

**IN THE HIGH COURT OF MADHYA PRADESH AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 1<sup>st</sup> OF SEPTEMBER, 2022

**WRIT PETITION No. 8953 of 2022**

Between:-

ASHISH PANDEY S/O LATE SHRI BASANT KUMAR  
PANDEY, AGED ABOUT 47 YEARS, OCCUPATION:  
BUSINESS 35/10 RISHI NAGAR EXTENSION, UJJAIN  
(MADHYA PRADESH)

.....PETITIONER

*(BY SHRI (DR.) MANOHAR DALAL, ADVOCATE)*

AND

1. THE STATE OF MADHYA PRADESH THROUGH  
PRINCIPAL SECRETARY MANTRALAYA  
VALLABHBHAVAN, BHOPAL (MADHYA PRADESH)

2. DIRECTOR DIRECTORATE OF GEOLOGY AND  
MINING MADHYA PRADESH, 29-A KHANIJ BHAVAN,  
ARERA HILLS, BHOPAL (MADHYA PRADESH)

3. COLLECTOR UJJAIN (MADHYA PRADESH)

4. MINING OFFICER COLLECTORATE, UJJAIN  
(MADHYA PRADESH)

.....RESPONDENTS

*(BY SHRI BHASKAR AGRAWAL, GOVT. ADVOCATE)*

*This petition coming on for admission this day,*

***JUSTICE VIVEK RUSIA passed the following:***

**O R D E R**

The petitioner has filed the present writ petition under Article 226 of the Constitution of India being aggrieved by the order dated 07.04.2022 passed by the Mining Officer, Collectorate, District – Ujjain, whereby the petitioner has been directed to deposit dead rent for the year, 2019, 2020, 2021 and 2022 before execution of a deed for renewal of the lease.

02. The facts of the case in short are under:-

2.1. The petitioner was having a mining lease for the Government land bearing Survey No.942 area of 3.600 hectares situated at Village & Tehsil – Ghatia, District – Ujjain. The petitioner applied for renewal of the lease for another 10 years vide application dated 16.05.2018 to the Mining Brach of Collectorate, District – Ujjain. A decision has been taken for renewal of the lease for the area admeasuring 3.600 hectares for the period of 10 years from the year 01.01.2019. Vide letter dated 20.01.2021, the petitioner was directed to comply with provisions of Rule 42 of M.P. Minor Mineral Rules, 1996 (in short the Rules of 1996). Vide order dated 12.01.2022, the Director of Mining Department has approved for execution of sanction under Rule 6 & 18(2) of the Rules of 1996 for grant of lease for a period of 10 years from 01.01.2019 subject to compliance of the amended provisions of the Rules of 1996 (22.01.2022).

2.2. Now vide order dated 07.04.2022, the petitioner has been

called upon to execute an agreement with the deposit receipt of dead rent for the years, 2019, 2020, 2021 and 2022. Hence, the present petition before this Court.

03. Shri Manohar Dalal, learned counsel for the petitioner submits that there is no such provision of charging dead rent from the prospective leaseholder under the provisions of the Rules of 1996 for the period when there was no lease. Even otherwise, there was no delay on the part of the petitioner in submitting an application for renewal. The renewal was withheld by the State Government due to the pendency of 53 writ petitions before the Full Bench of M.P. High Court. After the decision given by the Full Bench on 21.09.2020, the Additional Secretary, Mining Department vide letter dated 27.11.2020 directed all the Collectors, Mining Branch to initiate a process to decide the pending applications for renewal of the lease. Therefore, it is not a case where the petitioner did not operate the lease to make him liable to pay the dead rent. The Government was not taking any decision in respect of renewal because of the pendency of the matter before the Full Bench of this High Court, hence, the petitioner cannot be compelled to deposit the dead rent from the year 2019 to 2022 before the execution of the agreement for lease.

04. Learned Government Advocate appearing on behalf of the respondents / State submits that as per Rule 30 of the Rules of 1996, the petitioner is liable to pay lease rent which is a condition precedent for grant of quarry lease or renewal of the lease. Rule

30(1)(a) of the Rules of 1996 specifically provides that the lessee shall pay for every year a dead rent at the rates specified in Schedule IV in the advance for the whole year on or before the 20<sup>th</sup> day of the first month of the year. Rule 30(1)(b) also provides that the lessee shall pay the dead rent or royalty in respect of each mineral whichever is higher in amount but not both. Since there was no extraction of minerals, hence, no royalty was paid to the State for these four years, hence, under Rule 30(b) of the Rules of 1996, the dead rent is liable to be paid to compensate for the non-payment of the royalty. It has further been submitted by the learned Government Advocate that under Secretary of the State Government vide letter dated 09.05.2022 has clarified that all the taxes, royalty and rent are liable to be paid before execution of mining lease agreement / renewal. Hence, the writ petition is liable to be dismissed.

