

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Shanti Lal Vs. State of Rajasthan & ors.

S.B.CIVIL WRIT PETITION NO.1634/1996

Date of order : 29th July, 2005

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.D.D.Thanvi for the petitioner
Mr.S.N.Tiwadi, Dy.G.A. for the respondents

BY THE COURT :

A mining lease for mineral marble (ML No.292/89) granted to the petitioner for ten years from 20.11.1989 was cancelled by the Mining Engineer, Rajsamand by the order dated 12.8.1992 (Annex.1) for default and deficiencies in payment of dead-rent, for filing of the record for royalty assessment and the monthly statistical figures. This order dated 12.8.1992 was challenged by the petitioner by way of an appeal under Rule 43 of the Rajasthan Miner Mineral Concession Rules, 1986 (hereinafter referred to as 'the Rules'). This appeal (No.61/94) was filed as late as on 23.4.1994 and was accompanied by an application seeking condonation of delay which was disallowed by the Addl.Director (Mines), Udaipur Zone, Udaipur and

the appeal was dismissed by the order dated 24.10.1994 (Annex.3). A further appeal as provided under Rule 43 of the Rules was taken by the petitioner to the State Government. However, this appeal was also dismissed by the order dated 18.5.1995 (Annex.8). The petitioner has submitted this writ petition assailing the aforesaid orders, Annex.1, Annex.3 and Annex.8.

Brief facts relevant for the present writ petition are that the petitioner was a granted mining lease, ML No.292/89, for mineral marble near village Sapol Tehsil and District Rajsamand for an area of 10000 sq.meters for a period of ten years from 20.11.1989. The petitioner claims that this area falls in khatedari land of one Devi Singh who has extended a no objection certificate on 6.2.1989 in his favour for obtaining the mining lease. A copy of this no objection certificate has been produced as Annex.A with the writ petition, but the fact regarding this certificate has not been admitted by the respondents. Be that as it may, the petitioner has submitted that after obtaining the mining lease, he carried developmental activities, overburden was removed and with huge investment, mines were developed. The Mining Engineer issued a notice on 4.3.1992 pointing out three breaches on the part of the petitioner. This notice was never served upon the petitioner. However, the mining lease was

cancelled by the Mining Engineer by the order dated 12.8.1992 (Annex.1).

The petitioner has alleged that the order cancelling mining lease was also not served upon him and he came to know about it for the first time on 14.2.1994 when his power of attorney holder approached the Department for obtaining Ravanna Books and for depositing the dead-rent. The petitioner immediately applied for copy of notice and the cancellation order etc. and the copies were supplied on 19.3.1994 and the appeal was filed before respondent No.2 on 23.4.1994.

The petitioner filed the appeal alongwith an application for condonation of delay (Annex.2). The contents of the application Annex.2 show that the petitioner alleged that there was bonafide reason for his having not preferred the appeal within time for the notice dated 9.3.1992 having not been served upon him. This notice has been alleged to have been given to someone named Vanita who was neither a member of his family nor his servant or agent. The cancellation order dated 12.8.1992 was also never received by the petitioner and the same has been served upon Smt.Usha Singhvi who was also neither the member of his family nor his servant or agent.

The power of attorney holder was also never served with the cancellation order. The cancellation order came in the knowledge of the petitioner for the first time on 14.2.1994 when the power of attorney holder approached the Mining Office for obtaining the seals on the royalty book and for depositing the dead-rent. Immediately thereafter, copies were applied and after receiving the copies, proceedings for completing all the formalities were taken up and the dues of dead-rent of Rs.9,555/- were also deposited with the Department. The petitioner remained under treatment and rest on account of his ailment from 20.3.1994 to 20.4.1994. On 21.4.1994, the petitioner submitted the monthly figures and the record for royalty assessment and has already applied for no dues certificate from the Department. On these averments, the petitioner prayed for condonation of delay. The petitioner has also placed on record a copy of the affidavit filed by one Sohanlal Singhvi in the said appeal deposing that the said Miss Vanita was a neighbour of the petitioner and was a minor, whereas, the said Smt.Usha Singhvi was the wife of brother of the petitioner and living separate from the petitioner and the families were not on talking terms.

The petitioner has contended that despite all the aforesaid facts being before the appellate authority and the same having not been

controverted by the Department, the Addl. Director (Mines) has seriously erred in refusing to condone the delay and in rejecting the appeal by the order dated 24.10.1994 (Annex.3).

Against the order dated 24.10.1994 passed by the Addl. Director, the petitioner submitted further appeal under Rule 43 before the State Government and contended, inter alia, that he had remedied all the breaches before filing of the appeal and his appeal ought to have been considered on merits. The Department admitted that the appellant had remedied all the three breaches of course before filing of the first appeal, but only after cancellation of the lease deed. The petitioner seems also to have made a submission that alternative discretion of imposing penalty under Rule 18(21) of the Rules could have been exercised as has been exercised in other cases to which the Department replied that the same was within the discretion of the appellate authority and so far the cancellation was concerned in the case of the petitioner, the same has been validly and correctly ordered. The petitioner has raised grievance in this writ petition that the Dy. Secretary (Mines) has also dismissed the appeal without considering the material on record by the order dated 18.5.1995 (Annex.8).

