

(2009) 08 JH CK 0032**Jharkhand High Court****Case No:** None

Dhani Ram Mahato

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Aug. 20, 2009**Citation:** AIR 2010 Jhar 63**Hon'ble Judges:** M.Y. Eqbal, J; Dilip kumar sinha, J**Bench:** Division Bench**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

1. Heard the parties.

2. By this writ petition, by way of Public Interest Litigation, prayer has been made for cancelling the stone mining lease of plot No. 787 and 807 of Rangdungri, Samram which was leased out to respondent No. 7 for a period of ten years and part of the aforesaid plot measuring six acres leased out to respondent No. 6 on the ground, *inter alia*, that any kind of mining activities in that area may endanger the lives and properties of the villagers as a result of flood in the village since the plot in question is located on the bank of river Karkhai.

3. After considering the report furnished by the technical experts and the stand taken in the counter-affidavit, this Court by order dated 7.5.2009 directed the District Judge, Saraikela-Kharsawa along with Chief Engineer, Water Resources Department of that area to verify the correctness of the report submitted by the Technical Expert, who are merely Junior Engineers. It is worth to mention here that the Technical Expert, who is the Junior Engineer, in their report mentioned that mining operation would not create over flow of water from river in question to the village. In the report, submitted by the District Judge, Saraikela-Kharsawa it is stated that the mining operation will cause great loss to the villagers. For better appreciation paragraphs 3 and 4 of the report is quoted herein below:

3. An all weather road, which connects the village Samrum to the Kharkai river is lying at about distance of 100 meters towards north of the last point of hillock. On verification it appears that the village Samrum is situated at a height of 4 meters plus from H.F.L. This spot of 4 meters is obtained from the first house situated on that road which belongs to one Shambhu Nath Mahato. Thus, also the part of report relating to the height also appears to be correct.

4. One very particular feature, which is present on the spot is the situation of hillock and the curve of the river. Since the hillock situate just adverse to the curve the current of water, in course of heavy discharge such as during high floods etc. in such situation the village got protection form the hillock as also some spur available at the place. On glaring thing, which also became apparent, which was caused during previous year flood, the embankment of the river situate just adverse to the hillock was eroded badly. If the hillock and the spur would not have on the eastern side then in that situation the eastern embankment could have suffered a great loss causing damage opt the village Samrum. It has been suggested by the Chief Engineer present that if the hillock if permitted to be cut down then it should not be removed fully rather one meter above the H.F.L. can be left in the hillock, because the hillock is giving protection like flood wall, man made, at any embankment site to protect erosion. Though the hillock being very small it would protect only fraction of the area and since the river is in its early streams it may erode the portion which is not protected by the hillock.

4. Pursuant to the report submitted by the District Judge, Saraikela-Kharsawa a supplementary counter-affidavit was filed by respondent Nos. 6 and 7 giving some suggestion to the effect that if no extraction of stone from these plots are allowed then in such a situation at least the respondents may be allowed to use the crusher machine by bringing stone from out side.

5. We do not find justification in allowing respondent Nos. 6 and 7 to run a crusher machines for doing any kind of mining activities in the plot in question because that will not only cause damage to the adjacent area/village but that will also cause serious health hazards.

6. We, therefore, allow this application and the respondents are directed to stop any kind of mining activities on the plot in question.

7. The concerned authority of the Government is also directed to cancel the lease made in favour of the respondent Nos. 6 and 7.