

Anuvrat Verma vs State Of Uttarakhand And Others on 24 May, 2022

Author: Sharad Kumar Sharma

Bench: Sharad Kumar Sharma

IN HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No.340 of 2022 (M/S)

Anuvrat Verma

Vs.

.....Peti

State of Uttarakhand and others

...Respon

Advocate: Mr. Birendra Singh Adhikari, Advocate for the petitioner.

Mr. Pradeep Hariya, Standing Counsel for the State of Uttarakhand.

Mr. Siddhartha Singh, Advocate for respondent no.4

With

Writ Petition No.678 of 2022 (M/S)

Arjun Singh

Vs.

.....Pet

State of Uttarakhand and Another

...Respon

Advocate: Mr. Siddhartha Singh, Advocate for the petitioner.

Mr. Pradeep Hariya, Standing Counsel for the State of Uttarakhand.

Hon'ble Sharad Kumar Sharma, J.

Under Article 246 of the Constitution of India, Schedule 7 has been formulated and as per Entry 23 of the List 2 i.e. the State List, it deals with the State's prerogative of making Regulations of Mine and Minerals Development subject to the provisions of List-1, in respect of Regulations and Development, which are under the control of the union. Meaning thereby under Entry 23, the exception, which was only carved out with, regards to the Regulation and development, which fall under the control of the union, which is not the case at hand.

2. The State Government, while exercising its powers under Rule 87 of the Uttar Pradesh Mine and Minerals Rules of 1963 to be read with the Mine and Mineral Act, had formulated the Regulations by notifying the same in the Official Gazette on 30.04.2001. The then undivided State of Uttar Pradesh while exercising its powers under Section 15 Sub Section (1) of Mine and Minerals (Development and Regulations) Act of 1957 had framed the Rules called as Uttar Pradesh Mine and Minerals Rules of 1963. The Rules thus framed by the State of Uttar Pradesh in 1963 on the creation of the State of Uttarakhand stood adopted by virtue of Section 87 of the Uttar Pradesh Reorganization Act of 2000

by Gazette Notification issued by the State Government being Gazette Notification No.1187/vkSofoo@2001&22[k@2001 lfpoky;] nsgjknwu fnukad 30-04-2001-

3. Later on with the passage of time the aforesaid policy decision taken by way of formulation of Regulations were kept on modulating as per the requirement and situational need of the State, for the purposes of carrying out the excavation of mine and minerals in the territorial domain of the State of Uttarakhand and accordingly the Regulations were notified which would be subject matter of present writ petition, being a Notification No.1582/VII- 1/2017/31[k/17 dated 31.10.2017, which was formulated under the Mine and Minerals Act of 1957, while exercising its powers under Section 15(1) of the Act. What would be the subject matter of prime consideration, while dealing with the objection taken by the respondents pertaining to the grant of the interim order, would be the amended Clause 23 Sub Clause (1) of the Notification dated 31.10.2017 which is extracted hereunder:-

^^23- uhyke@fufonk@uhyke ,oa fufonk@bZ&uhyke@bZ&fufonk@bZ&fufonk ,oa lg bZ&uhykeh iV~Vk ds fy;s {ks= dh ?kks"k.kk% ¼41½ jkT; ljdkj ;k funs'kd lkekU; vFkok fof"k"V vkns'k }kjk ,slh fdllh {ks= vFkok {ks=ksa dh} ftls ;k ftUgsa uhyke djds fufonk }kjk ;k uhyke ,oa fufonk ,oa bZ&uhyke@bZ&fufonk@bZ&fufonk ,oa lg bZ&uhykeh iV~Vs ij fn;k tk ldsxk] ?kks"k.kk dj ldsxhA^^

