

Uberoi Mohinder Singh and Associates

Vs

State of Haryana and Others

With

Doon Construction Company

Vs

State of Haryana and Others

Civil Appeal No. 2034 of 1978 with Writ Petition No. 157 of 1979

(K. Ramaswamy, N. M. Kasliwal JJ)

21.02.1991

JUDGMENT

KASLIWAL. J. –

1. The above appeal by the grant of special leave and the writ petition raise almost identical disputes, as such they are disposed of by common order. In order to appreciate the controversy we would narrate the facts of the appeal.
2. The State of Haryana after coming into force of the Haryana Minerals (Vesting of Rights) Act, 1973 issued a notification under sub-section (1) of Section 3 of the said Act and acquired the right of the minor minerals in respect of village Basantpur within the District of Gurgaon. On September 14, 1976, a gazette notification was published notifying the general public that minor mineral quarries of Gurgaon district will be put to auction on September 30, 1976. The Punjab Minor Mineral Concession Rules, 1964 (hereinafter referred to as 'the Rules') are also applicable to the State of Haryana. Rule 28 provides for the grant of contracts by auction or tender. On September 30, 1976 an auction was held in respect of minor mineral of sand situated in village Basantpur. The bid of the appellant for Rs. 95,500 per annum was declared to be the highest. According to the terms and conditions of the auction the appellant deposited a sum of Rs. 23,875 as advance contract amount and further sum of Rs. 23,875 as security. The contract was to be valid till March 31, 1978 from the date of the execution of the agreement. The highest bid of the appellant was confirmed by the Director of Industries, Government of Haryana on December 21, 1976 and the appellant was called upon to approach the Senior District Industries Officer, Faridabad with non-judicial stamp papers worth Rs. 1432.50 for execution of the agreement. Under Rule 33 the bidder was required to execute the deed of agreement within one month from the date of communication of acceptance of it failing which the bid shall be deemed to have been revoked and the amounts paid under Rule 30(2) IV or 31(3) as the case may be shall be forfeited to the government. The communication of the acceptance of the bid was received by the appellant on November 8, 1976. The appellant in the above circumstances supplied the non-judicial stamp papers on November 19, 1976 vide Annexure I and requested the Senior District Industries Officer to make the contract effective from the date the

quarry site is handed over to the appellant after obtaining the clearance and no objection from the Flood Control Department as the entire area lay within the protected area. On December 3, 1976 vide Annexure II the non-judicial stamp papers were returned with a direction that the matter may be typed as provided in Form 'L' and then to submit along with other documents. The appellant was also informed that further action will be taken only after the execution of the contract.

3. The case of the appellant is that he came to know that some dispute was going on regarding boundary between the States of U.P. and Haryana and the 'Dixit Award' had allotted the major portion of the leasehold area of village Basantpur to U.P. The appellant on December 8, 1976 vide Annexure III wrote a letter to the Senior District Industries Officer that the contract be made effective from the date the area was handed over to the appellant after obtaining clearance and no objection certificate from Flood Control Department, and other departments as major portion of the land lay within protected area. The appellant was called upon on December 22, 1976 to sign the contract but the respondents did not deal with any of the objections raised by the appellant. On July 7, 1977 the appellant received the duly executed contract. However, neither the respondents obtained no objection certificate from the Executive Engineer (Flood and Irrigation) Canal Colony, Faridabad nor delivered the possession of the demised area to the appellant. The contract was made effective from May 26, 1977. The appellant vide Annexure IV dated July 8, 1977 returned the agreement again pointing out all the abovementioned facts and requested the Director of Industries to make necessary changes and make the contract effective only from the date of delivery of possession of the demised area after obtaining no objection certificate from the Executive Engineer (Flood Control) in order to enable the appellant to start extraction and removal of sand. The appellant's case further is that the Director of Industries vide Annexure V dated January 12, 1978 informed the appellant that 'Dixit Award' had not yet been implemented and work may be started after getting permission from the Executive Engineer (Flood) Division Faridabad. It was further stated that the appellant was bound to pay the contract amount w.e.f. May 27, 1977 i.e. the date of commencement of the contract agreement. The appellant was further called upon to pay a sum of Rs. 23,875 for the period August 6, 1977 to November 25, 1977 and a further sum of Rs. 23,875 for the period November 26, 1977 to February 25, 1978. It may be made clear at this stage that Annexure V is a copy of letter dated August 8, 1977 from the Director of Industries Haryana to M/s. Uberoi Mohinder Singh and Associates (appellant) forwarded to the Senior District Industries Officer, Faridabad by endorsement dated December 22, 1977. However, according to the appellant he did not received such letter on August 8, 1977 but had received the same on January 12, 1978.

