
(2008) 01 GUJ CK 0046

In the Gujarat High Court

Case No : Special Civil Application No. 8604 of 1999

Veekee Developers Pvt. Ltd. and Another	APPELLANT
Vs	
State of Gujarat and Others	RESPONDENT

Date of Decision : 28-01-2008

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 10, 11(2), 17A(2)

Citation : AIR 2008 Guj 76 : (2008) 1 GLH 369 : (2008) 2 GLR 1027

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : Y.M. Thakkar, for Petitioners 1-2, for the Appellant; Maithili Mehta, AGP for Respondent 1, Ratna Vora, for Respondent 2 and Mukund M. Desai, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—This petition has been preferred praying for following reliefs:

8. The petitioner therefore humbly prays that:

A. Your Lordship may be pleased to issue a writ of mandamus or any other writ/order/ or direction in the form of mandamus or any other appropriate writ directing the Respondent No. 1 & 2, to grant Mining lease of land bearing survey No. 125/1, strictly following statutory provisions of the Mines and Minerals (R & D) Act 1957 for extracting Manganese from the land bearing survey No. 125/1 of Village Shivrajpur, Tal. Halol, Dist. Panchmahals.

B. Your Lordship may be pleased to issue writ of mandamus or a writ in the form and nature of mandamus or any other appropriate writ/order or direction directing the Respondent No. 1 & 2, to consider the application of the petitioners dated 4.10.1996 for the grant of Mining lease for the land bearing survey No. 125/1 of the Village Shivrajpur, Tal. Halol, Dist. Panchmahals as the petitioners are qualifying all the criteria's and requirement stipulated in the Act.

C. Your Lordship may be pleased to issue writ of mandamus or a writ in the form and nature of mandamus or any other appropriate writ/order or direction quashing and setting aside the action of the Respondent No. 1 in recommending the Resp. No. 3, M/s. C.K. Thakore & Sons for the grant of Mining lease of land bearing survey No. 125/1 of the Village Shivrajpur, Tal. Halol, Dist. Panchmahals vide recommendation dated 07.12.1998. Annexure "H" to the Central Government, as the same is arbitrary, illegal, null and void as the same is against the statutory provisions of the Mines and Mineral (R & D) Act 1957.

D. Your Lordship may be pleased to stay the grant of Mining Lease of land bearing survey No. 125/1 of village Shivrajpur, Tal. Halol, Dist. Panchmahals to any other person, without considering the applications of the petitioners, pending admission, hearing and final disposal of the present writ petition.

E. Your Lordship may be pleased to stay the grant of Mining Lease of land bearing survey No. 125/1 of village Shivrajpur, Tal. Halol, Dist. Panchmahals to any other person pending admission, hearing and final disposal of the present writ petition.

F. Your Lordship may be pleased to grant any other further relief(s) looking to the case and circumstances of the case and/or deem fit just and proper in the case.

2. According to the petitioners, an application for being granted Mining Lease came to be filed in Form-I as required by provisions of Section 10 of The Mines and Minerals (Development and Regulation) Act, 1957 (the Act) which was received by the respondent State Government on 05.10.1996. According to the petitioners, on 07.12.1998 the Additional Secretary, Industries & Mines Department, communicated to respondent No. 3 that the application moved by respondent No. 3 can be recommended to the Central Government for grant of Mining Lease on the conditions stipulated therein. It appears that both the applications moved by the petitioners and respondent No. 3 pertain to same parcel of land. According to the petitioners, the knowledge regarding communication dated 07.12.1998 was derived by the petitioners only on 01.10.1999 and hence, the petition which was moved on 29.10.1999.

3. Heard the learned advocate for the petitioners. His principal grievance was to the effect that the application moved by the petitioners was prior in point of time and hence, the petitioners were entitled to being considered for grant of Mining Lease whereas the respondent authorities have wrongly recommended, or taken a decision to recommend respondent No. 3. However, he hastened to add that, in any event, the application moved by the petitioners has not been decided till date by the respondent authorities and in case any such decision has been decision, the same has never been communicated to the petitioners. It was further urged that before recommending respondent No. 3, respondent State authorities were duty bound to inform the Central Government that the petitioners have also applied for Mining Lease for the very same parcel of land and as the State Government had failed to intimate the said fact to the Central

Government the case of respondent No. 3 was wrongly considered.