4. The consideration would as be to its vis-à-vis. impact on Clause 29 Sub Clause (29 Ka-11) is extracted hereunder:-

"11- [kuu iV~Vk {ks=kUrxZr iMus okyh futh Hkwfe ds HkwLokeh dks mldh Hkwfe ds {ks=Qy ij vuqer xgikbZ ds lkis{k vkaxf.kr ek=k ij izfrBu fu/kkZfjr uhykeh /kujkf'k ls xq.kkdj izkIr /kujkf'k dk 10 izfr'kr izfriwfrZ ds :i esa iV~Vk/kkj d }kjk ns; gksxkA fdllh Hkh okn dh fLFkfr esa iV~Vk/kkj d }kjk izfriwfrZ /kujkf'k funs'kd HkwrRo ,oa [kuhdeZ bdkbZ dks isesUV xsVos ds ek;/e ls miyC/k djkbZ tk;sxh ftldk forj.k jktLo foHkkx }kjk fu/kkZfjr fd;s tkus mijkUr jktLo foHkkx ds ek;/e ls fd;k tk;sxk o funsZ'kd HkwrRo ,oa [kuhdeZ bdkbZ dks lwfpr fd;k tk;sxkA^^

5. The contention of the learned counsel for the petitioner in the writ petition, had been that the mining lease granted to the private respondent of his writ petition on 05.04.2021; in relation to Khata No.223 Khasra No.78.2, could not have been granted under the Regulations framed on 31.10.2017, because the said land was a bhumidhari land recorded in Shreni 1-Ka in the name of the petitioner under the classification of holding under revenue laws, i.e. bhumidhari land.

6. This is the solitary ground on which the petitioner has put a challenge to the mining lease dated 05.04.2021. It is on that exclusive pretext that when this argument was extended by the counsel for the petitioner before the Coordinate Bench of this Court, the interim order was granted on 02.03.2022 merely on the consideration of arguments, that mining lease, whether it could at all be granted on the bhumidhari land or not.

7. It has been argued by the learned counsel for the respondents, that the Gazette Notification of 31.10.2017, which regulates the mining licences granted to the respondents on 05.04.2021, would amount to be a subordinate legislation since having being framed in the exercise of powers under Section 15 of the Act of 1957 and for the purposes of declaration of an area of a land to be brought within the mining zone, it will fall to be a subject matter of consideration of the State Government and the Directorate, as it has been provided under Clause 23 Sub Clause (1) of the Notification of 31.10.2017. It has further been argued by the counsel for the respondents that mine and minerals, which are found on the surface of the bhumidhari land or even beneath the earth would, not be the property of the bhumidhar, but rather it would be a property, which stands vested with the State as per Article 246 of the Constitution of India and Schedule-7 and it will be exclusively the State's prerogative to issue a notification under Regulations of 2017, as contained under its Clause 23 and accordingly, while exercising its powers under the Regulations of 2017, the District Magistrate vide his Office Memorandum No.1211 dated 27.05.2021, had notified the area lying in village Rampur Raighati Ahtmal of Tehsil Laksar, District Haridwar, lying in Khasra No.78/2, as to be an area which has to be brought within the mining operation to the extent of 1.700 hectares of land, which as per the notification itself was a conscious decision that it was a "niji naap land" which was being declared to be brought for the purposes of mining operation. The relevant part of the Office Memorandum issued by the District Magistrate on 27.05.2021 is extracted hereunder:-

^^mRrjk[k.M 'kklu] vkS|ksfxd fodkl vuqHkkx&1] nsgjknwu ds 'kklukns'k la[;k&1876@VII-A-1@2021&02¼4106¼2@18 fnukad 28 tuojh] 2021 ds vUrxZr Jh vtqZu flag iq= Jh Hkxr flag fuoklh xzke HkkSM xkao ikso iwokZy xkao iV~Vh fgUnko ok;k ?kulkyh tuin fVgjh x<oky ds i{k esa tuin gfj}kj rglhy yDlj ds xzke jkeiqj jk;?kVh vgrey ds [kljk la[;k 78@2 ds {ks=kUrxZr 1-700 gSo eSnkuh {ks=kUrxZr fJDr futh uki mi[kfut {ks= esa mi[kfu ds pqxku gsrq 05 o"kZ dh vof/k gsrq Lohd`r vk'k; i= fnukad 07 fnlEcj] 2018 dh vuqikyuk esa gq, yxHkx 06 ekg ds foyEc dk e"kZ.k djrs gq, mRrjk[k.M mi[kfut ¼4ifgkj¼2 ¼4la'kks/ku¼2 fu;ekoyh] 2017 ds izko/kkukuqlkj mDr vk;k; i= esa Lohd`r dqy 05 o"kZ dh vof/k esa ls vo'ks" k vof/k vFkkZr fnukad 06 fnlEcj] 2021 rd tuin gfj}kj dh rglhy yDlj ds xzke jkeiqj jk;?kVh vgrey [kljk la[;k 78@2 ds {ks=kUrxZr dqy 1-700 gSo fJDr fuft uki mi[kfut {ks= esa mi[kfu pqxku gsrq pqxku@[kuu iV~Vk dfri; 'krkZs ds v/khu Lohd`r fd;s tkus dh vuqefr iznku dh xbZ gSA^^

