SUPREME COURT OF INDIA

State of Karnataka & Ors.

Vs.

Janthakal Enterprises & Anr.

C.A.No3293-3294 of 2011

(R.V. Raveendran and A.K.Patnaik,JJ.,)

15.04.2011

ORDER

SLP(C) No.33773-33774/2009

1. Leave granted. Heard.

2. The first respondent was the holder of a mining lease (No.593/993) for the period 6.7.1965 to 5.7.1985 under registered lease dated 6.7.1965 in respect of an area of 80.94 hectares in Survey No. 35(Part) of Tanigehalli and Survey No.107(Part) of Hirekandawadi villages, Holalkere Taluk, Chitradurga District, Karnataka. The first respondent filed an application for renewing the mining lease, on 22.6.1984, without seeking clearance under Section 2 of the Forest (Conservation) Act, 1980. The application for renewal was rejected on 30.9.1996. However subsequently by two notifications dated 23.8.2007, the State Government accorded sanction for the first renewal of the mining lease retrospectively for a period of twenty years (from 5.7.1985 to 4.7.2005) and for the second renewal for another period of twenty years (from 5.7.2005 to 4.7.2025) subject to clearance under Section 2 of the Forest (Conservation) Act, 1980 and environment clearance under Environment Protection Act, 1986. But the said renewals have not been granted as the first respondent did not obtain the required clearances. In fact, the proposals submitted by the first respondent, for obtaining forest clearance were returned several times for not submitting a complete proposal. In view of it, the first respondent alleges that mining activity has been carried on by the first respondent in the mining lease area, after 5.7.1985.

3. The first respondent produced before the Director, Mines & Geology, State of Karnataka, an alleged permission letter dated 14.2.2008 purportedly issued by the Ministry of Environment and Forest, (for short `MoEF') Government of India, addressed to the Principal Chief Conservator of Forests, Karnataka according permission to the first respondent for lifting upto one lakh Tonnes of old waste dumped in the leased area, made up of natural soil erosions and waste thrown by neighbouring mining lessees. On routine verification about the genuineness of the said communication, the MoEF informed the Secretary (Forests), Government of Karnataka, that the said letter dated 14.2.2008 was a fake letter and directed

the state government to initiate criminal action against the first respondent and others responsible for the same. The first respondent subsequently admitted that the letter dated 14.2.2008 was not genuine. According to the first respondent, one Irfan Shaikh representing himself to be a clerk working at MoEF, had represented to the first respondent that he would be able to get any clearance from MoEF; that the first respondent explained its case to him; that the said Irfan Shaikh thereafter provided the said letter dated 14.2.2008 authorising lifting the old waste dumps; and that believing the said letter to be a genuine letter issued by MoEF, the first respondent had furnished it to the Director, Department of Mines and Geology, State of Karnataka. The first respondent submitted that once it came to know that the letter was a fake, it neither relied on it nor used it.

4. The first respondent filed IA Nos.2419 and 2420 of 2008 in WP (C) No.202 of 1995 (T N Godavaraman Thirumulpad vs. Union of India) in this Court, seeking permission to intervene and seeking direction for grant of approval of its proposal for diversion of 80.94 Hectares of forest land, for non-forest mining activity under the Forests (Conservation) Act and permission to lift 75000 MT of iron ore and 25000 MT of Manganese ore which had been previously mined and lying in the dump area of the mine. In the said applications, the petitioner averred as under :

> "That in the mine in question, around 75000 MT of iron ore and 25000 MT of manganese which were previously mined and stored in the dump area are lying there (material mined before 1980). The appellant prays that it may be permitted to lift the same from the dump and sell it.
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> The first respondent also offered to pay the NPV for the said forest area of 80.94 Hectare, as also the amount to be paid for carrying out compensatory afforestation. The said applications were however dismissed by this court, as withdrawn, on 20.3.2009."

