

SUPREME COURT OF INDIA

Olpherts Pvt. Ltd., Calcutta

Vs.

Triloki Nath Agrawal

C.A.Nos.1191-1192 of 2003

(R.C. Lahoti and A.K. Bhan JJ.)

12.02.2004

JUDGMENT

R.C. Lahoti, J.

1. The disputes in these appeals, relates to mining lease for extraction of red oxide of iron ore over an area of 147.35 acres situated at Village Jauli in Tehsil Sihore, District Jabalpur. The mining lease dated 31st July, 1951 was in favour of the appellant-Orpherts Private Limited. The term of the lease came to an end with effect from 31st July, 1981. The appellant had applied for renewal though not before 12 months calculated from the date of the expiry of the mining lease. Renewal was not granted by the State Government. The appellant preferred a revision before the Central Government which was allowed by order dated 16th November, 1987 directing the State Government to pass a speaking order on merits disposing of the appellant's application for renewal. As the State Government failed to dispose of the application, the appellant filed a writ petition in the High Court of Madhya Pradesh at Jabalpur. Vide order dated 20th December, 1996 passed in Writ Petition No. 4499/1996, the learned Single Judge of the High Court directed the State Government to dispose of the appellant's application consistently with the directions made by the Central Government within a period of thirty days from the date of the order. However, on 27th July, 1984, the State Government had notified the entire area of 147.35 acres as available for new mining lease after 30 days of the publication of the notification in the Government Gazette. Pursuant to the said notification, 61 applications were made to the State Government.

2. On 22nd January, 1997, two orders came to be passed: One, calling upon the appellant to rectify certain defects in the application for renewal, and the other, rejecting all the 61 applications praying for grant of mining lease by way of fresh grant. It appears that the State Government was inclined to go ahead with renewal of the appellant's mining lease. On 6th February, 1997 the Additional Collector(Mineral Branch), Katni, sent a communication to the Regional Forest Office, Katni wherein it is stated that the State Government had taken decision to sanction the renewal over revenue land to the appellant leaving aside the forest land. This communication also stated that out of 147.35 acres of land only 6.70 acres was

available for operation as mining lease and the rest was forest area as to which mining activity was not permissible in view of the Forest Conservation Act, 1980.

3. Some of the applicants for fresh grant filed an application before the High Court of Madhya Pradesh seeking recall of the order of the learned Single Judge dated 20th December, 1996 on the ground that the writ petitioner had made a concealment of material facts and had successfully persuaded the Court into passing an order which the writ petitioner did not deserve. On 1st May, 1998 the learned Single Judge passed an order recalling the order dated 20th December, 1996. The learned Single Judge not only directed the writ petition filed by the appellant to be dismissed but also imposed exemplary costs of Rs. 10,000/- on him payable to the State Government. The learned Single Judge further directed the appellant to be prosecuted, over and above, the recovery of the amount of compensation, royalty and other dues on the assumption that the appellant had been guilty of illegally and unauthorisedly extracting minerals from the said land. The order dated 20th December, 1996 was put in issue by the appellant by filing Letters Patent Appeal which has been directed to be dismissed on 16th February, 2001. A review of the order was sought for but the review application too was dismissed on 14th March, 2001. The aforesaid orders dated 16th February, 2001 and 14th March, 2001 are impugned in these two appeals by special leave.

4. The order dated 22nd January, 1997 rejecting the 61 applications for fresh grant of mining lease was also challenged by some of the applicants by filing revisions before the Central Government. By order dated 12th March, 2001, 16 revisions were allowed by the Central Government and the State Government was directed to consider those applications afresh subject to order of the High Court in Writ Petition No. 6933 of 2000 filed by the appellant herein against Smt. Gayatri Devi Bansal which also relates to the same piece of land and which was pending in the High Court.

