Neutral Citation No. - 2023:AHC:237358-DB
A.F.R.
Reserved

Court No. - 3

Case :- WRIT - C No. - 28355 of 2021
Petitioner :- Smt. Kalpana Karwariya
Respondent :- The State Of U P And 4 Others
Counsel for Petitioner :- Suraj Singh,Sr. Advocate
Counsel for Respondent :- C.S.C.,A.K. Singh

Hon'ble Siddhartha Varma, J.
Hon'ble Manoj Bajaj, J.

1. The question here for our determination is as to whether the security money which a miner deposits at the time of grant of lease under the Uttar Pradesh Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as the **"1963 Rules"**) could be forfeited when a lease is determined for the non-payment of royalty, rent or other dues. In the instant case, the petitioner had applied by means of e-tendering when it was advertised that the lease would be settled on the highest bidder for the Yamuna River Khand no. 16/2 and 16/3 measuring 20.23 acres in Village Mahewa, Tehsil Manjhanpur, District Kaushambi. The availability of mineral was given out as 4,00,000 cubic meters per year. The lease was to be given for a period of five years. The petitioner who applied by e-tendering was found to be the highest bidder and was given a lease of five years commencing on 22.02.2018 and ending on 21.02.2023. The petitioner before the grant of lease had deposited Rs. 1,74,00,000/- as security and had also deposited Rs. 1,74,00,000/- as the first instalment. As per the agreement in

the first year of the mining operation, the petitioner had to deposit four instalments of Rs. 1,74,00,000/-. In the second year thereafter, he had to deposit instalments of Rs. 1,91,40,000/- in four equal instalments. After the petitioner commenced with his work, he subsequently discovered that the mineral available was not of proper standard and that the work of excavation from the mines, which he had taken on lease, was not a profitable venture. As a consequence, therefore, on 15.10.2018 the petitioner applied online to the District Magistrate, Kaushambi requesting him to get the mining area of the petitioner surveyed for assessing as to whether the quantity of mineral as was earlier given out was there or not and as to whether the minerals were mixed with mud. This application was followed by another application dated 16.10.2018 and by this application, in fact, the petitioner prayed that the lease be determined on account of the mineral not being available in the mining area. The Mines Inspector, Kaushambi on 28.11.2018 upon a query being made by the District Magistrate as to whether a re-assessment could be made, wrote to the District Magistrate that there was no provision for re-assessing as to whether minerals were available or not in the mining area which was given out to the petitioner. It is the averment in the writ petition by the petitioner that even though the petitioner had not done any mining after he had given a notice on 15.10.2018, on 04.01.2019 a notice was given to the petitioner to deposit his fourth instalment of the first

year. It may be stated that after the petitioner had got the lease in his favour on 22.02.2018, he had deposited the second quarterly instalment on 19.04.2018 and the third instalment on 13.07.2018 by treasury challans. When the petitioner received the notice dated 04.01.2019, he objected to the demand made by the District Magistrate and on 30.01.2019 he objected in writing that there was no mineral available and mining was not possible and that the amounts which the petitioner had deposited earlier be also refunded to him. Even before, the petitioner's objection could be dealt with, the time to deposit the first instalment of the second year had arrived and, therefore, on 30.03.2019 the petitioner deposited Rs. 1,91,40,000/-. This the petitioner had deposited after the lease deed was determined by the order dated 25.03.2019.

2. It is the case of the petitioner that despite the fact that the petitioner had deposited the security, the two instalments of the first year and the first instalment of the second year, the District Magistrate demanded from the petitioner the fourth instalment of the first year and also the first instalment of the second year.

3. The petitioner approached the High Court against the demand but he was relegated to the filing of an appeal. The Appellate Court thereafter on 16.07.2021 rejected the appeal of the petitioner. Resultantly, the petitioner filed a Revision before the State Government under Rules 78 of 1963 Rules and when the

Revisional Court dismissed the Revision on 20.09.2021, the petitioner filed the instant writ petition.

