(2009) 03 P&H CK 0164

In the Punjab And Haryana At Chandigarh

State of Haryana APPELLANT

Vs

Jai Durga Finvest Private Limited RESPONDENT

Date of Decision : 21-03-2009

Acts Referred:

Citation : (2009) 03 P&H CK 0164

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

H.S. Bhalla, J.—By this common judgment, we shall be disposing of two appeals, being Letters Patent Appeal Nos. 215 of 2006 filed by the State of Haryana and 85 of 2007 filed by M/s Durga Finvest Private Limited (hereinafter referred to as "the respondent-firm") together as the question of fact and law involved therein is identical in nature. However, for the sake of convenience, facts are being extracted from Letters Patent Appeal No. 215 of 2006.

2. This appeal filed under Clause X of the Letters Patent is directed against judgment dated 4.8.2006 passed by the learned Single Judge rendered in Civil Writ Petition No. 12114 of 2000.

3. The facts required to be noticed for the disposal of the appeal are that the respondent-firm, in order to obtain contract for the extraction of sand from Bega Murthal Sand Zone, gave a highest bid of Rs. 1.48 crore per annum in an auction held on 6.4.1998. The highest bid offered by the respondent-firm was accepted by the appellant. The contract was executed between the respondent and the State on 30.11.1998. In terms of the contract, the respondent-firm deposited a sum of Rs. 37 lac as security with the department of Mines and Geology, Haryana. Thereafter the respondent-firm approached the land owners of the villages, namely, Nandnaur, Larsauli, Pipli Khera, Murthal and Bhagan for settlement of compensation, so that sand could be extracted through the mining process. The land owners did not agree to this. It is the case of the respondent-

firm that it was not allowed to extract sand from the quarries. It was unable to settle the amount of compensation for the use of land for the purpose of sand mining and therefore, it requested the Mining Officer for getting the compensation assessed from the Collector. No response was received by the respondent-firm from the appellant and therefore, it could not extract any sand from Bega-Murthal Sand Zone. It is further the case of the respondent-firm that it paid the monthly installments upto 31.8.1999. The Mining Officer issued one month notice dated 19.1.2000 for termination of the contract alleging that the respondent-firm had failed to pay the installments and interest thereon from September 1999 to January 2000. Thereafter, the contract was terminated by the Director, Mines and Geology, Haryana vide order dated 9.3.2000. The security amount was also forfeited. The respondent-firm filed an appeal, which was partly accepted by the appellate authority vide order dated 10.7.2000 and the security was ordered to be adjusted towards the outstanding amount against the respondent-firm. The respondent-firm received the demand notice from the appellant-State for depositing a sum of Rs. 68,35,298/- out of which, it had deposited a sum of Rs. 26,00,000/- on 18.8.2000. However, the appellant was not held entitled to the contract money from 10.3.2000 to 7.4.2000. The respondent-firm filed Civil Writ Petition No. 12114 of 2000, which was allowed partly vide judgment dated 7.10.2002 by a Single Bench of this Court, operative part of which, runs as under:

During the course of arguments, Mr. Yadav, confined his submission to two points, namely, that after the admitted termination of lease on 9.3.2000, the respondents had not legal right to claim rent and interest upto 7.4.2000, which had been claimed by them, according to the calculation sheet (Annexure P-5). He also submitted that Clause 18-A of the contract, which indicates that no interest would be payable on the security deposited by the petitioner, was inexecutable on account of the fact that if the said amount had been placed with a Banking Institution, the petitioner would have become entitled to receive interest thereon.

Taking up the second point first, it is evident that the petitioner had at least two opportunities of scanning through the terms of the lease for which it had given bid on 6.4.1998; the first would come prior to participating in the auction and the second would be available before signing of the actual contract. It is not the case of the petitioner that it was coerced into bid by any of the representatives of the State nor does the petitioner assert that when the contract was signed. It was working under some undue influence or pressure. Having voluntarily entered into a contract, which obliged it to deposit with the respondents some amount, which was to be held as interest from the security by the respo9ndents, it would not lie in the mouth of the petitioner to assail the contract as unconscionable and oppressive. The plea has been taken at a stage especially when the major period of the contract had already expired.

