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BEG RAJ SINGH
v.
STATE OF U.P. AND ORS.

DECEMBER 18, 2002

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[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

Practice and Procedure; Right to Relief:

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G.O. issued by the State Government for sand mining lease—Term of lease three to five years—Lease granted in favour of lessee for one year initially—Collector issued order for extension of lease by a further period of 2 years—On revision, State Government held, there was likelihood of getting higher revenue by holding auction of mining rights, thus setting aside Collector's order—In writ proceedings, High Court held that State

D

Government was not justified in interfering with extension order since initial lease should have been for 3 years but denied any relief on the ground that proposed auction would be in public interest and 3 year period had already ended—On appeal, Held: Right to relief should have been decided on the date on which petitioner commenced proceedings—However, under

E

exceptional circumstances due to subsequent/intervening events, relief could be denied in equity but it should not be denied only on account of time lost in proceedings—Lessee allowed to operate mine for remaining period of lease—Direction issued.

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State of Uttar Pradesh issued a G.O. to lease out mining rights of Yamuna River Bed for 3 years to 5 years term. Appellant was granted lease for mining of such area, initially for a period of one year which was extended by the Collector by a further period of 2 years. One competitor of the appellant filed a revision. State Government allowed the revision on the ground that Government have decided to hold auction of the mining rights in public interest and are likely to get higher revenue. Appellant preferred writ petition. High Court dismissed it but opined that extension of mining rights in favour of appellant was justified, however, denied the relief on the ground that auction of mining rights would be in public interest and 3 years period of lease came to an end. Hence this appeal.

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It was contended for the appellant that since the appellant made a huge

expenditure on mining area, as per State Government policy, he was legitimately entitled to operate the mine for 3 years, State Government was not justified in interfering with the collector's order for extension of mining rights at the instance of a third party; and that despite the finding that the State Government was unjustified in setting aside collector's Order for extension of mining rights, the appellant was denied relief by the High Court.

Allowing the appeal, the Court

HELD: 1.1. The ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and right to relief should be decided by reference to the date on which the petitioner entered the portals of the Court. A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events. The relief to 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. [534-B-E]

1.2. A petitioner having been found entitled to a right to relief, the Court would as an ordinary rule try to place the successful party in the same position in which he would have been if the wrong complained against would not have been done to him. The instant case is such a case. The delay in final decision cannot, in any manner, be attributed to the appellant. [534-E-F]

1.3. Merely because a little higher revenue can be earned by the State Government that cannot be a ground for not enforcing the obligation of the State Government which it has incurred in accordance with its own policy decision. [534-G]

1.4. The appellant shall be allowed to operate mine for a full period of three years subject to adjustment for the period for which he has already operated. The appellant shall remain liable to pay royalty and make other payments to the State Government in accordance with the terms of the lease.

[535-A]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8681 of 2002.

From the Judgment and Order dated 13.5.2002 of the Allahabad High Court in CMWP No. 18300/02.

B M.N. Rao, Ms. Tameem Hashmi, F.I. Choudhury and Ms. Promila for the petitioner.

Rakesh Dwivedi, Arvind Kumar Shukla, Ashok K. Srivastava, S.W.A. Qadri, Amitesh Kumar and Rahul Singh for L.R. Singh for the Respondents.

C The Judgment of the Court was delivered by

R.C. LAHOTI, J. Leave granted.

D The State of Uttar Pradesh took a policy decision as evidenced by G.O. dated 25.5.1995 for remission of the lease of the river bed Yamuna where sand and moram along with bajri bolder, reta or anyone of them is found in mixed condition. The policy decision contemplates such areas as are completely new and have been searched by the applicant himself being leased out on 'first come first serve' basis. As provided by the G.O. based on the opinion of Directorate of Geology and Mining, the term of such lease shall normally be between three to five years.

E The appellant applied for one such sand mining lease in accordance with the policy decision contained in the G.O. The Collector, Gautam Budh Nagar granted the said lease to the appellant. The lease was executed for a period of one year w.e.f. 3rd June, 1998. Before the expiry of the term of the lease, the appellant sought for a renewal for another period of two years. The **F** Collector granted such extension vide order dated 20.12.2000; the principal consideration for granting such renewal being that the lease, as originally executed, should have been for a minimum period of three years which having not been done and erroneously the lease having been executed for a period of one year the appellant was entitled to such extension for two years.