4. The appellant then vide Annexure VI dated January 28, 1978/February 6, 1978 wrote to the Senior District Industries Officer that in pursuance to appellant's letter dated July 8, 1977 a joint inspection by the Senior District Industries Officer, Faridabad S. D. M. Ballabgarh and Executive Engineer (Flood Control) was carried out and the appellant was given to understand that no mining operation can be permitted within the area of Revenue Estate of Basantpur because of various flood control protective measures undertaken by the Flood Control Department and as such no objection certificate and possession was not delivered by the Flood control Department. It was further mentioned that as desired the appellant was again approaching the Flood Control Department for giving him the permission to start the mining operation in the Basantpur area. It was further stated that in case the permission was granted and the possession of the area was delivered by the department the appellant will intimate the Senior District Industries Officer the date of such delivery and possession in order to incorporate the same in the deed of agreement. It was further stated that it was not possible for the appellant to agree to an arbitrary date of commencement i.e. May 27, 1977 because the possession and no objection certificate could not be allowed by the Flood Control Department. The appellant vide Annexure VII dated January 28, 1978/February 6, 1978 also

requested the Executive Engineer (Flood and Irrigation) to grant no objection certificate for undertaking the quarrying operation within the river bed of Jamuna flowing in Revenue Estate of Basantpur. Copy of the said letter was also sent to the Chief Minister with the following requests :

"Copy to the Chief Minister, Government of Haryana, Chandigarh to please direct the Flood Control Department and the Department of Industries to settle this issue of permitting the quarrying operation within the flood control measure areas so that unnecessary complications are not created both for the departments of government as well as for the mining contractors. He may kindly note that the Department of Industries is auctioning the rights to excavate sand from the river bed of Jamuna without obtaining the prior permission of the Flood Control Department and in most of the cases it is found that this decision to excavate sand from the river bed is against the interest of the flood control protection measures undertaken by the government on huge costs and generally results in unnecessary litigation. To avoid all these complications it is desirable that a prior consultation is done between the Department of Industries and Flood Control Department and only those areas which does not affect the flood control protective measures are put to auction so that there is no difficulty for the Industries Department as well as to the contractor who buy those mineral rights in an open auction. We hope a due consideration will be given to this aspect before Jamuna sand quarries are put to auction in near future".

5. The Executive Engineer Flood Control Gouchi Division, Faridabad vide Annexure VIII dated February 15, 1978 informed the appellant to remain in touch with Industries Department in this connection. Annexure VIII is reproduced as under :

"#No. 1535/9120 Dated : February 15, 1978 To M/s. Uberoi Mohinder Singh and Associates, 205, Pragati House, 47-48, Nehru House, NEW DELHI - 110 024 Sub : No objection certificate for undertaking the quarrying operation. Reference : Your letter dated February 6, 1978. Please remain in touch with Industries Department in this connection. Sd/- Executive Engineer, Gouchi Division, Faridabad. Dated : No. Copy of the above along with copy of letter referred above is forwarded to Sr. Distt. Industries Officer, Faridabad, for information and necessary action. Sd/- Executive Division Gouchi Division, Faridabad."##

6. The above letter indicates the Executive Engineer Flood Control instead of granting no objection certificate simply directed the appellant to remain in touch with Industries Department. Thereafter, the Director of Industries issued a notice to the appellant asking him to pay sum of Rs. 47,750 with 12 per cent interest per annum accrued thereon within one month from the date of receipt of the notice failing which the same shall be recovered as arrear of land revenue under Rule 53 of the Rules read with Section 55 of the Mines and Minerals (Regulation and Development) Act, 1957 vide Annexure X dated February 14, 1978. The appellant again vide Annexure XI dated February 24, 1978 wrote to the Senior District Industries Officer denying any responsibility for the contract from May 26, 1977 and called upon him to execute the contract w.e.f. the date the possession is delivered along with permission to start quarrying operations. It was also stated that the appellant cannot agree to the start of contract unless the possession of the quarry was given after no objection certificate from the Flood Control Department. The appellant having received no relief at the hands of the respondents, approached the Punjab and Haryana High Court by filing a writ petition under Article 226 of the Constitution which was dismissed in limine on March 27, 1978. The appellant received a notice vide Annexure XII on March 31, 1978 informing that the contract had been

terminated, the amount of security deposited together with the instalment paid in advance had been forfeited and the Collector will be moved to recover the outstanding amount as arrear of land revenue, if the appellant failed to deposit the amount before the expiry of Seventh day commencing from the date of receipt of the notice. The appellant was also called upon to deliver the possession of the quarry/mine to the mining officer/District Industries Officer concerned within 7 days of the receipt of the order. Aggrieved against the order of the High Court the appellant approached this Court by filing special leave petition under Article 136 the Constitution.

