

State Of U.P. vs Vinay Kumar Singh on 23 August, 2023

Author: Dhananjaya Y Chandrachud

Bench: Dhananjaya Y Chandrachud

2023INSC763

NON-R

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5171-5172 OF 2023
(Arising out of Special Leave Petition (Civil) Nos.17891-1

State of U.P & Others

... Appell

Versus

Vinay Kumar Singh

... Respon

JUDGMENT

MANOJ MISRA, J.

1. The State of Uttar Pradesh (in short “the State of U.P.”) is in appeal against the orders of the High Court of Judicature at Allahabad (in short, “the High Court”) dated 30.09.2022 and 12.05.2023 passed in Writ C No.37749 of 2019 and Civil Misc. Review Application No.525 of 2022 respectively.

FACTS

2. The respondent (original petitioner) was granted a mining lease to excavate five lakhs cubic meter of sand. The lease was for a period of five years viz., from 13.02.2019 to 12.02.2024. The royalty payable for the first year was Rs.26,35,00,000 and for Date: 2023.08.24 15:10:41 IST each succeeding year it was to be higher by 10%. Reason:

3. The mining area was 25 hectares falling in plot nos.5 and 9 in village Bilharka, Tehsil Naraini, District Banda (State of U.P.).

4. Pursuant to the grant, the original petitioner obtained environmental clearance for mining in the area and in terms thereof the mining lease was executed appending therewith a map of the mining area.

5. According to the original petitioner, when he commenced mining operations, the district administration of Chhatarpur, State of Madhya Pradesh (in short, the State of M.P.) raised an objection to the mining operations conducted by the original petitioner on the ground that 300 meters of the demised mining area fell within the territorial limits of the State of M.P.

6. It is the case of the original petitioner that objection of the district administration of Chhatarpur was duly reported to the officers of the State of U.P. but they failed to resolve the boundary dispute. Rather, the State of U.P raised a demand of Rs.6,58,25,000/- as next instalment payable towards royalty. Aggrieved therewith, the original petitioner invoked the jurisdiction of the High Court under Article 226 of the Constitution of India by filing Writ C No.18794 of 2019 seeking a direction upon the State of U.P. as well as the State of M.P. – (a) to resolve the boundary dispute in the demised area and (b) to permit the original petitioner to continue mining operations in the demised area. In the alternative it was prayed that if the boundary dispute is not resolved, and the original petitioner is not permitted to carry out mining operations, further realization of royalty be suspended.

7. In Writ C No.18794 of 2019, the High Court called for instructions from the counsel representing the State of U.P. In response thereto, the Additional Chief Standing Counsel representing the State of U.P. produced a letter, dated 15.07.2019, written by the Chief Secretary, Government of U.P. to the Director, Geology and Mines, Government of U.P. wherein, with reference to the concerned mining area, a request was made to ban mining/mineral extraction till the mining area is properly demarcated.

8. By taking notice of the aforesaid letter dated 15.07.2019, the High Court disposed of Writ C No. 18794 of 2019 with a direction to the State of U.P. to resolve the dispute expeditiously in terms of the letter dated 15.07.2019. It was also directed that till the dispute is resolved, no coercive action be taken against the original petitioner to recover the royalty.

9. After disposal of Writ C No.18794 of 2019, a second writ petition i.e., Writ C No.37749 of 2019 was filed by the original petitioner before the High Court, claiming, inter alia, that since the State of U.P. could not resolve the boundary dispute, the State of U.P. and its officers be directed to refund the amount already deposited by the appellant including expenses amounting to Rs.26,65,66,666/- with 9% interest.

