

Court No. - 6

Case :- WRIT - C No. - 631 of 2023

Petitioner :- Rajesh Sharma Thru. Its Proprietor Rajesh Sharma

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin.

Secy. Geology And Mining Deptt. Lko. And 2 Others

Counsel for Petitioner :- Rahul Mishra, Shishir Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Shri Mukesh Prasad, learned Senior Advocate, assisted by Shri Amit Upadhyay and Shri Shishir Yadav, Advocates on behalf of the petitioner as well as learned Standing Counsel representing the State-respondents.
2. Learned counsel for the applicant/petitioner has filed an application for amendment of the writ petition by which he seeks to amend the prayer and assail the order dated 29.10.2020 passed by District Magistrate, Kaushambi.
3. There is no objection by the Standing counsel and accordingly the application for amendment is allowed.
4. Learned counsel for the petitioner is directed to make necessary incorporation in the memo of the petition during course of day.
5. By means of the present writ petition, the petitioner has challenged the order dated 17.09.2021 passed by the State Government in revision under section 78 of U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as 'the Rules, 1963) whereby the State Government has rejected the revision and upheld of the order of the District Magistrate dated 29.10.2020 whereby the mining lease of the petitioner has been cancelled and he was directed to pay the amount of first installment of royalty for the second year.

6. The brief facts of the case are that as per the New Government Policy-2017, a Government Order for settlement of lease under Chapter IV by e-tender/e-auction dated 14.08.2017 was issued. The Uttar Pradesh Minor Minerals (Concession)(43 Amendment) Rules, 2017 were framed whereby the mining lease was to be granted as per the procedure prescribed under the statutory Rules. Accordingly, an advertisement was issued on 05.09.2017 by the District Magistrate, Kaushambi for settlement of mining lease of sand and mourram under the amended Rules, 2017 in district-Kaushambi for several mining blocks by e-tendering.

7. The petitioner had also participated in the said process and had submitted an application for mining lease for mining in Village-Yamunapura, Tehsil-Manjhanpur, District-Kaushambi from the Yamuna river, measuring 24.28 hectares for a quantity of 4,80,000 cubic mtrs per year. The bid of the petitioner being the highest was accepted by the District Magistrate, Kaushambi and thereafter by means of the letter dated 13.11.2017 subsequent to which a letter of intent dated 04.12.2017 was issued and the petitioner fulfilled all the formalities including the deposit of security money as well as the first installment of the annual lease amount. Accordingly, a lease deed was executed and registered in favour of the petitioner on 17.02.2018 for a period of five years i.e. from 17.02.2018 to 16.02.2023.

8. The petitioner after entering into the lease deed entered into the mining area and continued mining till 15.02.2019. During this period he found that the entire lease area of the petitioner was submersed into the river and no mining is possible except on small area. The petitioner moved a representation to the District Magistrate, Kaushambi on 31.12.2018 stating that no mining is possible in the area allowed to the petitioner and also

that there is prohibition of mining in case the water level rises and the land get submersed and accordingly in the aforesaid compelling circumstances requested the District Magistrate, Kaushambi for cancellation/surrender of the mining lease. Despite the letter of the petitioner dated 31.12.2018, the Mines Officer, Kaushambi issued a demand notice dated 19.02.2019 demanding the installment of the lease amount along with interest. The petitioner under a belief that an appropriate order would be passed on his application dated 31.12.2018 did not deposit the amount demanded by the notice dated 19.02.2019 and consequently by means of the order dated 25.03.2019 the mining lease of the petitioner was cancelled and recovery proceedings were initiated for recovery of the outstanding amount of royalty.

9. The petitioner being aggrieved by the order of cancellation of the mining lease dated 25.03.2019 as well as recovery proceedings approached this Court by filing a writ petition being Writ-C No.16183 of 2019. One of the grounds raised by the petitioner for assailing the order of cancellation of the mining lease was that as per the show cause notice issued to the petitioner it was stated that the entire security amount deposited by the petitioner was liable to be adjusted towards a dues/liability fixed upon the petitioner. This Court was of the considered view that the said show cause notice was illegal, arbitrary and was not supported by the statutory provisions whereby the security amount could have been forfeited and consequently allowed the writ petition by means of the judgment and order dated 19.02.2020 whereby quashing the order dated 25.03.2019 passed by the Additional District Magistrate (F&R), Kaushambi as well as recovery certificate dated 05.04.2019 passed by the District Magistrate, Kaushambi and allowed the writ petition. It further granted liberty to the

respondents to proceed afresh against the petitioner in accordance with law.

