

(2007) 10 SC CK 0105

In the Supreme Court Of India

Case No : Civil Appeal No's. 5874 of 2000 and 4855 of 2007 (Arising out of SLP (C) No. 12611 of 2001)

State of Haryana and Another

APPELLANT

Vs

Aravali Khanij Udyog and Another

RESPONDENT

Date of Decision : 12-10-2007

Acts Referred:

Environment (Protection) Act, 1986 — Section 23, 3

Citation : AIR 2008 SC 273 : (2007) AIRSCW 6730 : (2008) 2 CLT 607 : (2007) 2 CTLJ 241 : (2008) 1 SCC 663 : (2007) 11 SCR 180 : (2007) 8 Supreme 45

Hon'ble Judges : Tarun Chatterjee, J;P. Sathasivam, J

Bench : Division Bench

Advocate : Manjit Singh, AAG, Anup G. Chaudhary and June Chaudhari, Harikesh Singh, Devendra Kumar Singh, T.V. George and K.B. Rohatagi, for the Appellant;

Final Decision : Allowed

Judgement

P. Sathasivam, J.

Civil Appeal No. 5874 of 2000

1. Secretary to Government, Mines and Geology Department, Haryana and Director of Mines and Geology, Government of Haryana aggrieved by the order of the Punjab and Haryana High Court dated 09.05.2000 made in C.W.P. No. 3007 of 2000 have filed the above appeal.

BRIEF FACTS:

2. On 18.02.1980, lease of mining silica sand was granted to the respondent M/s Aravali Khanij Udyog in respect of 139 hectares of land in certain areas of village Chelaka and sand in Tehsil Nuh, Dist. Gurgaon, Haryana for a period of 20 years by the appellants. Silica sand is a major mineral and is found underneath the ordinary sand, a minor mineral. In order to exploit the silica, every lessee is required to remove the overlaying ordinary sand in the interest of sale,

systematic and scientific mining. As both ordinary and silica sand occur one above the other, the State Government took a policy decision in August, 1984 to grant the mining lease of ordinary sand also to the lessee of silica sand for the purpose of systematic and harmonious mining in accordance with the Regulation No. 106 of Metalliferrous Mines Regulation, 1961.

3. As per the said decision, on 27.09.1984, the respondent- herein was advised to apply for the mining lease of ordinary sand. According to the Department, in spite of four reminders, no steps were taken by the respondent to apply for the mining lease for the ordinary sand. A notice dated 12.07.1985 was also served upon them. Finally, the mining lease was prematurely terminated on 06.05.1986. Aggrieved by the said order, the respondent filed a revision before the Central Government. On the basis of the undertaking of the lessee, the Central Government, vide its order dated 28.03.1998, while restoring the mining lease of the respondent also directed them to apply for the mining lease of ordinary sand within 30 days of the order. Subsequent to the order of restoration, the respondent applied for the grant of mining lease of ordinary sand which was granted to them for a period corresponding with the mining lease period of silica sand i.e. up to 17.02.2000. Since the period of mining lease was to expire on 17.02.2000, the respondent submitted a representation on 01.03.1999 to the State Government requesting for extension of the mining lease by 850 days on the ground that for 850 days his mining lease remained terminated in past. Since no decision was taken by the State Government on the request of the respondent, the respondent filed a writ petition No. 602 of 2000 in the Punjab and Haryana High Court, which, by order dated 16.02.2000, directed the State to take a decision on the representation of the respondent within a period of one month. Pursuant to the said direction and after hearing the counsel for the respondent herein, by order dated 03.03.2000, the Financial Commissioner and Secretary to Government of Haryana, Mines and Geology Department rejected the representation for extension of the mining lease period.

4. Questioning the rejection order of the Financial Commissioner, the respondent herein filed C.W.P. No. 3007 of 2000 in the Punjab and Haryana High Court for quashing the same. Though serious objection was raised by the State through their reply statement, the Division Bench of the High Court, by order dated 09.05.2000, allowed the writ petition and directed that the writ-petitioner shall be put into possession of the lease by 01.06.2000. Challenging the said order, the State of Haryana filed the above appeal.

5. We heard Mr. Anoop G. Chaudhari, Mrs. June Chaudhari, learned senior counsel and Mr. Manjeet Singh, AAG for the appellants and Mr. K.B. Rohtagi, learned Counsel for the respondents.