10. By the impugned order dated 30.09.2022, the High Court allowed Writ C No.37749 of 2019 on the ground that since the State had failed to deliver possession of the demised mining area, the amount of money paid for gaining mining rights was liable to be refunded. While allowing the writ petition, the submission made on behalf of the State of U.P. was noticed in paragraph 6 of the judgment, which is extracted below:

“6. On the other hand, learned counsel for the respondents submitted that after the order dated July 18, 2019 was passed by this Court in the earlier petition filed by the petitioner, a communication dated December 26, 2019 was sent by the District Magistrate, Banda, U.P. to the Collector, Chatarpur, M.P. requesting him to constitute a joint inspection team consisting of Sub Divisional Magistrate of

concerned Tehsil, Police and Mining Departments for joint inspection/measurement of the disputed area and fix a date for inspection, so that the Sub Divisional Magistrate of concerned Tehsil as well as the officials of Police and Mining Departments of State of U.P. may remain present at the spot on the said date along with the relevant records for joint demarcation. However, no response was received thereto. Thereafter, vide order dated March 21, 2020, District Magistrate, Banda granted permission for carrying out mining operations in the undisputed area of the land leased out to the petitioner in terms of the government letter dated March 17, 2020. Hence, the petitioner is not entitled to refund of the amount deposited.” The High Court then proceeded to notice two letters (i.e., dated December 26, 2019 and March 21, 2020) of the District Magistrate Banda in paragraph 9 of its order, which is extracted below:

“9. In the aforesaid writ petition, this Court vide order dated July 18, 2019 directed the State to resolve the dispute with reference to the letter dated July 15, 2019. It is thereafter that the communication dated December 26, 2019 was sent by the District Magistrate, Banda, U.P. to the Collector, Chatarpur, M.P. with a request to constitute a team of concerned official for conducting joint inspection/measurement of the disputed area. However, when no response was received thereto, vide order dated March 21, 2020, District Magistrate, Banda granted permission for carrying out mining operations in the undisputed area of the land leased out to the petitioner in terms of the government letter dated March 17, 2020.” Thereafter, the High Court considered a supplementary affidavit filed by the original petitioner wherein a stand was taken that the undisputed area is full of pebbles, small particles of boulders and rocks with no sign of sand, therefore, mining operation is not possible. Based on that, the High Court briefly recorded its reasons in paragraph 12 and allowed Writ C No. 37749 of 2019 in terms of the directions contained in paragraph 13 of the impugned order dated 30.09.2022. For a quick reference, the contents of paragraphs 12 and 13 of the impugned judgment are extracted below:

“12. The stand taken by the respondents seems to be that the petitioner was allowed to carry out excavation of minor minerals in the undisputed area out of total area of 25 hectares, which itself establishes that the interstate boundary dispute was not resolved. Besides this, nothing has been pointed out from the record that possession of aforesaid undisputed area was handed over to the petitioner. However, the petitioner may have opted for taking lease of a particular plot for carrying out excavation of minor minerals keeping in view the total plot and the availability of minor minerals therein, which may or may not be commercially viable for a part of the area.

13. For the reasons mentioned above, in our view, the respondents having failed to hand over the possession of the area allotted to the petitioner for carrying out excavation of minor minerals, in our opinion, the petitioner is entitled to get refund of the entire amount deposited for the purpose along with interest @ 6% per annum

from the date of deposit of the said amount till the date it is refunded. The needful shall be done by the authorities concerned within a period of three months from the date of receipt of copy of the order. In case, the amount is not refunded within the prescribed period, any interest payable to the petitioner thereafter, shall be the responsibility of the officer(s)/official(s), who may be responsible for delay in compliance of the order.”

