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(2009) 10 OHC CK 0018

In the Orissa High Court

Zenith Mining Pvt. Ltd. APPELLANT

Vs

Collector and Others RESPONDENT

Date of Decision : 22-10-2009

Acts Referred:

Constitution of India, 1950 — Article 14
Mines and Minerals (Development and Regulation) Act, 1957 — Section 8, 8(2)

Citation : (2010) 109 CLT 173 : (2010) 1 OLR 809 Supp

Hon'ble Judges : I.M. Quddusi, Acting C.J.;Sanju Panda, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sanju Panda, J.—In this Writ Petition challenge has been made to the Order Dated 17.7.2000 passed by the Government of Orissa, Department of Steel & Mines in rejecting the representation of the Petitioner dated 6.2.1999 regarding renewal of mining lease period from 10 years to 20 years as per the provisions of the Mines & Minerals (Regulation & Development) Act, 1957 (hereinafter referred to as "the Act").

2. The brief facts of the case are as follows:

One Mrs. D.K. Baipandya was granted mining lease for a period of 30 years in respect of an area of Ac.438.97 at Bonai in the district of Sundargarh in the year 1943. While the said lease was continuing, on 14.10.1957 a circular was issued by the Government of Orissa in the Department of Mines & Fuel wherein it was categorically stated that the date of commencement of mining lease will be the date of commencement of execution of the formal instrument of lease & not the date of the Government order sanctioning the lease. After the expiry of the lease period, the State Government declined to renew the lease. Therefore, OJC No. 1664 of 1981 was filed challenging the rejection order of the State Government to renew the mining lease. In the said Writ Petition, this Court directed the State Government to look into the grievance of the Petitioner & decide the matter afresh. Despite the direction of this Court, the State Government rejected the

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renewal application without giving an opportunity of hearing. Therefore, another Writ Petition i.e. OJC No. 201 of 1990 was filed & a direction was given to the parties to rectify the deficiencies in the application within a stipulated time & direction was also given to the State Government to make appropriate move to the Central Government for renewal of the lease period. In pursuance of the said direction given by this Court on 11.7.1991 in OJC No. 201 of 1991, the State Government allowed the renewal of the lease on 29.10.1991. The formal sanction of the State Government for renewal of the lease was made on 29.10.1991 & the lease deed was executed in favour of Smt. Baipandya for mining of manganese ore for a period of 10 years with effect from 2.8.1996. As such, she started mining operation in the area. During the mining operation, it was found that apart from manganese are, iron ore also existed in the lease hold area of the Petitioner. Accordingly the State Government included iron are in the lease deed dated 2.8.1996 by way of supplementary lease deed dated 13.8.1998. The present Petitioner applied for transfer of the mining lease area held by Smt. Baipandya in its favour. The lease was transferred in favour of the present Petitioner in accordance with the rules. The present Petitioner became the lessee. After the lease was transferred in favour of the Petitioner, it made a representation before the State Government seeking correction of lease period in the lease deed dated 2.8.1996 from 10 years to 20 years as Ordinance 2 of 1994 was promulgated by bringing amendment to Section 8 of the Act. As per the said amendment, the maximum period for which mining lease may be granted was proposed to be not exceeding 30 years which was earlier confined to 20 years only. The minimum period of lease was changed to not less than 20 years which was earlier 10 years. Thus, as per the said amendment to Section 8 of the Principal Act, all the mining leases executed thereafter are to be given minimum for a period of 20 years.

3. M/s. Narayani & Sons made a representation on 22.4.1996 for correction of renewal period of mining lease from 10 years to 20 years. The State Government recommended its case to the Central Government in view of the aforesaid amendment to Section 8 of the Act. The Central Government vide notification dated 30.1.1997 vested power with the State Government for grant of renewal of mining lease reviving the term from 10 years to 20 years as per the aforesaid amended provision of Section 8(2) of the Act. The mining lease granted in favour of M/s. Narayani & Sons was renewed by the State Government on 6.7.1990. The lease, deed was executed on 28.12.1992 & the correction was made by the State Government in the said mining leasadeed on 25.2.1999 by changing the expression "10 years" to "20 years''. Since the present Petitioner is similarly situated as that of M/s. Narayani & Sons, it approached the State Government for renewal of the mining lease granted in its favour from 10 years to 20 years. As the State Government did not consider the same, the Petitioner filed OJC No. 8097 of 1999 which was disposed of on 9.3.2000 with a direction to the State Government to consider the representation of the Petitioner within one month in the light of the amended provision. The State Government by a non-speaking

