

M/S. JAI DURGA FINVEST PVT. LTD.

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v.

STATE OF HARYANA AND ORS.

JANUARY 5, 2004

[V. N. KHARE, CJ, S.B. SINHA AND DR. AR. LAKSHMANAN, JJ.]

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Punjab Minor Mineral Concession Rules, 1964—Rule 33—Contract for mining operation—Non-performance of contract by the contractor due to non-compliance of statutory obligation on part of concerned authority—Demand of contract amount by authority—Demand held justified by High Court—On appeal, held: Demand not justified in view of non-compliance of statutory obligation on part of the authority—However, case remitted back to High Court for determination of doctrine of frustration.

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Respondent got a contract for mining operation for extraction of mineral sand in an auction. In furtherance of acceptance of his bid he entered into an agreement. According to clause 9 of the agreement appellant approached the land owners for settlement of compensation. When the land owners did not permit him to operate, he requested respondent No.3 as per clause 27 of the agreement to get the compensation determined by the District Collector, but no response thereto was made. As a result, performance of the contract by the appellant became impossible despite having paid a large amount. Appellant also did not seek any relief in payment of contract money on the plea of non-extraction of sand in view of condition No.18A of the contract agreement. Respondent No.2 terminated the contract of the appellant on 9.3.2000 for not having paid the contract money from September 1999 to January 2000 and his security amount was also forfeited. In appeal against the order terminating the contract, Appellate Authority directed adjustment of security amount against the outstanding amount of contract money and upto date interest thereon. Thereafter respondent No.3 demanded the alleged balance amount, which was paid by appellant, but he submitted that contract money for the period 10.3.2000 to 7.4.2000 was wrongly raised in view of the fact that the contract was terminated on 9.3.2000.

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Appellant filed writ petition, which was partly allowed by High Court regarding the amount for the period 10.3.2000 to 7.4.2000 and it

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A further held that appellant was obliged to deposit the amount in terms of the contract, as he had entered into the contract voluntarily without any coercion and undue influence.

B In appeal to this Court, appellant contended that the contract became impossible to be performed as the compensation was not paid to the land owners due to non-enforceability of Clause 27 of the agreement on the part of respondent No.3.

Allowing the appeal and remitting the case to the High Court, the Court

C HELD: Grant of mining lease in favour of the appellant for the extraction of mineral sand by the respondents is governed by the provisions of Punjab Minor Mineral Concession Rules, 1964. In terms of Rule 33, the bidder is required to execute a deed in Form 'L'. Clause 27 of the agreement in Form 'L' obligates the respondent to comply with the request made in terms thereof. The Appellant Authority had not considered this aspect of the matter. High Court also did not apply its mind in this behalf. As the High Court has merely proceeded on the basis that the appellant had entered into the contract with his eyes wide open, but, the same would not mean that they were bound to pay the contract amount, get its security amount forfeited, as also pay interest at the rate of 24 per cent, although it could not, by reason of acts of omission and commission on the part of the respondents, carry out the mining operation as per the terms of the agreement. Whether in such a situation the doctrine of frustration will be invoked or not should have been considered by the High Court. [162-F-H; 163-A-B]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9267 of 2003.

From the Judgment and Order dated 7.10.2002 of the Punjab and Haryana High Court in C.W.P. No. 12114 of 2000.

G Dr. Vikas Vashishth for Kuldip Singh for the Appellant.

Aditya K. Choudhary, Sanjay Singh for Ms. Kavita Wadia for the Respondents.

H The Judgment of the Court was delivered by

S.B. SINHA, J. The writ petitioner before the High Court is appellant A
herein.

