

PETITIONER:
RAMLAL & SONS

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT 09/10/1975

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
ALAGIRISWAMI, A.
UNTWALIA, N.L.

CITATION:
1976 AIR 54 1976 SCR (2) 222
1976 SCC (1) 112

ACT:

Mines and Minerals (Regulation and Development) Act (67 of 1957), s. 5 and the Mineral Concession Rules 1949, r. 41- State Government demanding premium without prior approval of Central Government-Validity.

HEADNOTE:

The appellant's tender for mining rights for mica was accepted in 1951. The appellant deposited the premium demanded and took possession of the land. The lease was for a period of twenty years but no lease was executed. In 1967, the State Government directed that the appellant should vacate the land within a month from the date of the receipt of their order. The appellant challenged the order under Art. 226. but the High Court dismissed the petition.

Allowing the appeal to this Court,

^

HELD: (1) In view of the facts, that the period of the purported lease had already expired, and no proper lease had been executed, there was no question of issuing a writ for granting the lease, or the appellant exercising an option to renew the lease. [224H]

(2) The appellant, however, was entitled to a refund of the illegally realised premium deducting the sum received on account of compensation for the unexpired period. The State Government was under a legal obligation to act in accordance with the statutory rules applicable, namely, the Mineral Concession Rules, 1949, made in exercise of the power conferred under s. 5 of the Mines and Minerals (Regulation and Development) Act, 1948 when granting a lease. It could not impose terms and conditions according to its own whims ignoring or disregarding statutory rules which are binding on it, and could not exercise a power unknown to the rules. There is no provision in the rules authorising the realisation of premium. Rule 41, providing for conditions of the lease, specifically mentions royalty, dead rent and surface rent but not premium. Under r. 41(3) a mining lease may contain any other special conditions subject to the prior approval of the Central Government; but no such prior approval was given in the present case, for the realisation of the premium.

[225A-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1562 of 1970.

Appeal by special leave from the Judgment and Order dated the 29th July, 1970 of the Rajasthan High Court in D.B. Civil Special Appeal No. 172 of 1970.

D. V. Patel, S. M. Jain, for the appellant.

Miss Maya Rao for the respondent.

The Judgment of the Court was delivered by

GOSWAMI, J. This appeal by special leave is against the judgment of the Division Bench of the Rajasthan High Court by which an appeal against the judgment of a single Bench was summarily rejected.

In answer to a notification of March 29, 1950, issued by the State of Rajasthan inviting tenders for mining rights for mica on certain terms and conditions, the appellant submitted its tender which was accepted on December 30, 1950 and a notification in that behalf was made by the State Government on February 6, 1951, granting the mining lease for mica for block No. 6 (except sidries mine) in Bhilwara District on payment of the tendered amount of Rs. 1,55,000.

223

The lease was for a period of 20 years with an option of renewal of the lease for another 20 years as per conditions prescribed in the Mineral Concession Rules, 1949 (briefly the Rules). A premium of Rs. 1,55,000 was deposited by the appellant and possession was also handed over to it on March 15, 1951. The area originally was 6021 acres but later on a dam, by the name of Meza Dam, was constructed over some parts of the original area and the appellant was left to work on 2924 acres. It is stated that the appellant spent Rs. 5,65,000 between 1951 and 1955. It is also common case that no lease was executed within six months of the acceptance of the tender as required. On June 19, 1955, the Director of Mines and Geology, Rajasthan, sent a notice to the appellant intimating that the orders sanctioning the lease stood revoked with effect from June 6, 1955. The appellant was asked by this notice to show cause why further action to take immediate possession of the area should not be taken. It may be noted that in this notice exception was taken for the appellant not executing the lease within the requisite period of six months which, it was mentioned, expired on August 27, 1953. The appellant submitted a review application against the order of the State Government cancelling the mine lease on February 23, 1957. It appears, meanwhile, the State Government proposed to grant a lease to the appellant and the latter did not press the review application. Thereafter some correspondence took place between the appellant and the State Government regarding execution of the lease, its terms and conditions and the like. A reference was also made by the appellant to the Central Government on March 12, 1963, to direct the State Government to sanction the lease. On May 15, 1965, the Mining Engineer, Rajasthan, sent a notice to the appellant to deposit the dead rent amounting to Rs. 1,27,616.36 for the period 1-4-1960 to 14-9-1965 on pain of legal action. The appellant preferred a revision application to the Government of India against this order. The Government of India by its order of March 19, 1966, set aside the order of May 15, 1965, demanding Rs. 1,27,616.36 as dead rent for block No. 6. This order is significant in more than one way.