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order rejected the representation of the Petitioner on 17.7.2000. Therefore, the Petitioner has filed this Writ Petition challenging the said non-speaking Order Dated 17.7.2000 of the State Government.

4. The Learned Counsel appearing for the Petitioner submitted that the action of the State Government is discriminatory as the State Government though corrected the lease period from 10 years to 20 years in the case of M/s. Narayani & Sons did not consider the case of the Petitioner who is similarly situated & the Petitioner being the lessee is entitled to the benefit of the amended provision of Section 8 of the Act as it has only stepped into the shoes of the original lessee after the lease being duly transferred.

5. The State Government filed its counter affidavit taking a stand that the Petitioner being the transferee of the lease is not entitled to the benefit of the amended provision. They have further stated that in the case of M/s. Narayani & Sons the lease period has been corrected giving benefit of the amended Act as because it was the original lessee who applied for such extension in accordance with amended rules. Therefore, the Petitioner''s representation was rejected.

6. On the direction of this Court, the Learned Government Advocate produced the relevant records. We have perused the same.

7. From the aforesaid submissions of the Learned Counsel for the parties, this Court has to consider whether the transferee of the lease is entitled to the benefit of the amended provision of Section 8(2) of the Act. There is no doubt that the transfer was made in accordance with the law. As such, the transferee acquired all rights & is entitled to all the benefits available under the lease which the original lease holder was entitled. As per the circular dated 14.10.1957 of the State Government in the Department of Mines & Fuel which reveals that the date of commencement of the date of execution of formal instrument lease will be the date of commencement of lease & not the date of the Government order sanctioning the lease. Therefore, renewal lease was executed by the authorities on 2.8.1996. In the year 1994, Section 8 of the Act'' was amended. The period of renewal of the lease was extended from 10 years to 20 years as per Section 8(2) of the Act.

8. For better appreciation, Section 8(2) of the amended Act is quoted below:

8. Periods for which mining leases order may be granted or renewed.-(1). The maximum period for which a mining lease may be granted shall not exceed thirty years:

Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years.

(2) A mining lease may be renewed for [a period not exceeding twenty years].

9. The Central Government vide notification dated 30.1.1997 vested power with the State Government for grant of renewal of the mining lease reviving terms

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from 10 years to 20 years as per the amended provision of Section 8(2) of the Act. Therefore, after conjoint reading of the above provision, we conclude that the period of lease if considered to be renewed by the appropriate authorities, has to be renewed for a period of 20 years after the amended provision of Section 8 of the Act & a lesser period than 20 years is not permissible. The Petitioner being the transferee is also entitled to all the benefits available to the original lessee. The lease deed was executed in the year 1996 after the amendment was came into force after considering the prayer of the lease holder for renewal of the lease. There is no ground to deny the benefit of the transferor if he has held the lease after being duly transferred. There is also no reason to say that the benefit of the renewal is only available to the original lessee & not the transferee. Therefore, we reject the plea of the State Government that the Petitioner being the transferee his representation was not considered though they have extended the period from 10 years 20 years while considering the prayer of renewal of the lease in the case of M/s. Narayani & Sons as it was the original lessee. We hold that the action of the State Government has violated Article 14 of the Constitution of India.

10. Therefore, we quash the Order Dated 17.7.2000 passed by the Government of Orissa, Department of Steel & Mines, vide Annexure-3 & direct the State Government to consider the application of the Petitioner taking into consideration the amended (1994) provision of Section 8 (2) of the Act within-a period of three months from the date of receipt of a copy of this order.

11. The Writ Petition is accordingly allowed. No costs.

I.M. Quddusi, A.C.J.

I agree.

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