4. Learned Assistant Government Pleader appearing on behalf of the respondent State Government authorities firstly pointed out that factually it was incorrect that the application moved by the petitioners was prior in point of time i.e. prior to the application of respondent No. 3 and, therefore, there was no obligation on the State Government to inform the Central Government about any application moved by the petitioners. Inviting attention to provisions of Section 11(2) of the Act it was submitted that in a case where two or more persons have applied for Mining Lease in respect of the same area, the applicant, whose application was received earlier, shall have the preferential right to be considered for grant of Mining Lease over the applicant whose application was received later. That as the application moved by the petitioners was later in point of time, the application of the petitioners was kept pending and no decision had been taken on the basis of the past practice and procedure adopted by the State authorities.

5. When the Court called upon the learned Assistant Government Pleader to explain the basis for such practice and procedure it was submitted that such a procedure was adopted to ensure that in the event an application moved by the applicant, who was prior in point of time, being rejected for whatsoever reasons the application of the applicant, whose application is later in point of time, can be taken up for consideration. It was contended that though there was no such provision either in the Act or The Mineral Concession Rules, 1960 (the Rules), the procedure was adopted to save time and was in consonance with requirement of the provisions of Section 11(2) of the Act.

6. Lastly, it was submitted that in light of subsequent notification dated 01.06.2007 in exercise of powers u/s 17A(2) of the Act specified Local Limits have been sought to be reserved for undertaking prospecting or mining operation of Manganese Ore by the Gujarat Mineral Development Corporation Limited for a period of 30 (thirty) years from the date of publication of the notification and hence, at this juncture, the petitioners cannot get any relief even if the application moved by the petitioners is taken up for consideration.

7. In rejoinder the learned advocate for the petitioners has submitted that if a decision is taken by the respondent State Government on the application moved by the petitioners, the petitioners would get a right to challenge such a decision in case the decision is adverse to the petitioners and hence, the respondent State authorities must be directed to decide the application moved by the petitioners.

8. As certain reliefs have prayed against respondent No. 3, learned advocate for respondent No. 3 was also heard. However, in light of the admitted factual position, it is not necessary to make any direction which would affect respondent No. 3 at this stage.

9. As of today, it is not possible to state that the petitioners were entitled to be preferentially considered in so far as the application of the petitioners is

concerned for the simple reason that the application of respondent No. 3 was found to be prior in point of time as recorded by the respondent State authorities and there is no material to dispute or go behind the said factual averment. In any view of the matter that is an issue which can be raised before the authorities when a hearing is granted by the authorities.

10. However, it is apparent that in absence of any statutory provisions, either in the Act or under the Rules, the respondent State authorities could not have kept the application of the petitioners pending without intimating the petitioners about such pendency. Even if the respondent State authorities rely on provisions of Section 11(2) of the Act the respondent State authorities are bound to inform the later applicant that the application is required to be considered after the application of the applicant, who is prior in point of time and who is entitled to preferential consideration under the provisions of Section 11(2) of the Act. In absence of such a communication the applicant, like the petitioners, is not in a position to decide future course of action : as to whether the applicant should await outcome of the application or should make a fresh application in relation to a different parcel of land. Hence, the practice and procedure adopted by the respondent State authorities cannot be accepted and permitted to operate in entirety. The respondent State authorities, even if they are inclined to continue with such practice and procedure, should necessarily ensure that every applicant in relation to same parcel of land is informed about any prior application or applications which are pending or which are under consideration. This is the least that is required in law and principles of fair play are expected from the State authorities. There is another angle to this aspect of the matter. This will ensure that no allegations about favouritism or malpractice or malafides are levelled against the State authorities once the order of priority is known to all applicants.

11. In the facts and circumstances of the case there is no dispute that not only such an intimation was not forwarded to the petitioners but the application moved by the petitioners has not been processed. In fact no decision as such appears to have been taken and the application which was moved in 1996 is stated to be pending till date. In the aforesaid set of circumstances the respondent State authorities are directed to ensure that a decision, in accordance with law, is taken on the application moved by the petitioners as expeditiously as possible, preferably within a period of 04 (four) weeks from the date of receipt of a simple copy of this order, without waiting for a certified copy.

12. In light of what is stated hereinbefore, it is not necessary to pass any further orders or grant any further relief. The petition is allowed accordingly in the aforesaid terms. Rule made absolute to the aforesaid extent. There shall be no order as to costs.