

Kamal Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Mar-26-1998

Reported in : 1998(2)AWC1190

Judge : Binod Kumar Roy and ;P.K. Jain, JJ.

Acts : Uttar Pradesh Minor Minerals (Concession) Rules, 1963; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 10442 of 1998

Appellant : Kamal Singh

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : M.S. Negi, Adv.

Judgement :

Binod Kumar Roy and P.K. Jain, JJ.

1. In this writ petition the petitioner has come up with the following prayers : (i) to quash the order dated 3.3.98 passed by the District Magistrate, Agra, as contained in Annexure-5, bearing No. 317/Khanij, dated March 3, 1998, (ii) the respondents be restrained from not interfering with the mining operation of the petitioner in

relation to an area measuring 84.387 acres of Gata No. 26 in village Chiknipur. Tahsil Bah, district Agra.

2. The portrayal of the relevant facts are in a narrow compass :

'A lease for three years of the aforementioned land was granted by the mining authorities on January 6, 1995 in terms of the orders passed by the Addl. District Magistrate as contained in Annexure-1. The said lease was to expire on 5th January, 1998. Before the expiry of his lease, the petitioner filed an application for renewal on 5th July, 1997, as contained in Annexure-3. However, the Apex Court, through a Judgment dated December 12, 1996 in *Codavarman Thirumulkpad v. Union of India and others*, (1997) 2 SCC 267, considered the question of felling of the trees of the forest and issued directions, *inter alia*, to stop mining operation in an area where the forest is situated. Yet in view of the operation of the law as contained in the Mining Rules, the renewal prayed for by the petitioner stood automatically granted and he proceeded to deposit Rs. 62,540 vide the Chalan, as contained in Annexure-4.'

3. According to Mr. Negi learned counsel appearing in support of this writ petition, instead of allowing the petitioner to continue the mining operations over the area aforementioned, relying upon the Judgment of the Apex Court, the authority proceeded to pass the impugned order. In passing the order restraining the petitioner from proceeding further with the mining operations, it violated the principles of natural Justice. Inasmuch as no opportunity was granted to the petitioner to prove that the mining area under his lease was not within the forest area to which direction of the Apex Court did not apply. Alternatively, he submitted that in view of the fact that the petitioner was allowed to operate mining operations for about two months' period, it would be in the interest of justice to command the respondents to refund back proportionate amount out of the amount deposited for six months' period.

4. Mr. Hasnain, the learned Chief Standing Counsel, appearing on behalf of the respondents, on the other hand, contended that it is true that there was some delay on the part of the authorities in Implementation of the order of the Supreme Court but after an enquiry. It was found that the mining area falls within the forest

area and thus the impugned order was correctly passed. Nothing tangible has been produced by the petitioner before us to show even prima facie that the mining area in question does not fall within the forest area. Thus, the petitioner is not entitled to the discretionary relief.

5. In regard to the second submission that the petitioner should be refunded back the proportionate amount, Mr. Hasnain contended that quantity of the sands extracted during two months will also be relevant consideration for working out the proportionate amount which may be directed to be returned back to the petitioner.

6. It is well-settled by dates of decisions by now that on the ground of mere violation of the principle of natural justice, the Court will not be justified in granting desired relief to a person complaining such a breach under discretionary Jurisdiction of this Court under Article 226 of the [Constitution of India](#). In order to be satisfied as to whether the petitioner was really prejudiced in submission of the report by the authorities concerned stating that the mining area in question falls within the forest area, we expressly put to Mr. Negi as to what are the documentary materials to support the case of the petitioner that the mining area does not fall within the forest area, to which Mr. Negi very clearly answered that he has none. In all fairness to Mr. Negi. we must put on record here that in this regard, he took up a stand that the petitioner may produce himself to be examined by the Court to ascertain true facts.

7. There is a presumption of correctness and regularity of the official acts. The report submitted by the authority that the mining area falls within the forest area has not been brought on record by the petitioner for our perusal. In this backdrop, coupled with the statutory presumptions of correctness and regularity attached with that report, we do not feel inclined to rely upon the self serving statement of the petitioner made in this writ petition. Further, it is not the case of the petitioner that after cancelling the lease of the petitioner, the mining authorities have settled the mining area in question with some one else.

8. For these reasons, we are not prepared to quash the order impugned.

9. Coming to the next question as to whether the petitioner should be refunded the proportionate amount, we find that the question of quantum of removal of sand is also involved in it. Accordingly, we are not in a position to grant even this relief to the petitioner, but in the interest of justice, we permit the petitioner to put in an appropriate application for refund of the amount before the appropriate authority, giving full facts supported by documents/affidavits, which if made within a fortnight, shall be considered and disposed of accordingly.

10. This writ petition is dismissed with the aforementioned liberty and direction. There shall be no order as to costs in regard to this proceeding.

The office is directed to hand-over a copy of this order within one week to Mr. Hasnain, learned Chief Standing Counsel, for its communication to and follow up action by the authorities concerned.

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