S.A. RASHEED

v.

DIRECTOR OF MINES AND GEOLOGY AND ANOTHER

APRIL 28, 1995

[B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.]

Constitution of India, 1950 : Article 226.

Laches and delay—Quarrying lease—Granted—Lease deed not executed—Revision allegedly filed against such omission—Writ petition filed after eight years—No explanation given for the delay—No document filed to show that the petitioner ever reminded the authorities for disposal of revision—No document filed to show that the authorities asked petitioner to wait—In such circumstances the High Court rightly held the writ petition to be suffering from unexplained laches and delay—Karnataka Minor Mineral Concession Rules, 1969—Mines and Minerals (Regulation and Development) Act, 1957.

Infructuous writ petition—Quarrying lease for a specified period granted—Lease deed not executed—Writ petition against such omission filed after long delay—Lease period contemplated by the grant expiring by the time of decision—High Court rightly held that issuance of writ at this stage would not be just and proper.

The appellant applied on July 4, 1980 for grant of a quarry lease in respect of pink granite admeasuring 300 acres. On January 6, 1981, a lease was granted to him in respect of 100 acres. At the instance of the appellant, a corrigendum was issued on June 6, 1981 stating that the area in respect of which the appellant had been granted lease shall be read as 300 acres. Before a lease deed could be executed in favour of the appellant as required by the Karnataka Minor Mineral Concession Rules, 1969, Rule 3(a) was introduced in the said Rules prohibiting the grant of mining lease in respect of granite to private persons with effect from July 2, 1981. In view of the said Rule, the respondents declined to execute a lease deed in his favour pursuant to the said grant.

Aggrieved by the refusal to execute the lease deed, the appellant filed a revision before the respondents on July 26, 1981. Prior to the filling of

A the said revision, he had also filed a representation to the same effect on July 21, 1981. The filing of the revision and the submitting of the representation aforesaid was denied and disputed by the respondents. The appellant in the year 1989, i.e.; after a lapse of eight years filed a writ petition before the High Court for direction to the respondents to execute the lease deed. The High Court dismissed the petition on the ground of B undue delay and laches. Aggrieved by the High Court's judgment the appellant preferred the present appeal.

On behalf of the appellant it was contended that he had filed a revision and representation before the respondents to execute the lease C deed; that since writ petitons were pending in the High Court he was asked to await the result of the said proceedings; that because of the said assurance he did not move further in the matter; that when the respondents refused to excute the lease deed even after the position of law was made clear by the High Court and this Court, he filed the writ petiton in the year 1989; and that he was not guilty of unexplained delay and laches. D

Dismissing the appeal, this Court,

HELD : 1.1. It is significant to notice that the averments are singularly silent as to who asked the appellant - petitioner to "await". Not a single E letter or proceeding is filed to establish the said averment. The petitioner also does not say that he ever requested in writing for execution of the lease deed - not even after the judgment of this court. It is rather curious that even after this Court's judgment, the appellant is said to have been asked to "await" and he just kept waiting. [891-A, B]

F 1.2. There is not a shred of paper to show that between 1988 and 1989, the appellant had ever reminded the respondents of his revision petition or asked for its disposal. There is also not a scrap of paper to establish that the respondents had ever asked him to wait. It is ununderstandable, why was he asked to wait even after the decision of this Court - on the ground G that some other similar writ petitions were pending in the High Court - and why did the appellant implicitly agreed to wait. The entire explanation is vague and unacceptable. The writ petition filed by the appellant suffered from laches and the delay has remained unexplained. [892-F to H]

2. Even if a lease deed had been executed within a period of three H months therefrom, it would have expired in the year 1991, for the reason

that the period contemplated by the grant was only ten years. The High Court therefore, thought that issuance of a writ after the expiry of the said period would not be just and proper. It cannot be said that the said consideration is an irrelevant one in the context of the fact that the right claimed by the appellant was with respect to the quarrying lease of a mineral in a government land. [893-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5278 of 1995.

From the Judgment and Order daed 3.10.91 of the Karnataka High Court in W.A.No. 1035 of 1991.

