

Rural Litigation and Entitlement Kendra, Dehradun and Others

Vs

State of U.P. and Others

With

In The Matter of : The Monitoring Committee

Vs

Vijay Shree Mines (Through Its Proprietor, David Paul)

I.A. No. 21 of 1990 in Writ Petition No. 8209 of 1983

(CJI Ranganath Misra, P. B. Sawant JJ)

30.04.1991

ORDER

1. We are concerned here with Mining Lease No. 99. By a decision of this Court dated August 30, 1988 in Writ Petitions 8209 and 8821 of 1983 (Rural Litigation and Entitlement Kendra v. State of U.P., 1989 Supp 1 SCC 504) an exception was made in the case of this lease since its period was to expire in 1990. The lease from the government was of 15 acres of land and another 100 acres of land were taken by the lessee from some private source. The learned counsel appearing for the lessee had undertaken before the court that over the said 100 acres no mining operation would be carried out and the lessee would immediately restore vegetation over the area and full forest growth would be available on the same. The mine was further neither within the forest limit nor within the municipal area and the minerals from the area were to be removed not through the city limits. The learned counsel had also undertaken that on the expiry of the lease, even the 15 acres of land taken on lease from the government would be subjected to afforestation by the lessee, and undertaking to that effect was also directed to be filed in the court. On such undertaking being filed the mine as a special case was permitted to operate until the expiry of the lease. The Monitoring Committee, as provided in the judgment, was to supervise the afforestation programme to be undertaken by the lessee. It was further provided that in case the Committee was of the view that the undertaking was not being properly carried out the permission to work out the lease was to be varied. The court also observed that an exception which was made in the case of the said lease was for testing the genuineness of the representation made by the lessee and also in consideration of the smallness of the area.

2. At the instance of the State and the petitioners the above order was modified on December 16, 1988. It was then brought to the notice of this Court that the mine was within the municipal limits of Mussoorie and all mining leases situated within the municipal limits had been closed down by the earlier order until mining was cleared by the Bandyopadhyay Committee. None of such mines was cleared. It was further noticed that the location of the lease was not far away from the heart of Mussoorie town and the limestone quarried had to be transported through the city. All these facts were contrary to the representations made when the earlier order was passed. The court, therefore,

felt that except for the assurance of immediate reforestation of the 100 acres of private land and the further assurance that after the lease period was over in 1990, the remaining 15 acres comprised in the lease would also be afforested, there was no difference of any substance between this lease and the other leases situated within the municipal limits and which were not permitted to continue mining under the earlier order. Hence, the court directed that the mining in the present lease shall also be stopped w.e.f. December 31, 1988. The court further directed that if there be any limestone collected before that day the lessee shall be permitted to remove the same but from January 1, 1989 there would be no further mining in the area. Although it was the claim of the State that in fact the area comprised by the lease was acquired by the State Government for development of tourism and the possession had already been handed over to its Tourism Department, the court did not go into the said question firstly because the dispossession of the lessee under the acquisition proceeding was disputed by the lessee and secondly, because the question of possession was irrelevant to the order that was to be passed. There was, however, no dispute that the lessee had been operating the mine at the relevant time. The mining was, therefore, directed to be ended w.e.f. December 31, 1988. The lessee was also discharged w.e.f. December 31, 1988 from his undertakings given to the court while passing earlier order.

3. The Monitoring Committee in its inspection report dated May 23, 1989 disclosed, among other things, the following state of affairs :

(i) The lessee began lifting of material since May 15, 1989 without waiting for arrangements to be made by the Monitoring Committee for supervision although the information about the lifting was given by him to the Committee on May 10, 1989. He was lifting as "quarried material" huge fissured and compact boulders and pieces of limestone both attached to and detached from hill slopes, sometimes about 5 metres in diameter. They were being broken by crowbars and sledgehammer in smaller fragments.

(ii) He was also lifting 60-90 cms thick compacted layers with grass and bushy vegetation growing on top, soil mixed with limestone below and larger fragments or fissured rock underneath. In addition, he was lifting parapet walls in dry rubble masonry of limestone blocks and sometimes consisting of heaped limestone fragment as well as scree.

(iii) It was not possible to estimate the quantity of quarried material.

(iv) In view of the lessee's method of working, the topography of the area, the kind of tools used, the nature of land surface which crumbled easily generating fresh minerals in small and large fragments, and the impossibility of distinguishing between old and fresh material once it was loaded, it was not practicable to supervise the lifting of already-mined loose mineral in the lease area in such a way as to ensure that fresh mining was not done under the cover of the court's order of May 5, 1989.