10. It is in compliance of the judgment of this Court dated 19.02.2020 that the respondents decided to initiate fresh proceedings against the petitioner and issued a show cause notice dated 30.05.2020. In the said show cause notice the operative portion of the judgment of this Court dated 19.02.2020 was mentioned and subsequently they asked the petitioner to respond to letter dated 25.03.2019 within a period of 20 days. The petitioner responded to the notice dated 30.05.2020 and denied the allegations levelled therein and requested that an inspection may be conducted to verify as to whether minor minerals were available for mining and the lease deed be suitably amended and the excess royalty paid by the petitioner be refunded. By means of the impugned order dated 29.10.2020 the District Magistrate has cancelled the mining lease and forfeited the security amount of the petitioner and has sought recovery of an amount of Rs.3,57,72,000/-. Against the impugned order dated 29.10.2020 the petitioner has preferred a revision before the State Government which has also been rejected by means of the order dated 17.09.2021. In the present writ petition the petitioner has impugned the order of cancellation passed by the District Magistrate, Kaushambi as well as revisional order passed by the State Government.

11. The main plank of the argument of the petitioner is that on the first occasion when he has approached this Court challenging the order of cancellation this Court had considered the arguments raised by the petitioner with regard to the infirmity in the previous order of cancellation dated 25.03.2019 whereby the security amount deposited by the petitioner was liable to be adjusted towards dues/liability fixed upon the petitioner after cancellation of the lease deed. This Court was

also of the view that the said order was without any statutory basis and recovery if any against the petitioner could have been made as arrears of land revenue; rather than forfeiting the security amount deposited by him and consequently had set aside the order dated 25.03.2019 as well as consequential recovery proceedings. It has been submitted that once the order dated 25.03.2019 has been found to be illegal and arbitrary and having been quashed by this Court then the respondents could not have asked to the petitioner to respond to the same order once again in the show cause notice dated 30.05.2020. Accordingly, on this account it is stated that the respondents have overlooked the previous judgement of this Court dated 19.02.2020 and in fact have acted contrary to the directions of this Court and on this ground alone the proceedings of the writ petition deserves to be set aside.

12. Learned Standing Counsel, on the other hand, has opposed the writ petition and has submitted that U.P. Minor and Minerals (Concession) Rules, 1963 have been amended w.e.f. 14.08.2019 and now there is a provision for cancellation after adjusting the security money deposit made by the lease holder, but he does not dispute the fact that on the previous occasion this Court had quashed the order dated 25.03.2019 passed by the Additional District Magistrate (F&R), Kaushambi and recovery certificate dated 05.04.2019.

13. Considering the rival submissions, only question urged by the petitioner is that the previous proceedings were held to be illegal, arbitrary and contrary to the statutory provisions and the cancellation order dated 25.03.2019 was set aside only on the ground that the respondents had proceeded contrary to the provisions of U.P. Minor Minerals (Concessions) Rules, 1963 and specially clause 19(3) of the Government Order dated 14.08.2017 which does not permit the forfeiture of the security

amount deposited by the lessee/petitioner and only provided the realization of the said amount as arrears of land revenue along with the interest prescribed. In the fresh show cause notice dated 30.05.2020 the petitioner has again been asked to respond to the order dated 25.03.2019. This Court was of the considered opinion that once the order 25.03.2019 has been held to be illegal and arbitrary and has been quashed by this Court it was not within the competence of the respondents to have asked to the petitioner to respond to the said order once again. It is clear that the respondents have proceeded clearly in violation of the previous order of this Court dated 19.02.2020 passed in Writ-C No.16183 of 2029 in a most illegal and arbitrary manner.

14. Accordingly, without delving into the merit of the controversy, the proceedings impugned in this petition are also quashed. The orders dated 17.9.2021, 4.10.2021, 19.2.2022 and 29.10.2020, as contained in Annexure No.s 1, 2, 3 and 17 to the writ petition, are quashed.

15. The writ petition is **allowed**.

(Alok Mathur, J.)

Order Date :- 29.3.2024

RKM.