

RAMAKANT DWIVEDI

A

v.

RAFIQ AHMAD & ORS.

(Civil Appeal No. 4 of 2016)

JANUARY 04, 2016

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**[ANIL R. DAVE AND ADARSH KUMAR GOEL, JJ.]**

*Mines and Minerals – Excavation of minor minerals – On the basis of renewal of pre-existing lease, on 27.4.2013 – PIL filed – High Court passed interim order against excavation of minor minerals by the appellant holding the grant of lease being violative of judgments passed in two cases – On appeal, held: The two judgments of High Court debarred grant of lease under Chapter II of 1963 Rules after 31.5.2012 – The Government order dated 26.2.2013 on the basis of which renewal dated 27.4.2013 was granted, was itself in conflict with the High Court orders – Thus grant of lease being in violation of the two judgments are liable to be struck down – Uttar Pradesh Minor Mineral (Concession) Rules, 1963 – Chapter II.*

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**Dismissing the appeal, the Court**

**HELD: 1. The High Court has rightly held that the renewal was in pursuance of the Government Order dated 26th February, 2013 which itself was in conflict with the order of the High Court in *\*Nar Narain Mishra's* case as reiterated in *\*\*Sukhan Singh's* case. Orders of the High Court in *\*Nar Narain Mishra* and *\*\*Sukhan Singh* clearly debarred the grant of lease under Chapter II of Uttar Pradesh Minor Mineral (Concession) Rules, 1963, after 31st May, 2012. In the case of the appellant, environmental clearance was granted on 21st September, 2012 and renewal was granted on 27th April, 2013. [para.4] [573-E-F]**

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**2. In the present case, since the lease was granted in violation of judgment of the High Court, subsequent withdrawal of the Government order dated 31st May, 2012 could not benefit the appellant as on the date of grant of lease in favour of the appellant, the said Government order was operative. [para 5] [575-B-C]**

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- A *\*Nar Narain Mishra vs. The State of U.P. 2013(2) ADJ 166; \*\*Sukhan Singh versus State of U.P. 2014 (11) ADJ 89 – referred to.*

Case Law Reference

- |   |                  |             |        |
|---|------------------|-------------|--------|
| B | 2013(2) ADJ 166  | referred to | Para 2 |
|   | 2014 (11) ADJ 89 | referred to | Para 2 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 04 of 2016

- C From the Judgment and Order dated 18.06.2015 of the High Court of Judicature at Allahabad in Public Interest Litigation (PIL) No. 35233 of 2015.

Dr. Rajeev Dhawan, Arvind Srivastava, Anupam Mishra, Simanta Kumar Vinod Kumar K., Gaurav Khanna for the Appellant.

- D Gaurav Bhatia, AAG, Samir Ali Khan, Gaurav Srivastava, Aditya Narayan Singh, Aamir Naseem, Md. Shahid Anwar, Syed Rafat Ali, Debasis Kukarjee for the Respondents.

The Judgment of the Court was delivered by

- E **ADARSH KUMAR GOEL, J.** 1. Leave granted. This appeal has been preferred against order dated 18<sup>th</sup> June, 2015 passed by the High Court of Judicature at Allahabad in PIL No.35233 of 2015 granting an interim order against excavation of minor minerals by the appellant in respect of lease executed in his favour on 17<sup>th</sup> October, 2013.

- F 2. In the impugned order, the High Court observed that lease granted to the appellant was in violation of its judgments dated 29<sup>th</sup> January, 2013 in *Nar Narain Mishra versus The State of U.P.*<sup>1</sup> and dated 12<sup>th</sup> September, 2014 *Sukhan Singh versus State of U.P.*<sup>2</sup>. In *Nar Narain Mishra*, the operative part of the High Court order is as follows :

- G *“In the result, all the writ petitions are disposed with the following directions :*

*1) The prayers made by the petitioners/applicants for considering their applications for renewal of their mining leases which were pending on 31/5/2012, and the*

<sup>1</sup> 2013(2) ADJ 166

H <sup>2</sup> 2014(11) ADJ 89

*applications for grant of fresh leases which were pending on 31/5/2012 are refused.* A

*2) The Government Order dated 26/7/2012 and all consequent steps taken thereunder are quashed.*

*3) Notices issued by the District Magistrate inviting applications by E-tendering consequent to the Government Order dated 31/5/2012, cannot be allowed to be finalized and are quashed with liberty to the respondents to issue fresh notice in accordance with law.* B

