

GAHC010013812020



2024:GAU-AS:10666

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./72/2020

BABUL CHANDRA DEY @ ASHIT AND 3 ORS.
S/O- LATE ABINASH CHANDRA DEY, R/O- VILL.- SIDHESWAR PART-II, P.O.
AND P.S. KATIGORAH, DIST.- CACHAR, ASSAM.

2: SRI JADAV CHANDRA DEB
S/O- LATE JATINDRA MOHON DEB
R/O- COLLEGE ROAD
HAILAKANDI P.O. AND DIST.- HAILAKANDI
ASSAM.

3: SRI AMIT DEY
S/O- ASHIT CHANDRA DEY
R/O- VILL.- SIDHESWAR PART-II
P.O. AND P.S. KATIGORAH
DIST.- CACHAR ASSAM.

4: ARPITA DEY @ PAPRI DEY
D/O- ASIT CHANDRA DEY
R/O- VILL.- SIDHESWAR PART-II
P.O. AND P.S. KATIGORAH
DIST.- CACHAR ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS.
THROUGH- THE SECRETARY TO THE GOVERNMENT OF ASSAM,
ENVIRONMENT AND FOREST DEPTT., DISPUR, GUWAHATI- 781006.

2: THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
ASSAM REHABARI
P.O. REHABARI
GUWAHATI- 781008.

3: THE CHIEF CONSERVATOR OF FORESTS

SOUTHERN ASSAM CIRCLE
SILCHAR DIST.- CACHAR
ASSAM PIN- 788001.

4:THE DISTRICT LEVEL ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY (DEIAA)
CACHAR REP. BY ITS CHAIRMAN
DEPUTY COMMISSIONER
CACHAR SILCHAR
DIST.- CACHAR
ASSAM PIN- 788001.

5:THE DEPUTY COMMISSIONER
CACHAR SILCHAR
DIST.- CACHAR
ASSAM PIN- 788001.

6:THE DISTRICT LEVEL EXPERT APPRAISAL COMMITTEE (DEAC)
CACHAR HEADED BY THE EXECUTIVE ENGINEER
IRRIGATION SILCHAR DIVISION
SONAI ROAD NAGATILA
DIST.- CACHAR
ASSAM PIN- 788001.

7:THE DIVISIONAL FOREST OFFICER
KARIMGANJ DIVISION
DIST.- KARIMGANJ
ASSAM PIN- 788710.

8:THE EXECUTIVE ENGINEER
POLLUTION CONTROL BOARD
PWD ROAD SILCHAR
P.O. SILCHAR
DIST.- CACHAR
ASSAM PIN- 788001

Advocate for the Petitioner : MR. S P CHOUDHURY, D GUPTA, D DAS, MRS K M SAIKIA, MR.
P BORAH, MR DIFENSO M, MR. S K DAS, MR. M K MAJUMDAR, MR. A K PURKAYASTHA

Advocate for the Respondent : SC, FOREST, SC, FOREST

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

30.10.2024

[Manish Choudhury, J.]

Heard Mr. D. Das, learned counsel for the review petitioners and Mr. D. Gogoi, learned Standing Counsel, Environment & Forest Department for the respondent nos. 1, 2, 3 & 7.

2. The instant review petition is preferred seeking review of a Judgment & Order dated 26.08.2019 passed in a writ appeal, W.A. no. 157/2019.

3. In paragraph 1 of the instant review petition, it has been averred that the petitioners had approached the Hon'ble Supreme Court of India vide Special Leave Petition no. 27556 of 2019 and the Hon'ble Supreme Court vide Order dated 02.12.2019, had disposed of the special leave petition giving direction to the petitioners to prefer review petition before this Court in view of the apparent error available on the face of the record and as such, the present review petition has been filed by the review petitioners. The Order dated 02.12.2019 passed by the Hon'ble Supreme Court of India in Special Leave Petition no. 27556 of 2019 is appended as Annexure-A[1] to this review petition.

4. The Order dated 02.12.2019 reads as under :-

Learned counsel appearing for the petitioners prays for withdrawal of this petition with liberty to apply for review before the High Court.

Prayer is allowed.

Accordingly, the special leave petition is disposed of as withdrawn with the liberty aforesaid.

5. From the text and tenor of the Order dated 02.12.2019, it does not emerge that there

was a direction of the Hon'ble Supreme Court of India to the petitioners to prefer the review petition before this Court. It has emerged that before the Hon'ble Supreme Court of India, the learned counsel appearing for the petitioners prayed for withdrawal of the special leave petition with liberty to apply for review before the High Court and accordingly, allowing the prayer, the special leave petition was disposed of as withdrawn with the liberty to prefer the review petition. Be that as it may.