It is clearly stated in the order that the conditions under the Mineral Concession Rules 1949 under which mining or prospecting operation is allowed to be undertaken do not provide for payment of premium by the lessee except with the prior approval of the Central Government. It was also pointed out in the order that no such approval was secured by the State Government before accepting the premium of Rs. 1,55,000 from the appellant. It was, therefore, pointed out that the acceptance of the premium was illegal. It was further held that the State Government was entitled to charge only royalty in the present case and it could charge dead rent or royalty, whichever was higher, only after execution of a formal lease.

Then came the State Government's impugned order of November 9, 1967, addressed to the appellant. There was reference in the above order to the fact that the appellant-

"approached the Central Government in revision.

The Central Government have held that the permissive permission

224

of this block to you is not even as a licensee under the Mineral Concession Rules 1949. Government, therefore, do not want that the possession of this area should remain with you any longer. Government is, therefore, pleased to order that you should vacate the aforesaid block No. 6 within a month from the date of the receipt of this note, failing which such action shall be taken as may be deemed proper".

It may be mentioned that the Central Government in the order referred to above in the extract also observed "this licence was not within the meaning of Mineral Concession Rules 1949 but was governed by the General law, e.g. the Easement Act". (See Central Government letter dated March 19, 1966.)

The appellant after receipt of the order of November 9, 1967, instituted an application under article 226 of the Constitution in the High Court of Rajasthan (being Writ Petition No. 691 of 1967) praying for a writ of certiorari to quash the aforesaid order, to restrain the State from revoking the licence and dispossessing the appellant from the mining area absolutely or in the alternative, till compensation along with refund of the premium of Rs. 1,55,000 and the dead rent realised in excess of royalty were paid by the State. As a last alternative it prayed for a direction to the State to grant the lease of the balance area of 3628 acres or such other area to which the appellant was entitled in law.

The learned single Judge of the High Court dismissed the writ application as infructuous in view of the offer made by the State in its application of April 20, 1970, repeated through the learned Advocate General. The learned Advocate General submitted before the High Court that the State Government "was still prepared to pay them compensation in order to revoke the licence granted in favour of the petitioner".

In the aforesaid application of April 20, 1970, the State Government was prepared to pay compensation to the appellant at the rate of Rs. 7750 per annum for the unexpired period of 20 years ending on March 14, 1971.

The learned single Judge while dismissing the application observed that if the petitioner thought that the compensation was inadequate he could agitate the matter in court.

The appellant's appeal thereafter to the Division Bench was summarily dismissed and leave to appeal to this Court was also rejected. Hence this appeal by special leave.

We have heard the learned counsel for both the parties.

In view of the fact that the period of the purported lease already expired on March 14, 1971, there is no question of a writ for granting the lease. Since a proper lease had not been executed, for whatever reasons, there was no question also of exercise of an option of renewal

225

of lease. The only question that survives is whether the State Government could realise premium in a lawful manner under the Mineral Concession Rules.

We do not find any provision in the Rules authorising realisation of premium as done in this case. Rule 41 of the Rules of 1949 applicable at the relevant time provides for conditions of the lease. These conditions specifically mention royalty, dead rent and surface rent, but not premium. Again proviso to rule 41(1)(iii) states that the lessee shall be liable to pay the dead-rent or royalty in respect of each mineral whichever be higher in amount, but not both. Under subsection (3) of section 41, a mining lease may contain any other special conditions, subject to the prior approval of the Central Government. The Central Government, is, therefore, right in holding that the realisation of the premium of Rs. 1,55,000 was illegal, particularly because there was no prior approval under subsection (3) of rule 41 of the Rules.

When in this case grant of the mining lease was envisaged under definite statutory rules made in exercise of power, conferred under section 5 of the Mines & Minerals (Regulation and Development) Act, 1948, the State Government was under legal obligation to act in accordance with these rules. It could not exercise a power in the matter of grant of mining lease unknown to these Rules. The State Government could not impose terms and conditions according to its own whims ignoring or disregarding the statutory rules which are binding on it. The appellant is, therefore, entitled to a refund of Rs. 1,21,930.71 which is due to the appellant out of the illegally realised premium of Rs. 1,55,000 allowing the sum of Rs. 33,069.29 already received by the appellant from the Government on account of compensation.

The appellant's counsel made a statement in court that since the appellant had already vacated the area it will not of its own make any further claim for compensation or under any other heads but reserves its right to raise all possible defences against any action that may be instituted by the State against the appellant in the matter of the grant of mining for mica in the area. Subject to the reservation of the above right, the appeal is partly allowed to the extent that the State Government is directed to refund Rs. 1,21,930.71 as mentioned above.

The appellant is entitled to its costs in this Court.

V.P.S.

Appeal allowed in part.

226