Kapil Sibal, D.L.N. Rao and S.K. Kulkarni for the Appellant.

M. Veerappa for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted. Heard counsel for the parties.

The appellant is canvassing the correctness of the judgment of the Division Bench of the Karnataka High Court allowing Writ Appeal No. 1035 of 1991 filed by the respondents herein (Director of Mines and Geology and the Deputy Director of Mines and Geology) and dismissing his writ petition. The learned Single Judge had allowed the appellant's writ petition and dircted the respondents to execute the lease deed in his favour in respect of 300 acres in Survey Nos. 20 and 21 of Kudagali village. The pink granite concerned herein is a minor mienral, the quarrying whereof is regulated by the Karnataka Minor Mineral Concession Rules, 1969 framed under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957.

The appelant applied on July 4, 1980 for grant of a quarry lease in respect of pink granite in Survey Nos. 20 and 21 admeasuring 300 acres. On January 6, 1981, a lease was granted to him in respect of 100 acres. At the instance of the appellant, a corrigendum was issued on June 6, 1981 stating that the area in respect of which the appellant has been granted lease shall be read as 300 acres. Before, however, a lease deed could be executed in favour of the appellant as required by the Rules, Rule 3(A)

A was introduced in the said Rules prohibiting the grant of mining lease in respect of granite to private persons with effect from July 2, 1981. In view of the said Rule, the appellant says, the respondents declined to execute a lease deed in his favour pursuant to the grant aforesaid even though the Senior Geologist submitted his survey report (on the basis of survey conducted by him on July 3, 1981) to the competent officer. (Incidentally, the B survey report states that the appelant had chosen only 50 acres out of the extent grant to him).

Aggrieved by the refusal to execute the lease deed, the appellant says, he filed a revision before the Director of Mines and Geology on July C 26, 1981. (*Vide* para 4 of Writ Petition). Prior to the filing of the said revision, he says, he had also filed a representation to the same effect on July 21, 1981. (*Vide* Para 3 of Writ Petition). The filing of the revision and the submitting of the representation aforesaid is, however, denied and disputed by the respondents. They say that no such revision petition or D representation was received by them. Be that as it may, in the year 1989, i.e., after a lapse of eight years, the appellant filed Writ Petition No. 14657 of 1989 in the High Court of Karnataka for issuance of an appropriate direction to the respondents to execute a lease deed pursuant to the grant of lease dated Janaury 6, 1981 as corrected on June 6, 1981. The learned Single Judge allowed the writ petition holding that inasmuch as the grant E of lease in favour of the appellant was prior to the introduction of Rule 3(A) (imposing the ban), the execution of a lease deed pursuant to such grant is not barred by the said Rule. The learned Judge purported to follow the earlier decisions of the High Court in that behalf. The order of the learned Single Judge was appealed against by the resondents which was F allowed by the Division Bench on more than one ground, viz, (1) "(F)rom the information gathered, it is clear that, though he had initially applied for the grant of lease over an area of 300 acres, he was satisfied with an area of 50 acres and to that extent a sketch was prepared and the area was demarcated as identified by him. The respondent cannot make his claim on the basis of Annexure B, viz., the corrigendum dated 6.6.81 which infact G was issued under suspicious circumstances because there is nothing to show that prior to 6.6.81 the respondent had requested the appellants to correct the mistake regarding the area of lease". (2) Since no lease deed was executed within three months of the grant (reference is evidently to grant dated January 6, 1981) the grant must be deemed to have been H revoked. In such a case, the remedy open to the appellant was to file a

fresh aplication for lease and not a writ petition. Moreover, the apellant had approached the High Court after a lapse of eight years by which time the very lease period contemplated under the grant had almost come to an end. (3) No writ or direction can be issued by the High Court contrary to law. Rule 3(A) prohibits grant of lease to private individuals. (4) The appellant is guilty of undue laches. He approached the High Court eight years after the grant in his favour stood revoked by operation of law.