The Department has admitted in its reply to the writ petition of granting of the aforesaid mining lease to the petitioner but has not admitted the fact of the land being a khatedari land and of the petitioner having no objection certificate from the khatedar. It has been alleged that the petitioner was served with the notice dated 4.3.1992 pointing out three beaches which was served upon the petitioner and a copy of the acknowledgment receipt Annex.R/2 has been submitted on record. The petitioner failed to comply with this order within 45 days and then proposal was sent to the Superintending Engineer for cancellation of the lease deed which was approved on 22.7.1992. The cancellation order was sent to the petitioner by registered post and the same was also duly delivered on 24.8.1992 and a copy of the acknowledgment thereof has also been produced as Annex.R/5. After cancellation of the lease deed, the possession of the area was also taken by the authority concerned on 16.10.1992 and a copy of the possession report has also been produced as Annex.R/6.

The respondents have contended that the petitioner made a totally false statement that the order cancelling the mining lease was not served upon him and that he came to know about it for the first

time on 14.2.1994. The appeal filed by the petitioner was hopelessly barred by time and was rightly dismissed by the Addl. Director who has properly considered the question of limitation and the order dated 24.10.1994 (Annex.3) could not be said to be illegal. The story sought to be set up by the petitioner was a made up story not worth consideration in this writ petition. The second appeal has also been considered in accordance with law and the petitioner was not entitled to get the benefit of Rule 18(21) of the Rules. The challenge to the impugned orders of cancellation of mining lease and of rejection of the appeals has been opposed with the submissions that the orders are neither illegal nor contrary to law nor violative of principles of natural justice.

Making submissions on behalf of the petitioner, learned counsel has urged that the petitioner had remedied all the breaches alleged. The area falls in khatedari land of a third person who has extended surface rights to the petitioner only and in the facts and circumstances of the case, his appeal ought to have been considered on merits. Learned counsel has referred to Rule 18(21) of the Rules and has submitted that upon breach, the discretion was available with the Department either to cancel the lease or in the alternative to impose payment of penalty not exceeding twice the amount of annual

dead-rent of the lease and in the interest of justice, such alternative ought to have been adopted in the present case. Learned counsel has also referred to Rule 71 of the Rules and has submitted that notice under the Rules was required to be served upon the lessee in person or by registered post addressed to him and service could have been effected only either upon the petitioner personally or upon any adult male member of the family or his authorised agent. The aforesaid two ladies do not answer to the description of the persons upon whom the service could be effected by virtue of Rule 71 of the Rules and when it was shown that both of them were not even members of the petitioner's family, the learned appellate authorities ought to have considered the matter on merits. Learned counsel has confined his prayer to the effect that in the interest of justice while setting aside the orders Annex.3 and Annex.8, his appeal may be ordered to be considered on merits.

Learned Dy.Government Advocate has submitted that the said Miss Vanita being minor has not been proved on record nor enmity of the petitioner with Smt.Usha Singhvi has been established; service was complete in all respects and, therefore, the petitioner was not entitled for any relief.

Having considered the rival submissions and having perused the record, this Court is clearly of opinion that the orders Annex.3 and Annex.8 rejecting the appeals filed by the petitioner suffer from errors apparent on the face of record and cannot be approved.

It was apparent before the first appellate authority that various grounds and submissions were made by the petitioner seeking condonation of delay and it was precisely pointed out that the aforesaid Vanita and Usha Singhvi were not the members of his family and the notice and the cancellation order, both, were never served upon the petitioner. The defects pointed out by the Mining Engineer had already been remedied before filing of the appeal, of course in the month of April, 1994. The learned appellate authority has not considered any of the facts aforesaid as stated in the application seeking condonation of delay (Annex.2) and instead has proceeded only on the conjectures that in every quarter, the instalment of dead-rent was required to be deposited and if the appellant was not knowing about the cancellation order dated 12.8.1992, then he would have deposited the dead-rent every quarter. On this consideration alone, it has been assumed that the petitioner was aware of the cancellation order and then it has been

observed that the petitioner did not submit the appeal intentionally within time and now has filed the appeal carving out the ground of knowledge in the month of February, 1994. This Court is clearly of opinion that when it was asserted by the petitioner before the appellate authority that the notice and the order concerned were not served upon him and the persons upon whom they were served, were not the members of his family, then it was required of the appellate authority to have dealt with those submissions before pronouncing finally upon the prayer for condonation of delay. The petitioner has pointed out his compliance of the deficiencies/defects pointed out by the Mining Engineer and having deposited the due amount. This fact was also not considered before rejecting the application for condonation of delay.

The Department has submitted in its reply to the second appeal (Annex.7) that no particulars were available in the Mining Department as to who the said Vanita and Usha were, upon whom respectively the notice dated 4.3.1992 and the cancellation order dated 12.8.1992 had been served. It has been admitted that the appellant had removed all the three deficiencies before filing of the first appeal, but this was done after cancellation of the lease deed. It has also been submitted that in other cases, the appellate court has

restored the lease by imposing the penalty and that was within the discretion of the appellate court but the cancellation order was valid.