The first argument, however, has some substance. The mining lease in the present case had been terminated on 9.3.2000 and it is only upto the date of termination that the respondents could have charged the rent for the same. Once the agreement is terminated, it would not be open to the State of demand lease money for the remaining period of the lease extending from 10.3.2000 to 7.4.2000 for which the lessee was being denied its right to extract sand. To this extent the petition will have to be allowed and a direction issued to the respondents to recalculate the amount due from the petitioner in the light of the above observation. If any amount is still found due after adjusting the amount of Rs. 53,37,881/- the petitioner would be obliged to deposit the same with the respondents together with interest chargeable on delayed payments. In the event of the petitioner not depositing the said amount within a month of the reassessment, the respondents would be at liberty to recover the same in accordance with law.

4. Being dissatisfied with this order, the respondent filed a SLP in the Hon''ble Supreme Court, being Civil Appeal No. 9267 of 2003 arising out of SLP No. 9491 of 2003. The said appeal was accepted by Hon''ble the Supreme Court vide judgment dated 5.1.2004 and order dated 7.10.2002 was set aside and the matter was remitted to this Court with the direction to consider the matter afresh in the light of the observations made in the judgment by Hon''ble the Supreme Court. Matter was decided by a Single Bench of this Court vide order dated 4.8.2006, operative part of which, reads as under:

Keeping in view the discussion held above, the petitioner has failed to prove that the respondents had failed to discharge their statutory obligations. It is rather the petitioner who failed to function in accordance with the terms and conditions of the agreement dated 30.11.1988. Therefore, the petition stands partly allowed in the following terms, i.e., the contract money and interest thereon for the period from 10.3.2000 to 7.4.2000 can not be charged by the respondents from the petitioners as the contract had come to an end on 9.3.2000. However, the petitioner would be liable to pay the contract amount upto 9.3.2000 in terms of the contract agreement dated 30.11.1998. The petitioner would also be entitled to interest @ 9% of the security amount of Rs. 37 lacs from the date of its deposit till it is adjusted against the amount which was outstanding against him as on 9.3.2000 or returned. If any amount is found recoverable from the petitioner, the same would be recovered in accordance with law but if the amount paid by the petitioner is found in excess, the same would be refunded by the respondents to the petitioner forthwith. The petition with regard to the remaining claims is dismissed.

5. Aggrieved against this order, the State of Haryana preferred LPA No. 215 of 2006 whereas the present petitioner preferred L.P.A. No. 85 of 2007 for setting aside order dated 4.8.2006.

6. A perusal of the record clearly spells out that the learned Counsel appearing for the respondent-firm vehemently argued before Hon''ble the Supreme Court that the respondent could not extract sand from the contracted place because the appellant-State failed to cooperate for which they were legally bound under

Clause (7) of the agreement dated 30.11.1998, therefore, the appellant was responsible for the loss suffered by the respondent-firm because of non-extraction of sand and as such, it was entitled to refund the entire amount as ordered by it to the appellant with interest.

7. Before we proceed further in the matter, it would be necessary at this stage to peep through order dated 5.1.2004 passed by Hon''ble the Supreme Court and we find that the Apex Court made reference to the provisions of Clauses (9), (17), (18) and (27) of the agreement dated 30.11.1998. The relevant extract of order dated 5.1.2004 reads as under:

It is not in dispute that the grant of mining lease in favour of the appellant herein for the extraction of mineral sand by the respondents is governed by the provisions of Punjab Minor Mineral Concession Rules, 1964. In terms of Rule 33 the bidder is required to execute a deed in Form `L''. Clause 27 of the agreement in Form `L'' obligates the respondent to comply with the request made in terms thereof. The Appellate Authority had not considered this aspect of the matter. The High Court also did not apply its mind in this behalf. The first question that arises whether the respondents complied with their statutory obligations when the request was made by the appellant. If not, the second question would be the effect of non-compliance of the statutory obligation of the respondents which formed part of the contract in so far as they did not comply with the appellants request as aforementioned which had a direct bearing to the right of the appellant to raise sand. As the High Court, as noticed here-in-before, has merely proceeded on the basis that the appellant had entered into the contract with his eyes wide open but the same would not, in our opinion, mean that they were bound to pay the contract amount, get its security amount forfeited, as also pay interest at the rate of 24 per cent, though it could not, by reason of acts of omission and commission on the part of the respondents, carry out the mining operation as per the terms of the agreement.

8. The above quoted portion of the judgment of the Apex Court clearly spells out that this Court was required to re-determine the issues keeping in mind its observation. It is further admitted case of both the parties that the respondent-firm moved an application for amendment of the Civil Writ Petition, which was contested and the learned Single Judge, vide order dated 26.5.2006, directed that the amendment of the writ petition qua clauses 14-D, 14-E and 15 and the prayer clause shall be decided along with the main writ petition. It is admitted case of the respondent-firm that it sought only two reliefs. Firstly, direction to the State not to charge contract money and interest thereon from 9.3.2000 to 7.4.2000 and secondly to issue direction declaring Clause 19 of the agreement null and void to the extent it stipulates non-payment of interest on the heavy amount of security deposited by the respondent-firm and that direction be issued to the appellant-State to pay interest @ 24% per annum on the amount of security. On 7.10.2002 counsel for the respondent-firm suffered a statement before the court, which runs as under:

During the course of arguments, Mr. Yadav , confined his submission to two points, namely, that after the admitted termination of the lease on 9.3.2000, the respondents had no legal right to claim rent and interest upto 7.4.2000, which had been claimed by them, according to the calculation sheet (Annexure P-5). He also submitted that Clause 18-A of the contract, which indicates that no interest would be payable on the security deposited by the petitioner, was in executable on account of the fact that if the said amount had been placed with a Banking institution, the petitioner would have become entitled to receive interest thereon.

9. The question involved herein is - whether the respondent could not extract the sand because of the fault of the appellant, if so, its effect?

10. Before we proceed further in the matter, it would be apt to refer to Clause 27 of the agreement dated 30.11.1998, which reads thus:

27 Acquisition of land of third parties and compensation thereof:

In accordance with provisions of Clause 9 of this agreement the contractor shall offer to pay compensation to an occupier or owner of the surface of the land where from the minor mineral will be raised including the land required for use as access to the quarry/mine stacking of mineral and purpose subsidiary thereto for any damage or injury which may arise from the proposed mining operations of the contractor and in case the said occupier or owner refused his consent to the exercise or the rights and powers reserved to the government and demised to the contractor under these presents. The contractor shall report the matter to the Assistant Mining Engineer/Mining Officer posted in the District who shall request the collector of the District concerned to direct the occupier or the owners on such mining/quarrying operations as may be necessary for the working of the mine/quarry on deposit with the collector to the occupier or the owner by the contractor subject to its final fixation by the collector under the Land Acquisition Act, 1894:

(a) 10% of the annual contract for land comprising the quarry/mine; and

(b) A sum of rate of one rupee per square yard in the case of waste land per year for land to be used for access to quarry /mine, stacking of minerals and other subsidiaries purpose. The contractor shall use the shortest possible route for access to the quarry/mine.

If the amount of final compensation works out to be more than the tentative amount of compensation already deposited/ the contractor shall deposit immediately on demand by the collector the additional amount of compensation. If however, the amount of final compensation is less than the amount already deposited by the contractor, the excess amount shall be refunded to him.

