
(2011) 07 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5117 of 2010

Tilak Raj Singh

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 247
Metalliferous Mines Regulations, 1961 — Regulation 164(1)

Citation : (2012) 2 EFLT 146

Hon'ble Judges : S.R. Alam, C.J.;Alok Aradhe, J

Bench : Division Bench

Judgement

S.R. Alam, C.J. and Alok Aradhe, J.—In this writ petition which has been filed as public interest litigation, the petitioner who is a resident of village of Hinauti, district-Satna inter alia, seeks a direction to the respondent No. 8 not to carry out blasting operations within 500 metres of abadi area of villages Hinauti and Bandrakha, district-Satna. The petitioner also seeks a direction to the respondents 1 to 6 to ensure compliance of agreement dated 10.2.1995 and to make payment of compensation to the villagers whose properties have been damaged on account of blasting operations carried out by the respondent No. 8-company. The facts, leading to filing of the writ petition, briefly stated, are that the respondent No. 8, namely, Prism Cement Co. Ltd. has a cement manufacturing unit in village Mankahari, district - Satna. For the purpose of manufacture of cement the respondent No. 8 company has been granted mining lease by the State Government for extraction of lime stone in the year 1995. The petitioner's case is that in a meeting dated 10.2.1995 presided over by the Collector, which was also attended by the villagers as well as representatives of the respondent No. 8 company, an undertaking was given on behalf of the respondent No. 8 that blasting operations shall not be carried out within the periphery of 500 metres of abadi area. However, in contravention of the aforesaid undertaking, the respondent No. 8 is carrying out the blasting operations as a result of which houses and buildings of the villages - Hinauti and Bandrakha have

developed cracks. The representations Annexures P-8 and P-9 dated 18.8.2009 and 4.11.2009 were submitted to the Collector. However, the representations submitted by the petitioners have failed to evoke any response. In the aforesaid factual backdrop, the petitioner has approached this Court.

2. Shri D.K. Tripathi, learned Counsel for the petitioner submitted that due to blasting operations carried out by the respondent No. 8 company, damage has been caused to the houses and property of the villagers of villages - Hinauti and Bandrakha. In support of aforesaid submissions, learned Counsel for the petitioner has made reference to the panchnama prepared by the Tahsildar (Annexure P-5) and the complaints contained in Annexures P-8 and P-9 as well as the photographs (Annexure P-13). It was further submitted that though an undertaking was given on behalf of the company that no blasting operation shall be carried out within the periphery of five hundred metres of abadi area, yet the blasting operations are being carried out within the aforesaid periphery as a result of which damage has been caused to the houses and property of the villagers of the villages-Hinauti and Bandrakha. Learned Counsel, therefore, submitted that the respondents should be restrained from carrying out any blasting operation with the periphery of five hundred metres of abadi area of villages Hinauti and Bandrakha.

3. On the other hand, Shri Kumaresh Pathak, learned Deputy Advocate General for the respondents 1 to 3 and 5 to 7 submitted that this Court vide order dated 20.7.2007 had issued an interim direction by which the Mining Officer of the Mining Department was directed to depute an officer to supervise the blasting activities undertaken by the respondent No. 8. In compliance of the directions issued by this Court, one Mining Inspector was deputed to supervise the mining operations carried out by the respondent No. 8 company. The reports of the Mining Inspector have been brought on record as Annexure R-1 to show that blasting operation is being carried out in a controlled manner on a very low intensity. The allegation regarding damage to the houses and buildings of the residents of the villages- Hinauti and Bandrakha is not correct. It has further been submitted that the blasting operation is being carried out by the respondent No. 8 after obtaining statutory permission in accordance with law.

4. Shri Kishore Shrivastava, learned Senior Counsel for the respondent No. 8 company submitted that the mining lease has been granted to the respondent No. 8 company for extraction of lime stone in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the rules framed thereunder, namely, Mineral Concession Rules. The lease deed in statutory form has been executed. Clause 5 of the Part III of the lease deed only prohibits the respondent No. 8 from carrying out any blasting operation within periphery of 50 metres from any railway line, rope way, public road and buildings and inhibited site except with the previous written permission of Deputy Commissioner/Collector. It is submitted that there is no restriction on mining activities beyond the distance of 50 metres. Under Clause 4 of Part VII of the

