

Jagdev Singh Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Feb-09-2005

Reported in : RLW2005(1)Raj582; 2005WLC(Raj)UC545

Judge : Govind Mathur, J.

Acts : Rajasthan Minor Mineral Concession Rules, 1986 - Rule 18(3)

Appeal No. : S.B. Civil Writ Petition No. 776 of 1993

Appellant : Jagdev Singh

Respondent : State of Rajasthan and ors.

Advocate for Def. : S.N. Tiwari, Dy. Govt. Adv.

Advocate for Pet/Ap. : B.S. Sandhu, Adv.

Disposition : Petition allowed

Judgement :

Govind Mathur, J.

1. A mining lease was granted to the petitioner under an office order dated 19.12.90 by the Superintending Engineer, Department of Mines and Geology, Government of Rajasthan, Bikaner. The lease was granted at the annual dead rent of Rs. 21,5697- with a condition that the same shall be revised time to time in

accordance with the Rules. As a consequence of the office order dated 19.12.90 a lease deed was executed between the parties on 11.1.91. In the lease deed also it was mentioned that dead-rent shall be subject to revision as per the Rules and the dead rent may be revised proportionately if there is increase in the rate of royalty. The lease granted to the petitioner was to remain in currency for a period of ten years.

2. The Assistant Mining Engineer, Ganganagar by office order dated 27.3.92 enhanced the dead-rent from Rs. 21,569/- per year to Rs. 38,599/- per year. The dead rent was enhanced as the rates of royalty were increased. The Assistant Mining Engineer communicated the decision for enhancement of dead rent to the petitioner under a communication on 1.7.92. This enhancement in dead-rent is under challenge in the instant petition.

3. A reply to the writ petition has been filed on behalf of the respondents stating therein that enhancement in the dead rent was made in accordance with the condition stipulated in the lease deed to the effect that the dead rent shall be revised in proportionate to the rates of the royalty. The rate of royalty was revised by the Government and therefore, the same necessitated enhancement of dead rent.

4. I have heard the counsel for the parties.

5. The contention of the counsel for the petitioner is that Sub-rule 3 of Rule 18 of the Rajasthan Minor Mineral Concession Rules, 1986 provides that the lessee shall pay every year dead rent as may be fixed by the Government and the competent authority may revise it after every five years from the date of initial grant or renewal of the mining lease in accordance with the formula prescribed. In view of Sub-rule 3 of Rule 18 according to the counsel for the petitioner, it was not open for the State Government to enhance the dead rent. Per contra it is stated by the counsel for the respondents that the dead-rent was enhanced commensurating with the revised rates of royalty as permitted under the lease deed itself.

6. Precisely, the question involved in the present controversy is that whether the State Government was right in enhancing the dead rent irrespective of the fact that

proviso-II to Sub-rule (3) of Rule 18 restricts the State from enhancing the same prior to a period of five years from the date of initial grant or of renewal of the mining lease on basis of the condition mentioned in the lease deed.

Proviso-II to Rule 18(3) of the Rules of 1986 reads as under-

'Provided further that the competent authority may revise deadrent after every 5 years from date of initial grant or of renewal of the mining lease in accordance with the following formula:- Revised Deadrent = Existing deadrent + 40% of Existing deadrent+ Average excess royalty of the first four years of each span of 5 years :'

7. From careful reading of the lease deed I find that the stipulation in the lease deed to the effect that the dead rent will be revised proportionately if there is increase in the rate of royalty is not in contravention of proviso-II to Sub-rule 3 of Rule 18. It is required to be read harmoniously with the proviso- if to Sub-rule 3 of Rule 18. Meaning thereby the State Government is empowered to enhance the dead rent after a lapse of five years from the date of grant of the lease or its renewal keeping in mind revision of the royalty. This is further fortified from the formula prescribed under the proviso itself which provides that the revised dead-rent shall be determined by adding average excess royalty of the first four years of each span of five years with existing dead-rent and 40% of existing dead-rent. In view of it, it was open for the respondents to make the dead-rent proportionate to the royalty after a period of five years from the date of execution of the lease deed, but not prior to it.

8. The respondents by the order impugned revised the dad-rent prior to the statutory period prescribed under proviso-II to sub- rule 3 of Rule 18 which is not having support of law.

9. Accordingly, this writ petition succeeds. The orders impugned Annexure-3 dated 27.3.92 and Annexure-4 dated 1.7.92 passed by the Assistant Mining Engineer, Department of Mines and Geology, Ganganagar are declared illegal and are quashed. Action, if any, taken place under the order impugned, the same also stands declared illegal. Petitioner shall be entitled for all consequential benefits.

10. No order as to costs.

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