

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP (C) no. 2552/2022

CM no. 7029/2022

Reserved on : 29.11.2022

Pronounced on : 21. 12.2022

Kanwarjit Singh

..... Applicant/Petitioner(s)

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Ravi Abrol, Advocate

Vs

UT of J & K and others

..... Respondent(s)

Through: Mr. Ravinder Gupta, AAG
Mr. R. S. Thakur, Sr. Advocate with
Mr. Vasharan Thakur, Advocate for caveator

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

With the consent of learned counsel for the parties, the instant petition has been taken up for final disposal.

Heard learned counsel for the parties at length.

Admit.

With the appearance of learned counsel for the caveator, the caveat stands discharged.

ARGUMENTS ON BEHALF OF PETITIONER

1. The petitioners have approached this Court on the basis of an Agreement which was alleged to have been executed between respondent no.3 and the petitioner on 29th November, 2019, in which the party of the first part,

i.e., respondent no. 3, who, under misconception of law has transferred the leasehold rights in favour of the petitioner on the strength of a letter of intent dated 3rd September, 2019 out of his free will and consent.

2. The short grievance which has been projected by Mr. Sunil Sethi, learned Senior counsel assisted by Mr. Ravi Abrol, for the petitioner is that the futuristic/prospective rights have been created by the respondent no. 3 in favour of petitioner by virtue of the aforesaid deed of agreement as a result of which, lease hold rights have been transferred to him by respondent no.3. Furthermore, it is only the petitioner with whom the Department can enter into the lease deed and respondent no.3 has no right whatsoever to continue on the strength of the lease deed already executed in his favour by virtue of an order dated 17th July 2021. It has further been contended by the learned counsel for the petitioner that there can be the following eventualities which are required to be considered in the light of the aforesaid agreement.

- i) That the lease deed which has been executed in favour of respondent no.3 is required to be cancelled by the official respondents in terms of Rule 51 of *The Jammu and Kashmir Minor Mineral Concession Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016* (hereinafter, ‘the Rules’) notified vide SRO -105 dated 31st March 2016;
- ii) Since the right has been created in favour of the petitioner by virtue of an agreement executed between the parties, i.e., the

petitioner and respondent no.3, in that eventuality, it is the petitioner who has right to execute the lease deed with the Department.

- iii) That since the petitioner has, on many occasions, represented before respondent no.2 by bringing in notice the violations which have been done by respondent no.3, it was incumbent on the part of respondent no.2 to have taken a call by deciding/considering the representations, as he is under a statutory obligation to decide those representations in case the violation of the lease deed has been brought to the notice of respondent no.2 by the petitioner.

3. Mr. Sethi further contends that respondent no.2 is under a legal obligation *qua* the petitioner to decide the representation in accordance with the Rules. Since respondent no.2 is sleeping over the matter, the petitioner is left with no other option but to knock the doors of justice and, hence, the present writ petition has been filed by the petitioner. Besides, petitioner has also contended that a writ of Mandamus be issued against respondent no.2 to transfer the mining lease executed with respondent no.3 on 30th July 2021 in favour of petitioner with respect of the mineral block, besides seeking a direction against respondent no.1 and 2 not to allow private respondent to undertake mining in mineral block. Mr. Sethi has further pointed out that insofar as *locus standi* is concerned, a right has been created in him by virtue of a deed of agreement executed on 29th November, 2009. Consequently,

prospective/futuristic right has been created by respondent no.3 in his favour out of his own free will with regard to mining lease and thus, respondent no.3 has surrendered his rights to continue with the Department by virtue of the aforesaid deed of agreement. He further submits that as on date, this agreement holds good and has not been set aside or cancelled by any court. Merely because the agreement has been called in question before the Competent Court, i.e., Court of Additional District Judge, Kathua, as pointed out by the caveator, does not mean that the agreement which has been duly registered by the competent authority loses its significance as long as the said agreement holds good and is not set aside by the Court. He further contends that merely challenging the same will not relinquish or wipe off the rights which have been created in him by virtue of respondent no. 3, voluntarily and gladly. Mr. Sethi heavily relies on Rule 51 of the Rules, which provide that the Department has a right to cancel the lease deed, once there is a violation of the Rules. Accordingly, it was incumbent on the part of respondent no. 2 to have cancelled the lease deed issued in favour of respondent no.3, as per rules. Since respondent no.2 has failed to act in accordance with law and in conformity with Rule 51 of the Rules, the petitioner is left with no other option but to file the present writ petition. Reliance has also been placed on Rule 37 and 37(2) of the aforesaid SRO.