5. The first respondent thereafter filed a writ petition on 30.3.2009 before the Karnataka High Court (WP No.8094/2009) seeking the following relief:

> "Issue a writ of mandamus directing the respondents to permit the petitioner to lift the dumped material lying in the mining yard of ML 593/993 at Hirekandawadi & Thanigehalli village of Holalkere Taluk, Chitradurga District, by collecting the requisite fee and royalty."
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> The State of Karnataka, Director of Mines and Geology (Karnataka), Secretary, Ministry of Environment and Forests, (Government of India), Principal Chief Conservator of Forests, Karnataka and the Conservator of Forests, Chitradurga Division were arrayed as respondents 1 to 5 in the said writ petition. The first respondent alleged as follows in support of the said prayer in the writ petition :

(a) The leased area under ML No.593/993 had been declared as reserved forest area wherein mining or other non-forest activities were prohibited without obtaining necessary clearance.

(b) When the mining activities were carried on by the first respondent between 1965 and 1980, there was no value for iron ore of grades less than 62% or 63% and the excavated material of lesser grades were dumped as waste in the mining area. There were nine such old dumps containing 1,17,800 metric tonnes of waste material, in the leased area, consisting of material extracted prior to 1985 when the mining lease was validly in force.

(c) In view of the gradual appreciation in value of iron ore, the said dumped material became valuable and the first respondent decided to dispose of the said waste. But in spite of repeated requests, necessary clearances/transportation permits, were not issued to the first respondent who was the owner thereof, even though there was no legal impediment for grant of such clearances/permits.

6. The said writ petition came up for consideration before a division bench of the High Court on 24.4.2009 for preliminary hearing. The High Court directed issue of notice to the respondents and also issued an ex parte interim direction to the forest department, to furnish the following details to the court :

"(i) What was the actual quantity of dumped material available in the mining yard?

(ii) What would be the royalty, EPF, NPV which the writ petitioner was otherwise liable to pay?

(iii) What was the damage they had caused to the flora and fauna? And

(iv) What was the extent of afforestation, if the writ petitioner was liable to make it?"

7. When the matter came up for preliminary hearing on 2.7.2009, the Government Advocate handed over to the court, a copy of the report dated 18.6.2009 submitted by the Deputy Conservator of Forests, Chitradurga Division to the Principal Chief Conservator of Forests, prepared in compliance with the order dated 24.4.2009. The said report furnished the following information:

"Q: What is the actual quantity of the available material:

A: There are 9 old dumps in the above ML area. The quantity of the material assessed by the Dept. of Mines & Geology is 1,17,800 M.T.

Q: Since when it is dumped and the damages caused thereto due to that dumping:

A: As per this office records in the above ML no mining activities were carried out in the area since 1985. Due to dumping of the material, forest growth and vegetation in the area and surrounding streams are disturbed.

Q: What is the royalty, damages has to be paid by the petitioner?

A: The royalty is to be collected by the Dept. of Mines & Geology. Hence, the information is to be provided by the Dept. of Mines & Geology. The surrounding area about 12.00 Ha was damaged. As per the Hon'ble Supreme Court of India order dated 28/03/2008 in I.A. NO.826 in 566 with related I.As in Writ Petition (Civil) No.202/1995 the value of the damaged forest land is estimated at the rate of Rs.8.03 lakhs per Ha. Hence, for 1200 Ha. the damages in mandatory terms amounts to Rs.96.36 lakhs (Rupees Ninety six lakhs thirty six thousand only). Q: The amount of Net Present Value, EPF to be paid by the petitioner A: As per the Hon'ble Supreme Court of India order dated 28/03/2008 in I.A. NO.826 in 566 with related IAs in Writ Petition (Civil) No.202/1995 the Net Present Value is to be paid by the petitioner is as follows:

Sl. No.	Particulars	Density	Extent (in ha)	Rate of (Rs in lakhs)	Amount NPV (Rs. lakhs)
1	Eco-Class III	Dense	80.94	8.03	649.9482

The Compensatory afforestation charges at the rate of Rs.84,000/- per ha for 80.94 ha. amounting to Rs.67,98,960/- (Rupees Sixty seven lakhs ninety eight thousand nine hundred and sixty only) if the user agency take action to transfer and mutate the 80.94 ha non-forest land in favour of the Forest Department.