11. After the impugned order dated 30.09.2022 was passed, a review application was filed on behalf of the State of U.P. and its officers (respondents in the writ petition) stating, inter alia, that in the writ petition there was no averment to the effect that possession of the area allotted to the petitioner for carrying out excavation of sand/morum was not handed over to him. It was claimed that the observation in paragraph 13 of the judgment that the respondents had failed to handover the possession of the area for carrying out excavation of minerals is based on no material. It was also stated in the review application that the prayer for refund of Rs.26,65,66,666/- was completely misconceived as the writ petitioner had never deposited the said amount. The amount deposited by the petitioner was only Rs.6,58,75,000/- as security and Rs.6,58,75,000/- as first installment for the first year's royalty. Thus, the total amount deposited by the original petitioner was only Rs.13,17,50,000/- and not Rs.26,65,66,666/- for refund of which, prayer was made in the writ petition. In addition to above, in the review application, it was stated that the original petitioner had already excavated a total of 22,820 cubic meters of sand/morum between 15.02.2019 up to 26.05.2019. Additionally, it was pleaded in paragraph 8 of the review application that the advertisement inviting bids for the concerned mining area had clearly specified that the prospective bidder may inspect the mining area as also the approach road to the mining area before participating in the bidding process. In paragraph 9 of the review application, it was submitted that if the writ petitioner had participated in the bid after verifying the mining area and had himself submitted the mining plan along with the environmental clearance certificate disclosing the estimated quantity of mineral available, it cannot now lie in his mouth to claim that he was not given possession of the mining area or that the area was such where no mining was possible.

12. This review application was allowed in part vide impugned order dated 12.05.2023 whereby the earlier order dated 30.09.2022 was modified in terms below:

“5. Considering the facts and circumstances, as it is apparent from the face of the record, we accordingly modify the order dated 30.09.2022 to the effect that the opposite party would be at liberty to deduct the amount from the total outstanding amount to the effect (should be read as extent) of total excavated sand/morum of 22,820 cubic meters, as it is alleged the same has been excavated by the petitioner with effect from 15.02.2019 to 26.05.2019 and accordingly, the rest of amount along with requisite interest may be returned.”

13. Aggrieved by the orders dated 30.09.2022 and 12.05.2023, the appellants are before us.

14. We have heard Ms. Garima Prashad, Senior Additional Advocate General for the State of U.P. and its officers (the appellants herein) and Ms. Meenakshi Arora, learned senior counsel for the

respondent (the original petitioner).

SUBMISSIONS ON BEHALF OF THE APPELLANTS

15. On behalf of the appellants it was submitted that the High Court proceeded to decide the matter on an assumption that the State had failed to deliver the possession of the mining area to the original petitioner (the respondent herein). It was submitted that the stand of the original petitioner was not that the State had failed to deliver possession. Rather, his case was that officers of the State of M.P. were causing hindrance in the mining operations of the original petitioner by claiming that a portion of the mining area fell within the territorial limits of the State of M.P. It was also urged on behalf of the appellants that the original petitioner had bid for the mining area after being satisfied that it could be mined and had also got an environmental clearance certificate in respect thereof which indicated that the entire area was mineable to the extent indicated in the lease. In these circumstances, according to the appellants' counsel, there was no frustration of the contract and, therefore, the question of refund does not arise. According to the appellants' counsel, the High Court has failed to address the issues in the correct perspective and thereby erred in law by issuing a direction for refund of the money after deducting the value of the sand/morum already excavated from the mining area.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

16. Per contra, on behalf of the respondent (i.e., original petitioner), it was submitted that from the own letter of the State Government dated July 15, 2019, which finds mention in the first order of the High Court dated 18.07.2019 passed in Writ C No.18794 of 2019, the mining operations were suspended till resolution of the boundary dispute. Therefore, as admittedly the boundary dispute with the State of M.P. could not be resolved, there was no option but to treat the mining contract as frustrated warranting refund of the amount.