Admitted fact of the matter is as under:

An auction for grant of mining operation that is for extraction of mineral B
sand in Bega Murthal comprising 56 villages in the district of Sonapat in the
State of Haryana was held on 6.4.1998. The reserved price therefor was fixed
Rs. 83,23,000 (Rupees eighty three lacs twenty three thousand only). The
appellant herein became the highest bidder, the bid amount being
Rs. 1,48,00,00 (Rupees one crore forty eight lacs) per annum for the period
11th October, 1998 to 31st March, 2001. The said bid was accepted and C
pursuant to and in furtherance thereof an agreement was entered into by and
between the parties on 30th October, 1998. The appellant herein deposited an
amount of Rs. 37,00,000 (Rupees thirty seven lacs) as security.

The relevant clauses of the said agreement are as under :

“9. Payments of Compensations to land owners: D

The contractor shall make and pay reasonable satisfaction and
compensation for all damages or disturbance which may be done by
him in exercise of the powers granted by this contract and shall
indemnify and keep indemnify fully and completely the Government E
against all claims which may be made by any person or persons in
respect of any such damage, injury or disturbance and costs any
expenses in connection therewith.

17. Termination of the contract by State Government in public interest:

Except as otherwise provided, the contract may be terminated by F
Govt. if considerable by it to be in public interest, by giving one
month's notice.

Provided that in the state of national emergency or war contract may
be terminated without giving such notice.

18. Recovery of contract money as arrears of land revenue: G

Any sum from the contractors on account of contract money in respect
of the contract, shall be recovered from him/them as arrears of land
revenue. H

A 18A The contractor shall have no right to seek any relief in payment of contract money on the plea that he was not able to extract sand from any village falling in the zone.

27. Acquisition of land of third parties and compensation thereof :-

B In accordance with provisions of clause 9 of this agreement the contractor shall offer to pay compensation to an occupier or owner of the surface of the land where from the minor mineral will be raised, including the land required for use as access to the quarry/mine, stracking of mineral and purpose subsidiary thereto for any damage or injury which may arise from the proposed mining operations of the contractor and in case the said occupier or owner refuses his consent to the exercise or the rights and powers reserved to the government and demised to the contractor under these presents the contractor shall report the matter to the Assistant Mining Engineer/Mining Officer posted in the District who shall request the collector of the District concerned to direct the occupier or the owners on such mining/quarrying operations as may be necessary for the working of the mine/quarry on deposit with the collector to the occupier or the owner by the contractor subject to its final fixation by the collector under the Land Acquisition Act, 1894.”

E The contention of the appellant was that in terms of clauses 9 and 27, he approached the land owners of villages Nandnaur, Larsauli, Pipli Khera, Murthal and Bhigan for settlement of compensation, but, they did not accede thereto. Thereafter, the appellant requested respondent No.3 to get the amount of compensation determined by the District Collector and pay the same to the land owners but no response thereto was made. Further contention of the

F appellant is that although in the aforementioned situation he has not been able to extract and even for a day, he had deposited a huge sum of Rs. 2,12,07,573 (Rupees two crores twelve lacs seven thousand five hundred seventy three only.) The appellant further urged that having regard to the said conduct on the part of the respondents, performance of contract on his part became impossible. Despite the same, one month notice was issued by the

G 3rd respondent herein on or about 19th January, 2000, terminating the contract on the ground that the contract money from September 1999 to January 2000 had not been paid; whereafter the Director, 2nd respondent terminated the contract by an order dated 9th March, 2000; as a result whereof the security amount deposited by the appellant was also forfeited.

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Aggrieved by the said order, the appellant preferred an appeal which was partly allowed by the Appellate Authority in terms of an Order dated 10th July, 2000, whereby and whereunder the security amount deposited by the appellant was directed to be adjusted against the outstanding amount of contract money and upto date interest thereon. The 3rd respondent thereafter issued a notice to the appellant on 4th August, 2000 demanding the alleged balance amount along with the interest at the rate of 24 per cent per annum which was worked out to Rs. 68,35,290 (Rupees sixty eight lacs thirty five thousand two hundred ninety only). The appellant deposited the said amount, but submitted a representation before the 2nd respondent *inter alia* contending that the contract money for the period 10.3.2000 to 7.4.2000 has wrongly been raised having regard to the fact that the contract stood terminated on 9th March, 2000.