4. Learned counsel for the petitioner has assailed the three orders primarily on the ground that under Rule 58 of the 1963 Rules if any mining lease was determined after serving a notice on the lessee to pay within 30 days of the receipt of notice any amount due or dead rent under the lease including the royalty due to the State Government and if it was not paid within the next 15 days then the State Government could realise the dues from the lessee as arrears of land revenue. Learned counsel for the petitioner since had relied upon Rule 58 of the 1963 Rules the same is being reproduced here as under :-

> *"**[58. Consequences of non-payment of royalty, rent or other dues :-***
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> *(1) The State Government or any officer authorised by it in this behalf may **determine the mining or auction lease** after serving a notice on the lessee to pay within thirty days of the receipt of the notice any amount due or dead rent under the lease including the royalty due to the State Government if it was not paid within fifteen days next after the date of fixed for such payment. **This right shall be in addition to and without prejudice to the right of the State Government to realise such dues from the lessee as arrears of land revenue**.*
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> *(2) Without prejudice to the provisions of these rules, simple interest at the rate of 24 per cent per annum may be charged on any rent, royalty, demarcation fee and any other dues under these rules, due to the State Government after the expiry of the period of the notice under sub-rule (1).]"*
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> ***(Emphasis supplied)***

5. Learned counsel for the petitioner has further stated that the only instalment which the petitioner had not paid was the fourth instalment of the first year and that was to the tune of Rs. 1,74,00,000/-. This amount could, as per the Rule 58 of the 1963 Rules, be realised as arrears of land revenue from the petitioner. Learned counsel for the petitioner also referred to the Government Order dated 14.08.2017 and submitted that as per Clause 19(3) if the petitioner could not deposit any due then that amount could be recovered from him as arrears of land revenue alongwith interest. Clause 19(3) is being reproduced herein under :-

> *"**(3)** प्रथम वर्ष के लिए शेष 75 प्रतिशत पट्टा धनराशि एवं आगामी वर्षो के लिए पट्टा धनराशि नियमावली में निर्धारित चतुर्थ अनुसूची के अनुसार राज्य सरकार द्वारा समय समय पर निर्धारित प्रक्रिया के अनुसार पट्टाधारक द्वारा जमा की जायेगी। उक्त अनुसूची में नियत तिथि के अनुसार देय धनराशि जमा न करने की दशा में नियम-59 के अनुसार देय धनराशि ब्याज सहित वसूल की जायेगी।"*

6. Learned counsel for the petitioner, only to clarify as to when the security could be used for adjusting the amount due, referred to Rule 59 of 1963 Rules and submitted that if there was any contravention of the conditions of the lease then the petitioner/miner could be made liable for a certain fine/penalty and that penalty could be deducted by the District Magistrate from the security money deposited against the lease in case of failure of deposit of penalty money. Learned counsel for the petitioner has also relied upon a judgment of this Court dated 19.02.2020 in

Writ-C No. 13569 of 2019 (Ajay Raj Dwivedi vs. State of U.P. & Ors.) and submitted that under no circumstance, the amount which was due could be recovered other than the method as was provided under the provisions of Rule 59 of 1963 Rules and he submitted that definitely the security could not be forfeited. Learned counsel for the petitioner further pointed out to the Part-II of the agreement which the petitioner had entered with the State Government on 22.02.2018 wherein it was provided that if any particular payment was not made then the same could be recovered as arrears of land revenue. This provision is being reproduced here as under :-

> ***"स्वामित्वों का समय पर भुगतान न किया जाये तो कार्यवाही की प्रक्रियाः-*** *(3) यदि इस उपस्थापन-पत्र (Presents) की शर्तों और प्रतिबन्धों के अधीन राज्य सरकार को देय स्वामित्व की किसी किश्त का भुगतान पट्टाधारक/पट्टाधारकों द्वारा उपरोक्त नियत समय के भीतर न किया जाये तो उसे ऐसे अधिकारी के, जिसे राज्य सरकार सामान्य या विशिष्ट आज्ञा द्वारा निर्दिष्ट करें, प्रमाण पत्र पर उसी रीति से वसूल की जा सकती है जैसे मालगुजारी का बकाया।"*

7. Also since Rule 59 of the 1963 Rules was sought to be differentiated from Rule 58, the Rule 59 is being reproduced here as under :-

> *"**59. Consequences of contravention of certain conditions** -(1) The proponent who has received Letter of Intent however has not produced mining plan within the stipulated period, of one month as per the provisions mentioned in Rule 34 be liable for penalty of Rs. one lakh on failure to deposit the*

amount of penalty the same shall be deducted by the District Magistrate from the security money deposited against the concerned lease.