Sri Kapil Sibal, learned counsel for the apellant submitted that (1) inasmuch as the three months' period contemplaetd by Rule 9(2) had not expired in this case by the time Rule 3(A) was introduced, the appellant's right to obtain a lease deed pursuant to the grant in his favour made on January 6, 1981 and rectified on June 6, 1981 remained unaffected and that the respondents were under a statutory obligation to execute the lease deed in his favour. This is the view taken uniformly by the Karnataka High Court in several decisons which has also been approved by this Court. The respondents having failed to execute a lease deed within three months of the grant as required by law, cannot take advantage of their own inaction and say that on account of their own failure, the appellant's right to obtain a lease deed is defeated.

(2) The period of three months contemplated under Rule 9(2) should be calculated with effect from June 6, 1981 and not from January 6, 1981. The appellant had applied for lease in respect of 300 acres but when it was granted for 100 acres only, he was legitimately entitled to bring to the notice of the government the said discrepancy. The government has actually corrected its mistake and issued the corrigendum on June 6, 1981. In the circumstances, the Division Bench was not right in holding that the grant of lease in favour of the appellant stood revoked under Rule 9(2). The High Court was also not right in holding that the *Mandamus* issued by the learned Single Judge was contrary to law.

(3) The Division bench was not justified in holidng that the appellant is guilty of laches. Against the refusal of the respondents to execute a lease deed, the appellant had filed a revision before the Dierctor as early as July 26, 1981, i.e., within three months from June 6, 1981. Earlier to that, he had also filed a representation before the Director of Mines. The said revision was never considered or disposed of by him. On the contrary, the respondents had been assuring the appellant that since the position of law

A consequent upon introduction of Rule 3(A) was not clear and because writ petitions were pending before the High Court and the Supreme Court, the appellant should await the result of the said proceedings. Because of the said assurance, the appellant did not move in the matter. When the respondents refused to execute the lease deed even after the position of law was made clear by the High Court and this Court, the appellant moved B in the matter and filed the writ petition in the year 1989. It cannot, therefore, be said that the appellant has been sleeping over his rights or that he is guilty of unexplained delay.

Rule 3(2) of the Kartnataka Minor Mineral Concession Rules, 1969 C states that no quarrying lease shall be granted in respect of any land notified by the government as reseved for use by the government or for any public or special purpose. Rule 3(A)*, as originally introduced on and with effect from July 2, 1981, provided that notwithstanding anyting to the contrary contained in the said Rules, no lease for quarrying pink granite (among other kinds of granite) shall be granted to private persons. It D provided that the State Government may themselves engage in quarrying the said granite or grant lease for quarrying it in favour of any corporation wholly owned by the State Government. (In the present case, it may be noted, the land in respect of which the appellant had applied for lease is government land.) Rule 4 provides for application being made for quarry- E ing leases while Rule 5 provides for the security deposit to be made along with every such application. Rule 6 provides that "every application for quarrying lease shall be disposed of within three months from the date of its receipt and if it is not disposed of within that period, the application shall be deeemed to have been refused". Rule 7 prescribes the fee for grant and renewal of licences. Rule 8 prescribes the register of application which F has to be maintained by the competent officer. Rule 9 is relevant for our purposes and may be extracted in full:

> "9. *GRANT OF QUARRYING LEASE*—(1) On receipt of an aplication under rule 4 the competent officer on making such G enquiries as he deems fit may sanction the grant of quarrying lease to the applicant or refuse to sanction it.
>
> (2) When a quarrying lease is granted under sub-rule (1) the formal

* Rule 3(A) has been substituted by a Notification dated May 22, 1990 but it may not H be necessary to refer to the amended Rule 3(A) for the purpose of this case.

lease shall be executed within three months of the order sanctioning the lease or within such further period as the competent officer may allow in this behalf and if no such lease is executed within the aforesaid period, the order sanctioning the lease shall be deemed to have been revoked. A

(3) The Competent officer shall forward to the controlling officer one copy of the quarrying lease as soon as the lease is executed." B

