

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

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S.B. CIVIL WRIT PETITION NO.5735/2004

Govind Prasad Somani vs. State of Rajasthan and others.

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Date : 20.12.2004

HON'BLE MR. PRAKASH TATIA, J.

Mr. J.P. Chhangani, for the petitioner.

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Heard learned counsel for the petitioner.

It appears from the facts of the case that the petitioner's application for renewal of mining lease was rejected by the order dated 17.1.1992 against which the petitioner preferred revision petition before the Union of India which was allowed vide order dated 1.7.1994 and the matter was remanded back to the lower authority for deciding whether the land in question is falling in the forest area or not ? After remand, the petitioner was directed by the lower authority to bring no-objection certificate from the forest department. However, the forest department by their letter dated 16.12.1994 informed the concerned authority that the land was falling in the forest area, therefore, the petitioner's application for renewal of mining lease was rejected earlier and there is no change in the position, meaning thereby, the

land is falling in the forest area. The petitioner's application for renewal of mining lease was again rejected vide order dated 26.3.1996. The petitioner again preferred a revision petition before the Union of India which was decided vide order dated 29.8.2001 and the matter was again remanded back to the lower authority.

It appears from the impugned order dated 24.9.2004, which was passed after remand order dated 29.8.2001, that the authorities demanded no-objection certificate of the Forest Department and the burden was placed upon the petitioner to bring the no-objection certificate. The petitioner failed to produce the no-objection certificate and, therefore, again the petitioner's application for renewal of mining lease was rejected.

According to learned counsel for the petitioner, the petitioner was holding license from the same department since 1987 and it was renewed time to time but one fine morning, the respondent decided not to renew the license simply on the ground that the land is falling in the forest area. The respondent cannot take such a contradictory stand. It is also submitted that the respondent demanded the no-objection certificate from the forest department who is the contesting authority against the petitioner's claim for renewal of mining lease. According to learned

counsel for the petitioner, the State should have held the enquiry about the fact whether the land in question is falling in the forest area or not instead of directing the petitioner to produce the no-objection certificate from that department against which the petitioner's claim is under consideration. In that view of the matter, the order dated 24.9.2004 appears to be absolutely illegal and in fact, the State has not proceeded to decide the issue in the matter and which is whether the land is falling in the forest area or not ? And for that purpose, the no-objection certificate of the forest department may be a piece of evidence, if produced by the petitioner but in case the rival claimant - forest department refuses to give no-objection certificate, that does not mean that the petitioner lost his right to prove the fact that the land is not a forest land. For that purpose, the State should have held an enquiry before rejecting the petitioner's application for renewal of mining lease.

Since the matter was considered by the revisional authority and the matter was remanded by the revisional authority vide order dated 29.8.2001 (Annex.12), therefore, all these questions should have been raised before the same authority who remanded the matter back to the State Government for consideration by filing revision petition against the order dated 24.9.2004 (Annex.15) so that the revisional authority

would have made it clear to the State Government how to proceed.

In view of the fact that the revision petition is maintainable against the order dated 24.9.2004 (Annex.15) passed by the State, therefore, this writ petition cannot be entertained and it will not be just and proper to entertain the writ petition and the petitioner is left free to challenge the impugned order dated 24.9.2004 before the appropriate authority by filing a revision petition.

(PRAKASH TATIA), J.

S.Phophaliya