7. A notice was issued to the respondents and a counter-affidavit has been filed on behalf of the respondents 1, 2 and 3. The contention put forward by the respondents is that the period of contract commenced from the date of execution of the contract deed as laid down in Rule 59 of the Rules. The said agreement was executed by the State Government on May 26, 1977 and was immediately thereafter sent to the appellant and as such the agreement became effective from May 26, 1977. It was admitted to the extent that village Basantpur was ravaged on occasions by the floods and in order to protect it from the fury of floods, the Flood Control Department endeavoured to divert the flow of the water away from the village and also took other preventive measures. It was however, denied that the Flood Control Wing of the Irrigation Department had declared any area of the village to be a protected area and it was wrong to allege that no mining or quarrying operations could be carried out unless the Flood Control Department gave a no objection certificate. Respondent 4 - Executive Engineer (Flood and Irrigation) Canal Colony, Faridabad was contacted to clarify the position in this behalf who intimated as under :

"There is no practice obtain/procure any no objection certificate from the Flood Control or Drainage Department. Moreover the Flood Control Department has never declared Basantpur village as protected area."

It has thus been submitted that there is no substance in the allegation regarding the necessity of obtaining any 'No Objection Certificate' from the Flood Control Department. It was admitted in the counter-affidavit that a team consisting of SDM Ballabgarh, Senior District Industries Officer, Faridabad, Executive Engineer Gouchi Division, Gurgaon and the Mining Officer Faridabad inspected the quarry on March 24, 1977 and made the following report :

"Village Basantpur - At present extraction of Yamuna sand from this village is not being done. This quarry was auctioned by the Industries Department @ Rs. 95,500 per annum and the bid has been confirmed. It was observed that if the contractor extracts Yamuna sand from the area lying between the present flow of water and the flood protecting work after getting the area demarcated in the presence of the Executive engineer, Gouchi Division, Faridabad and the Mining Officer, Faridabad, they can extract the minor mineral. Part of this village may be transferred to U.P. State in accordance with 'Dikshit Award'. Nobody from the village or the Revenue Patwari Basantpur could show us the pillars which will demarcate the boundary of Haryana (Basantpur) and U.P. State. We were informed that the demarcations have been done two or three times. Thus nobody was certain about the demarcation line. The 'Dikshit Award' is yet to implemented and at present whole of the revenue state of village Basantpur is a part of the Haryana State."

8. It was further submitted in the reply that in terms of the Rule 61 and clause 26 of the agreement the appellant himself was to obtain possession of the quarry in the first instance, if he was unable to get the possession then he was to deposit the amount as specified in the said rule with the Collector

who was to get him the possession of the area given to him on contract. The respondents had been guiding the appellant from time to time in this behalf and the Senior District Industries Officer in his Memo No. 18306 dated January 10, 1977 had advised the appellant as under :

"As per rules you are not allowed to excavate the minor mineral from the areas prohibited by any authority unless the permission to this effect is obtained properly in writing. You are advised to approach the concerned land owners/revenue authority and to take effective steps for starting of mining operations after paying fair and reasonable compensation according to law. In case you face any difficulty this office may immediately be contacted."

It was further stated that in fact the appellant did not make any effort whatsoever to enter the quarry on payment of compensation and to start the quarrying operations. On the contrary the appellant was deliberately delaying and writing unnecessary communications to the respondents, insisting on the delivery of possession of the quarry to him which he himself was to obtain and there was no requirement of the issue of no objection certificate from the Flood Control Wing of the Irrigation Department.

