RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 12350/2023
CNR: RJHC020624542023 | URN: CW / 23306U / 2023

Rajasthan High Court
सत्यमेव जयते
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M/s Shri Shyam Stone through its Authorized Partner Sh. Sachin Prasad Sharma having its office at Village-Sirondh, Tehsil-Roopwas, District-Bharatpur.

----Petitioner

Versus

1. State of Rajasthan through The Joint Secretary, Department of Mines & Petroleum, Government of Rajasthan, Secretariat, Jaipur.
2. Department of Mines through The Additional Director (Mines), Kota Zone, Kota.
3. Department of Mines and Geology, Roopwas, through the Assistant Mining Engineer, Roopwas, District Bharatpur.

----Respondents

For Petitioner(s) : Mr. David Mehla
For Respondent(s) : Mr. Vigyan Shah, AAG with
Mr. Sankalp Vijay

HON'BLE MR. JUSTICE ANAND SHARMA

Order

26/11/2026

1. By way of filing the instant writ petition, petitioner has challenged order dated 27.06.2023 passed by the Assistant Secretary-cum-Revisional Authority, whereby application filed by the petitioner to modify the revisional order to the extent to which dead rent amount was required to be paid even for the period during which the petitioner was not in a possession of the mining lease, has been rejected.

2. It is stated that mining lease was sanctioned in favour of one Sh. Maan Singh S/o Sh. Jugal Ram in the year 2000 and

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thereafter transfer of the lease in favour of the petitioner was approved on 02.07.2015. On 27.07.2016, the respondent-Mining Department issued notice highlighting certain anomalies and ultimately the mining lease was terminated vide order dated 01.12.2016 and possession of the leased area was taken on 02.12.2016.

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3. Feeling aggrieved, the petitioner filed appeal before the Additional Director (Mines), Kota Zone, Kota, which came to be rejected on 13.04.2022 and ultimately, the petitioner approached the revisional authority by way of filing Revision Petition No.157/2022. The revisional authority while allowing the revision petition filed by the petitioner quashed the termination as well as appeal order and following directions were given:

"विचाराधीन रिवीजन में बहस सुनी गई। साथ ही प्रार्थी द्व ारा प्रस्तुत रिवीजन के तथ्यों, विभागीय तथ्यात्मक प्रतिवेदन तथा सहायक खनि अभियन्ता, रूपवास से प्राप्त पदवार उत्तर की विवेचना की गयी। अवलोकन/विवेचन से स्पष्ट है कि प्रार्थी द्वारा सुसंगत कारण से चेतना पत्र की समयावधि में पालना नहीं की थी लेकिन तत्पश्चात् उसके द्वारा सम्पूर्ण बकाया राशि ब्याज माफी योजना 2020–21 के तहत मूल रॉयल्टी पेटे जमा करा दी गई है जिसकी पुष्टि सहायक खनि अभियंता, रूपवास द्वारा प्रेषित पदवार जवाब से होती है। प्रकरण के गुणावगुण निर्णय अनुसार विभागीय राजस्व, खनिज विकास को देखते हुए तथा प्रार्थी द्वारा वर्तमान में समस्त बकाया राशि जमा कराने एवं भविष्य में समय–समय पर विभागीय बकाया को निश्चित समयावधि में जमा कराने हेतु दिये गये आश्वासन के परिप्रेक्ष्य में अतिरिक्त निदेशक(खान), खान एवं भूविज्ञान विभाग, कोटा का आदेश दिनांक 13.04.2022 एवं सहायक खनि अभियन्ता, रूपवास का आदेश, दिनांक 01.12.2016 को अपास्त किया जाता है। खनन पट्टा क्षेत्र रिक्त होने/प्रतिबंधित क्षेत्र में नहीं होने तथा किसी न्यायालय द्वारा जारी अन्यत्र आदेश से प्रभावित नहीं होने की स्थिति में प्रश्नगत खनन पट्टे के वर्तमान के एक वर्ष के वार्षिक स्थिर भाटक की 2 गुना शास्ति राशि एवं अन्य बकाया समस्त राशि जमा कराने पर खनन पट्टा बहाली की कार्यवाही नियमानुसार की जावें। प्रार्थी द्वारा उक्त शास्ति राशि आदेश जारी होने की तिथि से 30 दिवस में कार्यालय सहायक खनि अभियन्ता, रूपवास में आवश्यक रूप से जमा करवाई जावेगी। प्रार्थी द्वारा निर्धारित अवधि में शास्ति जमा नहीं कराये जाने पर यह आदेश स्वतः निरस्त माना जावेगा।

आदेश आज दिनांक 20.01.2023 को खुले न्यायालय में सुनाया गया।"

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4. As per the aforesaid directions for restoration of lease, the petitioner was required to deposit entire due amount as well as penalty.