A reading of sub-rule (1) of Rule 9 shows that the competent officer is empowered to grant quarrying lease to the applicant or to refuse the same on making such enquiries as he deems fit. Sub-rule (2) says that where a lease is granted under sub-rule (1), a formal lease deed shall be executed within three months of such order or within such further period as the competent officer may allow in that behalf. It further declares that if no such lease is executed within the aforesaid period "the order sanctioning the lease shall be deemed to have been revoked". This sub-rule shows that the grant of lease under Rule 9 is complete and takes effect only when a lease deed is executed within the period prescribed and that in case the lease deed is not so executed, the grant under sub-rule (1) stands revoked. The sub-rule is mandatory in nature. Rule 14(1) says that except with the prior approval of the controlling officer, no quarrying lease shall be granted in the case of minor minerals for an area exceeding 60 hectares (150 acres). Rule 20 prescribes the condition which shall attach to quarrying leases granted under the Rules. Rule 61 provides for a revision against the orders of the competent officer to the controlling officer; where the order is made by the controlling officer, the revision lies to the government. C D E

We may first deal with the question of laches. In the writ petition filed by the appellant, the explanation furnished for approaching the court after eight years was to the following effect: after the grant of lease, he repeatedly approached the competent officer for execution of the lease deed but there was no response even after the Senior Geologist submitted his survey report. He, therefore, filed a revision petition before the Director of Mines on July 26, 1981. He had also submitted a representation to the Director of Mines earlier on July 21, 1981. He submitted another representation on August 20, 1981.What happened thereafter is better set out in his own words : F G

"The Respondents were thinking that in view of Rule 3(A) lease H

A deed could not (be) executed, but however, since similar question was pending before the High Court in W.P. 2921/81. *The petitioner was asked to await.* The Petitioner patiently awaited and ultimately that writ petition was allowed and the direction was issued to the authority to execute the lease deed. Petitioner approached the Respondents for similar relief. In the said writ petition, the B petitioner therein was granted a quarry lease before coming into force of Rule 3(A). By the time, the lease deed could be executed, Rule 3(A) came into operation and the competent officer by applying Rule 3(a) did not execute the lease deed. Since the land was already granted, execution of the lease deed is a formality. C This Hon'ble Court was pleased to accept the said contention and a writ in the nature of *mandamus* is issued. Then the petitioner approached the Respondents, by submitting a copy of the said order, *he was asked to await*, since the said judgment was taken up in appeal by the authorities before the Supreme Court, the D Respondents did not take steps to execute the lease deed on the ground that certain such writ petitions are pending before the Hon'ble High Court.

The Petitioner repeatedly made a request and also brought to the notice of the Respondents saying that the respondents being E party to the said judgment should implement the order, but however, *the petitioner was asked to await* the judgments in respect of large number of similar matters which were pending at that time before this Hon'ble Court.

It is respectfully submitted that following the earlier judgment, F this Hon'ble Court passed orders directing the authorities to execute the lease deed. When this was again brought to the notice of the Respondents, the Respondents were not prepared to extend the same benefit to the petitioner.

G The Petitioner's repeated requests were of no avail. Neither the competent officer took steps to execute the lease deed, nor the controlling officer took steps to pass orders on the revision petition filed by the petitioner. The petitioner is constrained to approach this Hon'ble Court for suitable directions."

H (Emphasis added)

It is significant to notice that above averments are singularly silent as to who asked the appellant petitioner to "await". Not a single letter or proceeding is filed to establish the said averment. The petitioner also does not say that he ever requested in writing for execution of the lease deed - not even after the judgment of this court referred to in the first paragraph of the above extract. It is rather curious that even after this court's judgment, the appellant is said to have been asked to "await" and he just kept waiting.

In their statement of objections filed under Rule 21 of the Karnataka High Court Writ Proceedings Rules, 1977, the respondents denied the aforesaid averments in the writ petition. They stated that after the grant in favour of the appellant, Rule 3(A) was amended and, therefore, he was not entitled to obtain a lease deed. The respondents have stated, "however, the petitioner has also not made any demand thereafter. He has kept quiet all along and has filed this writ petition after a lapse of nearly 8 years from 1981..... The petitioner has not made any representation on 21.7.1981. The petitioner has not executed the lease deed within 3 months from the date of the notification dated 6.1.1981..... The contention of the petitioner that the petitioner has filed a revision petition on 26.7.1981 is denied as the same is not available in the records and therefore the question of taking any steps does not arise. All other averments which are not specifically traversed therein are hereby denied as false and untenable."