5. We have heard the learned counsel for the parties at length.

6. In the present appeals, the principal controversy arising for decision centers around the order of the learned Single Judge dated 1st May, 1998 recalling the order dated 20th December, 1996. With the assistance of the learned counsel for the parties, we have carefully gone through the contents of the writ petition filed by the appellant which led to the passing of the order dated 20th December, 1996 and the documents annexed therewith. Without entering into very many details suffice it to observe that we do not find it a case of any such material concealment which would have made out a case for recalling the order. The view taken by the learned Single Judge in his order dated 1st May, 1998 is too stringent and too technical a view and, therefore, cannot be sustained. The order dated 1st May, 1998 and the two orders passed by the Division Bench upholding the order of the learned Single Judge are all set aside.

7. The question which survives for consideration is what should be an appropriate order to be passed in the facts and circumstances of the case also keeping in view the subsequent events which have taken place after the passing of the order dated 20th December, 1996 by the

learned Single Judge. Firstly, it is pointed out, that in the Panchnama dated 3rd November, 2000, made during the course of a joint inspection of the said land carried out by Forest Department and Revenue Department on Application No. 1946/2000 it has been stated that the area of 56.43 hectares of Khasra No. 405, 0.70 hectare of Khasra No. 410 and 1.41 hectares of Khasra No. 411, a total area of 58.74 hectares (some mistake in total) does not fall within the limits of Forest Department and demarcation was done accordingly. It is submitted that in view of this subsequent development, the entire area forming subject matter of mining lease dated 31st July, 1951 alongwith such other area as may have been added to it (i.e. such other area as was available for grant pursuant to the notification dated 27th July, 1984) may be available for mining without running into conflict with the provisions of the Forest Conservation Act, 1980. Secondly, under the mining lease dated 31st July, 1951, the appellant would have been entitled to a renewal for a period of 20 years which period too has expired with effect from 31st July, 2001 during the pendency of these proceedings. Thirdly, there were 61 applicants for fresh grant who suffered dismissal of their applications out of which some only challenged the order of dismissal, by filing revisions before the Central Government and, therefore, there are less than 61 applicants for fresh grant and the appellant in the fray claiming for the grant of mining leases. In view of these subsequent events, in our opinion, the ends of justice would be satisfied if we dispose of the controversy by making the following directions:

“(1) the application dated 30th September, 1980 read with the application dated 1st August, 1981 filed by the appellant seeking renewal of lease shall be treated as an application for fresh grant. That application shall be available for consideration as an application for fresh grant (and not as an application seeking renewal) to be taken up for consideration alongwith such other applications for fresh grant which were validly filed and though rejected by the State Government were remanded by the Central Government for consideration afresh by the State Government.

(2) All such applications shall be treated as applications for fresh grant and shall be considered on merits. If there be any deficiency in any of the applications that shall be got cured by affording an opportunity to the party concerned.

(3) So much area of the mining lease dated 31st July, 1951 along with such other area as has been added to it (i.e. such area as was available for grant pursuant to the Notification dated 27th July, 1984) shall be considered for grant by way of fresh mining lease or leases excluding such area as may be forest attracting applicability of *Forest Conservation Act, 1980*.”

8. Before parting, we may clarify that we have not expressed any opinion about the area which is actually available for allotment and that shall be open for determination by State Government consistently with the provisions of the *Forest Conservation Act, 1980*. So far as the pendency of Writ Petition No. 6933 of 1996, before the High Court of Judicature of Madhya Pradesh at Jabalpur is concerned, the learned senior counsel for the appellant has stated that the same shall be withdrawn as it has become infructuous in view of this order.

9. In view of the time that has already been lost in litigation, the State Government shall expeditiously dispose of the pending applications for the grant and in any case within a period of four months from the date of communication of this order.

10. No order as to costs.

11. No orders are called for on the interlocutory applications which may all be treated as disposed of.

Civil Appeal No. 1193 of 2003

12. Be treated as disposed of in terms of the decision rendered today in C.A. Nos. 1191-1192 of 2003.