4. Mr. Sethi has further argued that the letter of intent has not to be taken in isolation as the letter of intent has culminated into the execution of the

lease deed. According to his submissions, both have to be read together as letter of intent is a step forward in executing the lease deed and once respondent no.3 has created a futuristic/prospective right in his favour by virtue of surrendering the lease hold rights, then he has a vested right of entering into an agreement with the Department to run the affairs of the mining. Accordingly, respondent no.3 has no right whatsoever to continue on the strength of the lease, for which lease hold rights have already been surrendered by respondent no.3.

ARGUMENTS ON BEHALF OF CAVEATOR (RESPONDENT NO. 3)

5. Mr. R. S. Thakur, learned senior counsel, assisted by Mr. Vasharan Thakur, learned counsel appearing for caveator/respondent no. 3 herein submits that the said agreement is a fraud and has already been called in question before the Court of Additional District Judge, Kathua and, thus, Mr. Sethi cannot rely upon the said agreement which is already *sub judice* before the Civil Court. He further submits that the Department will come into the picture only in the eventuality once the lease is executed and not before that. The petitioner has approached this court on the basis of an agreement which was executed at a stage when there was only a letter of intent and lease hold rights were yet to be created. Thus, the said agreement loses its significance even if it is taken on its face value, because the letter of intent has culminated into the execution of lease deed. He further submits that had there been any agreement after the creation of lease hold rights then, perhaps, Rule 51 will

come into force and the Department could have taken cognizance on the basis of the representation filed by the petitioner or cancelled the lease. Since the agreement on which the reliance has been placed by Mr. Sethi is already subject matter of Civil Court, it does not create any right in him to file the present writ petition as the petitioner is having no *locus standi* being a stranger to the lease deed and the proceedings between the Department. He further submits that petitioner is a stranger having no *locus* to call in question the lease deed which has been issued in his favour after complying with the provisions of SRO 105, where no objections were sought from all different quarters. Consequently, after fulfilling the requisite formalities as envisaged under law pursuant to the issuance of letter of intent, lease deed was executed in his favour which was perfectly valid, legal and in consonance with the Rules of SRO 105. Merely that some agreement came to be executed in his favour at a stage when letter of intent was issued which is subject matter of Civil Court has no value in the eyes of law because, the letter of intent has culminated in the execution of lease deed and the right is created only in the eventuality, once the lease deed is executed and not before that. Since the agreement on which the reliance has been placed by Mr. Sethi is prior to the execution of the lease deed and thus, it cannot be relied upon nor any right is created in the petitioner to agitate before this court by way of filing present petition, more particularly, when that agreement is already subject matter of Civil Court and is called in question.

6. Mr. Thakur disputes the contents of the agreement and submits that it is sheer fraud on the part of the petitioner. He further submits that respondent no. 3 has fulfilled all the requisite formalities as envisaged under law before the leasehold rights are created in him, and he further argues that the writ petition is utterly misconceived devoid of any merit and deserves dismissal at the very threshold having no *locus standi* for the petitioner to agitate under Article 226.

ARGUMENTS ON BEHALF OF RESPONDENT NOS. 1 & 2

7. Mr. Ravinder Gupta, learned Additional Advocate General appearing for the department was asked to clarify why action has not been taken in pursuant to the representation filed by the petitioner, whereby, petitioner has alleged violation of the Rules of SRO 105 and why the department has not taken any cognizance under Rule 51 of the aforesaid Rules by cancelling the lease deed more particularly when it was brought to their notice the alleged violation of the rules and the terms and conditions of the lease deed.

