

**(2010) 09 AHC CK 0485**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Writ Petition No. 9170 (M/B) of 2010

Anees Khan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** Sept. 17, 2010

**Citation:** (2011) 1 ADJ 315 : (2011) 114 RD 80

**Hon'ble Judges:** R.R. Awasthi, J; Pradeep Kant, J

**Bench:** Division Bench

**Final Decision:** Allowed

### **Judgement**

1. Notice on behalf of Respondents No. 1 to 5, has been accepted by the learned Chief Standing Counsel and Smt. Bulbul Godiyal has accepted notice on behalf of Respondent No. 6.

2. Since the counter-affidavit has been filed by the contesting Respondent No. 6 and the rejoinder affidavit has also been filed and the facts, which are relevant, have been brought on record by means of the affidavits aforesaid, which do not stand disputed by the State, we proceed to decide the same with the consent of the parties counsel at the admission stage.

3. Petitioner Anees Khan has filed this writ petition challenging the order passed by the State Government dated 31.8.2010, by means of which the lease granted in favour of the Petitioner for the mining area has been kept in abeyance and the extension has been granted to the opposite party No. 6, for carrying on the mining operations for an additional period of 8 months and 19 days. The order further says that for further extension of 11 months and 1 day, the District Magistrate may take a decision at his own level.

4. In short, the facts of the case are that for the area in question a mining lease was granted to the Respondent No. 6 on 20.4.2005. He started the mining operations but due to an interim order of stay passed by the High Court in Writ Petition No. 4015 (M/S) of 2005, Vijay Shanker v. State of U.P. and Ors. Writ Petition No. 4015 (M/S) of

2005, on 18.7.2005, the mining operations could not be undertaken for the period commencing from 23.7.2005 to 11.4.2006. After the term of 3 years was over i.e. on 20.4.2008, an advertisement was published by the District Magistrate, Jalaun under Chapter-II of the U.P. Minor Mineral (Concession) Rules, 1963 (hereinafter referred to as the Rules, 1963), on 21.4.2008, inviting applications for grant of mining lease for a period of three years for excavating Balu and Mauram. In pursuance of the said advertisement, Petitioner submitted his application for grant of lease in respect to Khand-I, Gata No. 240, Himmanpura, Tehsil, Kalpi, District Jalaun measuring 50 acres. This was the very plot with the same area, which was leased out to the Respondent No. 6 in the year 2005.

5. Since the valuation of the lease was above rupees five lacs, recommendation was made by the Mining Officer to the District Magistrate for grant of lease to the Petitioner. The District Magistrate gave his approval and then forwarded the same to the State Government in Praroop - 2 on 14.8.2008 for granting prior consent before issuing a formal order granting lease. This was done in view of the requirement prescribed in the G.O. dated 16.10.2004.

6. The State Government accorded its prior approval on 4.2.2010 with a direction that prior to grant of lease, the District Magistrate will ensure compliance of the provisions of the Rules, 1963.

7. It appears that before the lease could formally be granted in favour of the Petitioner, the Respondent No. 6 laid his claim for extension of the term of his lease, for allowing him to continue with the mining operations for another period of about 20 months This was in lieu of the period from 23.7.2005 to 11.4.2006 and 25.5.2007 to 16.4.2008, during which the mining operations could not be conducted.

8. The disruption in first part of the term aforesaid occasioned because of the interim order passed by the Court but the second disruption was not because of any order passed by any Court. This application for extension of the lease for the first time, according to the Respondent No. 6 himself, was moved on 10.6.2008. The Petitioner, however, disputed the filing of the aforesaid application. Another application was filed on 18.2.2009, allegedly when the earlier application was not considered and no order was passed.

9. A perusal of the aforesaid applications (copies being on record), shows that they though do not make any prayer specifically for extension of the term of the lease, yet they raise a complaint of not being able to undertake mining for the disrupted period, with the prayer that the Respondent No. 6 be allowed to excavate the mines for the aforesaid disrupted period.

10. The District Magistrate even after the approval by the State Government for grant of lease in favour of the Petitioner, on an application moved by the Respondent No. 6 seeking extension of the term of his lease, despite the fact that such an application was moved after expiry of the period of lease, forwarded the

same to the State Government for guidance. The State Government, however, did not pass any order, which persuaded the Respondent No. 6 to challenge the order of approval passed by the State Government for grant of lease in favour of the Petitioner by filing Writ Petition No. 30481 of 2010.

