

(1983) 01 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Writ Petition No. 978 and 979 of 1974

Tiwari Jhooma Lal Swarooplal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 18-01-1983

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15

Citation : (1983) WLN 600

Hon'ble Judges : P.K. Banerjee, C.J

Bench : Single Bench

Judgement

P.K. Banerjee, C.J.—This rule is directed against an order passed by the Government by way of penalty forfeiting 40% of the security which the petitioner deposited with the Government.

2. The petitioner is a lessee of minor mineral under the Rajasthan Minor Mineral Concession Rules, 1959 (here in after referred to as "the Rules"). These Rules have been framed u/s 15 of the Mines and Minerals (Regulation and Development) Act, 1957 The petitioner was in possession of the said mine for a number of years but during the period in question, though the petitioner continued in possession, no lease deed was executed by the Government for the reasons best known to them. But be that as it nay, under Rule 17 of the Rules, it has been provided that the conditions have been included in every mining lease and if they are not so included, shall be deemed to have been included therein. Therefore, whether the lease was executed or not, a minor mineral lease will be deemed to contain the provisions as laid down in Rule 17 of the Rules. Sub-rules (21) and (22) of Rule 17 run as follows:

(21) The Government shall have the right to determine the lease after serving a notice on the lessee to pay the dues within 30 days from the date of receipt of notice and to forfeit the security if the dead rent or royalty or surface rent reserved or made payable by the lessee is not paid within 15 days next after the dated in the lease for payment of the same. Government may also at any time

after serving aforesaid notice enter upon the said premises and distrain all or any of the minerals or movable property therein and may carry away detain or order these of the property so distrained, or so much of it as will suffice for the satisfaction of the rent or royalty due and all costs and expenses occasioned by the non-payment thereof.

(22) In Case of any breach on the part of the lessee of any covenant or condition contained in the lease other than a condition regarding rent or royalty), the Government may determine the lease and take possession of the said premises and forfeit the service money or in the alternative, may impose payment of a penalty not exceeding twice the amount of the annual dead rent from the lessee. Such action shall no be taken unless the lessee has failed to remedy tie breach after 30 days notice.

It appears to me that Sub-rule (21) provides that for non-payment of dead rent, royalty or surface rent reserved or made payable by the lessee, the Government can determine the lease after serving notice or forfeit the security. Under Sub-rule (22) in case of any breach on the part of the lessee of any other covenant or condition contained in the lease (other than a condition regarding rent or royalty), the Government may determine the lease a d take possession of the said premises and forfeit the security money or in the alternative may impose payment of penalty not exceeding twice the amount of annual dead lent from the lessee. In the present case, it appears, the petitioner admittedly could not pay the dead rent within the stipulated time though at the present moment, dead rent and royalty have been paid. The question, therefore, for my consid eation is whether the penalty imposed under Rule 17 Sub-rule (21) can be imposed on the petitioners. Mr. Keshote on behalf of tae petitioners contended that it cannot be imposed in view of the different wordings of Rule 17 Sub-rule (21) and Rule 17 Sub-rule (22) of the Rule. They, according to him, come into play in two different situations. For non-payment of dead rent it is open to the Government to determine the lease or forfeit the security, but in respect of violation of any other conditions, it is open to the Government to determine the lease or forfeit the security money, or in the alternative impose penalty. Mr. Khan, on behalf of the respondents contends that what was done by the responde its is that 40% of the security deposit was forfeited. In my opinion, however, the word "Shasti" has been used in the order the English translation of which cannot but be penalty. Therefore, a penalty has been imposed on the petitioner for non-payment of rent or royalty within the time allowed under Rule 17 Sub-rule (21) of the Rules. That, according to me, is not possible. No penalty can be imposed for violation of the term as contained in Rule 17 Sub-rule (22), though it is open for the respondent to forfeit the security wholly or determine the lease but imposition of penalty is not to be found within this condition at all. A penalty is imposed under Rule 17 Sub-rule (22) only if the Government feels that determination of lease or forfeiture of security will not be made and in the alternative penalty can be imposed Under Sub-rule (22) of Rule 17 of the Rules, determination of the lease, forfeiture of the security and imposition of penalty cannot be made at the same

time. If the lease is determined, the question of imposing a penalty does not arise. If the security money is forfeited, question of imposition of penalty under Rule 17(22) also will not arise. But in case the Government feels that justice of the case will be served by imposing a penalty On the lessee, it cannot determine the lease and forfeit the security under Rule 17 Sub-rule (22) of the Rules. Reading Sub-rules (21) and (22) of Rule 17, in my opined, they act on different field. As in the press it case there is a violation of Rule 17 Sub-rule (21), the question of imposition of penalty will not arise.

3. I, therefore, set aside the order in so far as the penalty portion is concerned and maintain the other portions of the order. It is, however, said that the petitioners have already paid the dues of the Government. That is for the Government to consider and if some dues still are pending, they will be at liberty to realise the same from the petitioners. Any amount which has already been paid as a penalty will be adjusted to the subsequent rent or dead rent or royalty by the Government.