8. Mr. Gupta has submitted that department is not under obligation to take cognizance because the agreement on which the reliance has been placed by the petitioner is at a stage when there was only letter of intent and letter of intent is only a formality of initiation of process which ultimately culminates into the execution of lease deed and the right is created in the person only in the eventuality, if the lease deed is executed. Since the petitioner is relying upon the agreement on the basis of which prospective lease hold rights were

created, when respondent no. 3 was having the letter of intent only and thus the said agreement has no value in the eyes of law and cannot be relied upon because any agreement which is against the mandate of statutory provisions cannot be relied upon nor it has any impact on the execution of the said lease deed which has come in force subsequent to the execution of the agreement. He further submits that the department is not under any obligation to act on the basis of a representation which has no sanctity in the eyes of law as agreement has been executed at a stage when there was only letter of intent even if it is taken on the fact value and respondent no.3 by no strength of imagination can create a right in a third party when he himself has no right to surrender because on the said date, there was no lease deed executed. How could respondent no.3 surrender the lease hold rights in a third party by way of agreement on a date when he was himself not possessing the same and, thus, the agreement loses its significance and sanctity in the eyes of law.

LEGAL ANALYSIS

9. The petitioner through the medium of the present writ petition is seeking a writ in the nature of Mandamus commanding respondent no. 2 to transfer the mining lease executed with the respondent no. 3 on 30.07.2021, in favour of the petitioner with respect to Mineral Block with the description at Taraf Tajwal Tehsil & District Kathua over an area of 9.98 hectares keeping in view the execution of Deed of Agreement and supplementary partnership deed between the parties. Besides, the petitioner is also seeking a writ in the nature

of Mandamus commanding the respondent no. 1 and 2 not to allow the private respondent no. 3 to undertake a mining in the same Mineral Block, on the basis of order no. 86-DGM of 2021 dated 27.07.2021 and mining lease dated 30/07/2021.

10. The petitioner with a view to substantiate his claim has placed reliance on the so-called agreement and supplementary partnership deed dated 29.11.2019 to sustain the relief prayed for in the petition, primarily on the ground that respondent no. 3 had sold the Letter of Intent issued in his favour to the petitioner by virtue of the aforesaid agreements, conceding 85 per cent of the interest in the mining business to the petitioner for a sum of Rs. 5 lacs allegedly paid to respondent no.3. Therefore, the petitioner claims that he has a right to run the mining lease. During the course of the arguments, learned counsel for the petitioner has admitted that mining is a licensed business and the Letter of Intent and the license running the mining business is not transferable. The case set up by the petitioner in the present petition is that by virtue of the said agreement and supplementary partnership deed, the petitioner had become a partner in the business and, as such, has acquired the right to license, lease and lease deed.

11. The petitioner has specifically pleaded in the writ petition that the petitioner has a right to seek enforcement of the aforesaid deed of agreement and supplementary partnership deed. Consequently, it was the specific case of

the petitioner that the respondents are under a legal obligation to honour the same by transferring the minor lease in favour of the petitioner.

12. In my opinion, the argument of learned counsel for the petitioner is self-defeating inasmuch as the agreement and the supplementary deed are *void ab initio* for the reason that there can be no transfer, sub-letting or partnership in the mining license, and thus respondent no. 3, by no stretch of imagination, can create or assure any legally enforceable right or obligation for any of the parties.

13. The letter of intent was issued in favour of respondent no. 3 under rule 6 and 13 of the *Jammu & Kashmir Minor Mineral Concession Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016* notified vide SRO 105 dated 31.03.2016.

14. The respondent no. 2 vide Letter of Intent no. 283/MCC/DGM/P.19/1678-80 dated 03.09.2019, advised respondent no.3 to submit an approved mining plan and valid environmental clearance issued by the competent authority within a period of six months and subsequently the life of Letter of Intent was extended in his favour for submission of the requisite documents by or before 02.09.2020.