11. This writ petition was filed at Allahabad, which was disposed of vide order dated 25.5.2010. The order aforesaid dated 25.5.2010 shows that the State Government was directed to pass appropriate orders after giving opportunity to the parties though no notice was issued to the contesting private Respondent, namely, the Petitioner in this writ petition, whose rights were likely to be adversely affected by the order which might have been passed by the State Government on the direction aforesaid, issued by the High Court.

12. In pursuance of the direction issued by the High Court in the aforesaid writ petition, the State Government has passed the impugned order after affording opportunity to the concerned parties, allowing the Respondent No. 6 to carry on the excavation of minor minerals for an additional period of 8 months and 19 days.

13. At the outset, we would like to mention that as per submission made by the learned Counsel for the Petitioner, the statement of fact made in the order impugned, passed by the State Government dated 31.8.2010 that the Respondent No. 6, has already deposited the royalty for the period commencing from 23.7.2005 to 11.4.2006 i.e. for the period during which the mining operations could not be undertaken by Respondent No. 6 and in lieu whereof the extension was claimed, is not a correct statement of fact as the said amount has not yet been deposited. The submission is that in view of the aforesaid incorrect statement of fact of deposit of royalty being made by Respondent 6, which is one of the considerations for extension of the term of lease, the impugned order of the State Government stands vitiated on this ground alone.

14. Smt. Bulbul Godiyal, learned Counsel appearing for Respondent No. 6 does not dispute the fact that at the time of passing of the impugned order aforesaid, the royalty was not deposited by Respondent No. 6.

15. Apart from the aforesaid fact, the question for consideration is whether in a case of present nature, any extension could be granted to the lessee beyond the period of his lease and whether such an action of grant of extension stands supported by any rule.

16. Learned Counsel for the Respondent No. 6, Smt. Bulbul Godiyal has vehemently placed reliance upon the case of Beg Raj Singh Vs. State of U.P. and Others, wherein because of the interim order passed by the State Government in a statutory revision, the lessee could not undertake the mining operations for certain period and when the State did not extend the lease, a challenge was made to the order passed by the State Government for holding fresh auction before the High Court, which challenge failed but in appeal the Supreme Court allowed the lessee to

continue for the extended period, i.e. for the period during which he was not allowed to do mining operations because of the orders of the State Government.

17. Learned Counsel for the Respondent No. 6, says that here, in the present case also, the Respondent No. 6 was not allowed to excavate and undertake the mining operations for the aforesaid period of 8 months and 19 days because of the interim order of stay passed by the High Court, and, therefore, he is entitled for extension of lease, equivalent to the same period, as the Apex Court in the case of Beg Raj Singh (Supra) allowed to undertake the mining operations for the additional period.

18. In the aforesaid case, the Apex Court considered the fact that the mining operations were hindered because of the own action of the State Government for no valid reason and for no fault of the lessee. Taking notice of the rule (Government Order dated 25.5.1995) that it was a case of Khoji Patta, namely the person, who discovered the mines, was entitled to operate the mines without any competition from any other party for atleast a period of three years, which may range upto five years under sub-para 3 of the relevant GO aforesaid, the Court came to the conclusion that Beg Raj Singh was having a right to operate the mining lease atleast for a period of three years, he being the discoverer of the mines, but his right was obstructed to by the State Government without any fault on his part. Under these circumstances, additional period was allocated to the lessee for operating the mines.

19. The lessee, in the aforesaid case, was entitled to have the lease atleast for three years but it was initially granted to him only for a period of one year, which was against the terms of the Government Order aforesaid and because of which two years" extension was granted to him but the State Government intervened and passed an interim order restraining him, from mining and also directed for leasing out the mines by holding an open auction.

20. The Apex Court in the case of Beg Raj Singh (Supra) also observed as under:

... The Petitioner though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events i.e. the events between the commencement of litigation and the date of decision. The relief of which the Petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the Petitioner any relief over the Respondents because of the balance tilting against the Petitioner on weighing inequities pitted against equities on the date of judgment. Third party interests may have been created or allowing relief to the claimant may result in unjust enrichment on account of events happening in between. Else the relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi-judicial forum and for no fault of the Petitioner.