If the compensatory afforestation land is not available and the petitioner fails to identify and transfer non-forest land in favour of the forest department, double the amount i.e. Rs.67,98,960 x 2 times = Rs.1,35,97,920/- (Rupees One crore Thirty five lakhs Ninety seven thousand Nine hundred and twenty only) is to be paid by the petitioner to raise the compensatory afforestation in the forest land. Environmental loss may be assessed by the Environmental Department, Government of Karnataka."

8. At the said hearing on 2.7.2009, when the matter came up for further orders, the Government advocate appeared for respondents 1, 2, 4 and 5. There was no representation on behalf of the third respondent (MoEF, Government of India). As only a short time had elapsed after service of notice, the State and its forest and mining departments could not file their statement of objections. The Forest department claims that it could not even appoint a Litigation Conducting Officer nor furnish its parawise remarks to the counsel for preparing the counter-affidavit, for want of time. The High Court however allowed the writ petition by the impugned order dated 2.7.2009, with the following directions :

"The petitioner is permitted to remove the dumped Iron ore quantified at 1,17,800 Metric Tonnes lying in the mining yard (M.L.No.593/1993) situate at Hirekandawadi and Tanigehalli Villages of Holalkere taluk, Chitradurga District, subject to the following conditions :

(i) The iron ore which has already been extracted and quantified at 1,17,800 Metric Tonnes lying staked as on date, can be lifted by the petitioner upon proper notice to the Mining Authorities.

(ii) On getting such notice, the Mining Authorities shall depute a competent officer, who shall remain present at the time of such lifting.

(iii) Such lifting will take place in accordance with law and upon payment of required royalty to the State.

(iv) The lifting operation must be completed within a period of six weeks from the date of receipt of this order or production of the certified copy of the order, whichever is earlier.

(v) Petitioner shall make payment of the following amounts before lifting the dumped Iron ore:

a) Royalty : Rs. 11,04,375/-

b) Damage of forest land in monetary terms : Rs.96,36,000/-

c) Net present value, EPF for the entire area : Rs.6,49,94,820/-

d) Compensatory Afforestation charges. : Rs. 67,98,960/- OR Penalty on compensatory afforestation charges if the land is not available & if the petitioner fails to identify and transfer the non-forest land. :Rs.1,35,97,920/-

e) Any other statutory dues

vi) It is made clear that it is for the forest authorities to decide, whether Net present value as directed to be paid, is adjustable towards the approval under section 2 of the Forest (Conservation) Act."

9. The first respondent thereafter filed an application seeking modifications in the order dated 2.7.2009. The said application was allowed on 27.8.2009, without giving opportunity to the State or Central Government to file their objections. Direction (iii) and onwards in the operative portion of the order dated 2.7.2009 were recast as follows :

"(iii) Such lifting will take place in accordance with law and upon payment of required royalty and amount ordered to be deposited by this court, necessary permission for transport for lifting the iron ore shall be issued within thirty days of depositing the royalty and amount ordered to be deposited by the petitioner by this order.

(iv) The lifting operation must be completed within a period of six months from the date of receipt of this order or production of the certified copy of the order, whichever is earlier.

(v) Petitioner shall make payment of the following amounts before lifting the dumped Iron ore:-

a) Royalty : 11,04,375/-

b) Net present value, EPF for the entire area : 4,69,45,200/-

c) Compenatory Afforestation charges : 67,98,960/- OR Penalty on compensatory Afforestation charges if the Land is not available and if the petitioner fails to identify and transfer the non-forest land : 1,35,97,920/-

d) Any other statutory dues.

vi) The petitioner shall be entitled to adjust the present amount to be paid as per the order towards amount payable as EPF for the purpose of granting permission under section 2 of the Forest (Conservation) Act".