9. We have heard learned counsel for the parties at length. From a perusal of the entire correspondence placed on record we are fully convinced that there was no fault on the part of the appellant and he was insisting even before the execution of the agreement dated May 26, 1977 that the quarry of Yamuna sand be handed over after obtaining clearance from the Flood Control Department as the entire quarrying area lay within the protected area as is borne out from Annexure I dated November 19, 1976. The appellant under the pain of forfeiture of his security amount as well as the first instalment as contained in Rule 33 was left with no other option than to execute the deed in Form 'L' within one month from the date of communication of acceptance of bid. It is pertinent to note that soon after the acceptance of the bid in favour of the appellant, he was repeatedly making a request to the respondents to hand over possession of the area and to grant him no objection certificate from Executive Engineer (Flood and Irrigation). Copy of letter Annexure V dated August 8, 1977 written by the Director of Industries to the appellant itself makes a mention in the following terms :

"With reference to your letter dated July 8, 1977 on the above subject I have to inform you that the 'Dikshit Award' is yet to be implemented and at present the whole of the revenue estate of Basantpur falls within Haryana State. Under the authority of the contract you can extract the sand after getting permission from the Executive Engineer, Flood Division, Faridabad. You are, therefore, liable to pay the contract money from May 27, 1977 the date of commencement of contract agreement."

The contents of the above letter clearly go to show that the appellant was authorised to extract the sand after getting permission from the Executive Engineer Flood Division, Faridabad. Annexure VI dated January 28, 1978/February 6, 1978 written to Senior District Industries Officer also goes to show that a joint inspection was made on the spot and the appellant was given to understand that no mining operation could be permitted within the area of revenue estate of Basantpur because of various flood control preventive measures undertaken by the Flood Control Department unless no objection certificate and possession was delivered by the Flood Control Department. The appellant had clearly mentioned in the aforesaid letter that he would inform regarding the results of his efforts in obtaining no objection certificate. Thereafter vide Annexure VII dated January 28, 1978/February 6, 1978, he submitted an application to the Executive Engineer (Flood and Irrigation) for granting

no objection certificate for undertaking the quarrying work within the river bed of Jamuna flowing in the revenue estate of Basantpur. A copy of the aforesaid letter was event sent to the Chief Minister in which the difficulty was pointed out even for future and it was suggested that in order to avoid all these complications it was desirable that a prior consultation was done between the Department of Industries and Flood Control Department and only those areas should be auctioned which did not affect the flood control preventive measures. It is important to note that the Executive Engineer vide Annexure VIII dated February 15, 1978 did not grant no objection certificate but simply directed the appellant to remain in touch with the Industries Department in this connection.

10. All the above correspondence unmistakably goes to show that the appellant was driven from pillar to post but was not given no objection from the Flood Control Department nor it was made feasible for him to excavate or take out sand from any area of the village. The appellant has not been able to take out or excavate a single particle of sand from the leased out area and the difficulty in this regard was pointed out not only after the execution of the agreement but even prior to such execution. In facts and circumstances of the case, there was no fault on the part of the appellant and his bona fides are evident inasmuch as he had deposited a sum of Rs. 47,750 even before the execution of the agreement and was always ready and willing to perform his part of the contract, but the Flood Control Department was not giving clearance and as such the performance of the contract itself was made inexecutable by the respondent. Clause 26 of the agreement as well as Rule 61 of the Rules do not apply in the present case. There is no question of payment of any compensation to start quarrying operation in the present case. The minor mineral i.e. sand was to be lifted from the surface itself and it was admittedly the property of the government. We do not find any force in the arguments of the learned counsel for the respondents that the appellant was benefited in not starting the excavation as the prices of sand were going high. The above inference is based on mere conjecture and is not supported by any material nor such plea has been taken in the counter filed by the respondents. We are unable to appreciate as to how the appellant was at all benefited in not excavating even a single price of sand even though he had already deposited a substantial amount of Rs. 47,750 with the respondents.

11. We are thus clearly of the view that the respondents are neither entitled to forfeit any amount nor to demand any further money from the appellant under the alleged agreement dated May 26, 1977.

12. The case M/s. Doon Construction Company in the abovementioned writ petition filed under Article 32 is almost identical with the appellant except that it took the contract in an auction for the period September 17, 1978 to March 31, 1981. The contract amount in its case is Rs. 2,70,000 per annum and it had deposited a sum of Rs. 1,35,050 in all.

13. In the result, both the appeal as well as the writ petition are allowed. We direct the respondents to refund the amount deposited, to M/s. Uberoi Mohinder Singh and Associates and M/s. Doon Construction Company within two months failing which the respondents would be liable to pay interest @ 12 per cent per annum on the aforesaid amount from the date of this order till realisation. In the facts and circumstances of the case, there will be no order as to costs.

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