15. On completion of requisite formalities by respondent no. 3 viz. submission of approved Mining Plan, Environmental Clearance issued by J & K Environment Impact Assessment Authority (JKEIAA) vide order no. JKEIAA/2020/232/1813-27 dated 16.07.2021 and other requisite documents,

the Mining Lease was granted in his favour vide order no. 86-DGM of 2021 dated 17.07.2021 under Rule 42 read with proviso 2nd of Rule 27 of these rules for a period of 05 years. Consequent upon issuance of the Order no. 86-DGM of 2021 dated 17.07.2021, the Mining Lease Deed was executed between the respondent no. 2 and respondent no. 3 on 26.07.2021 and after issuance of Consent to Operate from Pollution Control Board vide order no. PCC/digital/21042168194 of 2021 dated 31.08.2021 and demarcation report, the said lease became operational in the month of October, 2021. It is pertinent to mention that the said lease is non-operational at present **for want of Consent to Operate as the same has expired on 31.08.2022 and has not been renewed yet,** as per the stand taken by respondents no.1 & 2.

16. It is settled proposition of law that the letter of intent is just an indication to the person to whom it is issued that if he completes all the necessary formalities and obtains “No Objection Certificates” from all the concerned quarters, he might be considered for grant of mining license. Merely by reason of such Letter of Intent, a person does not acquire a right to the mining license, and such license can be refused by the respondents in case if the conditions are not fulfilled pursuant to the issuance of the Letter of Intent.

17. It is admitted case of the parties that respondent no. 3 has submitted an application for license, completed all the formalities, obtained NOC from all the quarters, and finally pursued the matter with the respondents no. 1 & 2 which ultimately culminated into the grant of license.

18. It is specific stand of respondent no. 3 that he incurred expenses in the entire process to the amount of Rs. 4,56,25,00/- which included application fee of Rs. 50,000/-, expenditure on preparation of mining plan and project appraisal for environmental clearance to the amount of Rs. 2,50,000/-, public hearing fee of Rs. 3,50,000/- paid to the Pollution Control Board, furnishing of the Bank Guarantee to the amount of Rs. 50,000/- in favour of the Mining Department, security deposit with the Department to the amount of Rs. 10,12,500/-, expenditure in the amount of Rs. 300000 on demarcation and installation of concrete poles around the mining area, on purchase of second-hand excavator (JCB) for extraction of minor minerals to the amount of Rs. 15,00,000/-, and on the cost of weight bridge installed in the mining area in the amount of Rs. 7,50,000/-.

19. The respondent no. 3 by no stretch of imagination can create futuristic/prospective rights in favour of the petitioner on the basis of the Letter of Intent. After the issuance of the license and grant of lease, the Letter of Intent and everything else that may have happened in the meantime is wiped out of utility and significance.

20. The case of the petitioner for transfer of lease on the basis of the said agreement and supplementary partnership deed is utterly misconceived. The same tantamount to seeking enforcement of his right on the basis of void documents which have no legal sanctity as respondent no. 3 has no authority whatsoever to transfer the lease deed on the basis of a letter of intent.

21. The petitioner has based his claim on the basis of an agreement, the existence, validity and authenticity of which is already subject matter before a Civil Court. The same has been called in question by the respondent no. 3 and can be adjudicated by the Civil Court on the basis of evidence to be led by both the parties, and this Court cannot comment upon the validity of the said partnership deed while exercising writ jurisdiction, more particularly, when the said agreement is already subject matter of a Civil Court.

22. The argument of learned counsel for the petitioner is self-defeating in the light of the fact, that, if the Letter of Intent had been sold to him by the respondent no. 3, then what prevented him to complete the formalities and obtain NOC and consequently stake his claim before the respondent no. 1 & 2 for the issuance of the license or grant of lease which is not forthcoming from the record nor there is any explanation in this regard. The petitioner did not even disclose the factum of execution of the documents in his favour to the Department before the mining license was issued in favour of respondent no. 3. Furthermore, no concurrence was sought by the petitioner from the Department before executing the aforesaid documents, on the basis of which the petitioner has based his claim for the grant of lease in his favour.

23. Admittedly, the license and lease deed were issued in favour of respondent no. 3 on 30.07.2021. On the basis of the aforesaid lease deed, respondent no. 3 continued to run his mining business without any grouse/demur from the petitioner, in the period ranging from the date of

execution of the lease in favour of respondent no. 3, till the filing of the present writ petition on 24.11.2022. Therefore, it appears that the present writ petition is a matter of after-thought and is loathed with *mala fide* considerations as the petitioner is aiming to enforce non-existent rights and obligations under the garb of documents executed between other private parties, which again is subject matter of Civil Court which is prohibited under the aforesaid Rules notified vide SRO 105.