lease deed, if on account of any mining activity any person suffers damage, in such an event he can claim compensation from the State Government. However, the lessee is required to keep the State Government indemnified in this regard. It has further been submitted that the blasting operation is being carried out by the respondent No. 8 company in accordance with the statutory permission granted to it. There are only two houses situate within the periphery of 500 metres as is apparent from the document contained in Annexure P-5 annexed by the petitioner himself. In paragraphs 24 and 25 of the return it has been stated that the houses shown in Annexure P-13 belong to the respondent No. 8 and this fact has not been disputed by the petitioner. The complaints contained in Annexure P-8 filed along with I.A. No. 13375/2010 have been filed by the brother, father and mother of the petitioner respectively. It has also been submitted that though the State Government has annexured 35 reports with regard to blasting operations carried out by the respondent No. 8 company in which it is stated that the blasting operations are being carried out in accordance with the statutory permission given to the respondent No. 8 company have not been disputed or controverted by the petitioner. The award for acquisition of the lands for the purpose of mining u/s 247 of the M.P. Land Revenue Code, 1959 has already been passed. However, the aforesaid award has not been challenged by any of the villagers. The instant writ petition is not a bona fide public interest litigation and has been filed only to harass the respondent No. 8. It is submitted that the petitioner is an ex-employee of the respondent No. 8 and his brother, namely, Pushpendra Singh, is under the employment of the respondent No. 8, who tried to extort money to the extent of Rs. 6 lacs and also wanted an assurance of service from the respondent No. 8, and when the management of respondent No. 8 did not succumb to the pressure, with a mala fide intention, the present P.I.L. has been filed.

5. We have considered the submissions made by learned Counsel for the parties. Admittedly in the year 1996 the respondent No. 8 company has been granted the lease deed in Statutory Form "k" appended to Mineral Concession Rules, 1960 for extraction of limestone. From a perusal of the Clause 5 of the lease deed it is apparent that there is no restriction for the lessee to carry out the mining activities beyond 50 metres of abadi area. The respondent No. 8 has obtained statutory permission under Regulation 164 (1) (d) of the Metalliferrous Mines Regulations, 1961 (Annexure R-8/6) from the Director General, Mines Safety vide order dated 9.9.2004 which also permits the respondent No. 8 company to carry out the blasting operations. The respondent No. 8 has also annexed the report prepared by the Central Mining Research Institute, Regional Centre (Annexure R-8/7) to show that the company is carrying out the blasting operation within fixed parameters. The facts that a lease deed has been executed in favour of the company and that it has obtained statutory permission under Regulation 164 (1) (d) of the Metalliferrous Mines Regulations, 1961 from the Director General, Mines Safety vide order dated 9.9.2004 as well as the report given by the Central Mining Research Institute, Regional Centre (Annexure R-8/7) have not been

disputed by the petitioner. In the absence of any challenge to the lease deed and statutory permission granted to the respondent No. 8, it cannot be prevented from carrying out blasting operations as per the terms and conditions of the lease deed and in accordance with the statutory permission granted to it under the Metalliferrous Mines Regulations, 1961.

6. So far as the issue with regard to damage to the houses and properties of the villagers of the villages-Hinauti and Bandrakha is concerned, the petitioner has asserted that damages is being caused due to illegal blasting operations carried out by the respondent No. 8 company. The petitioner has relied on Annexure P-5 the panchnama and the photographs, Annexure P-13 to support his version. On the other hand, in paragraphs 24 and 25 of the return filed by the respondent No. 8 company it has been asserted that the houses shown in photographs contained in Annexure P-13 belong to the respondent No. 8 company. The aforesaid fact is not controverted in the rejoinder given by the petitioner. From perusal of Annexure P-5-Panchnama on which reliance has been placed by the petitioner, it is apparent that only two houses are situate within the periphery of 500 metres. In compliance of the order dated 27.10.2010, a Mining Inspector was deputed by the State Government who has made supervision of the mining activities of the respondent No. 8 company. The State Government along with its return has Annexed 35 reports which show that the blasting operations are being carried out by the respondent No. 8 company in accordance with the statutory permission granted to it and in accordance with the lease deed. The aforesaid reports so have not been disputed by the petitioner.

7. The question whether or not any damages is being caused to the houses and properties of the villagers is a question of fact which cannot be adjudicated by this Court in the writ petition in view of the contradictory stands taken by the parties. However, in case, any villagers is aggrieved on account of any damage caused to his property, it would be open for him to lodge a claim for compensation before the competent authority as provided in Clause 4 of Part-VII of the lease deed. We have no manner of doubt that if any villager makes a claim for compensation, the same shall be examined and dealt with by the competent authority in accordance with law expeditiously. The authorities of the State Government shall also ensure that the blasting operations are carried out by the respondent No. 8 in accordance with the terms and conditions of the lease deed and in accordance with the provisions of the statutory permission granted to the respondent No. 8 vide Annexure R-8/6 by the Director General, Mines Safety. With the aforesaid directions the writ petition is disposed of.