

RAJASTHAN HIGH COURT

Amita Shekhawat

Vs.

State of Rajasthan

C.W.P. No. 1159 of 2002

(Prakash Tatia, J.)

06.03.2003

ORDER

Prakash Tatia, J.

1. Heard learned counsel for the parties finally on their requests.
2. The petitioner has challenged the order dated 14-2-2002 by which demand of Rs. 3,66,630/- has been raised against the petitioner against the dead rent for mining lease granted to the petitioner.
3. Learned counsel for the petitioner submitted that earlier certain demands were raised against the petitioner, which was challenged by the petitioner by filing SBCW No. 2127/2000 wherein interim order was passed by the Hon'ble High Court on 7th July, 2000 and the execution and implementation of the orders dated 22-12-99 (Annex. 4), 28-2-2002 (Annex. 5) and 18-4-2000 (Annex. 6) were stayed by the Court. The writ petition was decided by order dated 7-2-2001. It appears from the order dated 7-2-2001 that both the parties agreed before the Court that controversy involved in the writ petition No. 2127/2000 is squarely covered by the judgment and order passed by this Court in the writ petition of *Smt. Rajbai Dangi v. State of Rajasthan* ¹ The petition of the petitioner was disposed of in the light of the judgment and order and the notices referred above were quashed. However, the Court directed the competent authority to re-determine the dead rent after hearing the petitioner and further directed to determine the dead rent strictly in accordance with law and after considering the judgment of this Court given in *Amarjeet Singh v. State of Rajasthan, reported in* ² After the decision dated 7-2-2001 the impugned order dated 14-2-2002 was passed by the competent authority.

4. According to learned counsel for the petitioner the said order is absolutely illegal as the said order dated 14-2-2002 has been passed only under assumption that stay order dated 7-7-2000 passed in SBCW No. 2127/2000 stand vacated as the said writ petition has been decided by the Court and, therefore, only the order of recovery has been passed. There is no mention how the amount was determined and there is no mention how the judgment of Amerjeet's case was considered by the competent authority. It is also submitted that the authority was under obligation to decide the case of the petitioner strictly in accordance with law.

5. Learned counsel for the respondent vehemently submitted that after the decision of SBCW No. 2127/2000 by judgment and order dated 7-2-2001 the respondents gave a notice to the petitioner on 8th May, 2001, copy of which is placed on record as Annex. R/1. According to learned counsel for the respondent it is clear from the said notice served upon the petitioner that the competent authority was fully conscious of the directions issued by this Court in the said writ petition and, therefore, served notice upon the petitioner so that petitioner may appear and submit his case before the competent authority in the light of decision dated 7-2-2002, but petitioner did not turn up and, thereafter, after calculating the amount due against the petitioner in accordance with the provisions of law vide Annex. R/2, the recovery notice was issued. It is also submitted by learned counsel for the respondents that the said order of recovery dated 14-2-2002 can be challenged by filing revision petition, which is a statutory remedy available to the petitioner, but petitioner has not availed that remedy. Therefore, the writ petition of the petitioner is not maintainable. Learned counsel for the respondent also relied upon the Division Bench judgment of this Court in the case of *Rajbai Dangi v. State of Raj.* ³ in which I was also one of the member. According to learned counsel for the respondents once the lessee admitted in her application that she will be bound by the revised dead rent, she cannot say that she is not bound to make payment afterwards. The same controversy was decided by the Division Bench in the above *Smt. Rajbai Dangi v. State* ⁴ and the appeal against the judgment delivered in above SBCW No. 3018/2001 was dismissed by the Division Bench by judgment and order dated 15th July, 2002. Therefore, according to learned counsel for the respondent, the petitioner is not entitled for any relief in view of the Division Bench judgment of this Court delivered DBCW No. 756/2001.

6. According to learned counsel for the respondent the competent authority considered the directions of this Court and determined the dead rent by giving specific period from which to which the petitioner is liable for the payment of the dead rent.

