cancelling the lease deeds executed in favour of the Petitioner does not suffer from any infirmity or illegality, the Petitioner cannot be permitted to mine after the date of the order. The Petitioner cannot be permitted to take benefit of the interim order dated 9th June, 2008 and contend that since he has now operated after 12th May, 2008 under the interim order passed by the Court, he should also be permitted to mine for additional period of nine months, in view of the decision of the Supreme Court in Beg Raj Singh Vs. State of U.P. and Others, since the State Government illegally did not permit him to mine for the said nine months. Once the order passed by the State Government for cancellation of the lease deeds executed in favour of the Petitioner is found to be valid, the writ petition is liable to be dismissed and no benefit of the interim order can be permitted to be taken by the Petitioner.

39. This apart, a Division Bench of this Court in Civil Misc. Writ Petition No. 8914 of 2006 (Shanker Lal v. State of U.P. and Ors.) decided on 18.4.2006 considered a similar controversy and the judgment is quoted below:

This writ petition has been filed for quashing the order dated 4th January, 2006 which has been passed by the District Magistrate, Chitrakoot and for a direction upon the said Respondent to permit the Petitioner to excavate the sand for a further period of 600 days as the Petitioner had been deprived by the Respondents from excavating the sand for this period.

The Petitioner was granted a mining lease for a period of 5 years w.e.f. 18th September, 2000. The contention of the learned Counsel for the Petitioner is that as the Petitioner had been prevented from excavating the sand, the period of contract should be extended by that number of days and in support of his contention he has placed reliance upon the decision of the Supreme Court in Beg Raj Singh Vs. State of U.P. and Others,

Sri Mukesh Prasad learned Counsel for the Respondents and the learned Standing Counsel have on the other hand submitted that the period of contract

expired on 17th September, 2005 and, therefore, in effect the Petitioner is seeking extension of the period of contract which cannot be granted by this Court as that would vary the terms of contract. They have further submitted that as the Petitioner himself was at fault the decision of the Supreme Court in the case of Beg Raj (supra) is not applicable to the facts of the present case.

We have carefully considered the submissions advanced by the learned Counsel for the parties.

The Supreme Court in Union Territory of Pondicherry and Others Vs. P.V. Suresh and Others, and in Orissa State Financial Corporation Vs. Narsingh Ch. Nayak and Others, clearly held that the terms and conditions of the contract cannot be varied or modified and nor can the Court rewrite the contract between the parties. It is therefore not possible for the Court to vary the terms of the contract by extending the period for which the Petitioner could not excavate the sand. We may point out that this Court in Civil Misc. Writ Petition No. 13360 of 2004 (Haji Nawab Ahmad v. Nagar Palika Parishad, Khurja and Anr.) decided on 28th June, 2004 also took a similar view after noticing the decision of the Supreme Court in the case of Beg Raj Singh (supra). The said decision of this Court was affirmed by the Supreme Court in SLP (C) No. 20297 of 2004, which was dismissed on 8th October, 2004.

In our opinion, the decision of the Supreme Court in the case of Beg Raj Singh (supra) is not applicable to the facts and circumstances of the case as in the present case the Petitioner is said to be guilty of contravention of the terms and conditions stipulated in the lease deed for violating the relevant Rules as has been stated in the counter affidavit. Though these facts have been denied in the Rejoinder Affidavit but nevertheless they are disputed questions of facts which cannot be determined in this writ petition. In this view of the matter no relief can be granted to the Petitioner in this petition, It will, however, be open to the Petitioner to claim damages in appropriate proceedings in case he is so advised.

Subject to the observations made above the writ petition is dismissed.

(Emphasis supplied)

40. In Orissa State Financial Corporation Vs. Narsingh Ch. Nayak and Others, referred to in the aforesaid decision, the Supreme Court had observed that the Court should not annul the existing contracts and introduce a new contract and the relevant observations are:

...The order, to say the least, was beyond the scope of the writ petition which was being considered by the High Court and beyond the jurisdiction of the Court in a contractual matter. No doubt, while exercising its extraordinary jurisdiction under Article 226 of the Constitution the High Court has wide power to pass appropriate order and issue proper direction as necessary in the facts and circumstances of the case and in the interest of justice. But that is not to say that the High Court can ignore the scope of the writ petition and nature of the

dispute and enter the field pertaining to contractual obligations between the parties and issue such directions annulling the existing contracts and introducing a fresh contract in its place.

41. It can, however, be contended by the learned Senior Counsel for the Petitioner that the Court should extend the tenure of the contract for the period he was not permitted to do mining prior to 12th May, 2008 i.e. from November, 2007. Even for this period, the Petitioner can, as has also been observed by the Division Bench of this Court in Shanker Lal (supra), seek damages for any loss that may have been caused to him, in appropriate proceedings as it is not possible for the Court in this writ petition under Article 226 of the Constitution to determine whether the Petitioner was not permitted to mine because of the fault of the District Magistrate or he did not mine because of his own fault.

42. The Petitioner has, however, continued to mine under the interim orders dated 9th June, 2008 and 6th January, 2010. The Court has found that the order dated 12th May, 2008 passed by the State Government cancelling the lease deeds executed in favour of the Petitioner is justified. It is, therefore, the duty of the Court to put the parties in the same position they would have been, but for the interim order and the Petitioner cannot be permitted to retain the benefits accrued to him under the interim orders.

43. In this connection reference may be made to the decision of the Supreme Court in State of Gujarat and Others Vs. Dilipbhai Shaligram Patil, wherein it has been observed:

It is well settled that an order granting pending disposal of the writ petition/suit or other proceedings, comes to an end with the disposal of the substantive proceedings and that it is the duty of the Court in such a case to put the parties in the same position, they would have been but for the interim orders of the Court. Any other view would result in the act or order of the court prejudicing the party for no fault of his and would also mean rewarding writ Petitioner in spite of his failure. Any such unjust consequence cannot be countenanced by the courts. [(See Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others,

(Emphasis supplied)

44. In such circumstances, the State Government shall take steps to recover the benefit accrued to the Petitioner during the period he was permitted to mine under the interim orders passed by this Court.

45. The writ petition is, accordingly, dismissed subject to the observations made above.