21. We have to see the facts and circumstances of the present case not only for justifying the lease granted by the State Government but also with respect to the right of Respondent No. 6 to get the lease extended. To put the record straight, it is pertinent to mention here that, instant is not a case where the Respondent No. 6 was entitled to the grant of lease, beyond a period of three years at the first instance nor he could have any vested right under the Rules to get the lease renewed for an additional period of next three years nor any obstruction was caused by the State Government in the conduct of his mining operations for any reason whatsoever during his lease period.

22. While considering the extension of lease in favour of Respondent No. 6, his conduct during the term of lease and also after the expiry thereof would also be relevant to find out whether the extension could have been legally granted or is otherwise justifiable and meets the ends of justice.

23. Needless to reiterate that the impugned order passed by the State Government stands vitiated only on the ground that it was passed on an incorrect assumption of fact, that the Respondent No. 6, has already deposited the royalty for the period commencing from 23.7.2005 to 11.4.2006, but we find it expedient to address ourselves on the legality of the aforesaid order otherwise also.

24. The State Government apparently extended the period of lease to compensate the loss occasioned to the lessee (Respondent No. 6) for the period when the interim order of stay passed by the High Court remained operative. The ratio decidendi of the judgment of the Apex Court in the case of Beg Raj Singh (supra) is not that in every case where mining operations were disrupted or obstructed to for any period during the subsistence of the lease, the lessee has to be compensated necessarily, by giving him additional time for continuing with the mining operations, but it would depend upon the facts and circumstances of each case where such a lessee has to satisfy that such a disruption was not because of his own fault and that the hindrance was created absolutely by an arbitrary action of the State Government or any authority and that the circumstances which warranted such an interference/disruption, were beyond control of the lessee.

25. The manner in which such a lessee has pursued his alleged claim of extension of lease, would also be a relevant factor where it has to be seen that at what point of time and when he claimed extension of the term of lease i.e. if a lessee claims for extension of the term of lease for the first time after the term of said lease has expired, it would be a relevant consideration for refusing extension, as after the expiry of its term, the lease does not survive any more and there cannot be any extension of a non-surviving lease. The extension of the term of a lease can only be granted if the same is in existence and extension is sought before it comes to an end. Life cannot be instilled in a dead lease,

26. The Respondent No. 6 from the very beginning knew that the lease was granted to him for a period of three years. He was conscious of the fact that on expiry of the term of lease aforesaid, he would have no right to operate mining immediately from the very next day. He also knew that he had not been able to operate mining for a period of 8 months and 19 days i.e. from 23.7.2005 to 11.4.2006, and thereafter again from 25.5.2007 to 16.4.2008, may be for any reason whatsoever, but he did not ask for extension of the term of his lease within time i.e. before it expired on 20th April, 2008.

27. Since the Respondent No. 6 did not ask for extension of the term of lease and allowed it to expire, the District Magistrate issued a fresh advertisement on 21.4.2008 inviting applications for settling the mining lease but even then, no application for extension of the term of lease was moved by the Respondent No. 6. It was only on 10.6.2008 i.e. more than one and a half months after the expiry of lease that an application is said to have been moved by Respondent No. 6, though the said fact has been disputed by the Petitioner. Another application was moved on 18.2.2009 i.e. after more than 8 months of expiry of the lease.

28. The approval was accorded by the State Government for grant of lease in favour of the Petitioner on 4.2.2010. The Respondent No. 6 did nothing till 4.3.2010 but for moving the aforesaid applications dated 10.6.2008 and 18.2.2009, wherein knowing fully well that the term of the lease has already expired on 20th April, 2008, only a request was made that he be granted remaining period for undertaking mining. Factually after the expiry of the lease, there was no period which could be said to be the remaining period in the existing lease. As a matter of fact, the prayer for extension of the term of the lease ought to have been made during the subsistence of the lease, which prayer was specifically made by the Respondent No. 6 in his application dated 4.3.2010. This application was moved before the District Magistrate, but admittedly the Respondent No. 6 even after moving the said application, did not take any appropriate steps for enforcing his alleged right that is to say, if he was aggrieved by any action of the State Government in granting approval to the lease in favour of the Petitioner or the action of the District Magistrate in holding fresh auction, he ought to have challenged the same in the Court promptly, but he did it only on 25.5.2010 i.e. much after the approval was granted by the State Government in favour of the Petitioner, but of course when only a formal order of grant of lease was to be issued by the District Magistrate, which was only a ministerial act.