To establish that he had filed a revision before the Director of Mines and Geology July 26, 1981, the appellant has filed a xerox copy of a receipt said to have been issued by the office of the Director of Mines and Geology along with an affidavit. In the affidavit (dated April 1, 1995), the appellant stated, "I submit respectfully that the revision petition was filed by me on *28.07.1981* and the acknowledgment was also taken on the copy of the proforma. However, a few years back, while I was travelling from Bangalore to Mysore, I lost my suitcase in which all the originals of all documents were kept. Therefore, I am not having the originals with me. A set of photocopies were available from which I made further copies". The photocopy of the receipt which has been produced before us is blurred in many places. The proforma entries are in Kannada while the entries made by the appellant are in English. The date on the said receipt which is in type is blurred. A date is put under the signature of the person who received the same but it only mentions the date and the month but not the

A year. The filing of a subsequent representation on August 20, 1981 before the Director (wherein the appellant says that he referred to his revision petition filed on July 28, 1981) is equally not clear and is denied by the respondent.

B The discrepancy between the averments made in the writ petition and the averments now made may immediately be noticed : in Para (4) of the writ petition, the appellant had stated, "(U)ltimately on *26.7.1981,* the petitioner was constrained to file a revision petition under Rule 61 of the Rules to the Director of Mines and Geology requesting for a direction to the competent officer to execute the lease deed. A true copy of the revision C petition is produced and marked as Annexure-D. The petitioner has also made a representation to the Director of Mines and Geology on 20.8.1981 (28.8.1981). A true copy of the representation is produced and marked as Annexure-E". As against the said averment, the present case of the appellant, as put forward in his affidavit dated April 1, 1995, is that the revision D petition before the Director was filed on July 28, 1981. (The Division Bench too refers to the date of filing the revision petition as dated July 26, 1981 evidently on the basis of the averments in the writ petition). Apart from this discrepancy in the date of filing the revision, what appears inexplicable is, what was the occasion for filing the said revision petition. The appellant had not received any refusal in writing from the respondents nor had a E period of three months elapsed from June 6, 1981. In view of the above circumstances and the denial of the respondents to have received any revision petition, we find it difficult to accept the appellant's story. Now, even if we proceed on the assumption that the appellant had indeed filed such a revision petition on July 28, 1981 (or July 26, 1981, as the case may F be) it still does not explain his laches spreading over a period of eight years. There is not a shred of paper to show that between 1988 to 1989, the appellant had ever reminded the Director of his revision petition or asked for its disposal. There is also not a scrap of paper to establish that the respondents had ever asked him to wait. It is ununderstandable, why was he asked to wait even after the decision of this Court-on the ground that G some other similar writ petitions were pending in the Karnataka High Court - and why did the appellant implicitly agreed to wait. The entire explanation is vague and unacceptable. We are, therefore, unable to say that the Division Bench of the High Court was in error or was unjustified in holding that the writ petition filed by the appellant suffered from leaches H and that the delay has remained unexplained.

The High Court has pointed out yet another circumstance, viz., that the appellant was granted a lease for 100 acres/300 acres on January 6, 1981/June 6, 1981. Even if a lease deed had been executed within a in period of three months therefrom, it would have expired in the year 1991, for the reason that the period contemplated by the grant was only ten years. The Division Bench, therefore, thought that issuance of a writ after the expiry of the said period would not be just and proper. It cannot be said that the said consideration is an irrelevant one in the context of the fact that the right claimed by the appellant was with respect to the quarrying lease of a mineral in a government land.

Having regard to our conclusion on the question of laches, we do not think it necessary to go into other questions. The appeal accordingly fails and is dismissed. No costs.

V.S.S. Appeal dismissed.