24. As per the facts of the present case, Respondent no. 3 in reply to the office letter no. 283/MCC/DGM/ML/19/2694-96 dated 25.02.2022 submitted that the petitioner has no *locus standi* of filing any complaint/application related to the mining lease granted on 17.07.2021 and he has not received any amount which the petitioner mentioned in the Deed of Agreement through cheque or any other mode.

25. As per SRO 105, there is no provision of such type of agreement and therefore, the same is null and void. It is a specific stand of the respondent no. 1 and 2 that the petitioner has never applied in the Departments of Geology and Mining for the grant of such mining lease and thus, no application/complaint can be entertained in the official records of the Department. Furthermore, as per the stand of respondents no. 1 & 2, the petitioner is a stranger for the Department and, thus, the Department was not under a legal obligation to decide the so called complaint which has no legal sanctity.

26. As per the stand of the official respondents, respondent no. 3 is the legal mining lease holder as per the mining lease order issued in his favour vide order no. 86 DGM of 2021 dated 17.07.2021, in conformity with the rules in vogue.

27. That as per Rule 37 of the J & K Minor Mineral, Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 vide SRO 105, no lease can be transferred except with the prior approval in writing of the competent authority.

28. For facility of reference, it would be apt to reproduce Rule 37 of the *Jammu & Kashmir Minor Mineral, Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016* notified vide SRO-105 dated 31.03.2016 as under: -

Rule 37. (1). Except with the prior approval in writing of the competent authority, the lessee shall not:-

- i. Assign, sublet, mortgage or in any other manner transfer the mining lease or any right, title or interest therein; or
- ii. Enter into or make any arrangement, contract or understanding whereby the lessee will or may directly or indirectly finance to a substantial extent by or under which the lessee's operations or undertakings will or may be substantially controlled by any person or body of persons other than lessee.

(2). Any application for transfer of mining lease shall be submitted to the competent authority along with a processing fee of Rs. 50,000/-. The said application shall be considered by the competent authority subject to the conditions that

- i. The lease has remained in force for at least two years from the date of its grant; and

ii. No dues are outstanding against the transferor or transferee.

(3). An application for transfer of mining lease shall be disposed of by the competent authority.

(4). Transfer of mining lease shall not be considered as a matter of right and the competent authority may refuse such transfer for the reasons to be recorded and communicated in writing to the lessee.

(5). Where, on an application for transfer of mining lease under these rules, the competent authority has given consent for transfer of such lease, transfer deed in Form ML6 shall be executed within three months from the date of consent after which the consent given shall be deemed to have been withdrawn.

29. Similarly Rule 51 provides for cancellation of License:-

51. Cancellation of License-if the licensee commits breach of terms of license or any provision of the rules or fails to comply with the directions given, within the period specified, the Director or any officer authorized by the Government may give a 15 days notice to the licensee to remedy the breach or to comply with the directions. In case the licensee fails to remedy the breach or comply with the directions within such period, the Director or an officer authorized in this behalf may impose a penalty not exceeding Rs. 25,000/- or may cancel the license with forfeiture of security deposits and license fee for the remaining period of the license.

30. A bare perusal of the Rule 37 of 51 makes it clear that, firstly, the lessee cannot assign, sublet, mortgage or in any other manner transfer the mining lease or any right, title or interest therein or enter into or make any arrangement, contract or understanding whereby the lessee will or may directly or indirectly financed to a substantial extent by or under which the lessee's operations or undertakings will or may be substantially controlled by any person or body of persons other than lessee except with the prior approval of

the competent authority in writing. Secondly, if the licensee commits the breach of the license sufficient penalty is provided in the shape of penalty not exceeding Rs. 25,000/- or may cancel the license with forfeiture of security deposits and license fee for the remaining period of the license. In the present case the agreement if any entered is prior to the grant of lease which the department was having no information and if the same is entered, the same has no effect on the grant of lease because the lease has been granted in favour of respondent no. 3.