7. I considered the rival submissions of the learned counsel for the parties. So far as direction issued by this Court in SBCW No. 2127/2000 dated 7-2-2001 are concerned, there is no dispute. It is also clear that the authority was directed to decide and determine the dead rent in accordance with law after considering the judgment of this Court delivered in the case of Amerjeet's case. A bare perusal of the impugned order dated 14-2-2002 it appears that the competent authority was under impression that the interim order dated 7th July, 2000 stand vacated in view of the final order dated 7-2-2001 passed in the SBCW No. 2127/2000. The order dated 14-2-2002 though contains certain calculations, but it appears from the order that the basis and reasons have not been given in the order. The reasons and basis are required to be found from the order and cannot be supplemented by way of pleading or arguments. When the High Court issues directions to do certain things then it is all the more necessary for the authority to pass an order in a manner so that from the order itself it can be found that the directions have been complied with and if the authority is directed to consider certain judgment of the High Court then it must also appear from the order itself that judgment was, in fact, considered. From the order dated 14-2-2002 neither it appears that the directions of this Court dated 7-2-2001 were considered or the determination has been done after considering the judgment of Amerjeet's case. The more emphasis appears to be on the plea that interim order dated 7th July, 2000 stand vacated in view of the final decision of the writ petition by order dated 7-7-2001 and, thereafter, straightway the authority mentioned the period for which the amount has been determined. There is no mention of any provision of law and rule, which empowers the charging of the amount, there is no mention of effect of the amendment made in the rule, there is no mention of the fact that whether the amended rule applies to the case of the petitioner or not and if applies how the amount has been determined. There is no mention of what is effect of the judgment of this Court delivered in Amerjeet's case on the facts of the petitioner's case? Therefore, the impugned order dated 14-2-2002 is non-speaking order, hence, liable to be quashed only on this ground.

8. The judgment relied upon by learned counsel for the respondent in support of his plea that once party agreed by submitting an application that the party will be bound to make payment of dead rent in a particular manner then she cannot challenge. The said plea was very much available to the respondents when the earlier SBCW No. 2127/2000 was decided by this Court. If the plea of the learned counsel for the respondent is accepted in this second round of litigation then it will mean that this Court will have to declare that the direction issued by this Court on 7-2-2001 cannot be implemented simply because the petitioner accepted in her application on an earlier

occasion that she will be bound to make payment as demanded by the respondents. Said plea of the respondent is based upon the principle of estoppel. The defense on the basis of principle of estoppel stand waived with the decision of earlier writ petition No. 2127/2000 and cannot be raised by the respondents in second round of litigation. The said defense is also barred by the principle of *res judicata* as well as barred under Order 2, Rule 2 of the Civil Procedure Code. Further, the respondent cannot be permitted to raise the plea, which will nullify the binding effect of the order of this Court dated 7-2-2001. Therefore, in the facts of this case, the judgment of the Division Bench delivered in the case of Rajbai Dangi (supra) has no application.

9. In view of the above reasons the writ petition of the petitioner is allowed and the order dated 14-2-2002 (Annex. 3) and order dated 13-3-2002 (Annex. 4) is quashed and set aside. The competent authority is directed to re-determine the dead rent for the petitioner by strictly complying with the direction issued by this Court in the judgment and order dated 7-2-2001 within a period of two months and the petitioner shall cooperate the competent authority. If the petitioner wants opportunity of hearing, he may appear before the Asstt. Mining Engineer, Banswara on 24th March, 2003.

Petition allowed.

Cases Referred.

1. (S. B. Civil Writ Petition No. 2031/1996 decided on 17-1-2000)
2. (1990) 2 Raj LR 457: (AIR 1991 Raj 146)
3. (DBC Special Appeal (W) No. 756/2001, decided on 15-7-2002)
4. SBCW No. 3018/2001