6. The Judgment & Order dated 26.08.2019 passed in a writ appeal, W.A. no. 157/2019 which is sought to be reviewed, is extracted herein in its entirety :-

Heard Mr. H.R.A. Choudhury, learned senior counsel assisted by Mr. R. Mazumdar, learned counsel for the appellants. Also heard Mr. S. Biswas, learned Standing Counsel, Forest Department appearing for the respondents.

2. This intra-court appeal is directed against the order dated 02.05.2019 passed in WP(C) No.949/2019 dismissing the writ petition filed by the appellants and also imposing a cost of Rs. 5,000/-.

3. It is the case of the appellants that the appellants, along with two others including one Smti. Pompa Endow had applied to the Principal Chief Conservator of Forests, Assam for grant of Forest Trade Permit under Assam Minor Mineral Concessions Rule, 1994 (for short, "the 1994 Rules"), for the purpose of extracting stone from a quarry called 'Baleswar Stone Quarry', which is under Kalain Range of Karimganj Forest Division. Consequent thereto, each of the appellants were allowed to extract 2500 cubic meters of stone on 30.01.2007 (date is wrongly recorded in the writ petition at Paragraph 2, should have been 03.01.2007) on payment of forest royalty at the rate of Rs. 170/- per cubic meter for issuance of formal order. The fixation of royalty at the rate of Rs. 170/- per cubic meter was the subject matter of dispute in WP(C) No.769/2007. The said writ petition was disposed of on 10.10.2007.

4. We will revert back to this order dated 10.10.2007 a little later.

5. It appears that the Additional District Magistrate, Karimganj had passed an order dated 31.08.2015 directing the Divisional Forest Officer, Karimganj to consider the prayer of the petitioners. As the prayer was not appropriately considered, WP(C) No.5385/2016 was filed before this Court and the said writ petition was disposed of by the order dated 09.09.2016 directing the State respondents to consider the representation filed by the petitioners therein.

6. By then, the Assam Minor Mineral Concessions Rules, 2013 (for short, "the 2013 Rules"), came into effect from 16.03.2013.

7. It is to be noted at this juncture that Baleswar Stone Quarry was subsequently bifurcated into Baleswar Minor Mineral Unit No.1 and Baleswar Minor Mineral Unit No.2. Baleswar Minor Mineral Unit No.1 came to be closed on account of environmental issues.

8. A sale notice dated 25.02.2017 was issued by the Divisional Forest Officer, Karimganj Division for settlement of Baleswar Minor Mineral Unit No.2. Writ petition being WP(C) No.1609/2017 came to be instituted challenging the said sale notice. While the said writ petition was pending, the appellants filed the present writ petition, out of which this appeal has arisen, praying for a Writ of Mandamus to the respondents for allowing to extract 2500 cubic meters of stone from Baleswar Minor Mineral Unit No.1 and Unit No.2 at the existing government royalty of Rs. 200/- per cubic meter on the basis of the letter dated 31.08.2015 passed by the Additional District Magistrate, Cachar and allotment letter dated 03.01.2007 till extraction of allotted stone material of 10,000 cubic meters.

9. The learned Single Judge recorded a finding that the appellant Nos.3

and 4 were minors at the time when the allotment was given and, therefore, they are not entitled to a favourable consideration of the prayers made in the writ petition. It was also noted that the present petitioners were not the petitioners in WP(C) No.769/2007 in which fixation of forest royalty at the rate of Rs. 170/- per cubic meter was put to challenge and, therefore, the very foundation of the writ petition is highly questionable. It was further observed that as 1994 Rules have been repealed and the 2013 Rules, which now holds the field, provide for a completely different methodology for settlement/extraction of minor minerals, after lapse of 12 years from the date of initial allotment, prayers made by the petitioners cannot be granted. On the impression gathered by the learned Single Judge that the petition was not filed bonafide, cost of Rs. 5,000/- was imposed on the writ petitioners to be paid to the Gauhati High Court Legal Services Committee.

10. Mr. Choudhury submits that the learned Single Judge committed manifest error of law in holding that in WP(C) No.769/2007 only Shri Paplu Dutt and Shri Partha Pratim Dutta were the writ petitioners and not the present petitioners. By drawing attention of the Court to Page-167, he points out that except Arpita Dey, all were writ petitioners in the said writ petition. He also submits that in view of the order dated 10.10.2007 passed in WP(C) No.769/2007, the appellants are entitled to operate the Mahal at Rs. 146/- per cubic meter, but since the present rate of royalty is Rs. 200/- per cubic meter, the appellants are praying for allowing them to operate at the rate of Rs. 200/- per cubic meter. It is also submitted that coming into effect of 2013 Rules will not have any impact in the present fact situation.

