

## **Masum Hussain S/O Maqbool Hussain vs State Of Madhya Pradesh And Ors. on 10 August, 1981**

**Equivalent citations: AIR1981SC1680, 1981(3)SCALE1153, (1981)4SCC155, 1981(13)UJ777(SC), AIR 1981 SUPREME COURT 1680, 1981 (4) SCC 155**

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**Bench: D.A. Desai, R.B. Misra**

ORDER

D.A. Desai, J.

1. One Masum Hussain (since deceased) was the successful bidder at a public auction for a Stone Quarry licence held on January 8, 1975. His bid at Rs. 11,500/- per annum for a period of three years 1975 to 1978 was accepted by the Director of Geology and Mining, Madhya Pradesh. He executed an agreement on April 18, 1976. It appears that thereafter some dispute arose with regard to specifications of the area covered by the mining lease and the matter was carried to the Commissioner who allowed the appeal of the lessee and gave certain directions. In the meantime, as the lessee failed to pay the amount which he was liable to pay under the agreement of lease entered into by him with the State of Madhya Pradesh, a fresh auction was held in respect of the same area for which the original lessee had given his bid. Thereafter, the Collector directed the recovery of Rs. 31,625/-alleging that the State has suffered a loss due to the breach of agreement committed by the lessee. The deceased lessee challenged the recovery proceedings by way of a writ petition in the High Court of Madhya Pradesh at Jabalpur. The High Court did not accept the contentions advanced on behalf of the petitioner and dismissed the petition in limine by a speaking order. Hence this appeal by the legal representative of the deceased lessee by special leave.

2. Having heard learned Counsel for the appellant as well as for the respondents, we are of the opinion that the order made by the Collector for recovery cannot be sustained and must be set aside. It is open to the Collector to proceed afresh in accordance with law.

3. The Collector who started recovery proceedings assumed that once a lessee committed breach of the agreement, the loss suffered by the State would be equal to the amount of rent payable by the lessee as represented by the amount of bid at which auction was knocked down. An identical contention was negatived by this Court in Civil Appeal No. 228 of 1979 (Kali Das Aggarwal v. The State of Madhya Pradesh and Ors.) decided on January 22, 1979, observing that in such a situation the Collector must, in the first instance, adjudicate on the question as to the quantum of loss suffered by the Government of Madhya Pradesh by reason of the default, if any, on the part of the

lessee who committed breach of the agreement of lease. This Court struck down the order by which coercive process was resorted to by the Collector without a preliminary adjudication and directed that the Collector should adjudicate the loss, if any, after giving an opportunity to the appellant to participate in the proceedings. The facts in the present case are identical with the facts in the appeal referred to above and the decision will *mutatis mutandis* apply in this case.

There is a further error apparent on the record inasmuch as the Collector, though having held that the deceased lessee had deposited Rs. 9875/-, appears not to have given credit of the same amount. There was a dispute about the correct figure of deposit and the same may now be ascertained.

4. Learned counsel for the respondent State frankly stated that since the date of the second auction the loss will have to be assessed keeping in view the amount at which the bid of the deceased lessee was accepted and the highest bid at the second auction accepted by the concerned authorities, and the difference between the two may provide a reasonable measure of loss, if any. He, however, contended that for the earlier period there was nothing wrong in adjudging the loss equal to the amount annually payable by the deceased lessee. Without accepting this contention, from this point of view also, a fresh assessment is inevitable.

5. We accordingly allow this appeal and quash and set aside the order of the Collector impugned in this appeal. We direct that the Collector, Raisen (M.P.) shall, after hearing the parties, ascertain the loss caused to the State Government as a result of breach, if any, on the part of the deceased lessee in the performance of the contract. It will be open to the parties to lead such evidence and raise such contentions which in the opinion of the Collector are open to them. In the circumstances of the case there will be no order as to costs.