05. Shri Dalal, learned counsel for the petitioner is relying upon a judgment delivered in the case of ***King Pal Singh v/s The State of U.P. & Others reported in (1996) 11 SCC 571*** in which the Apex Court has held that the dead rent is calculated based on a total area of the lease while the royalty is calculated on the quantity of mineral extracted or removed. The dead rent is a fixed return to the lessor and the royalty is a return which varies with the quantity of mineral extracted or removed. Shri Dalal submits that the petitioner is not disputing the changeability of the dead rent from the lessor if the lessee does not excavate any mineral during the

lease period. But in the present case, there was no lease in favour of the petitioner, therefore, he cannot be compelled to pay the dead rent for that relevant period.

06. We have heard learned counsel for the parties at length and perused the record.

07. It is correct that dead rent is not defined under the Rules of 1996, but the Apex Court in the case of *King Pal Singh (supra)* has defined the meaning of dead rent. There is a charging provision under Rule 30 of the Rules of 1996, whereby the lessee shall pay for every year, yearly dead rent at the rate specified in Schedule IV in advance and as per sub-rule (b), the lessee shall pay dead rent or royalty in respect of each mineral whichever is higher in the amount but not both.

07. There is no dispute or challenge to the levying of the dead rent from the lessee under Rule 30 of the Rules of 1996. ***The issue in question is whether in the given facts and circumstances, the demand for dead rent for the year, 2019 to 2022 is justified or not.*** The petitioner was having a mining lease since 20.06.1998 and before the expiry of 10 years, he applied for renewal of the lease deed on 16.05.2018, which is evident from the letter dated 22.01.2021 written by the Director (Annexure-P/3). The Director has passed an order dated 12.01.2022 for the renewal of the lease for the period of 10 years from 01.01.2019 and directed for execution of the agreement under the provisions of the Indian Registration Act, 1908.

08. The agreement between the parties is liable to be executed from the date of presentation of the lease deed to the competent authority for its registration. The respondents are reckoning 10 years of lease from 01.01.2019 for which the petitioner has no objection and there is no relief claimed that the lease should be renewed from the date of execution of the agreement. The grievance of the petitioner is only in respect of the demand for dead rent from the year, 2019 to 2022.

09. Admittedly, the writ petition was filed before the High Court of Madhya Pradesh at Indore Bench, in which vide order dated 27.06.2019 State Government was directed to conduct an auction in respect of grant of quarry / mining lease under the Rules of 1996. Thereafter, the matter was referred to the Full Bench in ***W.P. No.25364 of 2019 (M/s Trinity Infrastructure v/s The State of Madhya Pradesh & Others)*** and 55 writ petitions. Vide order dated 21.09.2020, the Full Bench of this High Court has held that for grant of quarry lease for minor mineral *stone for making Gitti by mechanical crusher* at Serial No.6 of Schedule, it would only be by open auction on the Government land.

10. Thereafter, an order dated 27.11.2020 has been issued by the Mining Department of the Government of Madhya Pradesh to all the Collectors for taking the decision on all pending applications for renewal of the lease. Admittedly, from the years 2019 and 2020 there was no renewal of the lease in favour of the petitioner, hence, he could not operate the mining lease and not

liable to pay dead rent for those years 2019 to 2022. The Director has passed an order dated 12.01.2022 in favour of the petitioner for renewal of the lease. Under Rule 30 of the Rules of 1996, every lessee is liable to pay yearly dead rent or royalty for the lease period. Admittedly, there was no lease in favour of the petitioner from the years 2018 to 2022. The royalty or dead rent is payable to the Government only during the currency of the lease. Since there was the excavation of the mineral due to non-renewal of the lease, hence, no royalty could be paid to the Government, therefore by renewing the lease deed from the back years the Government is demanding dead rent which is not permissible especially when the petitioner was not at fault. Now by renewing the lease deed from the back date i.e. from 01.01.2019 for 10 years, the respondents are demanding the dead rent from the petitioner for the last 4 years when he did not excavate the mineral and did not earn out of it, hence, demand is unreasonable, harsh and not justifiable. Accordingly, the impugned order dated 07.04.2022 is hereby set aside only with respect to the demand for dead rent.

The Writ Petition is allowed.

No order as to cost.

(VIVEK RUSIA)  
J U D G E

(AMAR NATH (KESHARWANI))  
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