*4) Parties shall bear their own costs.”*

3. According to the appellant, on 27<sup>th</sup> April, 2013, the pre-existing lease in his favour which expired on 18<sup>th</sup> November, 2010, was renewed for further period of three years upto 26<sup>th</sup> April, 2016. Approval was granted on 14<sup>th</sup> March, 2011 and environmental clearance was granted on 21<sup>st</sup> September, 2012. It is submitted that order of the Government dated 31<sup>st</sup> May, 2012 was not applicable and was later withdrawn on 22<sup>nd</sup> October, 2014 and thus, the lease was valid. C D

4. This submission though also supported by the State, cannot be accepted. The High Court has rightly held that the renewal was in pursuance of the Government Order dated 26<sup>th</sup> February, 2013 which itself was in conflict with the order of the High Court in *Nar Narain Mishra* (supra) as reiterated in *Sukhan Singh* (supra). In view of order of the High Court dated 29<sup>th</sup> January, 2013 in *Nar Narain Mishra* (supra) all pending applications as on 31<sup>st</sup> May, 2012 stood rejected. In the case of the appellant, environmental clearance was granted on 21<sup>st</sup> September, 2012 and renewal was granted on 27<sup>th</sup> April, 2013. Orders of the High Court in *Nar Narain Mishra* and *Sukhan Singh* (supra) which are not under challenge clearly debarred the grant of lease under Chapter II after 31<sup>st</sup> May, 2012. This aspect has been dealt with in greater detail in Civil Appeal Nos.4845-4846 of 2015 titled *Sulekhan Singh & Co. versus State of U.P.* with which the present appeal was tagged, which is being separately decided today. Stand of the State, to the contrary, can also not be appreciated. Reference may be made to the finding recorded by the High Court in the impugned order: E F G

*“A Division Bench in the case of Nar Narain Mishra v. State of U.P. and others reported in 2013 (2) ADJ 166, after interpreting the Government Order dated 31.5.2012 recorded* H

- A *as principle of law, that once notification has been published by the State Government in exercise of powers under Rule 23 of the Rules 1963, for vacant areas being available for grant of leases under Chapter IV of Rules, 1963, no grant/renewal on the pending applications can be made, after 31.5.2012.*
- B *The State was not satisfied with the legal position so explained. It came out with a Government Order dated 26.2.2013, which provided that pending applications, for renewal/grant in respect of which orders of approval have already been made by the State Government or by the competent authority shall not be controlled by the judgment in the case of Nar Narain Mishra (Supra) such cases may be processed further.*
- C *This Government Order dated 26.2.2013 came up for consideration before another Division Bench of this Court in the case of Sukkhan Singh v. State of U.P. and others reported in 2014 (11) ADJ 89. The Division Bench has held that the Government Order dated 26.2.2013 cannot deviate from the legal position, as has been explained in the case of Nar Narain Mishra (Supra).*
- D *It, therefore, follows that no application which was pending on 31.5.2012 can be proceeded with for grant/renewal of lease under Chapter II/VI of the Minor Minerals Concession Rules, 1963 after 31.5.2012. The grant, if any, after 31.5.2012 can only be made under Chapter IV of the Rules of 1963 Le. by e-auction or tendering. The State and its Officers have shown little or no respect to the orders of this Court.*
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- F *xxx*
- G *Prima facie, we find no substance in the contention raised. In our opinion, once a notification dated 31.5.2012 had been issued declaring that all the vacant areas are available for grant of lease only under Chapter IV, no lease subsequent thereto under Chapter VI could be executed. The area remains vacant till the execution of the lease deed. The Execution of the lease in the facts of the case has taken place after 31.5.2012. Mere grant/approval in our opinion will not alter the legal position.*
- H *The concern of the Court is both, in respect of best use of*

*natural resources by the State as well as for avoiding the degradation of environment, especially near the river beds.”* A

5. Last submission on behalf of the appellant is that on 22<sup>nd</sup> October, 2014 the State of U.P. has declared that the mining leases will be given under Chapter II and Order dated 31<sup>st</sup> May, 2012 was withdrawn. In the present case, lease was granted in violation of judgment of the High Court as already noted. Subsequent withdrawal of the Government order dated 31<sup>st</sup> May, 2012 could not benefit the appellant as on the date of grant of lease in favour of the appellant, the said Government order was operative. B

6. In these circumstances, we do not find any ground to interfere with the impugned interim order and leave the issue on merits to be finally decided by the High Court. C

7. The appeal is dismissed.

Kalpana K. Tripathy

Appeal dismissed.

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