

RAJASTHAN HIGH COURT

Naresh Verma

Vs.

State of Rajasthan

C.W.P. No. 2809 of 1996

(Gopal Krishan Vyas, J.)

20.02.2009

ORDER

Gopal Krishan Vyas, J.

1. By way of filing the present writ petition, the petitioner has prayed for quashing the order dated 12-11-1993 (An-nexure-9) and the order dated 15-4-1996 (Annexure-11) and further prayed that the respondents may be directed to execute the lease deed of the impugned mine situated in village Latoti Tehsil Jaitaran District Pali measuring 300 x 300 sq. meters in favor of the petitioner.

2. The case of the petitioner is that an application was filed by the petitioner for grant of mining lease under the Rajasthan Mineral Concession Rules 1986 (hereafter, for short "the Rules of 1986) for lime stones on 11-11-1991 for the land situated in village Latoti, Tehsil Jaitaran District Pali and he has prayed that mine measuring 300 x 300 sq. meters of lime stones may be allotted. On application, certain formalities were asked to be completed by the respondent Department. Thereafter, allotment order under Rule 8 of the Rules of 1986 was issued in favor of the petitioner on 7-8-1992. In the said order, certain conditions were also incorporated for depositing advance royalty. National saving certificate of Rs. 22,500/-, advance lease of Rs. 22,500/- for three months and stamp papers of Rs. 24,655/- and the petitioner soon after receiving the allotment order deposited all the aforesaid required documents and amount. Thereafter, the Assistant Mining Engineer wrote a letter to the District Collector, Pali for issuance of No objection Certificate but as per petitioner no such condition was made in the allotment order for obtaining N.O.C. from the District Collector and the lease deed was to be executed within a period of three months. The District Collector upon communication sent by Assistant Mining Engineer, Sojat City on 3-11-1992

forwarded the matter to the concerned Tehsildar and the concerned Tehsildar sent the same to the Halka *Patwari* of village Latoti for ascertaining correct position of the land.

3. According to the petitioner, a report was furnished by the concerned *Patwari* which is Annexure-5 and upon perusal of the said report, it is clear that that impugned mine is three kilometer away from the *Abadi area* and there was no adverse effect, if the impugned lease is allotted to the petitioner. However, the concerned *Patwari* reported that there was some encroachment over the impugned land in 2.6 bighas. The said report submitted by *Patwari* was submitted before the District Collector through Tehsildar.

4. The contention of the petitioner in the writ petition is that after receiving the report from the concerned *Patwari* and *Tahsildar*, the District Collector did not issue the No Objection Certificate and, refused to issue NOC to the petitioner. Therefore, lease deed was not executed by the respondents within the stipulated time and therefore, the petitioner again approached the respondents and personally submitted a letter to the Assistant Mining Engineer that the mining lease may be executed in his favor but Assistant Mining Engineer is not executing the lease-deed on the ground that the District Collector has not issued NOC. The contention of the petitioner is that the District Collector has wrongly refused to issue NOC and it resulted into the deprivation of the petitioner from getting the lease in his favor. As per petitioner, when the District Collector refused to issue NOC then the Director, Mines and Geological Department, Govt. of Rajasthan, Udaipur revoked the allotment order passed in favour of the petitioner vide order dated 12-11-1993. The petitioner is challenging the said order on the ground that there is no provision under the Rules with regard to obtaining NOC from the concerned District Collector.

5. Learned counsel for the petitioner submitted that the petitioner was not provided any opportunity of hearing before revoking the order passed by the respondents. Rule 5 of the Rules of 1986 requires for performance of certain formalities and there is no such provision in existence in the rules for obtaining the NOC, from Collector. Further, it is argued that after issuance of the allotment order under Rule 8 of the Rules of 1986, the Director has no jurisdiction to cancel the allotment order unless the conditions of allotment order are not fulfilled. The refusal of NOC by the District Collector is *per se* illegal and contrary to the report of the concerned *Patwari* and *Tahsildar*; therefore, the denial of allotment to the petitioner by way of revoking the allotment order by the respondents is illegal and under the Rajasthan Land Revenue

Act, the right over the mines exclusively vests in the State Government and the State Government has all the powers to enjoy such rights. Therefore, the refusal of NOC by the District Collector is not in accordance with law, so also contrary to the report submitted by the concerned *Patwari* and *Tahsildar*.

6. Learned counsel for the petitioner further argued that the order impugned dated 12-11-1993 Annexure-9 was challenged by the petitioner by way of filing revision petition before the State Government under Rule 43 of the Rules of 1986 and all the grounds taken in this writ petition were taken before the respondents. However, without assigning any reasons and without application of mind, the revision/appeal filed by the petitioner has been dismissed. Therefore, it is prayed that the order impugned dated 12-11-1993. Annexure-9 for revoking the allotment order by the respondents, so also the order passed in revision/appeal dated 15-4-1996 may kindly be quashed and the respondents may be directed to execute the lease in favor of the petitioner and it may be declared that there is no requirement under the Rules to obtain NOC from the concerned District Collector.