11. The above quoted clause clearly spells out that it refers to the duties of the Mining Contractor and the Mining officer. As per the case of the respondent, it was only to settle the amount of compensation for the use of the land for the purpose of sand mining and as such, it requested the Mining Officer for getting

the compensation assessed from the Collector, but to no effect. The appellant, during the course of reply, categorically pleaded that at the time of execution of the contract agreement as required by Condition No. 7 of the auction notice and also by the acceptance letter, the respondent-firm submitted an affidavit to the effect that it shall settle the compensation at its level with the land owners and indemnify the State Government in this regard and shall not claim any relief in payment of contract money on the plea that the land owners had interfered in the extraction of sand. In case of non-settlement of compensation at their level with the land owners, the respondent-firm was required to report the matter to the Mining Officer, Sonepat to refer the case for fixation of compensation under Rule 61 of the State Rules to the Collector Sonepat. In the present case, the respondent-firm neither deposited the tentative compensation with the Mining Officer, Sonepat nor gave him the details of the land of various villages from where it intended to extract sand, but the fact is that respondent-firm was not very keen to commence mining operation as it had entered into some sort of arrangement with the contractors of neighboring sand zones according to which, the extraction of sand was to be carried out only from two sand zones i.e., Chatter & Chewer, keeping the third zone i.e., Bega Murthal as an idle.

12. It is admitted case of the respondent-firm that it has not furnished the details about the notice given by it to the appellant or how many notices were served on the appellant nor it has disclosed the contents of those notices. Even those notices were also not annexed with the petition. It is further admitted case between the parties that no postal receipt or acknowledgment due was filed with the writ petition to prove if any such notice was sent by the respondent-firm to the appellant by registered cover .

13. As per the stand of the State, the respondent-firm was required to extract the sand and it had also furnished an affidavit at the time of auction that it will extract the sand at its own responsibility and the notice, which was sent by the respondent-firm to the appellant-State was not in compliance to the provisions of Clause 27 of agreement dated 30.11.1998 and the respondent-firm had failed to furnish names of the land owners who were not cooperating during the extraction. Even the details of the land and the villagers were not disclosed by the respondent firm along with the notice. The contents of the notice had not been disclosed, which were served by the respondent-firm on the appellant. During the course of reply filed by the State to the application for amendment, a copy of notice dated 28.12.1999 sent by the respondent -firm to the appellant was placed on the record. Since the entire case of the parties also revolves around this notice, the same is required to be noticed at this stage, which reads as under:

To

The Mining Officer, Sonepat.

Subject:- Glg/Cont/SNP/98-2001/Bega Murthal Zone/7642 for the period

10.10.98 to 31.3.2001

Sir,

We have taken the contract in auction for extraction of sand from 56 villages of Bega Murthal zone @ Rs. 1,48,00,000/- (One crore forty eight lacs only) Per Annum for the period upto 31.3.2001 and also paid Rs. 37,00,000/- as security and Rs. 12,33,334/-as advance installment.

From the date of acceptance of bid to date we could not work in any village in spite of best efforts made by us and despite this we have paid the installments from other sources so that the contract may not be disturbed. Now you are requested to take action to arrange the land from these village. Because without work we are unable to pay the contract money.

You are requested to tell us that as per condition No. 27 of agreement how much amount and in whose favour is to be deposited. You are informed that books given to us for running the work also are lying unused with us. So you are requested to kindly get the possession of the land urgently so that we may be able to start our work.

14. In response to the aforequoted letter/notice, the Mining Officer replied, which is as follows:

From

The Mining Officer, Mines and Geology Department, Sonepat.

To

M/s Jai Durga Finvest Pvt. Ltd. 703/14, Sonepat.

Memo No. 105 dated 10.1.2000

Subject: Glg/Cont/SNP/98-2001/Mega Murthal Zone/7462 for the period 10.10.98 to 31.3.2001 Under the aforesaid subject with reference to your Letters Patent Appeal No. 215 of 2006 and Letters Patent Appeal No. 85 of 2007 13 In Civil Writ Petition No. 12114 of 2000

Memo No. Nil dated 28.12.99.

