

(2012) 07 JH CK 0213

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3070 of 2006

Swapan Bhaumik

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Citation : (2012) 4 JLJR 267

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Saurav Arun, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. This writ petition has been filed for quashing the letter dated 24.12.2005 vide Memo No. 1936 (Annexure-6) by which the stone mining lease granted to petitioner has been cancelled.

2. According to the petitioner, on 11.8.1983 lease agreement was entered into between the petitioner and the respondents for doing the stone mining for the period of 15 years. Thereafter, lease of stone mining of the petitioner has been renewed on 26.4.2005 for a period of 10 years.

3. Learned counsel for the petitioner submitted that the order dated 24.12.2005 vide Annexure-6 has been issued by which lease has been cancelled by District Mining Officer, Ranchi for the reason that the lease should not be extended for the remaining period because of maintaining natural beauty and environmental balance.

4. It is the case of the petitioner that the requirement of Rule 27(1) of the Jharkhand Minor Mineral Concession Rules, 2004 has not been followed according to which minimum of three months prior notice is required to be issued upon the leaseholder before cancellation of lease. It is further submitted that respondents

were granted repeated adjournments whereafter three counter affidavits have been filed by them wherein it has not been denied that three months prior notice as stipulated under 27(1) of the Jharkhand Minor Mineral Concession Rules, 2004 was given to the petitioner.

5. On the other hand, learned counsel for the respondents submitted by referring Annexures-D and E of the supplementary counter affidavit that notices were issued to the petitioner on 15.9.2005 whereafter petitioner appeared before the Deputy Commissioner, but he has not submitted anything and the impugned order was passed thereafter.

6. However, learned counsel for the petitioner has refuted the contention of the respondents by submitting that the notice issued on behalf of the respondents was notice of hearing and not the notice of three months, which is required under Rule 27(1) of the Jharkhand Minor Mineral Concession Rules, 2004 in question, which is mandatory in nature. Learned counsel for the petitioner has relied upon a judgment of this Court in the case of similarly situated person in which the subsisting lease of the said petitioner Amar Prasad Sharma, which was to expire in the year 2015 had been cancelled on the similar ground without serving any notice and without giving an opportunity to the petitioner. In the said writ petition being W.P. (C) No. 3069 of 2006 vide judgment dated 28.8.2006, this Court had directed the respondents to give an opportunity of hearing to the petitioner before taking any action of cancellation of lease by passing a reasoned order. Learned counsel for the petitioner submits that the case of the present petitioner is similar to that of the case of Amar Prasad Sharma as in this case respondents have not given three months prior notice as stipulated under Rule 27(1) of the Jharkhand Minor Mineral Concession Rules, 2004.

7. After hearing of the parties and after going through the records as well as impugned order, it appears that impugned order dated 24.12.2005 has been passed by the respondents without complying Rule 27(1) of the Jharkhand Minor Mineral Concession Rules, 2004 and without giving three months prior notice before cancellation of the lease to the petitioner. Moreover, in similar circumstances, this Court had remanded the matter back to the respondents to pass a fresh order after giving appropriate opportunity of hearing while passing speaking and reasoned order.

8. In view of the aforesaid facts and circumstances and also considering the judgment relied upon by the petitioner being W.P. (C) 3069 of 2006, the impugned order dated 24.12.2005 is quashed and the matter is remanded back to the respondents with liberty to serve required notice on the petitioner within stipulated period giving the ground of cancellation of his lease and to pass a speaking and reasoned order after giving appropriate opportunity of hearing to the petitioner. Accordingly, this writ petition is allowed in the aforesaid terms.