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Court : Delhi

Decided On : Nov-24-1992

Reported in : AIR1993Delhi56; 1992(24)DRJ141

Judge : P.N. Nag, J.

Acts : [Constitution of India](#) - Articles 14, 32 and 226; Mines and Minerals (Regulation and Development) Act, 1957 - Sections 2(3), 4(A), 13, 15 and 30; Mineral Concession Rules, 1960 - Rules 27, 54 and 56; [Mines Act, 1952](#) - Sections 22(3) and 72B; Code of Civil Procedure (CPC) - Order 1, Rule 3; Metallic ferrous Mines Regulation, 1961 - Regulations 6, 34 and 116

Appeal No. : Civil Writ Petn. No. 2566 of 1985

Appellant : Avtar Singh

Respondent : Union of India and Another

Advocate for Def. : H.K. Gangwani, Adv., ; Kapil Sibal, Sr. Advocate, ; Ms. Ind

Advocate for Pet/Ap. : P.N. Lekhi, Sr. Advocate with; K.B. Rohatgi,; S.K. Dhingra

Judgement :

ORDER

1. In this writ petition, the petitioner challenges the revisional order on the Central Government dated 24-11-1984 passed under S. 30 of the Mines & Minerals

(Regulation & Development) Act, 1957 (hereinafter referred to as the Act) read with Rule 54 of the Mineral Concession Rules, 1960 (Annexure P-1) and order of review dated June 3, 1985 (Annexure P-2) whereby the order of cancellation of lease dated 27-4-1984 (Annexure P-14) has been upheld.

2. The petitioner was granted a lease of an area of 684 kanals and 6 marlas in village Palli, Taluk Ballabgarh in the State of Haryana for extraction of Silica Sand for a period of 10 years effective from 8-7-1981 to 7-7-1991. In pursuance of the Order dated 3-7-1981, the petitioner entered into a lease agreement with respondent No. 2 which incorporated by reproduction the terms which are mentioned in R. 27 of the Mineral Concession Rules, 1960 (hereinafter referred to as 'The Rules 1960'). In the aforesaid lease agreement, special condition was also incorporated to the effect that the lessee of minor mineral will work the mine first and the petitioner shall start work only after the lessee for minor minerals has finished his operations. The area leased to the petitioner was co-extensively lease in favor of Shri R. L. Sharma for extraction of ordinary sand termed as 'Minor Mineral'. The petitioner was, thus put in a restrictive condition to the effect that he would not interfere with the mining operation of Shri R. L. Sharma for extracting of the said minor mineral according to Condition 6(a) inserted in the lease deed. According to the petitioner, the officers/officials of the respondent/Department from the very beginning adopted a hostile and arbitrary attitude towards him and started harassing him inasmuch as he was issued a show cause notice on 10-3-1983 (Annexure P-12) under R. 27(5) of the Rules framed by the Central Government in exercise of its power under S. 13 of the Act for determination of lease. According to the Show Cause Notice, an inspection was carried out on 22-3-1992 jointly by the Director General Mines Safety and the General Manager, District Industries Centre, Faridabad, Government of Haryana and it was found that the depth of pits found in the mine was more than 36 meters and the sides were vertical and there was dangerous overhanging. Helmets and foot-wears were not provided to the workers nor arrangement of drinking water and first aid were made at the mine sites. The qualified personnel were also not appointed as required under the Rules. The petitioner in accordance with the Rules was asked to remedy the aforesaid breaches and comply with the terms and conditions of lease within sixty days of the receipts of the Notice.

3. On 9-5-1983, vide Annexure P-13 the petitioner replied to the show cause notice and submitted that the boundary marks had been erected but these were unfortunately demolished by the miscreants. But the petitioner had repaired the boundary marks. According to the petitioner there were no dangerous pits on the leased area and that he had made necessary arrangements for the firstaid and drinking water supply at the mine site. Furthermore, the petitioner categorically denied that there had been any joint inspection as referred to in the show cause notice or was he informed about it.

4. In the additional affidavit dated 26th October, 1985 filed by the petitioner, it has been stated that according to the plan prepared by the Director of Mines Safety as on 25-9-1983 there were 21 pits in the entire area leased out to him and none of the pits is in a dangerous condition or is of alarming height. It is inconceivable that the depth of the pits would reduce by working the mines for 18 months. According to him, after 18 months from the date of inspection, the depth of the pits have been considerably reduced inasmuch as some pits are of the depth of 0.5 meters. 0.4 meters etc. while the maximum depth is of 8.5 meters, which shows that the report submitted on the basis of joint inspection on 22-3-1982 is not correct and the dangerous pits cannot at the time of joint inspection be the pits which do not fall within the area leased out to the petitioner although they might be falling within the revenue estate of Pali. As a matter of fact, the area leased out to the petitioner is a very small fraction of the entire revenue estate of Pali and the map will show that on 25-9-1983 when the survey was conducted there were many pits of the depth of 25, 30 meters etc. in the revenue estate of Pali but there was not a single pit of the depth of more than 8.5 meter in the area leased out to the petitioner.