G It appears that around the time when the appellant was allowed the extension of two years, the Government had taken a decision to hold an auction of the sand mining lease. The respondent No.3, a competitor aspirant of the appellant preferred a revision before the State Government against the order of the Collector dated 20.12.2000. The revision was filed after expiry of **H** one year and four months from the date of the order of extension. The State

Government condoned the delay in filing the revision on the ground that the revision was filed within the period of limitation calculated from the date of the knowledge of the respondent No.3. The issue as to locus standi was also decided in favour of respondent No.3. The State Government, vide its order dated 22.4.2002, set aside the order of the Collector influenced mainly by the consideration that the State Government having decided to hold an auction of the mining rights, the State Government was likely to gain higher revenue and therefore it was in public interest to transfer mining rights by holding an auction.

The appellant preferred a writ petition in the High Court feeling aggrieved by the order of the State Government. Vide order dated 13.5.2002, the High Court has dismissed the writ petition. A perusal of the impugned order shows that in the opinion of the High Court the order of the Collector granting two years extension of mining rights to the appellant was justified and the State Government was not justified in interfering and setting aside the order of the Collector. The High Court agreed that the initial lease should have been for a period of three years in which case there would have been no occasion for litigation. However still, the High Court denied the relief to the appellant on the ground that auction would sub-serve public interest by fetching higher royalty to the State Government and further because the period of three years calculated from the date of the original grant had in any case come to an end and therefore no relief could be allowed to the appellant. The appellant has filed this appeal by special leave.

The only submission made by the learned counsel for the appellant is that the appellant has been given a very rough deal by the State Government and the injustice done to the appellant the High Court has failed to redeem. He had identified and explored the new mining area and made huge expenditure in making the mining area approachable and therefore it was the legitimate expectation of the appellant that he would be entitled to operate the mine for a minimum period of three years as per the declared policy of State Government. The State Government should not have interfered with the order of the Collector and that too at the instance of a third party—the respondent no.3, when no auction was held and no right was created in favour of the respondent No.3. Matter as to the grant or renewal of the lease for a total period of three years was in accordance with the policy of the State Government and was a matter between the State and the appellant. It was submitted at the end that the appellant has been agitating his right diligently throughout and the time lost in prosecuting legal proceedings upto the High Court wherein the plea

A raised by the appellant laying challenge to the order of the State Government was found to be meritorious and the order of the State Government held liable to be set aside, the appellant should not have been denied relief and should have been allowed to operate the mine for that period by which the mining operation by the appellant fell short of three years time.

B Having heard the learned counsel for the appellant as also the learned counsel for the State and the private respondent, we are satisfied that the appeal deserves to be allowed. The ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and right to relief should be decided by reference to the date on which the

C petitioner entered the portals of the Court. A 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 to 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

D 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 judgments. 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

E 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. A plaintiff or petitioner having been found entitled to a right to relief, the Court would as an ordinary rule try to place the successful party in the same position in which he would have been if the wrong complained against would not have been done to him. The present one is such a case. The delay in final decision

F cannot, in any manner, be attributed to the appellant. No auction has taken place. No third party interest has been created. The sand mine has remained un-operated for the period for which the period of operation falls short of three years. The operation had to be stopped because of the order of the State Government intervening which order has been found unsustainable in

G accordance with stipulations contained in the mining lease consistently with the G.O. issued by the State of Uttar Pradesh. Merely because a little higher revenue can be earned by the State Government that cannot be a ground for not enforcing the obligation of the State Government which it has incurred in accordance with its own policy decision.

H For the foregoing reasons, the appeal is allowed with costs. The impugned

order of the High Court, dismissing the petition filed by the petitioner, is set aside. Instead, it is directed that the appellant shall be allowed to operate mine for a full period of three years subject to adjustment for the period for which he has already operated. The appellant shall remain liable to pay royalty and make other payments to the State Government in accordance with the terms of the lease. A

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S.K.S.

Appeal allowed.