
(2014) 12 RAJ CK 0093

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) Nos. 1088, 1034 and 1087 of 2014

Sriram Tiwari and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Citation : (2015) 2 CDR 999

Hon'ble Judges : Sunil Ambwani, Acting. C.J.; J.K. Ranka, J.

Bench : Division Bench

Advocate : B.M. Sharma, Advocate, for the Appellant; Abhinav Sharma, A.A.G. and Deven Pareek, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel appearing for the parties. The defects pointed out by the Registry are formal in nature and are thus waived.

2. There is delay in filing D.B. Civil Special Appeal (Writ) Nos. 1088/2014 & 1087/2014, which has been sufficiently explained. The delay is condoned. The applications are allowed.

3. In the writ petitions, learned Single Judge has relegated the petitioners to the alternative remedy of filing an appeal under the Rajasthan Miner Mineral Concession Rules, 1986.

4. On 27.11.2014, we pass the following order in D.B. Civil Special Appeal (Writ) No. 1034/2014 (Anar Singh vs. State of Rajasthan & Anr.):

"Let a copy of the Special Appeal be served in the office of the Advocate" General. On such filing of the copy, notices on respondent Nos. 1 & 2 shall be taken to be served.

It is submitted by learned counsel appearing for the appellant, who were petitioner in the writ petition, that on 21.06.2013, a notice was issued under Rule 18(21) read with Clause 4(21) of the contract for recovering the royalty of

the alleged illegal excavated minerals, with a proposal to impose ten times penalty. On 01.08.2013, the petitioner had submitted a reply to the show cause notice. Without considering the reply and waiting the final orders, the penalty was imposed, and the consequential steps to cease the mines as well as recovery have been initiated. Learned Single Judge has relegated the petitioner to the alternative remedy, without considering that the petitioner's objections were not decided, and that unless the final orders were passed, the remedy of filing appeal was not available to the petitioner.

Learned counsel appearing for the State-respondents will take instructions, and ascertain whether any final order was passed in the matter.

List again on 04.12.2014."

5. Shri Abhinav Sharma, learned Additional Advocate General informs the Court after taking instructions that final orders have not been passed in pursuance to the show cause notice, to which reply was not given within the prescribed time. The rawannas (movement, challans), for carrying the minerals, have been stopped on the ground of the allegation of using forged rawannas for movement of the illegally excavated minerals. In the inspection made on 20.06.2013 by the field staff, it was noticed that the mining was being made beyond the demarcated area of the mining lease, and the movement of the minerals was made on the forged documents. He submits that serious violation of the lease deed detected, on which the issuance of rawannas was stopped. He further submits that the petitioner had not given reply to the show cause notice within 15 days, but admits that so far no final orders have been passed in the matter. Learned Additional Advocate General further submits that in the past also, the petitioners were found using forged documents for movement of minerals, on which action was taken against them.

6. In our view, learned Single judge committed an error of law in relegating the petitioner to the alternative remedy to file appeal, as the final orders, in pursuance to the show cause notice, have not been passed so far. The remedy of appeal can be availed only after the final orders have been passed.

7. We are surprised to find that despite the findings of illegal mining beyond the demarcated area, and the use of forged documents, no final orders have been passed in the matter for last more than one & half years.

8. On the facts and circumstances, the Special Appeals are allowed and while setting aside the orders passed by learned Single Judge, the Special Appeal are disposed of with directions that the respondents will finalize the proceedings in pursuance to show cause notice after considering the reply given by the petitioners. The final orders will be passed, as far as possible within a period of one month from today. In view of the serious allegations made against the petitioners, we direct that until final orders passed in the matter and subject to such orders, the mining shall remain suspended, and that no fresh rawannas will be issued. The coercive process to recover the assessed amount of royalty and

penalty will remain stayed for a period of one month.

A copy of this order be placed in all connected files.