2) The lessee who does mining works contravening the terms and conditions mentioned in the approved mining plan and clean environment certificate issued as per the provisions provided under Rule 34, then he will be liable for penalty at the rate of Rs. 50,000/- per occasion of default that shall be recovered by the District Magistrate.

(3) If the lease holder disobeys the provisions of Rule 35 then penalty at the rate of rupees twenty five thousand per day for each and every default shall be levied by the concerned District Magistrate. ***In case of default on deposit of such levied penalty the concerned District Magistrate will deduct the said amount from the amount of security deposited against the said mining lease.***

(4) According to the provisions provided under Rule 41-H mining work through suction machine/lifter into the water stream will be prohibited. If any lessee is found contravening the provisions of the said rule then he will be liable for penalty at the rate of of Rs. five lakh per occasion of contravening act, which will be recovered on the order of District Magistrate or Director, Geology and Mining. ***On failure to deposit of the above mentioned amount of penalty the same shall be deducted by the District Magistrate from the security money deposited against the concerned lease.***

(5) Any lessee holding a mining lease who commits a breach of any of the conditions provided in Rule 44 shall be liable for levy/penalty of Rs. fifty thousand. ***On failure to deposit the said amount of penalty the same shall be deducted by the District Magistrate from the security money deposited against the concerned lease.****"*

(Emphasis supplied)

8. Also the Rule 60 of the 1963 Rules, to illustrate how its provision is different from Rule 58, is being reproduced here as under :-

> ***"60 Consequences of contravention of rules and conditions of lease generally*** *- (1) In case of any breach or contravention by a lessee of any of these rules or conditions and covenants contained or deemed to be contained in the lease* ***except*** *those relating to payment of royalty, rent or other sums due to the State Government, the State Government may, after giving the lessee a reasonable opportunity to state his case, determine the lease. The right shall be in addition to and without prejudice to the provisions of Rule 59.*
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> *(2) If a lease is determined under sub-rule (1), the lessee may be black listed by the District Officer for such period, not exceeding two years, as he may consider proper which shall be uploaded on the website of the department and during the said period no mineral concession under these rules shall be granted to him. An entry in this regard shall be made in the remarks column of the registers of mining lease or the auction lease, as the case may be.*
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> *(3) If any person other than the mining lease holder or entity held is convicted for the charge of illegal mining/transportation, then besides the penalty/ punishment, name of such person or entity will be listed into the black- list by the State Government and will be uploaded and displayed on the website of the department and no mining lease under this rules shall be granted within such period in favour of the said person or entity."*

9. Learned counsel for the petitioner also drew the attention of the Court to the provision which was with regard to the forfeiture of the security money in the lease/agreement dated 22.02.2018.

That provision in the lease deed was in Part-III of the lease deed wherein it was provided that if any rule or any condition in the lease was violated then the complete or a part of the security could be forfeited and the lease could be terminated. Learned counsel for the petitioner stated that in the Clause given in Part-III of the agreement, even though the heading was ***"स्वामित्वों का समय पर भुगतान न किया जाये तो कार्यवाही की प्रक्रिया"***, the clause actually was with regard to violation of any condition of the lease or any rule and he, therefore, submitted that even if the heading of the Clause was with regard to the procedure if payment was not made, in fact, the Clause was with regard to what had to be done if any rule or any condition of the lease was violated. Learned counsel for the petitioner in this regard submitted that the heading of the Clause was not to prevail over the content of the Clause. Since learned counsel for the petitioner pointed out to the relevant Clause in Part-III of the agreement, the same is being reproduced here as under :-

> ***"स्वामित्वों का समय पर भुगतान न किया जाये तो कार्यवाही की प्रक्रियाः-*** *(1) यदि पट्टाधारक उ०प्र० उपखनिज (परिहार) नियमावली-1983 के किसी नियम या इस पट्टे की किसी प्रसंविदा और किसी शर्त को भंग करे तो राज्य सरकार पट्टा समाप्त कर सकती है और प्रतिभूति जमा को पूर्णतः या अंशतः जब्त कर सकती है, किन्तु प्रतिबन्ध यह है कि पट्टा समाप्त किये जाने के पूर्व पट्टाधारक को उक्त शर्त भंग करने का स्पष्टीकरण देने के लिये यथोचित अवसर दिया जाएगा।"*

