

In the Court of Mines Commissioner, Bihar, Patna

Dated 07.10.2017

Revision Case No – 07/2015

District – Rohtas

**PRESENT :- K.K. Pathak, I.A.S.,
Mines Commissioner**

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Sri Anil Singh

Vs.

Collector, Rohtas

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ORDER

07.10.2017

This is a Revision case filed by the Revisionist against the order passed by the Learned Collector, Rohtas on 06.10.2012. The Revision was filed on 01.10.2015 after a significant delay. However, the Revision was finally admitted by the then Learned Mines Commissioner on 06.11.2015.

Since then, various dates were given and the report from the Learned Collector was sought, which took some time. Copy of the report of the Learned Collector was provided to the Learned Advocate of the Revisionist. The Learned Advocate also wanted to inspect the Lower Court Records which was allowed.

The case was finally heard on 04.10.2017 where the Learned Advocate of the Revisionist was heard in great detailed.

The Learned Advocate of the Revisionist argued that his case does not fall under Rule 9 of the Bihar Minor Minerals Concession Rules, 1972. Rather, it is covered under Rule 9A. He pleads that his license was cancelled because of the non compliance of Rule 9(8) and hence this cancellation is invalid because his case does not lie under Rule 9. It lies under Rule 9A read with Rule 52.

He further argues that it was the responsibility of the Government, rather the Mines Department, to arrange the NOC from the Irrigation Department.

Finally, the Learned Lawyer concluded the hearing with the payer that either he should be granted extension of the lease or in absence of the above, a suitable compensation.

He further mentioned that there is no case for any non payment or delayed payment of royalty.

Having heard the Learned Advocate of the Revisionist and having perused the documents available on file as well as the Lower Court Records, my own findings on the matter is as under:-

(a) It appears that the Revisionist license was cancelled by the Learned Collector primarily because he could not obtain a No Objection Certificate from the Water Resources Department, who is the original owner of the land.

(b) Against this reason, the Learned Advocate of the Revisionist had pleaded that the responsibility for arranging the NOC was not with the Revisionist. In the auction notice, nowhere it was mentioned that the Revisionist was supposed to submit a No Objection from the Water Resources Department. Finally, he also pleads that his case lies under Rule 9A of the Bihar Minor Mineral Concession Rules, 1972 and not under Rule 9.

(c) I do not agree with the averments made by the Learned Advocate that this case falls under Rule 9A and not Rule 9. Rule 9A reads as under:-

"Notwithstanding anything contained in these rules, the Government may, by notification, in Official Gazette direct that any mineral may be leased out or

settled by Public auction/tender in the manner prescribed in rule-52."

(d) From the above, it is clear that under the Rule 9A, the Government has to take out notification and direct that a particular mineral may be leased out under Rule 52. The language of 9A suggests that it is an omnipotent Rule which overrides any other rule. However, in the instant case, Rule 9 is the one under which the auction was conducted. Since there was no notification issued by the State Government under Rule 9A, there is no reason for the undersigned to believe that the case of the Revisionist falls under rule 9A. Hence, it is a naturally corollary to conclude that this case falls under Rule 9 and not 9A.

(e) Having said that, it follows that the Revisionist did not comply with the condition mentioned in the Rule 9(8). That be the case, I find that the Learned Collector was correct in not passing an order in favour of the Revisionist.

(f) His other contention, made before the Learned Collector, that since Nagarajuna Construction Ltd. has been given an NOC by the Irrigation Department, hence his case should also be considered, cannot be sustained in the light of the fact that NOC was a project specific time bound NOC whereas, for the Settlee, it was a lease.

(g) As regards the payment of royalty, it appears that the Petitioner was supposed to pay some royalty which he did not do in time. From the orders passed by the Learned Collector, it also appears that the Revisionist has deposited only Rs. 2.72 crores against the required Rs. 5.40 crores. The Revisionist has not adequately answered this aspect. However, I understand that since the lease itself was cancelled on 06.10.2012 by the impugned order, the royalty to be paid still remain an overdue.

(h) I also find from the report of Deputy Director, Mines dated 05.10.2017 that the said area called village Dhaudnar has since being declared an Eco Sensitive Zone vide the Notification dated

30.10.2015 of the Ministry of Environment, Forest & Climate Change. This radically altered the situation on ground as Para 4 of the Notification clearly prohibits *all new and existing mining of major and minor minerals*.

- (i) That be the case, I do not find that there is any merit in the Revisionist application.

Conclusion:-

From the aforementioned findings, it is clear that the Revisionist has failed in obtaining the NOC from the Water Resources Department. Moreover, his averment that it was the responsibility of Mining Department to obtain the NOC from the Water Resources Department cannot be sustained as, under the Rule 9(8) of the Bihar Minor Mineral Concession Rules, 1972, it is responsibility of the Settlee to obtain the NOC.

Moreover, I have also explained my reason for not agreeing the averments of the Learned Advocate of the Revisionist that his case falls under Rule 9A and not Rule 9. Since, there was no notification issued by the State Government as required under Rule 9A, this case falls under Rule 9 of the Bihar Minor Mineral Concession Rules, 1972.

Thus, the Revisionist was duty bound to obtain the NOC from the land holder, which in this case, is the Water Resources Department and then proceed with the mining.

To further add to this matter, the Ministry of Environment, Forest & Climate Change has already issued a notification in the year 2015 declaring the said village to be falling under the Eco Sensitive Zone as demarcated for Kaimuar Wild Life Sanctuary. The said Notification also prohibits any new or existing mining of either the major or minor minerals in the said areas. Since the disputed area lies under the Eco Sensitive Zone, there is no question of any license be giving to the Revisionist.

Coming to the point of compensation, I don't see any reason for the Revisionist to be compensated as it was his responsibility to obtain all the necessary clearances from all concerned before starting the lease. He cannot lay the blame on the Department and say that it was the Department's job to obtain the NOC from the concerned land holder. Rule 9(8) clearly places this responsibility on the Settlee himself. Having said that, I find that there is no ground for any compensation whatsoever.

That be the case, I find that there is no merit in the Revision application. I, accordingly, dismiss the same and uphold the order passed by the Learned Collector, Rohtas on 06.10.2012.

Revision dismissed.

The Learned Collector, Rohtas may proceed for recovery of dues, if any, towards royalty under the Bihar Public Demands Recoveries Act.

Dictated & Corrected

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| Sd/- (K.K.Pathak) Mines Commissioner Mines and Geology Department, Bihar. | Sd/- (K.K.Pathak) Mines Commissioner Mines and Geology Department, Bihar. |
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Memo No.-.....3078...../M, Patna, Dated-...13/10/17.....

Copy to:- Collector, Rohtas/ Assistant Director, Rohtas/ Sri Anil Singh, . S/o-Sri Lachchan Singh, Vill-Dhaukaraha, P.S.-Sasaram, Dist.-Rohtas/I.T. ✓
Manager, Mines & Geology Dept. Patna for information and necessary action.

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Under Secretary to Govt.