10. The said orders dated 2.7.2009 and 27.8.2009 are challenged by the State Government and its authorities in these appeals by special leave. The appellants contended that the following incorrect factual assumptions were made by the High Court, while disposing of the writ petition, which are not borne out by the record :

"(a) That the material on record showed that first respondent was not carrying on any mining activities in Mining Lease Area No.593/993, after coming into force of Forest (Conservation) Act, 1980 in the mining area;

(b) That the nine dumps of iron ore found in the mining lease area quantified at 1,17,800 metric tonnes had been validly extracted by the first respondent when the mining lease was valid and was in force (that is prior to 5.7.1985);

(c) That the respondents in the writ petition (appellants herein) did not dispute the claim of the first respondent that it had stopped the mining operations and only wanted to shift the dumped iron ore excavated prior to 1980. Therefore, the writ

petitioner (first respondent herein) was entitled to permission to remove the 1,17,800 metric tones of dumped iron ore from the mining lease area.

(d) The state Government and the central Government conceded the claim of the first respondent."

11. We find considerable force in the contentions of the appellants. Neither the State Government nor the Central Government filed any counter nor did they have sufficient opportunity to file any counter. Nor did they concede any claim of the first respondent. Apparently, the entire order was passed on the basis of the report dated 18.6.2009 submitted by the Dy. Conservator of Forests, by assuming it to be an admission on behalf of the state government. But the report dated 18.6.2009 is only a report submitted by the Deputy Conservator of Forests to the Principal Chief Conservator of Forests in pursuance of an ex-parte interim order of the High Court. Even the said report does not state that the ore in the nine dumps was mined prior to the Forest (Conservation) Act came into force, but only states that there was no mining activity in the area since 1985. The said report does not say when the said ore was mined. In fact that information was not sought by the High Court. Significantly, apart from the said report of the Deputy Conservator of Forests, there is no other material to conclude that the material was mined legally prior to 1980, when the lease was in force or that the said quantity of dumped ore belongs to the first respondent or that the first respondent is entitled to remove or sell the said material. The first respondent had not placed any material to show that the said quantities of ore had been mined before the lease expired or that the said quantifies of ore were lying at the site prior to 1980. No report was also called for from the Director of Mines & Geology which is the concerned department, or from the central government. The four questions in the order dated 24.4.2009, significantly do not refer to the following important aspects :

"(i) When was the said material mined/excavated?

(ii) What is the grade (percentage of ore content) in the dumped ore?

(iii) Whether the first respondent was the owner of the dumped material?

(iv) Whether there was any impediment for removing the dumped material or transporting them? The above questions can be answered only by the Department of Mines and Geology and not by the forest department. Be that as it may."

12. The correctness and reliability of the report dated 18.6.2009 of the Dy. Conservator of Forests is itself doubtful and far from satisfactory. The inspection and verification was not done by the Dy. Conservator of Forests who had furnished the report. The Principal Chief Conservator of Forests informed the Dy. Conservator of Forests, about the ex- parte interim direction of the High Court, by letter dated 30.5.2009. In turn, the Deputy Conservator directed the Assistant Conservator of Forests to give a report. The Assistant Conservator of Forests gave a report dated 16.6.2009 to the Dy. Conservator of Forests which was

incorporated in his report dated 18.6.2009. There was not even an affidavit supporting or verifying the said report. The report appears to have been prepared rather casually and in a hurry. Be that as it may.

