

WP(C) 3938/2013
BEFORE THE
HON'BLE MR. JUSTICE UJJAL BHUYAN

Both these writ petitions raise identical issues of fact and law and are being disposed of by this common judgment and order.

2. Heard Mr. I. Choudhury, learned counsel for the petitioners in both the cases and Mr. P. Pathak, learned Senior Counsel assisted by Mr. K. Goswami, learned counsel for the respondents.

3. Petitioners were granted mining rights by the respondents. In respect of petitioner in WP(C) No. 3938/2013, it was for operation of Stone Mahal of all yielding areas of Dima Hasao district. In case of petitioners of WP(C) No. 3940/2013, it was for operation of different Sand Mahals. In the case of petitioner in WP(C) No. 3938/2013, the Mahal was settled for a period of 10 years w.e.f. 15.07.2011 at the price of Rs.1,50,00,000/-. In so far petitioners of WP(C) No. 3940/2013 are concerned, they were settled with the Mahals for periods of 3 years.

4. Pursuant thereto, respective agreements were entered into between the petitioners and Dima Hasao Autonomous Council. In the case of the petitioner in WP(C) No. 3938/2013, a supplementary agreement was also entered into between the parties wherein one of the clauses was that the Forest Department will not grant permit to any person or any Government department requiring stone/boulder stone other than the second party i.e. the petitioner.

5. On the ground that Dima Hasao Autonomous Council decided to adopt Assam Minor Mineral Concessions Rules, 1994, petitioners were initially asked to stop operating their mahals though such orders were suspended by the Principal Secretary, Dima Hasao Autonomous Council. Subsequently, such orders were vacated. Petitioners were informed by the Principal Secretary of Dima Hasao Autonomous Council by communication dated 22.05.2013 that as per decision of the Executive Committee of the Autonomous Council dated 11.04.2013 adopting Assam Minor Mineral Concessions Rules, 1994, agreements signed with the petitioners were cancelled. Petitioners were given liberty to apply for fresh lease as per provisions of Assam Minor Mineral Concessions Rules, 1994.

6. Aggrieved, petitioners have preferred the present writ petitions.

7. This Court by separate orders dated 18.07.2013 directed that the position that was prevalent prior to the issuance of the communication dated 22.05.2013 should be maintained.

8. Respondents have filed identical affidavits in both the cases. Stand taken is that petitioners were given opportunity to apply for fresh lease as per Assam Minor Mineral Concessions Rules, 1994 and as a matter of fact, petitioners had exercised their option for fresh lease by filing applications. It is stated that the earlier agreements were executed without any prior environmental clearance or without inviting tender. Additionally, it is pointed out that there has been some default in the payment of revenue by the petitioners. It is also stated that the 1994 Rules has since been repealed and the Assam Minor Mineral Concessions Rules, 2013 has come into force.

9. Petitioners have filed reply affidavit. Contention advanced is that as per proviso to Rule 3 of Assam Minor Mineral Concessions Rules, 1994, existing leases granted prior to commencement of the Rules are not to be disturbed. Since leases of the petitioners were granted prior to adaptation of the 1994 Rules to Dima Hasao, such leases are not to be disturbed.

10. Learned counsel for the petitioners submits that Rule 3 (1) of the 1994 Rules provides that no person shall undertake any mining or clearing operation in any area except under and in accordance with the terms and conditions of a mining lease or mining permit, as the case may be, granted in accordance with the provisions of the said Rules. However, as per the proviso to Rule 3 (1), the said Sub Rule would not affect any mining operation undertaken in any area in accordance with the terms and conditions of a lease/permit granted before the commencement of 1994 Rules. He submits that from the documents on record it is evident that the 1994 Rules were adopted by the Executive Committee of the Autonomous Council in its meeting held on 11.04.2013. All the settlements of the petitioners were granted prior to that date. Therefore, all the settlements are saved by the proviso to Rule 3 (1) of the 1994 Rules. He further refers to Section 4 A of the Mines and Minerals (Development and Regulation) Act, 1957 to contend that cancellation of the settlements without affording a reasonable opportunity of being heard to the petitioners was illegal.