5. The State Government, however, did not accept the version of the petitioner and came to the conclusion that the petitioner had failed to comply with the directions of the Authorities and consequently vide communication dated 27-4-1981 (Annexure P-14) in exercise of the powers under R. 27(5) of the Rules terminated the lease of the petitioner, forfeited the security deposited by the petitioner amounting to Rs. 1,060/-.

6. Against this communication/order dated 27-4-1984, the petitioner filed a revision petition before the Central Government under S. 30 of the Mines and Minerals (Regulation and Development) Act, 1957(hereinafter referred to as 'The Act') read with R. 54 of the Rules. One of the grounds amongst others, taken in the revision petition is that the State Government gave a contract in January, 1982 to the petitioner for extraction of minor mineral over the entire leased area at Pali to M/s. R. L. Sharma & Co. up to 31-3-1984 and it was this Company which indulged in unscientific method and dug mines up to the depth of 100 feet. The petitioner was granted mining lease subject to the condition that the lessee would not interfere in any manner whatsoever with the extraction of minor minerals for which contract was given to another party. Another crucial ground was taken before the Revisional Authority was that no joint inspection as referred to was carried out, no prior information was given either to the petitioner or his agent nor was inspection team seen working in the mine; nor did it meet any member of the supervisory staff of the petitioner. As a matter of fact, the so-called inspection held on 22-3-1982 was a fictitious inspection. However, the revision was dismissed on 24-11-1984 (Annexure P-1).

7. Against the Revisional order dated 24-11-1984, the petitioner attempted to seek redress by moving a Special Leave Petition being S.L.P. (Civil) No. 1017 of 1985 before, the Supreme Court under Art. 136 of the [Constitution of India](#). Vide order dated 19-2-1985, the Supreme Court dismissed the S.L.P. by a non-speaking order. According to the petitioner, as stated in para 20 of the petition, the Supreme Court considered it in expedient to intervene in the matter on the ground that jurisdiction to decide implied the jurisdiction to decide it rightly or wrongly unless the matter involves any violation of breach of the principles of natural justice or fundamental rights or any other constitutional violation in absence of which they would be disentitled to interfere even if the judgment was wrong, but made oral observation to seek a Review.

8. Thereafter, the petitioner, after having come to know about the filing of an affidavit by Shri S. K. Bhatnagar, Geologist of Government of Haryana in Civil Writ Petition No. 8135/83 in the case of Bandhua Mukti Morcha v. State of Haryana on the basis of which the Central Government accepted the Revision of M/s. Mohan

Ram & Company -- a similar case -- has filed a review petition before the Central Government. The said review petition was also dismissed being not maintainable by the Central Government.

9. Faced with the dismissal of the review petition, the petitioner filed a civil writ petition, being C.W.P. No. 1485/85, in this High Court, which was dismissed as withdrawn with liberty to file a fresh petition as the Court observed that the petitioner should also challenge the main order dated 24-11-1984 passed in revision, in the petition. thereforee, the present writ petition has been filed challenging both the orders, namely, main order dated 24-11-1984 and the order of review dated 3-6-1985 (Annexures P-1 and P-2 to the writ petition).

10. Counter-affidavit dated 4-9-1986 of Shri Kuldipak Ahuja, Mining Engineer, Department of Industries, Haryana, has been filed on behalf of respondent No. 2 -- State of Haryana. At the very outset, they have raised a preliminary objection about the maintainability of the writ petition. According to them, the petitioner had challenged the order dated 24-11-1984 of the Central Government passed in Revision application before the Supreme Court of India by way of Special Leave Petition (Civil) No, 1017/85 which was dismissed by the Supreme Court on 19-2-1985. thereforee, the order of the Revisional Authority has become final and the present writ petition is not maintainable.

11. Respondent No. 2 has denied that there is any similarity between the case of M/ s. Mohan Ram and Company and the Revision of the petitioner. In fact, according to them, facts of both the cases are entirely different. The grant of lease of 684 kanals and 6 marlas for a period of 10 years from 8-7-1981 to 7-7-1991 to the petitioner has been admitted. The grant of minor mineral contract to Shri R. L. Sharma has also been admitted. Incorporation of Condition 6(a) in the lease-deed of the petitioner also stands admitted which was to the effect that the lessee of minor minerals will work the mine first and the petitioner shall start work only after the lessee for minor mineral has finished his operations. However, on factual aspect the respondent No. 2 has denied the allegations of the petitioner. According to them, as the petitioner was operating his lease area under dangerous conditions without adhering to the provisions of [Mines Act, 1952](#) and Rules and