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5. In compliance of revisional order dated 20.01.2023, the demand note dated 06.02.2023 (wrongly mentioned as 06.01.2023) was issued by the Assistant Mining Engineer, whereby the petitioner was required to deposit the penalty amount, security amount, performance security amount as well as dead rent for the period commencing from 03.12.2016 to 31.03.2023.

6. Learned counsel for the petitioner submits that amount demanded by the respondent-Department was deposited by the petitioner except the demand of dead rent for the period commencing from 03.12.2016 to 31.03.2023.

7. Learned counsel for the petitioner further submits that since during the aforesaid period, possession of the leased area was not with the petitioner and rather the respondent-Department was in possession of the leased area, hence, the petitioner was not liable to pay dead rent for the aforesaid period. In support of his contention, learned counsel for the petitioner relied upon order dated 22.01.2013 passed by the Co-ordinate Bench of this Court at Principal Seat, Jodhpur, in the case of ***Rampal Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.1588/2002)***, judgment dated 07.07.2017 rendered by the Division Bench of this Court in ***D.B. Special Appeal Writ No.623/2006 (M/s Praveen R. Patel Vs. The State of Rajasthan & Ors.)*** as well as order dated 04.11.2023 passed by the Co-ordinate Bench of this Court at Principal Seat, Jodhpur, in the case of ***Ramchandra***

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Vaishnav Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.6770/2021).

8. Learned Additional Advocate General opposed the instant writ petition and supported the impugned action of the respondents and submitted that although the mining lease was terminated on 01.12.2016, for a period of around six years, the petitioner remained silent and did not avail any remedy against termination of mining lease.

9. Learned Additional Advocate General would submit that while allowing the revision petition, conditional directions were given by the revisional authority with regard to depositing the entire amount due on the date of passing of revisional order dated 20.01.2023 on the assurance of the petitioner. He would also submit that once the petitioner undertook before the revisional authority for depositing the entire due amount, he has waived and acquiesced his right to challenge the demand with regard to dead rent for the aforesaid period.

10. Learned Additional Advocate General further added that expression 'entire due amount' used by the revisional authority relates to the aforesaid intervening period during which possession of the leased area was not with the petitioner, hence, quite consciously order was passed by the revisional authority.

11. Learned Additional Advocate General would also submit that lease was granted to the petitioner for the stipulated period on the condition that during the entire lease period, the petitioner would pay the dead rent as prescribed under the Rules. It is also submitted that demand of dead rent for the aforesaid period is in consonance with the Rules. Since during intervening period the

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leased area was not allotted to anybody else, as per terms and conditions of the lease, the respondents are entitled to receive dead rent for the entire lease period irrespective of possession of the lease, hence, quashing of demand of dead rent would cause loss to the State Exchequer.

12. In rejoinder, learned counsel for the petitioner indicates that in reply to the writ petition, the respondents themselves in para No.16, have admitted that as per Rules 2(xv) & 28(2)(ii) of the Rajasthan Minor Mineral Concession Rules, 2017 (for short, 'the Rules of 2017'), the petitioner is liable to pay dead rent of the mining area, which is in petitioner's possession, hence, it is clear that the dead rent is charged only for the period during which the lessee remains in possession of the leased area, therefore, in view of the specific admission made by the respondents in reply to the writ petition, the respondent-Department is not entitled to demand dead rent for the period during which admittedly the petitioner was not in a possession of the leased area.

13. Heard learned counsel for the parties and perused the record.

14. This Court finds that the facts of the present case are not much in dispute and the sole question which arises for consideration of this Court is as to whether the respondent-Department can charge dead rent even for the period during which the leased area was not in possession of lessee.