11. Learned counsel for the respondents on the other hand submits that though the petitioners have sought protection of the proviso to Rule 3 (1) as well as Section 4 A, such protection would no longer be available in view of coming into force of the new Rules in 2013 which does not have any such saving provision. He also submits that respondents have cancelled the leases and have decided to go for fresh settlement keeping in view the observations of the Apex Court in the case of Dipak Kumar and Ors. Vs State of Haryana and Ors. reported in (2012) 4 SCC 629. He further submits that no prejudice has been caused to the petitioners as the respondents have given liberty to them to apply for fresh lease. Lastly, he submits that petitioners have not mentioned about the fact that they had submitted applications for fresh lease as per direction of the authority. Thus, there is suppression of fact which would disentitle the petitioners from seeking the discretionary relief of the Court.

12. Submissions made have been considered.

13. The Mines and Minerals (Development and Regulation) Act, 1957 has been framed to provide for development and regulation of mines and minerals. As per Section 3 (a), minerals includes all minerals except mineral oils, and as per Section 3(e) minor minerals means building stones, gravel, ordinary clay, ordinary sand and any other mineral which may be declared to be a minor mineral by the Central Government by notification in the Official Gazette. Section 4 deals with prospecting or mining operations under licence or lease whereas, Section 4 A provides for termination of prospecting licences or mining leases. While Sub-section (1) of Section 4 A empowers the Central Government to make recommendation to the State Government to make pre-mature termination of prospecting licence or mining lease to enable the State Government to make an order making a pre-mature termination of such prospecting licence or mining lease, Sub-section (2) empowers the State Government to make such pre-mature termination of prospecting licence or mining lease. As per Sub-Section (3), no order making a premature termination of a prospecting licence or mining lease shall be made except after giving the holder of the licence or lease a reasonable opportunity of being heard. Section 15 of the Act empowers the State Government to make Rules in respect of minor minerals.

14. In exercise of powers conferred under Section 15 of the Act, State Government has framed the Assam Minor Mineral Concessions Rules, 1994. As already noticed in the arguments of learned counsel for the petitioners, Rule 3 prohibits mining or quarrying operations without mining lease or mining permit. As per the proviso, terms and conditions of an existing lease/permit granted before commencement of the Rules would not be effected by operation of the Rules.

15. In the present case, Dima Hasao Autonomous Council is an autonomous district administered under the provisions of the 6th Schedule to the Constitution of India. Laws enacted by the State would become applicable to such area on its adaptation by the Council. It is not disputed that the Assam Minor Mineral Concessions Rules, 1994 were applied to the Dima Hasao Autonomous Council as per decision of Executive Committee dated 11.04.2013. As on that date, the agreements of the petitioners were in operation.

16. It is another aspect of the matter that the said 1994 Rules has been repealed and have been replaced by the new Assam Minor Mineral Concession Rules, 2013.

17. Without going into the contentious issues raised and submissions made by the learned counsel for the parties, Court is of the view that since the petitioners were holding subsisting lease and were carrying on extraction of minor minerals on the strength of existing agreements, they should have been afforded a reasonable opportunity of hearing prior to cancellation of their agreements. Sub-section (3) of Section 4 A of the Act mandates that no order making a premature termination of a mining lease shall be made except after giving the holder of the lease a reasonable opportunity of being heard.

18. Power of termination of agreements, as has been exercised in the present cases, is a drastic power and entails adverse civil consequences affecting the rights of the petitioners. Therefore, petitioners should have been put on notice prior to such termination.

19. Having regard to the above, Court is of the view that failure to provide reasonable opportunity of hearing to the petitioners has vitiated termination of agreements.

20. Accordingly, such termination of agreements cannot be sustained. Those are interfered with and are hereby quashed.

21. However, notwithstanding the above, it will be open to the respondents to put the petitioners on notice if they wish to go for fresh settlement and take necessary decision in accordance with law after giving opportunity of hearing to the petitioners.

22. Writ petitions are allowed to the extent indicated above. However, there shall be no order as to cost.