The appellant thereafter filed a Writ Petition before the Punjab and Haryana High Court which was marked as C.W.P. No. 12114 of 2000, praying *inter alia* therein the following reliefs:-

- (a) issue a writ of certiorari quashing the impugned notice dated 4.8.2000 to the extent it demands contract money and interest thereon @ Rs. 24% P.A. after expiry of one month notice dated 19.1.2000 terminating the contract or in the alternative demand of contract money and interest thereon from 9.3.2000 to 7.4.2000, be declared *null and void* and quashed;
- (b) issue an appropriate writ, order or directions declaring clause 19 of the agreement; (P/1) as *null and void* to the extent it stipulates non-payment of interest on the heavy amount of security deposited by the petitioner and that direction be issued to respondents to pay interest @ 24% P.A. on the amount of security till final adjustment qua the outstanding contract money;
- (c) issue further an appropriate writ, order or direction to the respondents not to charge interest on the amount of contract money being demanded from the petitioner vide order dt. 10.7.2000; P/3 and notice dated 4.8.2000."

The High Court allowed the writ petition in part i.e. as regard the demand of the amount for the period 10.3.2000 to 7.4.2000 of the contract money. As regard the other contentions of the appellant, the High Court proceeded on the basis that as it was not coerced into bid by any of the representatives of the State nor the contract was signed under undue influence

A or pressure, the appellant cannot be discharged of its liability as it entered into the contract voluntarily and as in terms thereof it was obliged to deposit the amount in question.

It appears to us that the High Court committed an error in not going into the principal issue involved in the matter.

B We may notice that the second respondent in its order dated 10th July, 2000 held :

C “It is an admitted fact that the appellant did not operate the Bega Murthal Sand Zone, even if by their own choice, but facts remain that they did not derive any benefit from the contract. On the other hand they had bound themselves by condition No. 18A of the contract agreement not to seek any relief in payment of conduct money on the plea of non extraction of sand”.

D The question, thus, which was required to be posed and answered was as to whether Clause 18A of the agreement would remain enforceable despite the fact that the appellant allegedly could not extract any sand by reasons of omission and commission on the part of the concerned respondents. The appellant herein has raised a plea that the contract became impossible to be performed as the land owners of the area in question did not receive compensation and despite request the 3rd respondent did not enforce clause 27 of the agreement.

E It is not in dispute that the grant of mining lease in favour of the appellant herein for the extraction of mineral sand by the respondents is governed by the provisions of Punjab Minor Mineral Concession Rules, 1964.

F In terms of Rule 33 the bidder is required to execute a deed in Form ‘L’. Clause 27 of the agreement in Form ‘L’ obligates the respondent to comply with the request made in terms thereof. The Appellate Authority had not considered this aspect of the matter. The High Court also did not apply its mind in this behalf. The first question that arises whether the respondents complied with their statutory obligations when the request was made by the appellant. If not, the second question would be the effect on non-compliance of the statutory obligation of the respondents which formed part of the contract insofar as they did not comply with the appellant’s request as aforementioned which had a direct bearing to the right of the appellant to raise sand. As the High Court, as noticed here-in-before, has, merely proceeded on the basis

G that the appellant had entered into the contract with his eyes wide open, but,

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the same would not, in our opinion, mean that they were bound to pay the contract amount, get its security amount forfeited, as also pay interest at the rate of 24 per cent, although it could not, by reason of acts of omission and commission on the part of the respondents, carry out the mining operation as per the terms of the agreement. **A**

Whether in such a situation the doctrine of frustration will be invoked or not should have been considered by the High Court. (See *M.D. Army Welfare Housing Organisation v. Sumangal Service Pvt Ltd.*, (2003) 8 Scale 424). **B**

For the reasons afore-mentioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed and the matter is remitted back to the High Court for consideration of the matter afresh in the light of the observations made herein on an early date. No costs. **C**

K.K.T.

Appeal allowed.