You have been granted the contract of aforesaid zone w.e.f.10.10.98. After that you executed agreement deed with the deptt. At that time you gave an affidavit to this office that we shall take land from owners at our own level. From 10.10.1998 to 28.12.1999 you have never intimated this office about any type of difficulty. Now as the installment of contract money for the month of September , 1999 amounting to Rs. 9,08,334/- and for the month of October 1999 to December 1999 and January 2000 are also due to you then you have written this letter. In addition to this you have never returned the weighment slip books which were issued to you. You are working in village Nandnaur from beginning. Even then if you are facing any difficulty in getting possession of land in any village, then submit the details of land, like name and village, total are required, name of land owner, khasra girdawari, killa No. etc. along with 10% tentative compensation immediately so that the possession of required land, after fixation of compensation by the collector can be handed over to you. In addition to this you are hereby informed that deposit the outstanding installments of contract money of your contract along with interest immediately, if you fail to deposit the amount, the process of termination of your contract shall be initiated.

Sd/-Mining Officer Mining & Geology Department Sonepat.

14. Having gone through the letter issued by the respondent and the reply of the Mining Officer, we find that after the execution of the agreement, the respondent served a notice on the appellant-State at the first instance on 28.12.1999. Meaning thereby that response came from the side of the respondent after the expiry of more than one year of lease/license period and no explanation in this regard has come forward on behalf of the respondent. If the respondent was obstructed by the land owners, then it would not sleep over its right for more than one year. The respondent is trying to construct a building on a sandy foundation, which is bound to collapse. In our considered opinion, in case of any obstruction by the villagers, respondent would have reported the matter to the appellant immediately when it failed to extract the land due to the problems created by the owners/occupiers of the land. Moreover, in the rejoinder to the reply of the amended application, the respondent categorically pleaded that it had served a notice on 19.11.1998, but to our mind, it is a false plea because the agreement itself was executed on 30.11.1998. Therefore notice dated 19.11.1998 could not be served by the respondent before it became entitled to extract the sand. Moreover, no such plea was raised in the writ petition. If at all, notice was issued on 19.11.1998, then this would have been mentioned in the notice dated 28.12.1999. Then again, if no response to the notice dated 19.11.1998 was received by the respondent, then it would not have waited for one year to send another notice to the appellant on 28.12.1999. Moreover, no postal receipt or acknowledgment was placed on the file in support of the plea in order to prove the service of notice dated 19.11.1998. All this proves beyond doubt that the respondent has raised a false plea with regard to the issuance of notice in order to secure benefits from the department. Moreover, having gone through the agreement, we find that respondent was also required to submit a monthly return about the sand extracted and if it was not extracting any sand due to the problems created by the land owners then it would certainly submit a monthly report/return to that effect mentioning therein that extraction of the land/sand is Nil. All this clearly spells out that respondent is negligent in not reporting the matter to the appellant-State in time. Besides this, the respondent-firm was disclosed by the department through its reply dated 10.1.2000 that it was working in village Nandnaur and in case it was facing difficulty in getting the possession of the land, it should furnish details of the land along with the name of the village and was called upon to deposit 10% of the tentative compensation immediately, so that the possession of the required land, after fixation of the