31. In the present case, it is the admitted case of the parties that the agreement and the supplementary partnership deed have been entered prior to the grant of lease on the basis of Letter of Intent. Respondent no. 3 has no authority, whatsoever, under law to transfer the said lease by creating futuristic/prospective rights in favour of the petitioner, that too without the consent of the Department. In case if any such document has been executed, the same will be *void ab initio* and has no bearing or effect on the grant of lease issued in favour of respondent no. 3. Since the petitioner is a stranger for the Department and thus, Department is not under a legal obligation to decide the complaint/representation filed by the petitioner. Furthermore, the petitioner does not have any right under law to run the affairs of the mining business in absence of any lease deed in his favour. As per the stand of respondent nos. 1 and 2, the petitioner has never applied in the Department of Geology and Mining for the grant of such mining lease and, thus, the so-called

application/complaint could not have been entertained by the official respondents for the reason that petitioner being a stranger to the proceedings.

32. Thus, I hold that the relief sought by petitioner for transfer of lease in his favour, in the absence of any legally enforceable right, is devoid of any merit, because, neither the petitioner falls under the category mentioned in Rule 27, nor there is any violation of Rule 37 of the *Jammu & Kashmir Minor Mineral Concession Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016* notified vide SRO-105 dated 31.03.2016.

33. It is settled proposition of law that the writ of Mandamus is not a writ of course or writ of right, but is, as a rule, discretionary. There must be a judicial enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. Thus, the violation of right is *sine qua non* for maintaining the writ for seeking Mandamus.

34. On thoughtful consideration of the entire matter, I have come to the conclusion that there is no violation of any right of the petitioner seeking such relief. The petitioner has **failed to establish that he has a legal right to performance of a legal duty by the official respondents, against whom the Mandamus is sought.** The petitioner has failed to establish that such right was subsisting on the date of filing of the petition. Thus, it is crystal clear that since **existence of a right is the foundation of the jurisdiction of a Court to issue a “Writ of Mandamus”, the same is not applicable in the instant case.**

35. In the present case, the petitioner has not been able to show which all of his rights have been violated by the official respondents, which can be basis for issuing writ of Mandamus from this Court. Thus, in the peculiar facts and circumstances of this case, the irrefutable conclusion can be drawn that none of the rights of the petitioner stand violated by the official respondents, in allowing respondent no. 3 to run the affairs of the mining business, for which a writ of Mandamus can be issued in favour of the petitioner.

36. I am fortified by the view taken by the Hon'ble Supreme Court in case titled as "**State of Kerala v. Smt. A. Lakshmikutty; (1986) 4 SCC 632**" at paragraph no. 34, which is reproduced as under:

"34. We must refer to the case of Mani Subrat Jain v. State of Haryana (supra) which was relied upon by learned counsel for the State Government. It is well-settled that a writ of mandamus is not a writ of course or a writ of right, but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance.It is elementary though it is to be restated that no one can ask for a mandamus without a legal right.

37. Additionally, as discussed earlier, the petitioner has no *locus standi* to file the present writ petition as he has failed to project how he has been affected by the issuance of the mining lease in favour of respondent no. 3. **It is settled proposition of law that relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the**

jurisdiction. The petitioner has failed to establish violation of any of his fundamental or legal rights.

38. Therefore, **in absence of the petitioner falling in the category of “person aggrieved”, the petitioner being third party has no locus standi to file the present writ petition alleging wrong or injury suffered by him.** I am fortified by the view taken by the Hon’ble Supreme Court in case titled as **“Vinoy Kumar v. State of U.P. and others (2001) 4 SCC Page 734”** as under:-

“2. Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries are caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organization which can take care of such cases. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief.”

39. Learned counsel appearing on behalf of the petitioner when confronted with the legal proposition that the private documents between the parties cannot be enforced in a writ jurisdiction, suggested, three options to this Court which have already been discussed in preceding paragraph.