4. The lessee was asked to take certain precautions and measures in his operations with a view to help supervision of the operations. He refused to submit to any of the said precautions except permitting the authorised members of the Committee to supervise the lease area with the help of the appointed officers as and when he wanted.

5. In pursuance of the order of this Court passed on November 23, and December 21, 1989 in

Interlocutory Application Nos. 1, 4, 5, 6, 7 and 9 of 1985 the District Judge and the District Magistrate, Dehradun inspected the concerned area covered by the lease, among other areas, on January 11 and 12, 1990 along with the members of the Monitoring Committee and submitted their report dated January 14, 1990. The report stated, among other things, that all over the mine faces and slopes, extracted material was lying, that unweathered rocks having fractures and joints with fresh, sharp and clean-cut edges in loose lumps were seen on the mine faces, that the pieces of rocks were coming out on a little shake by hand, that rock slates were loose, that clean-cut rocks were shining and on them there were no signs of natural vegetation, that the top of the mountain was brutally disfigured by dissecting it into two pieces giving a look of an ugly scar on the mountain thereby spoiling the scenic beauty, that the mining had been done in the most unscientific and uncontrolled manner, that it appeared to be a case of worst mining and that the material on the spot instead of decreasing had increased. Two members of the Committee, viz., Shri H. L. Kapoor, Air Vice Marshal (Retd.) and Shri G. Ganesh, Forest Secretary, U.P. Government pointed out to the Committee that on September 1, 1989 when they had visited the said mining site, the material lying on the spot was much less than that which was then lying on the spot. The Committee also stated that freshly mined surfaces were clearly observable. The Committee, therefore, concluded that it was a case where illegal mining had taken place even after the order of this Court passed on December 16, 1988 which became operative from December 31, 1988.

6. A further report of the inspection made by the Monitoring Committee on January 11 and 12, 1990 along with the District Judge and the District Magistrate, Dehradun, was forwarded to this Court in which it was mentioned that the inspection carried out of the mining area showed that there was evidence of fresh quarrying done between September 1, 1989 and January 12, 1990. The sites which had almost no material then, had mineral apparently freshly quarried at the relevant time.

7. It is obvious from the aforesaid narration of facts, that the lessee had done nothing from August 30, 1988 till December 31, 1988 to reafforest the land. The representation which he had made to this Court when it passed its order of August 30, 1988, viz. that the mine was not within the municipal area and the minerals could be removed without passing through the city limits, was also incorrect. After December 31, 1988 he had not restricted his activities only to transporting whatever he had mined till that date, but taking advantage of the permission given to him to remain on site for removing the quarried material, he had indulged in fresh mining. He had also refused to abide by the suggestions which were made by the Committee for taking precautions while carrying on his operations. While other similarly situated mines in the municipal limits were directed to stop their mining operations under the earlier order, the lessee was singled out and permitted to carry on his mining operations on the only grounds that the lease was of a small area, that the area was outside the municipal limits, that the quarried material would be taken from outside the city limits and that he would afforest the land. Thus he was given the benefit on certain conditions as against other lessees and those conditions were not fulfilled. On the other hand, he had acted in violation of them and had also surreptitiously indulged in further mining, doing more damage to the area and the environment. There is no reason why he should not be treated on par with the other lessees in all respects.

8. Those who are operating their leases by virtue of the order of this Court dated August 30, 1988 were required to pay Rs. 5 per MT of the extracted material to the fund of the Monitoring Committee for its expenses incurred in ensuring the maintenance of ecology and environment and also reafforestation in the area. Officially, as per the order of this Court dated December 16, 1988 the operation of the present lease was to come to an end by December 31, 1988. The Monitoring Committee does not have figures of the actual mineral extracted by the lessee and their allegation is

that the lessee had continued to mine even thereafter till January 12, 1990 when the last inspection was made. The Committee is unable to give estimate also of the material extracted calendestinely. The lessee has also not placed before us the quantum of the material extracted by him till December 31, 1988. Taking into consideration all the facts on record and in the belief that there is no mining going on at present, we direct that the respondent-lessee of the mining lease in question, i.e. No. 99, shall pay to the Fund of the Monitoring Committee a sum of Rs. 3 lakhs within two months from today. The interlocutory application is accordingly disposed of with no order as to costs.

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