10. Learned counsel for the petitioner, to bolster his argument that marginal note/heading had not to prevail over the actual contents of a section, relied upon the judgment of Supreme Court in **Maqbool vs. State of U.P. and another** reported in **(2019) 11 SCC 395** and he specifically relied upon paragraph 9 of the judgment. Paragraph 9 of the aforesaid judgment is being reproduced here as under :-

> *"**9.** The title to the provision need not invariably indicate the contents of the provision. If the provision is otherwise clear and unambiguous, the title pales into irrelevance. On the contrary, if the contents of the provision are otherwise ambiguous, an aid cant be sought from the title so as to define the provision. In the event of a conflict between the plain expressions in the provision and the indicated title, the title cannot control the contents of the provision. Title is only a broad and general indication of the nature of the subject dealt under the provision."*

11. Learned counsel for the petitioner, therefore, submitted that if any amount which was payable as royalty, rent or other dues was not paid by the petitioner then in addition to the determination of the mining lease, the amount could be recovered only as arrears of land revenue. He submitted that under no circumstance, the security money could be forfeited. At this point of his argument, learned counsel for the petitioner submitted that petitioner was in fact ready to get the amount of royalty, which he had not paid, deducted from the security which he had deposited.

12. Sri Sandeep Kumar Singh, learned Additional Chief Standing Counsel, however, in reply has submitted that if the petitioner had not paid the royalty which was due from him then the authorities had no other option but to punish the petitioner and if they had to punish they could rely upon Rule 58 or also on the condition of the lease dated 22.02.2018 and relying upon the Clause under Part-III of the lease deed as had been reproduced earlier, he submitted that the Clause definitely permitted the State to forfeit the security. Also, the TDS etc. when was not paid then that had to be taken from the petitioner in addition to the forfeiture of the security.

13. Having heard Sri Mukesh Prasad, learned Senior Advocate assisted by Sri Suraj Singh, learned counsel for the petitioner and the learned Additional Chief Standing Counsel, we are of the view that when the petitioner had not paid the fourth instalment of the first year then that amount alongwith the TDS amount payable and the amount payable towards the District Mineral Foundation Trust Fund could be recovered only as arrears of land revenue. A composite reading of Rules 58, 59 and 60 of the 1963 Rules, definitely makes it clear that if a particular royalty or any other due under the lease was not paid then in addition to the determination of lease, the amount which was payable by the petitioner to the Government could be recovered only as arrears of land revenue. However, if there was any penalty for non-

compliance of any of the many rules or if there was violation of any lease condition except those relating to payment of royalty, rent or other dues, the State Government could determine the lease and could also impose a penalty under Rules 59 and 60 of forfeiting the security. Definitely, the provisions of Rule 58 stand apart from the provisions of Rules 59 and 60 of the 1963 Rules.

14. Rule 58 is only with regard to the consequences of non-payment of royalty, rent or other dues. Rule 59 is with regard to the contravention of certain conditions wherein penalty could be imposed and that penalty, if not paid, could be deducted by the District Magistrate from the security money deposited by the lessee. Rule 60 was with regard to the breach or contravention by a lessee of any of the Rules of 1963 Rules or conditions and covenant contained therein **except** those relating to payment of royalty, rent or other sums due.

15. Under such circumstances, this Court is definitely of the view that the confiscation/forfeiture of royalty by the three impugned orders namely the order dated 25.03.2019 of the Additional District Magistrate (F&R); the order dated 16.07.2021 of the Appellate Court and the order dated 20.09.2021 of the Revisional Court cannot be sustained in the eyes of law. The amount which was due from the petitioner could have been recovered only as arrears of land revenue. However, since the petitioner had given an offer that the money which was due from

the petitioner i.e. the fourth instalment of the first year and other statutory dues be recovered from the security amount, it is being provided that these amounts can be recovered from the security money of Rs. 1,74,00,000/- which was deposited by the petitioner before the execution of the lease. The rest of the amount of the security be released to the petitioner forthwith.

16. With these observation, the orders dated 25.03.2019 of the Additional District Magistrate (F&R); the order dated 16.07.2021 of the Appellate Court and the order dated 20.09.2021 of the Revisional Court are set aside and the writ petition is accordingly, **allowed**.

Order Date :- 14.12.2023
M.S. Ansari

(Manoj Bajaj, J.) (Siddhartha Varma, J.)