A perusal of the order dated 18.5.1995 (Annex.8) shows that second appellate authority has also disposed of the appeal in a wholly cursory manner on the ground that the first appeal was filed after an inordinate delay and there was no sufficient cause for condonation of delay. The other submissions of the petitioner seem not to have been considered while passing the order dated 18.5.1995.

This matter was taken up for hearing on 5.7.2005 and the learned counsel for the parties sought time to ascertain the facts and complete their instructions particularly regarding the present status of the area in question. On 21.7.2005, learned Dy. Government Advocate produced on record a letter dated 20.7.2005 received from the Mining Engineer, Rajsamand in which it has been stated that the lease was cancelled on 12.8.1992 and the possession of the area was taken on 16.10.1992. There were no dues at present and that the area was lying vacant at present.

It appears that despite cancellation of the lease and taking possession of the area way back in the year 1992, the area has yet

not been allotted to any other person. Although the Department has denied the fact about the area in question falling in khatedari of Devi Singh and the petitioner having no objection certificate from him but without going into that dispute of facts, this Court finds nevertheless that for all these years, the area has not been put to any use despite there being no interim order passed in this writ petition (stay application was rejected as withdrawn on 17.2.1999).

So far the appeal submitted by the petitioner is concerned, as found hereinabove, the prayer for condonation of delay has been denied by the first appellate authority on assumptions and conjectures only and the facts asserted by the petitioner have neither been considered nor rejected. The observation by the first appellate authority that the petitioner intentionally did not file the appeal in time cannot be said to be based on any material or co-related with the circumstance available in this case. The deficiencies on which the Department was proceeding were not of such nature which would impel the petitioner to seek avoiding the Department so as to intentionally not file the appeal within time. The deficiencies were of non-payment of dead-rent due from 20.5.1991 and non-filing of the record for assessment and the monthly statistical figures from 20.11.1989 but none of these deficiencies were of such nature for

which the petitioner would prefer to hide and shy away from the Department. Moreover, the petitioner was not going to gain anything by delaying filing of the appeal.

In the face of Rule 71, it appears that when the notice of such drastic consequences of likelihood of cancellation of lease deed was to be served, the same ought to have been served upon the persons recognised by Rule 71 and when the Department itself is not aware about the status and relationship of ladies aforesaid (vide para 1 of the reply Annex.7), then there is no reason to disbelieve the petitioner that notice and order were not properly served upon him or any member of his family. In those circumstances, this Court is clearly of opinion that ends of justice would have been served if the first appeal was considered on merits by the Addl. Director, instead of dismissing the same on the consideration of delay alone. When the authority has been specifically invested with the powers to condone the delay in filing of the appeal under Rule 45 of the Rules, unless there are very strong reasons for not condoning the delay, condonation ought not be refused as a matter of course. It may be pointed out that although the application seeking condonation has been titled as an application under Sec.5 of the Limitation Act but the fact remains that this application was and could be considered under the proviso to Rule 45

of the Rules which provides that an appeal may be admitted after the period of limitation if the appellant satisfies the appellate authority that he had sufficient cause for not filing the appeal within limitation. Considerations to be adopted while dealing with a prayer for condonation of delay ought to be with reference to the cause of justice rather than dismissal of the matter on technicalities.

In this case it is evident that the department is not in a position to controvert the submission of the petitioner that he was not served with the notice and cancellation order and that the ladies upon whom they were served, were not the members of his family; intentional delay in filing the appeal, as assumed by the first appellate authority, cannot be accepted; and no third party rights have come into existence which would get disturbed if delay is condoned and the appeal is heard on merits. As noticed above, admittedly, the area is still lying vacant. In those circumstances, this Court feels that the appeal filed by the petitioner deserves to be considered on merits.

The impugned orders Annex.3 and Annex.8 rejecting the appeals filed by the petitioner suffer from errors apparent on the face of record; and are vitiated being based on entirely irrelevant considerations while ignoring the relevant considerations and hence

they cannot be sustained. This Court is further of opinion that the impugned orders, if allowed to stand, would result in manifest injustice and on the contrary no injustice would be caused to either of the parties if the appeal submitted by the petitioner before the Addl.Director is considered on its merits. In this view of the matter, the orders Annex.3 and Annex.8 deserve to be quashed.

As a result of the aforesaid, this writ petition is partly allowed, the impugned orders dated 24.10.1994 (Annex.3) and dated 18.5.1995 (Annex.8) are quashed and set aside. The first appeal submitted by the petitioner before the Addl.Director (Mines) shall stand restored to its number. The delay in filing the said appeal shall stand condoned and the appellate authority shall consider the appeal on its merits. The petitioner in the first instance shall appear before the first appellate authority on 30.08.2005 who shall fix a convenient date for consideration of the appeal and shall expeditiously decide the appeal on merits in accordance with law. There shall be no order as to costs of this petition.

(DINESH MAHESHWARI),J.

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