
(2014) 03 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10114/2008

Sudarshan Kumar Purohit

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 4 WLN 170

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : Amit Vyas for D.D. Thanvi, Advocate for the Appellant; Suman Porwal, Deputy Government Counsel, Advocate for the Respondent

Judgement

Sangeet Lodha, J.—This writ petition is directed against order dt. 19.11.08 passed by the Deputy Secretary, Department of Mines, Government of Rajasthan, Jaipur, whereby the revision petition preferred by the petitioner against order dt. 16.7.08 of Superintending Mining Engineer, Jaipur, accepting the application dt. 22.12.07, preferred by the petitioner surrendering the mining lease w.e.f. 22.6.08, stands dismissed. The relevant facts are that a mining lease granted initially in favour of M/s. Mahendra Company Limited for excavation of marble at village-Saradhana, Tehsil-Bewar, District-Ajmer, was transferred in favour of the petitioner vide order dt. 28.7.01. The petitioner vide an application dt. 22.12.07, submitted before the Superintending Mining Engineer, Jaipur surrendered the mining lease with immediate effect in terms of Rule 18(18) of the Rajasthan Minor Mineral Concession Rules, 1986 (for short "the Rules"). It is submitted that as on the date of making the application for immediate surrender of the mining lease, neither any dues were outstanding nor any proceedings regarding breach of any condition of the mining lease was pending against the petitioner. Pending consideration of the application preferred, vide order dt. 2.6.08 issued by the Mining Engineer, Ajmer, penalty of forfeiture of 10% of the amount of security deposit quantified at Rs. 4,910/- was imposed upon the petitioner for alleged late deposit of difference security amount. Accordingly,

keeping in view the outstanding dues against the petitioner, the application preferred for surrender of lease was accepted vide order dt. 16.07.2008 passed by the Superintending Mining Engineer, after a period of six months from the date of notice i.e. w.e.f. 22.6.08 and consequently, the petitioner has become liable to pay the dead rent for the period from 22.12.2007 to 22.06.2008. In these circumstances, aggrieved by the order dt. 16.07.2008, the petitioner preferred revision petition before the State Government, which stands dismissed by the Deputy Secretary, Mines, Government of Rajasthan, by the order impugned. Hence, this petition.

2. Learned counsel for the petitioner submitted that the revisional authority has seriously erred in rejecting the revision petition preferred by the petitioner against the order dt. 16.7.08 passed by the Superintending Mining Engineer accepting the application preferred by the petitioner for surrender of mining lease after expiry of six months from the date of making the application. Learned counsel submitted that admittedly, as on 22.12.07, neither any dues were outstanding nor any other proceeding regarding breach of condition of mining lease was pending against the petitioner and therefore, the authority concerned was under an obligation to accept the surrender of mining lease with immediate effect as mandated by Rule 18(18) of the Rules. Learned counsel submitted that the penalty was imposed vide order dt. 2.6.08 after procuring the letter dt. 31.5.08 from the Mining Engineer, Ajmer regarding alleged non removal of the deficiencies pointed out. Learned counsel submitted that admittedly, the amount of dead rent and the late fee in terms of the deficiencies pointed out at serial No. 1 & 3 were deposited by the petitioner and even the penalty imposed could have been recovered from the security deposit of the petitioner and therefore, even otherwise, the respondents could not have deferred the acceptance of the application preferred by the petitioner for surrender of mining lease with immediate effect. Accordingly, it is submitted that the order impugned passed by the respondent authority without considering the correct factual position and the law applicable, is ex facie illegal and arbitrary and therefore, order impugned deserves to be set aside.

3. On the other hand, learned Deputy Government Counsel appearing for the respondents submitted that on the date of submission of application, an amount of Rs. 35989/- was due against the petitioner towards excess royalty and a sum of Rs. 24,550/- was due towards penalty and thus, a total sum of Rs. 60,539/- was outstanding against the petitioner and therefore, the surrender of mining lease has rightly not been accepted with immediate effect as prayed for. Learned counsel submitted that as per Rule 18(18) of the Rules, in case there is any outstanding dues against the lessee, the surrender of mining lease prayed for, can be accepted only after lapse of period of six months and therefore, the order impugned passed by the competent authority does not suffer from any infirmity or illegality so as to warrant interference by this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

4. I have considered the rival submissions and perused the material on record.

5. The controversy involved in the present writ petition rolls around Rule 18(18) of the Rules, which reads as under:

"18(18) The lessee may surrender the lease at any time by giving an application in writing to Mining Engineer/Assistant Mining Engineer, which shall be accepted with immediate effect provided there are no dues against the lessee in respect of the lease. In case there are dues against the lessee, the surrender of lease shall be accepted after 6 months of the date of notice but where only one quarterly installment of dead rent is due against the lessee and where there are no other breaches of the term of lease, the security of the lease shall be adjusted against dues and surrender shall be accepted with immediate effect:

Provided that where the mineral deposit is not economically workable, the lessee may surrender a part of the lease area with immediate effect by submitting an application to the Mining Engineer/Assistant Mining Engineer which may be accepted by the competent authority subject to the following conditions:-

(a) The area retained shall be rectangular and contiguous in shape, length being not more than 4 times the width.

(b) The extent of retained area shall not be less than the minimum prescribed size of the plot fixed for the mineral for that area.

(c) There shall be no dues against the lessee."

6. Indisputably, as on the date the petitioner preferred the application for surrender of the mining lease, no proceeding regarding alleged breach of the directions issued for removal of the deficiencies was pending against the petitioner. It is to be noticed that the Mining Engineer had recommended for acceptance of the application preferred by the petitioner for surrender of the mining lease with immediate effect vide letter dt. 30.1.08 placed on record as Annexure 1, stating in unequivocal terms that no dues are outstanding against the petitioner. There is no denial of the fact that the proceeding regarding alleged breach of the directions regarding removal of deficiencies was initiated pursuant to the letter dt. 31.5.08 issued by the Mining Engineer, who had earlier recommended for the acceptance of the surrender of mining lease with immediate effect, as aforesaid. It is pertinent to note that in the order dt. 2.6.08, it is specifically mentioned that the defects pointed at serial No. 1 & 3 therein were removed by the petitioner prior to filing of the application for surrender of the mining lease. Thus, the stand taken by the respondents regarding the amount of Rs. 35,989/- being outstanding against the petitioner as on the date of filing the application, does not appear to be correct. It is pertinent to note that the alleged liability of penalty was created against the petitioner vide order dt. 2.6.08 in the proceeding initiated subsequent to the application preferred by the petitioner for surrender of mining lease. That apart, an amount of Rs. 24,550/- said to be outstanding against the petitioner could have been recovered out of

the amount of security of lease deposited by the petitioner with the respondents. Thus, taking into consideration the totality of the facts and circumstances of the case, in the considered opinion of this Court, the action of the respondents in deferring the acceptance of the application preferred by the petitioner for surrender of mining lease with immediate effect runs contrary to the provisions of Rule 18(18) of the Rules and therefore, cannot be sustained. In the result, the writ petition succeeds, it is hereby allowed. The order impugned dt. 19.11.08 passed by the revisional authority and order dt. 16.7.08 passed by the Superintending Mining Engineer, Jaipur are quashed. The application preferred by the petitioner for surrender of mining lease shall be treated to have been accepted with immediate effect i.e. w.e.f. 22.12.2007. No order as to costs.