29. The silence on the part of the Respondent No. 6 for such a long time itself speaks that he was not in fact aggrieved by the proceedings of fresh auction notified on 21.4.2008. In case the Respondent No. 6 had actually felt that he was being deprived of mining operations for no fault of his and that he was entitled to some additional period for mining, he ought to have taken proper steps within time and not after the approval for mining lease for another period of three years was granted in favour of

a third person, namely, the Petitioner. Even assuming that the Respondent No. 6 moved applications for extension of lease on 10.6.2008 and thereafter on 18.2.2009, but when no response was given to him, he, like a man of ordinary prudence, ought to have approached the Court or appropriate forum if otherwise available under the Rules, for vindicating his rights and redressal of his grievance, but having not done so, he was not entitled to extension of the period of his lease after the approval was granted by the State Government, in favour of the Petitioner, particularly when the aforesaid lease was not in existence at all. The inaction on the part of Respondent No. 6 during all the aforesaid period persuades us to observe that he was not aggrieved by the steps taken for grant fresh lease by holding an open auction, after the term of his lease had expired.

30. This also fortifies the fact that the Respondent No. 6 was not really eager to get the term of the lease extended and he casually took a chance by moving the aforesaid applications so late, but that attempt of his succeeded in getting the order from the State Government allowing him to undertake mining operations for an additional period of 8 months and 19 days.

31. The aforesaid delayed action on the part of the Respondent No. 6, is sufficient to deny extension in his favour.

32. That apart, the lease rent for the period aforesaid having not been deposited by him till date, the Respondent No. 6 being defaulter is also not entitled to the equitable relief. An explanation has been given by learned Counsel for Respondent No. 6 that it was the District Magistrate, who permitted him to deposit the amount of royalty aforesaid at the end of 3rd year, but he could not deposit the same. We fail to appreciate as to under which provision or rule the District Magistrate was empowered to relax the time schedule for payment of royalty.

33. There is one more aspect of the matter which is also of great relevance. The Respondent No. 6 was charged of illegal mining, for which an F.I.R. was also lodged against him for the period under lease, a fact, which has not been disputed by counsel for the Respondent No. 6, though she says that she is not aware as to what happened to the aforesaid criminal charge. This makes it evident that the Respondent No. 6 was charged of illegal mining during the period of lease. Further case is that the Respondent No. 6 since did not deposit the royalty, a recovery notice was also issued against him which made him to approach the Commissioner, who set aside the proceedings on technical grounds and remanded the matter to the District Magistrate. The District Magistrate issued fresh recovery notice and in pursuance thereof an amount of Rs. 23,33,045/-was deposited by the Respondent No. 6 only on 4.3.2010, i.e. the date on which he allegedly moved an application for extension of the term of lease.

34. Learned Counsel for the Respondent No. 6, in defence, submitted that the Respondent No. 6 cannot be treated as defaulter as the earlier recovery certificate

was set aside by the Commissioner and, thereafter, when a fresh recovery citation was issued, the money had been deposited. The interpretation so given by Respondent No. 6, if accepted, would mean that any lessee who seeks extension can withhold the money under the lease or royalty for any period and can deposit the same at his own sweet will. The deposit of money on coercive steps being taken would be sufficient to deny the extension as well as the grant of equitable relief. A lessee, who does not adhere to the terms of the lease in the matter of payment of royalty and is charged of illegal mining, can neither be granted lease nor would have a case in his favour for renewal or grant or extension of lease.

35. Learned Counsel for the State has also urged that there is no provision under the Rules, 1963 for extension of the lease and this Court has also time and again held that no extension of lease can be granted.

