

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. NO. D-3968 of 2013

Present:
Mr. Justice Sajjad Ali Shah.
Mr. Justice Muhammad Junaid Ghaffar

M/s Hussain Coal Mines-----Petitioner

Versus

Director General & others-----Respondents

C.P.NO.D-3969/2013

M/s Mohiuddin Coal Mines-----Petitioner

Versus

Director General and others-----Respondents

Date of hearing: 18.08.2015

Date of order: 18.08.2015

Petitioners: Through Mr.Rafiq Kalwar, Advocate

**Respondents: Through Mr. Ghulam Mustafa,
Addl. A. G**

JUDGMENT

Muhammad Junaid Ghaffar, J:- Through aforesaid petitions, the petitioners have impugned Notification(s) dated 24.9.2013, whereby, Mining Permits of Coal issued in favour of the petitioners, which were valid up to 19.8.2011, have been cancelled/withdrawn.

2. Briefly stated facts are that the petitioner in C.P.No.D-3968 of 2013 was granted Mining Lease for Coal by respondent No.1 for an area of 2000 Acres of Land vide letter dated 1.8.1991 for five years, whereas, petitioner in C.P.No.D-3969 of 2013 was also granted such lease for an area of 1356 Acres of land vide letter dated 20.8.1991 for a period of five years. Thereafter, the said lease was

extended for further period of five years till 19.8.2001, and thereafter, was further renewed for ten years on 11.9.2004. It has been further stated that after expiry of such lease on or about 19.8.2011, the petitioner had approached the respondents for renewal and had also paid challan in this regard, however, instead of renewing the said lease/license, the impugned Notification(s) have been issued, whereby, the said lease/permits have been cancelled.

3. Learned Counsel for the petitioner submits that the impugned Notification(s) are without any lawful authority and are in gross violation of the principles of natural justice as the same have been issued without affording any opportunity of hearing, whereas no reason whatsoever has been assigned in the impugned Notification(s) for Cancellation of lease. Learned Counsel has further contended that the Mining Committee constituted pursuant to Rule 4 of Sindh Mining Concession Rules 2002, had recommended the renewal of lease for further period and a summary was also moved in this regard for approval of the Competent Authority, however, instead of approval, the impugned Notification(s) have been issued.

4. Conversely, learned Additional Advocate General, Sindh has raised a preliminary objection with regard to maintainability of the aforesaid petitions on the grounds that Rule 71 of the Rules 2002, provides for an alternate remedy to file an appeal, whereas, the impugned Notification(s) have been issued in abandoned pre-caution as the lease issued in favour of the petitioner stood expired on 19.8.2011 and were never renewed thereafter.

5. We have heard both the learned Counsel and by consent, the aforesaid petitions are being decided finally at Katcha peshi stage. From perusal of the record, it appears that there is no dispute with regard to the fact that though, Mining lease / Permits were issued to the petitioner(s) initially for a period of five years, which were renewed for further period of five years and thereafter for another 10 years, however, the said lease for Mining stood expired on 19.8.2011. After such expiry no further renewal has been granted in favour of the petitioners, therefore, at the very outset we may observe that in fact there was no occasion for

the respondents to issue impugned Notification(s) for cancellation of such lease / permission. The lease issued for Mining does not create a vested right in favour of the petitioners for its renewal in perpetuity. Once such lease has been issued for a specified period of time, its renewal is at the discretion of the grantor. If the grantor decides not to renew it, the petitioners do not have any locus standi to seek a mandatory declaration against the respondents for its renewal. At the most the petitioners can claim compensation / damages, if any, incurred on such investment, by filing appropriate proceedings before a Civil Court having jurisdiction in accordance with law.

6. It is also pertinent to observe that in view of Section-60 of the Easement Act 1882, the Licensee [petitioner(s)] have a very limited right as against a tenant, who cannot be evicted otherwise than provided under the Rent Laws. Section-60 of the said Act provides that License can be revoked by the Grantor, unless it is coupled with a transfer of property and such transfer is in force; or the licensee, acting upon the license, has executed a work of permanent character and incurred expenses in this regard. In the instant matter, we are afraid that both the aforesaid conditions are not attracted, whereby protection could be sought in terms of Section-60 of the Easement Act, whereas, Section 62 of the said Act clearly provides that the license is deemed to be revoked, once it has been granted for a limited period and on expiry of such period, it stands revoked.

7. The case of the petitioners in the instant matter is more appropriately covered in terms of Section 52 of the Easement Act, 1882, which provides that where one person grants to another, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license. In the case of grant of permission for mining, no lease can or has been granted and it is only a licence for excavation on the land of the grantor. No interest in the property is assigned or transferred nor this is the case of the petitioners, therefore, mere use of the word "*lease*" in the permission, even otherwise does not confer any title on the licensee. It is in fact

not the transfer of ownership in the property; rather it is merely a permission to do excavation, or to do something lawfully, which otherwise would be unlawful to do so. It never creates or confers rights physically in respect of the property.

10. In view of hereinabove facts and circumstances, we are of the view that both the petitions being misconceived in fact and law are liable to be dismissed. Accordingly by means of a short order, we had dismissed both the petitions in the earlier part of the day and above are the reasons in support thereof.

JUDGE

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