15. It is not in dispute that mining lease in favour of the petitioner was terminated on 01.02.2016 and possession thereof was taken by the respondent-Department on 02.12.2016. Thus, as

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on the date of passing of revisional order dated 20.01.2023, the possession was lying with the respondent-Department.

16. Rule 28(2)(ii) of the Rules of 2017 reads as under:

> *"**28. Terms and Conditions of mining lease or quarry licence-***
> *2. Every mining lease shall be subject to the following additional conditions:-*
> *(ii) The lessee shall pay, for every year, [such annual dead rent in advance equated quarterly installments], as may be fixed by the Government and if the lease is granted for more than one mineral, the dead rent for the mineral which is higher as per Schedule III shall be charged, but separate dead rent shall not be charged in respect of each mineral:*
> *Provided that the lessee shall be liable to pay dead rent or royalty whichever is higher but not both."*

17. In the instant case, on account of termination of lease and taking over possession by the respondent-Department, the petitioner was not in a possession of the leased area for the period commencing from 03.12.2016 to 31.03.2023. Thus, during the aforesaid period, when the petitioner was not in a possession, it is to be examined that in view of aforesaid Rule, whether the Department is entitled to charge the dead rent or not.

18. A bare reading of the aforesaid Rule makes it evident that the liability to pay dead rent is prescribed on annual basis, as the Rule employs the expression 'for every year'. The deliberate use of this expression by the Rule Making Authority assumes significance and indicates that liability to pay dead rent is required to be determined with reference to each individual year during which the lessee enjoys the benefit of lease and remains in possession of the leased area, rather than being an unconditional liability extending throughout the entire period for which the lease was originally granted.

19. The underlying object of imposing dead rent is to ensure payment of minimum amount to the Government in

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consideration of the lessee's right to enjoy and utilize the leased area. Consequently, where the lessee has not been put in possession of the leased area, or has ceased to remain in possession thereof, the very basis for imposing such liability would not survive. Any interpretation imposing dead rent even for the period during which the lessee was deprived of the leased area would defeat the underlying rationale of the levy and result in saddling the lessee with a financial liability without corresponding enjoyment of leasehold rights. Therefore, dead rent cannot be demanded for a period during which the lessee was not in possession of the leased area.

20. In the case of ***Rampal (supra),*** as relied by learned counsel for the petitioner, the Co-ordinate Bench of this Court at Principal Seat, Jodhpur, observed in quite explicit words that during the period for which the mine admittedly remained in the possession of Mining Department and the petitioner was not allowed to undertake any mining work, no dead rent or royalty can be demanded by the respondent-Mining Department from the petitioner for the intervening period. After giving such observations the demand made by the respondent-Mining Department was quashed.

21. The Division Bench of this Court in the case of ***M/s Praveen R. Patel (supra)*** took into consideration that the Special Appeal Writ was admitted on the limited question as to whether dead rent could be charged for the period when the possession was not with the lessee. While allowing the Special Appeal Writ on the aforesaid question, the Division Bench categorically held that the State Government is not entitled for

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charging the dead rent for the period during the lessee was not in possession.

22. Similar view was taken by this Court at Principal Seat, Jodhpur, in the case of ***Ramchandra Vaishnav (supra)***, wherein the condition imposed in the order of restoration of lease for depositing the dead rent even for a period during which possession of the mining lease area remained with the Mining Department was quashed.

23. In view of the aforesaid principles laid down by the Division Bench as well as Co-ordinate Benches of this Court, I am of the considered view that the respondent-Mining Department cannot enforce the demand of dead rent as per Rule 28(2)(ii) of the Rules of 2017 for the period during which the lessee was not in a possession of the leased area.

24. Accordingly, the writ petition filed by the petitioner is allowed. The demand raised by the respondent-Mining Department from the petitioner for the aforesaid period commencing from 03.12.2016 to 31.03.2023 is hereby quashed and set aside. The respondent-Mining Department is directed to proceed further in the direction of restoring the lease deed. It is made clear that the respondent-Mining Department is also restrained from charging the dead rent even for the intervening period till the lease deed is actually restored and possession thereof is handed over to the petitioner. Compliance of this order shall be made within a period of six weeks from today.

25. Pending application(s), if any, stand(s) disposed of.

(ANAND SHARMA),J

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