36. Following cases have been referred by the counsel for the Petitioner in this regard:

1. Karan Singh v. State of U.P. and Ors. in Civil Misc. Writ Petition No. 51206 of 2000, decided on 1.12.2000.

2. [Inam Vs. State of U.P. and Others,](#)

3. [Vashisht Kumar Jaiswal Vs. State of U.P. and Others,](#)

4. [Kanhaiya Singh Vs. State of U.P. and Others,](#)

5. Suresh Kumar Pandey & Brothers and Anr. v. State of U.P. and Ors., in Civil Misc. Writ Petition No. 2980 (M/S) of 2006, decided on 22.11.2006

6. Kulwant Singh and Anr. v. State of U. P. and Ors., in Writ Petition No. 970 (MB) of 2006, decided on 21.8.2006.

7. Haji Nawab Ahmad v. Nagar Palika Parishad and Anr., in Civil Misc. Writ Petition No. 13360 of 2004, decided on 28.6.2004

37. The plea of Respondent No. 6 is that though extension cannot be granted as a matter of right under the Rules, 1963, but in view of the law laid down by the Apex Court in the case of Beg Raj Singh (Supra), there can be an extension of the term of lease also.

38. We do not intend to enter into this controversy in detail, as the legal position in regard to extension of the term of lease under the Rules, 1963 remains unrebutted. May be that in a case where the facts of the case do permit, such an extension be granted, as was in the case of beg Raj Singh (supra). But here, we find the aforesaid case is of no assistance to Respondent No. 6, as the facts of that case were entirely different. The aforesaid judgment was passed taking into consideration the terms of lease which was to be granted in pursuance of the Government Order dated 25.5.1995 in favour of a person who had discovered the mines and to whom the

lease was to be granted atleast for a period of three years, which term may extend upto five years, but that legal right was infringed by the action of the State Government.

39. Their Lordships, in the aforesaid case, very specifically clarified that it does not mean that in each and every case, further extension can be granted if there is an interim order or the mining has been disrupted because of some action, may be for no fault of the lessee. The conduct of such a lessee thus would constitute a major factor for considering whether lease should be extended or not. Besides, it is also to be seen whether third party rights have been created and is it equitable to grant such a relief.

40. The Respondent No. 6, who was admittedly the defaulter in making payment of royalty not only for the period during which there was an interim order of the High Court but also during the subsequent period of lease and he was also charged of illegal mining, who deposited the amount only when coercive steps were taken, cannot even otherwise claim the benefit of Beg Raj Singh's case.

41. The extension, as already observed, could also not have been granted for the reason that the extension can be given to a lease which is in subsistence and for which an application for extension has to be moved during the subsistence of the lease. If application is moved during the subsistence of lease, the extension may be considered in accordance with law, but when the lessee seeks extension after expiry of the period of lease, such an extension would mean granting of fresh lease under the same very royalty/lease rent, which was fixed under the earlier lease and that too without looking to the competitive claims of other eligible and willing persons. There is no provision under the Rules, where such a lease could be granted.

42. Besides the above reasons, it also needs be clarified that when the Rules, 1963, under which the lease is granted, do not envisage of any extension of the term of the lease, beyond the period for which it has been granted, of course, subject to its renewal, there cannot be any authority with the District Magistrate or the State Government to grant any such extension, unless the case falls within such exception, as was in the case of Beg Raj Singh (supra) i.e. where some statutory right of the lessee has been infringed.

43. The plea of the lessee, that disruption in mining operation, for any reason whatsoever, during the lease period, has resulted or would result in financial loss, can also not be sufficient in itself alone, to justify extension of the term of the lease, as taking contracts/leases for mining is a commercial venture of such a person, which venture being a purely business activity, is prone, both to profits and losses alike. A person, who indulges himself in business, is supposed to know and understand that losses are also suffered in business. There cannot be any guarantee by the State Government/District Magistrate assuring reasonable profits in mining operations, while granting lease.

44. We are, thus, of the considered opinion that the State Government while passing the impugned order dated 31.8.2010, completely ignored and overlooked the facts of the case and only after misreading the material and the ratio laid down in the case of Beg Raj Singh (Supra), passed the impugned order dated 31.8.2010, which deserves to be set aside and is hereby set aside.

45. The Respondents are directed to issue formal order of grant of lease in favour of the Petitioner forthwith and allow him mining operations over the area in question.

46. The writ petition stands allowed. Costs easy.