compensation by the collector, could be handed over to the respondent, whereas in the notice dated 28.12.1999, the respondent had neither given the details about the land or the village or the land owners nor it had sent the requisite money, i.e., 10% amount of the tentative compensation. It is also an admitted case that the department issued a letter to the respondent calling upon it to furnish the details as required under Clause 27 of the agreement, but no compliance was made by the respondent and it kept on pleading that the -State had failed to discharge its statutory liability. It is further admitted case that notice dated 19.1.2000 was served upon the respondent calling upon it to make the payment of monthly installment, failing which the contract could be cancelled, but the respondent again wrote another letter dated 25.1.2000 to the appellant in which it repeated the same story with regard to providing of land in villages, so that it may do mining and extract sand, but it neither discloses khasra numbers of the land owners, name of the land owners, who were creating problems for the respondent and even 10% of the bid money, as required under Clause 27 of agreement, was not deposited being part of tentative compensation to those farmers. As already discussed above, and at the cost of repetition, Hon''ble the Supreme Court made an observation that two questions were to be taken care of and answered by this Court, the first of which was, whether the appellant had complied with its statutory obligation, when the request was made by the respondent and the second was, if the said statutory obligation was not discharged by the appellant its effect on non-extraction of sand by the respondent. But we find that the respondent has failed to prove that the appellant did not comply with the statutory obligation. The respondent remained silent for more than one year after the execution of the agreement. In such like circumstances, learned Counsel for the respondent has not been able to show as to how the appellant failed to comply with the statutory obligation and since the respondent could not succeed on this count, the second question does not arise.

15. Learned Counsel appearing for the respondent-firm in support of his contention has placed reliance upon the authorities rendered in the cases of The Bhopal Sugar Industries Ltd. Vs. The Income Tax Officer, Bhopal, ; Shantilal R. Desai v. Gujarat Electricity Board, (1971) 3 SCC 854; State of Uttar Pradesh and Another Vs. Raza Buland Sugar Co. Ltd., Rampur, ; Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, ; Suresh Kumar Vs. Kunhappa Nair and Others, ; Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another, ; Union of India (UOI) Vs. Krimpex Synthetics Ltd., ; State of Kerala Vs. Cochin Chemical Refineries Ltd., and M/s. Gautam Construction and Fisheries Ltd. Vs. National Bank for Agriculture and Rural Development and Another, . A reading of these authorities would show that they bear no resemblance to the facts in the instant case and do not in any manner support the point canvassed in the context of nature and circumstances of the present case.

16. In the facts and circumstances as referred to above , we find that the respondent-firm has failed to abide by the terms and conditions of the

agreement dated 30.11.1998. Therefore, the order of termination of the contract does not suffer from any illegality, particularly when the respondent-firm failed to respond even to the notice of termination dated 19.1.2000. In our considered opinion, respondent-firm was responsible for not extracting the sand from the licensed land and for his failure to comply with the provisions of Clause 27 of the agreement dated 30.11.1998, but at the same time, we also find that demand made by the appellant for the installments for the period from 10.3.2000 to 7.4.2000 is also not justified as the respondent-firm was denied the right to extract sand after terminating its contract vide order dated 9.3.2000 and in this manner, the claim made by the appellant for the contract money or interest thereon for this period is not legally maintainable. Learned Additional Advocate General appearing for the State of Haryana also submitted that as per Clause 19 of the agreement dated 30.11.1998, no interest was payable on the amount of security, but the contention raised by the State counsel cannot be accepted, inasmuch as they have been charging interest on the monthly installment and as well as on the delayed payments. Therefore, they cannot deny interest on the amount of security retained by them and as the appellant has retained the amount of the respondent-firm, Clause 19 of the agreement would not stand in the way of the respondent-firm and this clause is not liable to be upheld. We find that the learned Single Judge has awarded interest at the rate of 9% per annum from the date of deposit till the date of adjustment of the security amount or its repayment, which is in consonance with law. Approach of the learned Single Judge, in our considered opinion, in awarding interest at the rate of 9% per annum can not at all be said to be erroneous, which may warrant interference by this Court. Learned Counsel for the respondent-firm has not been able to show any irregularity or impropriety in the judgment dated 4.8.2006 passed by the learned Single Judge of this Court nor could point out any glaring defect on the law point, which has resulted in miscarriage of justice, which needs to be set right by this Court.

17. In the light of what has been observed above, both these appeals, being LPA Nos. 215 of 2006 filed by the State of Haryana and 85 of 2007 filed by the respondent-firm fail and are dismissed.

