

RAJASTHAN HIGH COURT

Prabhavati Bai

Vs.

Union of India

Civil Special Appeal No. 5 of 1999
(Arun Kumar C.J, prakash Tatia, J.)

11.04.2002

ORDER

Arun Kumar C.J, prakash Tatia, J.

1. This appeal is directed against the judgment of the learned single Judge of this Court dated 19-11-98 dismissing the writ petition filed by Madhav s/o late Sh. Ambadas and Smt. Prabhawati. By the writ petition Madhav had prayed that the order of the Central Government holding that the revision petition, which is pending had abated on the death of Ambadas deserves to be set aside and the State Government be directed to consider the application for renewal of mining lease. The background of the case is that a mining lease with regard to soapstone was granted in favor of Ambadas by the State Government for a period of 14-4-71 to 13-4-91, i.e., for 20 years. As per the rules the lessee was required to apply for renewal of lease within one year prior to the expiry of the period of lease. Ambadas made an application for renewal of lease on 11th June, 1990. There is a provision of deemed refusal under the rules. Further, the deemed refusal was set aside by the Central Government vide order dated 19-4-91. By the said order of the Central Government the State Government was directed to decide the question of renewal of lease. However, the State Government rejected the application for renewal of lease on 31-3-92 on the ground of delay because as per the facts already noted the application for renewal of lease was filed by Ambadas not exactly before expiry of period of one year. It was delayed by about two months. Ambadas approached the Central Government again in view of the order of rejection of the prayer for renewal of lease by the State Government. The Central Government vide its order dated 9-4-92 clarified that the delay in filing the application for renewal of lease stood condoned when the Central Government set aside the deemed refusal and directed the State Government to decide the application for

renewal on merits. In the meanwhile, Ambadas had also approached the Central Government on 5-4-92 by way of a revision filed against the order of the State Government rejecting his application for renewal of lease. The Central Government granted the stay order in favour of Ambadas on 1-5-92. Under it Ambadas continued his mining operations. Ambadas died on 22nd May, 1994. On 7-6-94 Madhav s/o late Sh. Ambadas applied before the Central Government in the revision petition, which was pending before the Central Government for substitution in place of Ambadas in view of death of Ambadas. The revision petition came up for hearing before the Central Government on 1-7-94. The Central Government took a view that the cause of action in favour of Ambadas for renewal of lease was a personal cause, which came to an end with his death and, therefore, the revision was dismissed as having abated. This order was challenged by Madhav by way of filing writ petition, which was decided by the learned single Judge by the impugned judgment. In the impugned judgment the learned single Judge has observed as under :

"In my opinion, the present petition filed by petitioner Madhav was not at all maintainable because the revision application filed by late Shri Ambadas was dismissed by the respondent No. 1 on the ground that it stood abated on the death of late Ambadas. Instead of filing this petition straightway before this Court, the petitioner Madhav son of Ambadas ought to have made an application before the respondent No. 1 for setting aside the abatement with a request to bring him as legal representative of the deceased Ambadas on record and obtain an appropriate order from the respondent No. 1. It is strange that the petitioner Madhav claims to be legal heir, though his mother Smt. Prabhavati Devi widow of Ambadas was very much there and in fact, she made an application for getting the lease transferred in her name, which was earlier granted to her husband."

In our view these observations are not called for as they are contrary to record. As a matter of fact, Madhav's application for substitution was already pending before the Central Government before the case was taken up by the Central Government for decision on 1st July, 1994, therefore, the observation of the learned single Judge that instead of filing the petition in the High Court, Madhav ought to have made an application before respondent No. 1 for setting aside his abatement is not correct. Secondly, the observation of the learned single Judge that Madhav claims to be a legal heir, though his mother Smt. Prabhavati Devi widow of Ambadas was very much there, which has been taken against the petitioner, is not correct. The presence of Smt. Prabhavati Devi widow of Ambadas does not debar Madhav who is son of Ambadas

and Prabhavati Devi, from approaching for substitution. There is no dispute or clash of interest between Madhav and Prabhavati Devi; therefore, these things could not have been taken against the petitioner/appellant for non-suiting them.

2. Learned counsel for the appellant has drawn our attention to Rule 25-A of the Mineral Concession Rules, 1960, which runs as under:-

"25-A. Status of the grant on the death of applicant for mining lease:- (1) Where an applicant for grant or renewal of mining lease dies before the order granting him a mining lease or its renewal is passed the application for the grant or renewal of a mining lease shall be deemed to have been made by his legal representative.

(2) In the case of an applicant in respect of whom an order granting or renewing a mining lease is passed, but who dies before the deed referred to in sub-rule (1) of Rule 31 is executed, the order shall be deemed to have been passed in the name of the legal representative of the deceased."

It is clear from the said rule that it envisages substitution of a legal representative in case of death of the persons applying for renewal of lease. The present is a similar case where the person concerned died after having made an application for renewal of lease. Therefore, the legal representatives were entitled to be substituted in his place as per the clear provision contained in the relevant rules. The Central Government as well as the learned single Judge failed to notice these rules. In fact the Central Government while holding that the cause of action of renewal of lease was a personal cause of action of the deceased-Ambadas was absolutely wrong and this decision of the Central Government was contrary to the Rules. This shows total non-application of mind on the part of the Central Government in passing the order.

3. Accordingly, the order of the Central Government dated 1st July, 1994 holding the revision to have abated on the death of Ambadas is hereby set aside. The effect of this will be that the Central Government is left only with the power to decide the question of condonation of delay in moving the application for renewal of lease by Ambadas. On this aspect the Central Government has already given its opinion on 9th April, 1992. Therefore, really there is nothing, which remains for decision of the Central Government. Delay in making the application for renewal of lease has already been condoned by the Central Government. What remains to be done now is the question of renewal of lease, which has to be considered by the State Government. Accordingly, we direct the State Government to decide the question of renewal of lease within two months from today.

4. These appeals are, therefore, disposed of with above direction. The interim order passed by this Court permitting the appellant to continue with the lease will continue to remain in force till the disposal of the application for renewal of lease by the State Government.

Ordered accordingly.