13. There was unexplained delay and laches in filing the writ petition. The lease period came to an end on 6.7.1985. The writ petition was filed twenty four years later that is in the year 2009, seeking a direction to the State Government and Central Government to permit lifting of the ore by collecting necessary fee/royalty. Except stating that the dumped material had earlier no value, there was no explanation why for 24 years, no action was taken by the first respondent either to claim ownership in respect of the said "material" or remove the same. There was no material to show that the said material was of a grade of 62% to 63% or less. There was no material to show that the first respondent had informed the Mining Authorities or Forest authorities or the state government about the existence of mined ore in the mining area in nine dumps, either by way of returns, reports or otherwise. The first respondent had earlier produced a fake document dated 14.2.2008 wherein it was stated that the waste dumps (of one lakh tones) was not mined material but consisted of natural eroded soil and wastage thrown from neighbouring mines. Though first respondent subsequently admitted that the said letter dated 14.2.2008 was a fake, it did not aver that the contents of the document were false and concocted. Thus at one stage before filing the writ petition, the first respondent claimed that what was sought to be removed was not mined mineral, but eroded soil and waste thrown from neighbouring mines. But in the writ petition, the first respondent claimed that the material in question was low grade ore mined by it when the lease was in force. The contradictory stands raise doubts about the claim of the first respondent.

14. The courts should share the legislative concern to conserve the forests and the mineral wealth of the country. Courts should be vigilant in issuing final or interim orders in forest/mining/Environment matters so that unscrupulous operators do not abuse the process of courts to indulge in large scale violations or rob the country of its mineral wealth or secure orders by misrepresentation to circumvent the procedural safeguards under the relevant statutes. The court should also realise that Central Government and the State Government are huge and complex organizations and many a time require considerable time to secure information and provide them to court, in matters requiring enquiry, investigation or probe. Where writ petitions involving disputed questions of fact in regard to forest/mining/environment matters, come up for consideration, courts should give sufficient time and latitude to the concerned ministries/departments to file their objections/counters after thoroughly verifying the facts. If there is undue hurry, the concerned ministries/departments will not be able to make proper or thorough verifications and place the correct facts. Instances are not wanting where the public interest will be sabotaged, by the officers of the state/central government who are supposed to safeguard the public interest, by colluding with the unscrupulous operators. A wrong decision in such matters may lead to disastrous results - in regard to public interest - financially and ecologically. Therefore, writ petitions involving mineral wealth, forest conservation or environmental protection should not be disposed of without giving due opportunity to the concerned departments to verify the facts and file their counters/objections in writing.

15. This case is a typical example where a writ petition requiring decision of disputed and unascertained factual allegations filed on 30.3.2009 has been disposed of on 2.7.2009 without giving due opportunity to the mining and forest departments of the State Governments and the MoEF, to file their counter-affidavits. When there was delay of nearly a quarter century on the part of the writ petitioner in approaching the court, the writ petition ought not to have been disposed of in hardly three months, without counter-affidavits from the concerned respondents. Even though there were no counter affidavits, nor any opportunity to the respondents in the writ petition to file counter-affidavits, the High court assumed that the State and the Central Governments had conceded the claims of the first respondent in the writ petition and allowed the writ petition on 2.7.2009. Again, the High Court without calling for objections from MoEF or the state government, on an application by the writ petitioner, amended the final order and reduced the Net Present Value (NPV) from Rs.6,49,94,820/- to Rs.4,69,45,200/-. Anxiety to render speedy justice should not result in sacrifice of the public interest.

16. We are of the considered view that the High Court committed a serious error in hurriedly deciding seriously disputed questions of fact without calling for a counter and without there being any proper verification of the claim of the first respondent by the authorities concerned. The order of the High Court cannot be sustained.

17. We, accordingly, allow these appeals and set aside the order of the High Court and dismiss the writ petition filed before the High Court. We impose costs of Rs.50,000/- upon the first respondent payable to the state government.

18. The learned counsel for first respondent submitted that this order should not come in the way of the first respondent seeking appropriate remedy in accordance with law. If the first respondent has any remedy in law or cause of action for seeking any remedy, this order will not come in the way of first respondent seeking such remedy in accordance with law.