40. Learned counsel appearing on behalf of the petitioner under misconception of law, further proceeds with his arguments that the Director ought to have considered his application/complaint and by passing appropriate orders, or else the respondent no. 1 and 2 ought to have taken resort to Rule 51 of the aforesaid rules for cancellation of license in favour of respondent no. 3 as respondent no. 3 has allegedly violated the terms and conditions of the lease deed. The contention of the petitioner is misplaced and is not tenable in the eyes of law as respondent no. 3 has no power or authority under law to transfer the license or the lease unless on the application only of the lessee, and in no event on the application or request of a third person, who is stranger for the Department. Secondly, as already discussed, respondent no. 1 and 2 were not obliged under law to take cognizance of an application filed by a third person having no *locus standi* to seek any consideration by such transfer in contravention of the rules *in vogue*. Rule 37 of the aforesaid Rules creates a specific bar to transfer of the lease even by the lessee unless with the approval in writing by the competent authority. A complete mechanism has been provided under Rule 37 for such transfer.

41. Sub Rule 2 of the said Rule requires of an application to be made by the lessee for transfer of mining lease accompanied by processing fee of 50,000/-. However, the consideration would still not be accorded, unless the lease has remained in force for at least two years. Sub rule (2) of Rule 37 further provides that the transfer of the license cannot be claimed as a matter of right, and the competent authority can still refuse such transfer.

42. Apart from the fact that the transfer of the lease cannot be claimed by a third party, even the request of a lessee for such transfer made in accordance with the requirement of Rule 37 of the Rules cannot be insisted to be considered as a matter of right. It is the competent authority who may refuse such transfer for reasons to be recorded and communicated to the concerned. Thus, I hold that the lease cannot be transferred solely on the request of the petitioner.

43. Since, the petitioner has no locus in the matter and, thus, the Director Geology and Mining was not under any legal obligation to have entertained the application filed by the petitioner.

44. With regard to the question whether or not respondent no. 2 has power to cancel the mining lease granted in favour of respondent no. 3 by resorting to Rule 51 of the aforesaid rules, it is mandatory that such power can be exercised only in the eventuality if there is a breach of Rule or violation of any condition of the lease which can only take place after the grant of lease and not before that.

45. Admittedly, respondent no. 3 has not done anything in violation of the aforesaid rules. Thus, the power as envisaged under Rule 51 cannot be restored to by the official respondents in the present case. Anything happening before such grant which the competent authority could not have taken into account before such grant and the respondents, as such, cannot resort to Rule 51 of the aforesaid Rules as there is no breach of any condition after the grant of such license/lease by respondent no. 3.

46. Rule 51 of the Rules grants power to cancel the license if the licensee commits breach of the terms of license or any provision of the rules or fails to comply within the period specified. In case, if there is any breach, the Director may give 15 days' notice to the licensee to remedy the breach or to comply with the direction within such period.

47. Thus, **I hold that in the context of exercise of power of cancellation of license in terms of Rule 51, significantly indicates that the breach of the terms of license or a provision of the Rules is envisaged to happen only after the license is issued and lease granted.** Anything happening prior to grant of lease loses its significance because of the fact that it is the Letter of Intent which culminates into the issuance of the lease, subsequently. A person is not a licensee in terms of the aforesaid rules and thus, cannot breach the terms of license or a provision of a rule applicable to the license before he becomes a licensee by grant of license. Thus, there is no specific averment in the petition or in the application of the petitioner, or while the case was being

argued by the petitioner with regard to any violation of the terms of the license or the lease muchless post grant of license. **The said agreement and the supplementary partnership deed which has been relied by the petitioner before the grant of license is void ab initio or incapable of creating rights and obligations in favour of the petitioner** and, thus, the official respondents were not obliged to have taken any cognizance with respect to the application allegedly filed by the petitioner against respondent no. 3. The documents relied by the petitioner have no legal sanctity in the eyes of the law and the same loses its significance with the grant of license in favour of the respondent no. 3. Consequently, no violation has occurred in any manner, as has been alleged, after the grant of license by respondent no. 3, which could be basis for cancellation of the lease deed by resorting to powers under Rule 51.