Regulations framed there under, the State Government was left with no other alternative but to terminate his mining lease on 27-4-1984. On 20-10-1983, the Director Mines Safety had imposed prohibitory orders regarding employment of labour in this mine. The allegations of the petitioner that the inspection held on 22-3-1982 was a fictitious one has also been denied. It has further been stated that the dropping of the proceedings initiated by the Director of Mines Safety against the petitioner on 23-5-1985 has no relevance with the cancellation of the mining lease on 27-4-1984 on the ground that the petitioner was operating mine under dangerous conditions and in violation of the provisions of [Mines Act, 1952](#) and Rules and Regulations framed there under. The order of C.J.M. Faridabad (AnnexureP-17) only dropped the proceedings under S. 72B of the [Mines Act, 1952](#) which related only to violation of prohibitory orders under S. 2(3) of [Mines Act, 1952](#). This does not absolve the petitioner from the charge of working his lease area in dangerous manner in violation of various provisions of [Mines Act, 1952](#) and Rules and Regulations framed there under. The termination of the lease by the respondent No. 2 has been justified as according to them, the lease has 'been terminated in accordance with the provisions of law as the petitioner failed to remove the defects as given in the show cause notice. However, it has been denied that Shri R. L. Sharma who was given the contract of minor mineral has dug dangerous pits, as alleged in the show cause notice. In fact, it was the petitioner who had dug deep pits up to the depth of 25 meters in his area. He could not shift the responsibility of digging these pits on Shri R. L. Sharma who only held the contract of minor mineral found near the surface.

12. In the reply, it may be highlighted that respondent No. 2 has taken the stand that the depth of dangerous pits have been shown up to 25 metres.

13. No counter-affidavit has been filed by the Union of India, respondent No. 1.

14. One Sahi Ram son of Shri Pola Ram, of Village and P.O. Uklona, Distt. Hissar moved an application dated 24-4-1989, being CMP No. 2252/89, under O.1, R. 10(2)(4) read with S. 151 of the Code of Civil Procedure for impleading the applicant as party in the present writ petition on the ground that after termination of the mining lease of the petitioner by respondent No. 2 under R. 27(5) of the Rules

vide order dated 27-4-1984, applicant applied for the grant of mining lease over the area for which the mining lease was granted to applicant on 31-10-1985 for three years and the possession was handed over on 11-11-1985 to him by respondent No. 2. However, the lease of applicant was also terminated under S.4(A) of the Act on 14-7-1986 by respondent No. 2 but again the possession thereof was restored and handed over to the applicant by respondent No. 2 in view of the order dated 17-8-1988 passed by this Court in Civil Writ Petition No. 420 of 1987 and since then the applicant had been conducting the operational work in the mining area.

15. The application under O.1, R. 10, C.P.C. to be arrived as one of the respondents on behalf of Sahi Ram son of Pola Ram was allowed and he was impleaded as respondent No. 3.

16. Respondent No. 3 has filed his counter-affidavit dated 12-8-1989 and taken the same preliminary objection as of State of Haryana inasmuch as the writ petition is not maintainable as the Special Leave Petition filed by the petitioner against the Revisional order has since been dismissed by the Supreme Court and the Revisional Order has become final and, therefore, the same cannot again be challenged in this Court by way of present proceedings. The power of review by the Central Government has been denied. According to him, R. 56 of the M.C.R. 1960 speaks only of correctional powers, clerical, arithmetical mistakes only. He has also denied that the case of M/ s. Mohan Ram and company was identical or similar to the present case of the petitioner. Respondent No. 3 has supported the version of the respondent No. 2 that the petitioner has contravened the terms of the lease and has indulged in unscientific methods and dug pits more than 100 feet. It has further been stated that the respondent No. 3 got the lease of mines for a period of three years which was terminated later on 14-7-1986 under S. 4A of the Act. Being aggrieved, he filed a writ petition, being CWP No. 410/87 (or 420/87.....Ed.), which was allowed vide order dated 17-8-1988 passed by Leila Seth and Arun B. Sahrya, JJ. The said order was again confirmed by the Supreme Court by dismissing the Special Leave Petition on 7-10-1988. Consequently, the respondent No. 3 was restored the possession of the mines in view of the judgment of this Court in C.W.410/87.

17. Mr. Kapil Sibar, learned counsel for respondent No. 2 -- State of Haryana, at the very outset, during the course of arguments, raised a preliminary objection that the Special Leave Petition filed by the petitioner against the Revisional order of the Central Government having been dismissed, the Revisional order has become final and no writ petition would be maintainable in this Court over the same cause of action. According to him, the Supreme Court while dismissing the S.L.P. had passed the order on merits of the case and the same is binding on the parties on the principle of rest judicata and the same matter cannot be re-agitated in this Court. The petition, therefore, should be thrown out on this ground alone.

18. It may be noticed that this preliminary objection was also taken at the time of admission of the writ petition but in spite of this the petition was admitted by the Division Bench.

19. Mr. P.N. Lekhi, counsel for the petitioner, vehemently stressed that the law is well settled that in case special leave petition is dismissed by a non-speaking order, such dismissal cannot be considered as dismissal on merits. Furthermore, if special leave petition is refused by the Supreme Court under Art. 136 of the Constitution, it does not necessarily mean that the judgment against which leave is sought is approved by the Supreme Court.

20. In order, to appreciate the rival contentions of the parties, it will be necessary to reproduce the order of the Supreme Court, which reads as under:

'UPON Hearing counsel the Court made the following

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