7. Learned counsel for the petitioner submits that the respondent has committed gross illegality while revoking the allotment order on the basis of so-called refusal of NOC by the District Collector. Further, it is argued that as per notification issued by the Government on 7-2-1998, it has been clarified that there is no requirement for obtaining any NOC from the District Collector but the respondents have illegally acted upon and denied the allotment of mining lease to the petitioner. Therefore, it is prayed that this writ petition may be allowed and the order dated 12-11-1992 (Annexure-9) and the order dated 15-4-1996 (Annexure-11) may kindly be quashed.

8. Learned counsel for the petitioner has also invited my attention towards the judgement dated 8-9-1997 passed by Coordinate Bench of this Court in (*Devendra Singh v. State of Rajasthan*)¹ and submitted that this writ petition may be allowed.

9. Per contra, learned counsel for the respondents argued that the requirement of NOC is necessary because the District Collector is only authority for the Revenue Department to ascertain whether the land in question can be allotted for the purpose of mining or can give report with regard to status of the land. In this case, in reply, it is submitted that there is a public way over the proposed land, therefore, the District Collector, Pali refused to grant NOC therefore, the authority of the District Collector or requirement for taking NOC from the District Collector cannot be questioned by the petitioner. The District Collector, Pali vide its order dated 25-2-1993 refused to issue

NOC as the land in question is required for public way as well as some allottees are in possession of the land, therefore, owing the public safety and security, he has refused to issue NOC, which is in consonance with law. Therefore, after refusal of NOC for the land in question, the order of revocation dated 12-11-1993 (Annexure-9) has been passed, which is well reasoned order and does not require any interference by this Court.

10. Learned counsel for the respondents submitted that all the grounds taken by the petitioner were considered by the Appellate Authority in the appeal filed by the petitioner under Rule 43 of the Rules of 1986, therefore, the order passed by the Appellate Authority also does not require any interference by this Court. Learned counsel for the respondents has invited my attention towards the ground that the petitioner has concealed material fact from this Court that against the refusal order NOC by the District Collector, a Revenue Appeal No. 20/93 was filed by the petitioner and that appeal was also dismissed in default by the Revenue Appellate Authority. Thereafter, the petitioner submitted an application under Order 9, Rule 9, Civil Procedure Code in which what happened is not disclosed by the petitioner, therefore, this writ petition deserves to be dismissed on this ground also because the petitioner has concealed material fact from this Court that he has filed an appeal against the refusal order of NOC passed by the District Collector.

11. I have considered the rival submissions made by the parties.

12. Upon perusal of order dated 12-11-1993 Annexure-9, it is obvious that the order of revocation was made on the ground that the District Collector, Pali has refused to issue NOC. In this regard, in my opinion, the contention of the petitioner that there is no requirement under the Rules for obtaining NOC is totally baseless and have no force of law because for area of mining lease, there is provisions under the Rules of 1986, which is Rule 11. Rule 11 of the Rules of 1986 speaks that mining lease shall be granted for such area as the Government may deem fit. Further, the Director may fix the area for the grant of mining lease for a particular mineral but it shall not be less than 1 hectare. This limit shall, however, not apply to the gap areas lying between two or more mining leases which are less than the minimum prescribed size. In my opinion, when the State Government has jurisdiction to grant mining lease as it deems fit then the authority of the District Collector, Pali cannot be questioned because the District Collector is administrative head of the District in the Revenue Department and before issuing mining lease as per Rule 11 of the Rules of 1986, the Mining Department is under obligation to ascertain the status of the land. Therefore, the

authority of the District Collector and the question of obtaining NOC from the District Collector cannot be questioned. In this view of the matter, the order impugned passed by the Mining Department is in consonance with the provisions of law and does not require any interference by this Court. One more important fact which is not disclosed by the petitioner is that he has challenged the order of refusal of NOC by way of filing an appeal before the RAA and that appeal was dismissed in default and thereafter, an application was filed by the petitioner under Order 9, Rule 9, Civil Procedure Code but he has not disclosed what happened to the said appeal. For this reason also, no interference is required in this case.

13. I have also perused the circular dated 7-2-1998 brought to the notice of this Court by the petitioner. In the operative part of the said circular, the following order has been made:

"Therefore, it is sufficient to give copy of the orders sanctioning the mining lease to the concerned District Collector. If no objection in writing to execute the lease deed is made by the Collector within 30 days of the issue of such orders. The agreement should be got executed. There is no need to write District Collector or sanctioned for producing NOC after issue of sanction and before execution.

Therefore, all Mining Engineers/Assistant Mining Engineers are hereby advised not to take any action for obtaining NOC from the District Collector either before or after grant of mining lease/prospecting license in future as per legal position explained above."

14. Upon perusal of aforesaid portion of the circular, it is revealed that argument of learned counsel for the petitioner is totally irrelevant that it is nowhere provided by the Government that NOC from the District Collector is not mandatory. In fact, in the above notification, it is clarified by the Government that if no objection, in writing, to execute the lease deed is received within 30 days, the lease deed can be executed by the Mining Department.

15. I have also perused the judgment dated 8-9-1997 passed by Coordinate Bench of this Court in SB Civil Writ Petition No. 2808/97. In my opinion the controversy involved in that case is altogether different.

16. In this view of the matter, I see no reason to interfere in this matter. Hence, the writ petition is dismissed.

Petition dismissed.

Cases Referred.

1. SB Civil Writ Petition No. 2808/1997