IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

DB Special Appeal (W) No.613/12
Jarnail Singh Vs. State of Raj. & Ors.

Date:31/07/2012

HON'BLE THE CHIEF JUSTICE MR. ARUN MISHRA
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN-I

Dr. P.C. Jain, for appellant.

Writ petition was filed by the appellant before the Single Bench against the order dated 11.5.2011 passed by the Deputy Secretary (Mines), Mining Department, Jaipur whereby the revision filed by the petitioner-appellant against the order dated 20.5.2009 passed by the Superintending Engineer (Mining), Bharatpur was dismissed.

Petitioner filed an application for mining lease of masonry stone on 23.1.2008. Its rejection was communicated after a period of one year and five months vide order dated 20.5.2009 passed by the Superintending Engineer (Mining), Bharatpur. It was submitted that the order was passed without affording opportunity of hearing. The application was rejected on the ground that applied area for granting mining lease was against the rehabilitation of the lease-holder of Kama-Deeg area under delineated plots. Revision was also dismissed vide order dated 11.5.2011. Hence, writ petition was preferred before the Single Bench.

Stand of the respondents was that while examining the application, it was found that applied area was overlapping M.L. Nos.412/2002 and 479/2002. It was submitted that according to report dated 1.5.2009 of the

Draftman, Senior Geologist, Alwar who vide his letter dated 8.10.2008 sent the maps of delineated plots to the Executive Mining Engineer, Bharatpur, which was received on 15.1.2009 and it was found that the present applied area of the petitioner bearing M.L. No.54/2008 was overlapping the delineated plots. Therefore, a proposal for rejection of petitioner's application was sent to the Superintending Engineer (Mining) Bharatpur on 14.5.2009. Thereafter, vide order dated 20.5.2009 petitioner's application was rejected.

It was further contended by the respondents that considering religious importance of Brij area in Tehsil Kama and Deeg, in public interest it was decided to close down 202 mining leases situated in the hills of Tehsil Deeg and Kama under the order dated 6.2.2008 as the said area was directed to be set apart under the Land Revenue Act as forest area. Thereafter the Government has decided to rehabilitate 202 mining lease owners by grant of delineated plots for mining in Village Gangora, Chinawara, Libasana, Bijasana, Chhpara of Bharatpur District. Out of 202 mining leases closed down in Tehsil Kama and Deeg, 13 mining lease owners had already been rehabilitated in Tehsil pahadi. The applied area by the petitioner was overlapping M.L. Nos.412/2002 and 479/2002. The writ petition has been dismissed aggrieved thereby, the intra-court appeal has been preferred.

Dr. P.C. Jain, learned counsel appearing on behalf of the appellant/petitioner has submitted that application of petitioner was rejected without affording opportunity of hearing and refund of the amount of Rs.2000/- ought to have been ordered.

After hearing learned counsel for the appellant, it is apparent that the area applied for was not available

for allotment. There was overlapping and the area which was available was less than 1 hectare for which, lease could not have been granted in terms of Rule 11 of the MMCR, 1986. In view of policy decision of the State Government for rehabilitation of 189 mining lease holders whose mines falling in villages Deeg and Kama within Brij Chorasi Kos Parikrama Path were cancelled. The uprooted lease holders were rehabilitated. Hence, the area was not available. Thus, the order impugned was appropriate.

This court has also examined the question of Brij Chorasi Kos Parikrama path as vires of Section 29(3) of the Rajasthan Forest Act, 1953 was put in question by mines holders. This court has rejected the challenged and upheld the constitutional validity of proviso to Section 29 (3) of the Act of 1953. Following is the operative portion of the order:-

> "*Considering the aforesaid, the State Government has rightly declared the intention to declare area as protected forest under Section 29(1) and has issued notification invoking proviso to Section 29(3) of the Act of 1953, declaring area to be protected forest. Notification under Section 30 has also been rightly issued. As such, no mining activity can be permitted to take place as provided under the aforesaid provisions. The action of the State Government restraining mining operations in the area in question as precautionary measure is perfectly within the framework of law and the same is in conformity with the law laid down by the Apex Court in the aforesaid decisions. It does not suffer from the vice of arbitrariness rather it has been taken in the public interest to protect area which is in the forest and is having religious significance apart from to take care of activities detrimental to environment and hazardous to the health of inhabitants and those who take parikrama. The action cannot also be said to be in violation of the principle of natural justice.*

> *So far as the submission raised by the petitioners that they had invested huge amount as such premature termination of the leases could not be said to be proper is concerned, the same cannot be accepted as public interest and interest of ecology, environment health, safety and that of composite culture and rich heritage cannot be compromised under the private rights, development has to be sustainable. Individual rights have to give way to the larger public interest. Such a plea that since the leaseholders had invested sums of money in mining operation, it was the duty of the authorities to renew the lease, was also rejected by the Apex Court in the case of M.C. Mehta VS. Union of India & Ors. (2004) 12 SCC 118. Hence, we find no merit in the aforesaid submission. Termination of leases cannot be said to be illegal.*
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> *For the reasons mentioned above, the proviso to Section 29(3) of the Act of 1953 cannot in any manner be said to be unconstitutional and violative of Articles 14, 19 (1)(g), 21 and 300A of the Constitution of India.*
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> *Resultantly, we find no merit in the writ petitions. They are hereby dismissed. However, we leave the parties to bear their own costs.*"

Thus, we find that the application filed by the petitioner has rightly been rejected. There was no necessity of granting opportunity of hearing even if it was not granted. In the facts and circumstances of the case, when the area itself was not available, nothing much could have been done. Petitioner has also availed remedy of revision. He was, thus, heard. The principles of natural justice cannot be applied in a straight jacket formula.

Dr. P.C. Jain, learned counsel appearing on behalf of appellant has also made a prayer that a sum of Rs.2000/- ought to have been refunded. No such prayer has been made in the writ petition. However, if it is

permissible, the appellant may pray for refund of the same to the concerned authorities.

In view of above, we find no merit in the intra-court appeal. It is liable to be dismissed as is, accordingly, dismissed. Stay application No.5866/12 is also dismissed.

(NARENDRA KUMAR JAIN-I)J. **(ARUN MISHRA)CJ.**

GS

All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

Govind Sharma, PA