6. In view of the fact that the lease granted in favour of the respondent had expired long ago and in the light of the subsequent developments as well as orders of this Court, it is unnecessary to traverse the claim of both the parties in detail. It is not in dispute that the lease of mining granted in favour of the

respondent-herein expired on 17.02.2000. However, it is the grievance of the respondent that because of the conduct of the Mining Department, they were not in a position to mine for a period of 850 days, hence they are entitled to extension of mining lease by 850 days for which they made a representation on 01.03.1999. Though the said representation was considered and rejected by the Financial Commissioner and Secretary to Government of Haryana, Mines and Geology Department, the said order was set aside by the Punjab & Haryana High Court which is a subject- matter of the present appeal.

7. Learned senior counsel appearing for the appellants by placing an affidavit of Shri S.K.Gupta, Assistant, Mining Engineer, Gurgaon, Department of Mines and Geology, Haryana dated 11.10.2007 (copy of which was supplied to counsel for the respondent) submitted that after expiry of lease period granted in favour of the respondent, the extraction rights for minor mineral from the site in question were auctioned on 20.12.2001 and given to M/s Dolphin Minerals, Gurgaon who was the highest bidder. He also submitted that the said auction was challenged by the respondent-herein by filing C.W.P. 19798 of 2001 before the High Court of Punjab and Haryana and ultimately the High Court dismissed the said writ petition on 12.09.2002. The following information in the affidavit of the Mining Engineer is relevant which reads as under:

4. ...Thereafter, the aforesaid bid (auction) was confirmed in favour of M/s Dolphin Minerals, 182 Phase-IV, Udyog Vihar, Gurgaon on 12.11.2002. Since then the aforesaid party i.e. M/s Dolphin Minerals is the lawful lessee of the said site and the lease period is still existing. Hence, third party rights have been created and no effective order could be passed without hearing the said third party i.e. M/s Dolphin Minerals.

8. In view of the above factual information, as rightly pointed out by learned senior counsel for the appellants and in view of the third party rights having been created, no relief could be granted in favour of the respondent-herein at this juncture.

9. In the same affidavit, the officer has stated that the mineral extraction of the said site, along with all other sites falling in Aravalis in Dist. Gurgaon has been stopped pursuant to the orders passed by this Court in M.C. Mehta and T.N. Godavarman Thirumalpad case. In this regard, learned senior counsel for the appellants placed an order passed by this Court on 16.12.2002 wherein this Court prohibited mining operation in forest areas. Among the various directions, the direction relating to Haryana State reads thus:

2. Under Notification dated 29th November, 1999 issued u/s 23 of the Environment (Protection) Act for certain Districts including Gurgaon District in the State of Haryana, the Ministry has delegated power to grant approval for mining purposes to the State. The mining activities are being regulated under the Notification dated 7th May, 1992 issued by the Ministry of Environment and Forest (Annexure A-1 in IA No. 833). We direct that, for the time being, no

mining shall be permitted within the areas of Gurgaon District in the State of Haryana where mining is regulated under the Notification dated 7.5.1992 issued u/s 3 of the Environment (Protection) Act, pursuant to permission granted after 29th November, 1999.

As on date, the said direction is in force.

10. From the above discussion, the following conclusion would emerge:

a) the mining lease granted on 18.02.1980 in favour of the respondent-herein had expired even on 17.02.2000;

b) after expiry of the lease, the site in question was auctioned on 20.12.2001 and given to M/s Dolphin Minerals, Guragon, who was the highest bidder. Though the said order was challenged by the respondent-herein, admittedly the writ petition was dismissed by the Punjab and Haryana High Court.

c) As per the order of this Court dated 16.12.2002, the mining operation in the entire area of Gurgaon Dist. is prohibited.

11. In view of the same, the direction of the High Court granting relief in favour of the respondent-herein cannot be implemented at this juncture. However, the respondent is free to approach the appropriate court for damages/compensation if the same are permissible in accordance with law.

12. With the above observation, the appeal is allowed. However, there shall be no order as to costs.

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13. Leave granted.

14. The respondent-herein questioning the order of the very same High Court dated 21.03.2001 passed in C.W.P. 14277 of 1999 against cancellation of the lease filed the above appeal by way of special leave.

15. In view of our conclusion in Civil Appeal No. 5874 of 2000, the appeal filed by the respondent-herein - M/s Aravali Khanij Udyog is dismissed.