48. **The next question which arises for consideration in the present case is whether by issuance of Letter of Intent by official respondents in favour of respondent no. 3, any right to the mining lease came to be created in his favour or not.**

49. In this regard, I would like to emphasize that the Letter of Intent issued in favour of respondent no 3 is in the form of an invitation to offer and its very nature is provisional. The Letter of Intent only conveys to the successful person that his offer has been accepted and subsequently, he is under an obligation, statutorily as well as contractually, to fulfill the requisite formalities envisaged under the Mining Rules, by depositing the requisite

amount within the specified period and obtaining requisite NOC from the concerned quarters before he becomes entitled to the grant of mining lease in his favour. The right to claim grant of lease and execution of formal lease deed would accrue to the concerned person only if the aforesaid requisite formalities as envisaged under the rules are completed within the statutory period prescribed therein. **Thus, I hold that no right whatsoever has accrued to the petitioner, at any time, to claim the grant of mining lease on the ground of issuance of Letter of Intent in his favour on the basis of the so called agreement and supplementary partnership deed by virtue of which the lease hold rights were alleged to have been transferred in his favour by respondent no. 3, especially when respondent no. 3 has himself no authority under law to transfer such lease hold rights merely on the basis of the letter of intent.**

50. I am fortified by the view taken by this Court in case titled **“Ashaq Hussain Paddar and others v. State of J & K and others a/w clubbed matters reported in 2020 SCC Online J & K 271”** in case bearing no. OWP no. 353/2019 decided on 01.05.2020, which is reproduced as under:-

41. The claim of the petitioners that with the issuance of LOI by the respondents and acceptance of 50% of the bid amount as also the approved mining plan, right to have the mining lease allotted came to be created in their favour, is totally misconceived and not tenable in law. LOI issued to the successful bidders is in the form of invitation to offer and is, by its very nature, provisional. It is so indicated clearly in the LOIs.

42. The letter of Intent (LOI) only conveys to the successful bidder that his highest bid has been accepted by the District Auction Committee and he is statutorily, as well as, contractually obliged to fulfill the requisite formalities envisaged under the Rules of 2016, besides depositing remaining 50% of the bid amount within a period of six months before he becomes entitled to the grant of mining lease in his favour.

46.....Accordingly, issue No. (i) is decided by holding that no right, whatsoever, accrued to the petitioners at any time to claim the grant of mining leases on the ground of issuance of Letter of Intent (LOIs) in their favour or by deposition of 50% of the bid amount on the conclusion of the auction process.

CONCLUSION

51. In the light of what has been discussed hereinabove coupled with the settled legal proposition of law, I hold that the present writ petition which is utterly misconceived is liable to be dismissed for the reasons: -

(i) That there is no privity of contract between the Mining Department and the petitioner. The documents relied upon by the petitioner, namely, the agreement and the supplementary partnership deed alleged to have been executed between the petitioner and respondent no. 3, do not create any prospective/futuristic right in favour of the petitioner, as the same have been executed before grant of license, at a stage when only Letter of Intent was issued in favour of respondent no. 3. Therefore, no Mandamus can be issued against the official respondents for the relief which has been sought by the petitioner.

(ii) The said agreement and the supplementary partnership deed dated 29.11.2017 are *void ab initio*, having no legal sanctity in the eyes of law, more particularly, when the authenticity of same is already subject matter before the Civil Court, and has been called in question by respondent no. 3. Thus, no writ petition can be maintained on the basis thereof.

(iii) Since there is no allegation of any violation of the terms and conditions of the lease granted in favour of respondent no. 3 post such grant, thus, respondent nos. 1 and 2 are not obliged under law to take cognizance under Rule 51 of the aforesaid rules by cancelling the lease deed granted in favour of respondent no. 3. Therefore, respondent no. 1 and 2 are not under an obligation to Act on the basis of a representation/complaint filed by a stranger who has no *locus standi* in the eyes of law.

(iv.) Accordingly, no direction can be issued to transfer the mining lease already executed with respondent no. 3 dated 30.07.2021 in favour of the petitioner with respect to the mineral block with the description at Taraf Tajwal in Kathua over an area of 9.98 hectares on the basis of the agreement and partnership deed between the parties as the petitioner raises complicated and disputed questions of fact to the existence, validity and sanctity of the said documents which can be determined only by way of leading evidence in appropriate

proceedings before a Civil Court where the challenge has been thrown and not in this Court while exercising the writ jurisdiction under Article 226.

52. Thus, viewed from any angle, the writ petition is misconceived and the same is *dismissed*, without any costs.

53. Interim direction, if any, shall stand vacated.

(Wasim Sadiq Nargal)
Judge

Jammu
21.12.2022
Sahil Toga