11. Mr. S. Biswas, on the other hand, submits that the very foundation of the case is fallacious as at no point of time there was any order in favour of the present petitioners permitting them to extract stone at the rate of Rs. 146/- per cubic meter. It is submitted that the order dated 10.10.2007 does not relate to the Baleswar Stone Mahal.

12. We have considered the submission of the learned counsel for the parties and have perused the materials on record.

13. At the very outset, we would observe that the learned Single Judge was not justified in holding that the present petitioners were not parties in WP(C) No.769/2007. It is, however, true that the present petitioner No.4 was not a party to the said writ petition. The position becomes manifestly clear from a perusal of the order sheet in WP(C) No.769/2007, which is available at Page 167 and 168. However, what is significant is to note that in the letter dated 03.01.2007 (Annexure1 at Page 89 of the appeal papers), names of only appellant No.1, appellant No.2, appellant No.4 and that of one Paplu Dutta were mentioned. Name of appellant No.3, Amit Dey, who is son of appellant No.1, was not there.

14. The order dated 10.10.2007 passed in WP(C) No.769 of 2007, reads as follows :

“Heard Mr. R.P. Sarma, learned Sr. Counsel, assisted by Mr. SMT Chistie, learned counsel for the petitioner as well as Ms. R. Chakraborty, learned State Counsel for the respondents.

It is submitted by Mr. Sarma, learned Sr. Counsel that the writ petition can be disposed of in terms of the averments made in paragraph 5 of the affidavit-in-opposition filed by the respondents, which is quoted below :

5. That with regard to the statements made in paragraphs 5, 6, 7, 8, 9, 10, 11 and 12 of the writ petition, the deponent begs to state that vide letter No.FRS 98/2003/104 dated 28.2.2007 issued by the Govt. of Assam in Environment and Forest Department stating that in the application filed by Shri Ashit Ch. Dey and two others for reducing the per cu.m rate, the Governor of Assam was pleased to reduce the

rate in terms of Assam Mines and Mineral Concession Rule, 1994 and the rate has been fixed at Rs.146/- per cu.meter to permit holder. As such the prayer of the petitioner was considered and hence on this ground alone the instant petition is liable to be dismissed.

In view of the above submissions made by the learned counsel for the petitioner, the writ petition is disposed of in terms of the respondents in paragraph 5 of the affidavit-in-opposition.

Writ petition is disposed of.

15. The letter No.FRS 98/2003/104 dated 28.02.2007, which is referred to in the said order dated 10.10.2007 is available at Page 172 of the appeal papers. The said letter was addressed by the Deputy Secretary, Government of Assam, Environment and Forests Department to the Chief Conservator of Forests (Territorial) Assam. It will be appropriate to extract the contents of the said letter :

In inviting a reference to your letter on the subject cited above, I am directed to say that after careful examination of the reports submitted by you and the petition dated 31.01.07 submitted by Shri Ashit Ch. Dey and two others praying for reducing the per cum rate for extraction of permit from Lakhidharra Nalah, Cachar Division, Governor of Assam is pleased to state that the rate shall be fixed at par with the rate of nearest mahal as per Assam Minor Mineral Concession Rule 1994 and hence the rate has been fixed at Rs.146/- per cum to the permit holder.

16. A perusal of the letter, as extracted above, demonstrates unequivocally that the rate of forest royalty fixed at Rs. 146/- per cubic meter was in respect of Lakhidharra Nalah and there is no reference to Baleswar Stone Mahal in the said letter. A perusal of the order dated

10.10.2007 goes to show that the learned counsel appearing for the petitioners therein prayed for disposal of the writ petition in terms of the averments made in paragraph 5 of the affidavit-in-opposition, which contains a reference to this letter dated 28.02.2007. May be, the learned counsel for the petitioners was under a mistaken belief that the letter dated 28.02.2007 pertains to Baleswar Stone Mahal. The order dated 10.10.2007 passed in WP(C) No.769/2007 does not take the case of the appellants any further and, therefore, the entire edifice that is sought to be built is without any foundation. The order dated 31.08.2015, which is available at page 105 of the appeal papers, on the basis of which the claim is now made for extracting stone, has its roots in the order dated 10.10.2007 passed in WP(C) No.769/2007 and, therefore, the said order cannot enure to the benefit of the petitioners. The learned senior counsel appearing for the appellants has not been able to place on record or before us any subsisting formal order permitting the appellants to extract stone either at the rate of Rs. 170/- per cubic meter or Rs. 146/- per cubic meter.

