

Vimla Devi Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Dec-06-2007

Reported in : 2008(1)AWC1025

Judge : V.M. Sahai and ;R.N. Misra, JJ.

Appellant : Vimla Devi

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Shri. Krishna Kumar Chaurasiya

Judgement :

V.M. Sahai and R.N. Misra, JJ.

1. The petitioner has filed this writ petition for renewal of the mining lease.

We have heard Shri Krishna Kumar Chaurasiya, learned Counsel for the petitioner and learned standing counsel for the respondents.

2. It appears from the contents of the petition that the mining lease was granted in favour of the petitioner for five years, i.e., from 27.9.2002 to 26.9.2007. According to Rule 6A of the U.P. Minor Mineral (Concession) Rules, 1963 (hereinafter referred to as the 'Rules') the petitioner has applied for renewal of the lease in Form MM-1 (Ka) on 2.2.2007, i.e., before six months of the expiry of the original lease. The District Magistrate, Mirzapur (respondent No. 3) has not passed any

order on her renewal application on the ground that 'No Objection Certificate' has to be obtained from the Forest Department. The petitioner has prayed for the issuance of writ of mandamus directing the respondent No. 3 to consider the renewal application of the petitioner without 'No Objection Certificate' of Forest Department and pass suitable orders.

3. The learned Counsel for the petitioner has urged that the petitioner had filed 'No Objection Certificate' dated 2.2.2002 (Annexure-1 to the writ petition) at the time of granting the lease and her renewal application should also be granted on the basis of that certificate. Though there is no written order/objection of the respondent No. 3 on the record but this is a fact that the renewal application of the petitioner has not been decided so far. The learned standing counsel has contended that while granting the permission to renew the lease, a fresh 'No Objection Certificate' is required and without that the renewal application cannot be accepted. Rule 6A runs as under:

Application fee etc. for renewal of mining lease.--(1) An application for renewal of mining lease may be made at least six months before the date of expiry of the mining lease alongwith four copies of the map of lease-hold area showing clearly the area applied for renewal and the provisions of Clauses (a) and (d) of Sub-rule (1) of Rule 6 shall mutatis mutandis apply.

(2) The State Government may condone the delay caused in making the application for renewal of mining lease after the period specified in Sub-rule (1).

4. This is admitted fact that when any person moves application for grant or renewal of the lease it is the duty of the District Magistrate concerned to get 'No Objection Certificate' from the Forest Department. In the case of K.M. Chinnappa v. T.N. Godavarman Thirumalpad 2002 (7) Supreme 620, the similar question arose before the Hon'ble Apex Court and the following observations were made:

Coming to plea that in case of renewal there is no requirement of compliance of Section 2 of the Forest Conservation Act, the stand is clearly untenable in view of decisions in Ambica Quarry's case (supra) and Rural Litigation and Entitlement Kendra v. State of U. P. : AIR 1988 SC2187 , where at page 2201 it was

observed that 'whether it is a case of first grant or renewal following exercise of option by the lessee, the compliance of Section 2 of the Forest Conservation Act is necessary as a condition precedent'.

5. The logic behind the problem as discussed by the Hon'ble Apex Court is that by destroying nature, environment, man is committing matricide, having in a way killed Mother Earth. Technological excellence, growth of Industries, economical gains have led to depletion of natural resources irreversibly. Indifference to the grave consequences, lack of concern and foresight have contributed in large measures to the alarming position.

6. In view of the said decision of the Hon'ble Apex Court it is necessary for the renewal of the mining lease to get 'No Objection Certificate' from the Forest Department. The certificate issued before five years may not be sufficient because in the meantime the situation might have changed.

7. The copy of the order of this Bench Annexure-3 to the writ petition passed in Civil Misc. Writ Petition No. 52855 of 2007, Pramod Kumar Mishra v. State of U.P. and Ors. has been filed by the petitioner. While passing that order the law laid down by Hon'ble Apex Court referred to above was not placed before us, therefore, the petitioner cannot take benefit of that order. However, in that order also the District Magistrate was not forbidden to take a fresh 'No Objection Certificate' from the Forest Department, if required.

8. This writ petition is disposed of with the direction to the respondent No. 3 to decide the application of the petitioner for renewal of the lease after obtaining 'No Objection Certificate' from Divisional Forest Officer, Mirzapur. The entire exercise should be completed by District Magistrate within a period of two months from the date when the certified copy of this order is filed in his office. The Divisional Forest Officer shall pass necessary order within ten days from the receipt of letter of District Magistrate for issuance of 'No Objection Certificate' and thereafter the District Magistrate will decide the renewal application according to law.