DISCUSSION

17. We have considered the rival submissions and have perused the record.

18. A plain reading of the order of the High Court dated 30.09.2022 would reflect that it was passed on an assumption that the respondents in the writ petition, namely, the appellants herein, had failed to deliver possession of the area allotted to the original petitioner for excavation of minerals. Interestingly, in the writ petition, copy of which has been brought on record as Annexure P-9, we could not find any specific statement that the State of U.P. and its officers had failed to handover possession of the mining area. Rather, in paragraph 7 of the writ petition, the stand taken by the petitioner is that when the petitioner, after having all the documents in hand, went to the spot, he found Patwari of district Chhatarpur (State of M.P.) along with Station House Officer of Police Station Bansiya, district Chhatarpur, who informed the petitioner that 300 meters of the demised area fell within the boundaries of the State of M.P. and, therefore, no mining could be allowed on that portion. In paragraph 7, it is also stated that the State of M.P. permitted its residents to install Pockland Machine for excavation and they have started mining the area leased out to the original

petitioner by the State of U.P. Paragraph 7 of the writ petition is extracted below:

“7. That after having all the documents in hand, when the petitioner just went to start the preliminary methodology of mining and reached the spot, he found that patwari of Chhatarpur, State of M.P. along with Station House Officer, Police Station Bansiya of District Chhatarpur entered 300 meter in the lease area of the petitioner indicating that this area is in M.P. and there cannot be mining by State of U .P. and they permitted the persons of State of M.P. to install Pockland Machine for excavation and they started mining in the leased area of the petitioner. Officers of M.P. State crossed mid stream of Ken River towards State of U.P. State side, which falls in District Banda. This act of the officers of M.P. State is clear violation of river mapping. The petitioner at once informed the Officers of State of U.P. on 23.02.2019. True copy of the representation of the petitioner dated 23.02.2019 is being annexed herewith and marked as Annexure No. 6 to this writ petition.”

19. In paragraphs 10 and 11 of the writ-petition it is stated by the original petitioner that there is a boundary dispute between the two States i.e., State of M.P. and State of U.P. and that both States have failed to resolve the dispute. Interestingly, in the second part of paragraph 11 of the writ-petition, the original petitioner stated:

“11. ... The petitioner on the basis of scrutiny of papers and revenue maps of both the States is very much sure that the stand of State Government of M.P. is wrong and if G.P.S. Survey Mapology is used alongwith electronic surveillance of flow of water, then it will be seen that the map prepared by State of M.P. is wrong and it requires to be corrected, but the thinking and saying of the petitioner falls on deaf ear, as the petitioner is a little Indian.”

20. On a careful reading of the writ-petition filed by the original petitioner, as noticed above, prima facie, it appears that the State of U.P. was justified in taking a stand in the review petition that the High Court had wrongly observed that the State of U.P. (i.e., respondents in the writ petition) had failed to handover possession of the area allotted to the petitioner for carrying out mining operations. However, while deciding the review petition, this aspect of the matter has not been dealt with by the High Court. Further, the High Court failed to address the ground no.8 in the review petition wherein it was stated that in the advertisement dated 16.02.2018 the bidder was advised to inspect and satisfy itself regarding the mining area before participating in the bidding process. As to what would be the effect of that clause on the relief claimed by the original petitioner is a matter which requires consideration. But there appears no discussion in that regard in the orders impugned. That apart, there is no determination of the area, if any, which falls in the disputed territory i.e., within the State of M.P. There is also no discussion on the plea of the appellants that the amount of which refund was sought was far in excess of the amount paid by the original petitioner.

21. Having found that the High Court has not properly addressed all the issues raised before it, we deem it appropriate to remand the matter to the High Court by restoring the writ petition to its

original number so that it is decided afresh in accordance with law.

22. Consequently, these appeals are allowed. The impugned orders dated 30.09.2022 and 12.05.2023 are set aside. Writ C No.37749 of 2019 is restored to the file for fresh adjudication. It is made clear that if parties have not already exchanged their affidavits in the said writ petition, they may do so within six weeks from today. We request the High Court to decide the matter in the light of our observations above, expeditiously, preferably, within a period of three months from the date a copy of this order is furnished before it.

23. We, however, clarify that we have not expressed our opinion on the merits of any of the issues that may arise for adjudication by the High Court.

.....CJI. (Dr Dhananjaya Y Chandrachud)J. (J B Pardiwala)J. (Manoj Misra) New Delhi;

August 23, 2023