17. In the aforesaid background as unfolded, we see no reason to interfere with the order passed by the learned Single Judge and, accordingly, finding no merit, this appeal is dismissed. However, since there was a factual error in the order passed by the learned Single Judge in the sense that it was construed that the petitioners were not party in WP(C) No.769/2007 and which primarily was the basis for imposition of cost, we are inclined to set aside that part of the order. Accordingly, while upholding the order of dismissal of the writ petition passed by the learned Single Judge, we exempt the appellants from payment of cost as directed by the learned Single Judge.

7. The scope and ambit of a review petition is limited. It is settled that only on few grounds a review petition is maintainable. Ordinarily, the review petition is maintainable when [i] discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him; [ii]

mistake or error apparent on the face of the record; and [iii] any other sufficient reason. It has been observed in *Kamlesh Verma vs. Mayawati and others*, reported in [2013] 8 SCC 320 that the words 'any other sufficient reason' have been incorporated to mean 'a reason sufficient on grounds at least analogous to those specified in the rule'. It has been further held as under :-

20.2. When the review will not be maintainable :

- [i] A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- [ii] Minor mistakes of inconsequential import.
- [iii] Review proceedings cannot be equated with the original hearing of the case.
- [iv] Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- [v] A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- [vi] The mere possibility of two views on the subject cannot be a ground for review.
- [vii] The error apparent on the face of the record should not be an error which has to be fished out and searched.
- [viii] The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- [ix] Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative.

8. A number of grounds, numbering 22, have been pleaded in this review petition.

9. We have considered the submissions of the learned counsel for the review petitioners and the learned Standing Counsel, Environment & Forest Department, extensively.

10. The issue involved in the original writ petition, W.P.[C] no. 949/2019 and in the writ appeal, W.A. no. 157/2019 pertained to issuance of a permit under the Assam Minor Mineral Concession Rules, 1994 [‘the AMMC Rules, 1994’], repealed subsequently by the Assam Minor Mineral Concession Rules, 2013 [‘the AMMC Rules, 2013’], and the rate to be payable per cubic metre of stone in respect of a stone mahal, namely, Baleswar Minor Mineral Unit no. 2. One of the grounds for dismissing the writ appeal, as recorded in the Judgment & Order dated 26.08.2019, sought to be reviewed, was that the appellants were not able to place on record or before the writ appellate court any subsisting formal order permitting the appellants to extract stone either at the rate of Rs. 170/- per cubic metre or at the rate of Rs. 146/- per cubic metre.

11. In the regime under the AMMC Rules, 1994 [since repealed], the process of grant of mining lease could be initiated on the basis of an application filed by a proponent. The application for grant of mining lease can be said to have crystallized in favour of an applicant only after issuance of mining permit in Form-L as per Section 31 of the AMMC Rules, 1994 [since repealed]. A process of granting mining lease, etc. has been made to undergo a competitive bidding process under the AMMC Rules, 2013, which have replaced the AMMC Rules, 1994. Rule 79 of the AMMC Rules, 2013 Rules has provided for repeal and saving clause which reads as under :-

79.[1] The Assam Minor Mineral Concessions Rule, 1994 as amended time to time, in their application to the State of Assam are hereby repealed.

[2] Notwithstanding such repeal, anything done or any action taken or proceedings commenced under ‘the Assam Minor Mineral Concessions Rule, 1994’ as amended from time shall be deemed to have done, taken or commenced under these rules :

Provided that wherever the terms and conditions of any mineral concession, granted before the commencement of these rules, are inconsistent with or repugnant to these rules, the same to have been modified in accordance with these of notification thereof.

12. Any right vested or accrued under the AMMC Rules, 1994 is saved by sub-rule [2] of Rule 79 of the AMMC Rules, 2013. On a pointed query to the learned counsel for the review petitioners, we find that the finding recorded in the Judgment & Order dated 26.08.2019 to the effect that there was no subsisting or formal order in terms of the Rule 31 of the AMMC Rules, 1994 [since repealed], has not been changed. The review petitioners have not been able to place any such mining lease issued in favour of the review petitioners. In the absence of any right accrued or vested in favour of the review petitioners in respect of Baleswar Minor Mineral Unit no. 2 neither at the time of the writ petition nor at the time of the writ appeal or at the time of filing and hearing of the instant review petition, in our considered view, the instant review petition is not merited.

13. In view of absence of such accrued or vested right in favour of the review petitioners, we find no necessity to consider the other grounds urged in this review petition on behalf of the review petitioners, as those would only add weight, apparently not necessary, to this order. The review petition being not merited, stands dismissed. No cost.

JUDGE

JUDGE

Comparing Assistant