8. It is this Khasra No.78/2, which the petitioner, as per the Khatauni Entries contends that it is a land, which since is being recorded in his name, as a bhumidhari land in the Khatauni annexed as Annexure No.1 to the writ petition and hence on that premise, he contends that no mining lease on his private land could be granted.

9. This Court is of the view that by grant of a mining lease under Regulations of 2017, as framed under Section 15 of the Act of 1957, the only stipulations, which is required

to be satisfied therein for granting a mining operation permission over the "niji naap land" is that there has had to be declaration under Clause 23 of the notification dated 31.10.2017 and that declaration has already been made by the District Magistrate and the said declaration, which is the foundation of grant of mining licence on 05.04.2021, is not a subject matter of challenge in the present writ petition.

10. It has been argued further by the counsel for the respondents that the grant of the mining license, is not at all prejudicial to the interest of the petitioners bhumidhari rights, which still would remain vested with him, in the light of the stipulations provided under Clause 29 (Ka) Sub Clause (11) which provides that in case if the mining lease is being granted on a "niji naap land", the bhumidhar of the land would still be entitled for a compensation at the rate of 10% as provided therein. There are two implications, which will flow as a consequence of the incorporation of Clause 29 Ka(11):-

i. That after the declaration made under Clause 23 of the Regulations of 2011, as soon as the declaration has been made and it has not been put to challenge, the State will exercise its powers in order to grant a mining license over a bhumidhari land until and unless the said notification itself is put to challenge since being permissible by way of declarations under amended Clause 23 of the Notification of 31.10.2017 ii. Secondly, the effect of Clause 29Ka (11) would be that when the State, in the Regulations of 2017 itself contemplates the payment of a proportional compensation, that itself means that there was no absolute bar in grant of mining lease. In that eventuality, the interim order, which has been granted by the Court merely on the pretext that it was a bhumidhari land and no mining operation could be permitted to be carried, is contrary to the provisions of Section 15 of the Act of 1957, to be read with the Regulations of 2017, as contained under Clause 23, to be harmoniously read and construed with Clause 29Ka (11).

11. In view of the aforesaid, since there was no specific statutory bar in grant of mining leases, to the land which stands vested to a private individual lying in Shreni 1-Ka, as in the instant case, since not being specifically barred, the argument extended by the counsel for the petitioner, would not be acceptable tentatively for the purposes of grant of a stay order, from conducting the mining operation in pursuance to the lease of 05.04.2021 because his interest would stand protected by Sub Clause (11) of Claus 29 Ka of the Regulations of 2017.

12. In that view of the matter, this Court is of the view that for the reasons aforesaid, since the statute does not specifically creates a statutory bar from grant of mining lease over the bhumidhari land, since the statue vests exclusive rights with State, to proceed to grant the mining license over the private land subject to satisfying the condition of Clause 23, since the Regulation framed under Section 15 of Act, protects the rights of the bhumidhar of being paid with the compensation, the statute or the subordinate legislation, since it was not creating any bar, the interim order of

02.03.2022, cannot be sustained as per the given set of legal and statutory circumstances of the case.

13. Accordingly, the stay order dated 02.03.2022 is hereby vacated. The amendment application as preferred by the petitioner by giving a subsequent challenge to Clause 23 of the Regulations of 2017, would be considered, subject to the objection to be filed by the respondents to the said amendment application.

14. List these petitions as soon as objection is filed to the amendment application.

(Sharad Kumar Sharma, J.) 24.05.2022 Arti