

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10305 OF 2014
(Arising out of SLP (C) No.29804 of 2012)

Tahasildar Begunia ... Petitioner

VERSUS

Jatin Routray ... Respondent

O R D E R

Leave granted.

Heard learned counsel for the appellant. Despite notice, no one has entered appearance on behalf of the respondent.

The respondent knocked at the doors of the High Court of Orissa for grant of work order on the foundation that he was the highest bidder and in auction, Bhuinpur Laterite Stone Quarry was settled in his favour for the financial year 2011-12.

As is manifest from the order of the High Court, it did not think it appropriate for issue of the work order in favour of the respondent, however, it directed refund of the amount in question.

Reasons for the same read as follows :

Signature Not Verified

Digitally signed by

Gulshan Kumar Arora

Date: 2014.11.21

17:43:08 IST

Reason:

"5. We have heard the learned counsel for the

parties and perused the record. There is

acknowledgment by the competent authority regarding the communication made to the Petitioner as per the aforesaid contention. Petitioner has also not produced any documents

showing his diligency by approaching the competent authority to execute the agreement and to issue the work order fulfilling the requirement as per the procedure. Therefore, the Petitioner is not diligent and for that reason also the work order is not issued in his favour till date. It is an undisputed fact that no agreement has been executed between the parties. Further, only two months time is left out for completion of the financial year 2011-12. If we

will pass any order directing the Opposite Party to issue work order in favour of the Petitioner at this stage, there will be loss of revenue of the State Government so also it will be taking away the rights of the intending bidder for the financial year 2012-13. Therefore, it would be just and proper for this Court to direct the Opposite Party to refund the amount deposited by the Petitioner within three weeks from today and make fresh auction of the sairat in question for the financial 2012-13 strictly in accordance with law."

It is submitted by learned counsel for the appellant that the High Court has not appreciated the stand taken by the State that though the auction Quarry was settled in favour of the respondent, the respondent had not deposited the Postal Savings Account as per the requirements and further he had not executed the necessary agreement as required under Rule 53 of the Orissa Minor Mineral Concession Rules, 2004.

As we notice from the order impugned, the High Court has noted that there was no communication to the respondent for the purpose of execution of the agreement and the respondent had also not shown any diligence to get the agreement executed. On that basis, the aforesaid order came to be passed.

Rules 35, 41, 50 and 53 of the Orissa Minor Mineral Concession

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Rules, 2004 read as under :

"35. Auction of minor minerals - Notwithstanding anything mentioned in these rules, sources of minor minerals specified in item 1(i) of Schedule III shall be sold or disposed of by public auction on such terms and conditions as may be specified in the auction sale notice by the competent authority.

xxx

xxx

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41. Earnest money- Any person who intends to participate in auction sale shall deposit earnest money fixed by the competent authority.

xxx

xxx

xxx

50. Security Deposit- In case the bid is confirmed and the total bid amount is deposited, the earnest money deposited, before the auction agreement is executed shall be converted to security deposit by depositing the same through Postal Savings Account duly pledged in favour of the concerned competent authority. Security

deposit would be refunded after expiry of the auction period if the auction holder has fulfilled all conditions of assignment. If any of the conditions of assignment is violated, the security deposit may be forfeited in whole or in part by the competent authority.

xxx

xxx

xxx

53. Agreement- An agreement containing the terms and conditions of auction sale, quarrying operations, etc. shall be executed by the successful bidder and the competent authority as per the provisions of the Registration Act, 1908 and the Stamp Act, 1899 within seven days from the date of payment of bid amount in full."

On a perusal of Rule 50, it is clear as crystal that he has to pledge the Postal Saving Account in favour of the concerned competent authority and execute the agreement. As is evident, the respondent did not come forward to do the same, and it was to be

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done before the auction agreement is executed. As the respondent failed to execute the agreement, security deposit is liable to be forfeited in whole or in part.

In view of the same analysis, there was no justification for grant of issue of a direction for refund and, therefore, we are of the considered view that the order passed by the High Court cannot be said to be defensible.

Resultantly, the appeal is allowed and the order passed by the High Court is set aside. There shall be no order as to costs.

.....,J.
(Dipak Misra)

.....,J.
(Uday Umesh Lalit)

New Delhi;
November 17, 2011.
ITEM NO.56

COURT NO.6

SECTION XIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 29804/2012

(Arising out of impugned final judgment and order dated 09/01/2012 in WP No. 22602/2011 passed by the High Court Of Orissa At Cuttack)

TAHASILDAR BEGUNIA

Petitioner(s)

VERSUS

JATIN ROUTRAY

Respondent(s)

(with interim relief and office report)

Date : 17/11/2014 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. Shibashish Misra, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)