

Office of Jodhpur Development Authority, Jodhpur

No. 45-61

Dated: Jodhpur, the 3rd of November, 2009

**PROCEEDINGS OF SPECIAL MEETING (4th MEETING) OF
THE JODHPUR DEVELOPMENT AUTHORITY
HELD ON NOVEMBER 3, 2009**

The Fourth meeting of the Jodhpur Development Authority (hereinafter referred to as "JDA" or the "Authority") was held under notice dated 30/10/2009. The following members of JDA attended and took part in deliberations in the meeting:

1. Shri Sandeep Verma, Chairman, Jodhpur Development Authority;
2. Shri Naveen Mahajan, Collector & District Magistrate, Jodhpur;
3. Smti. Amita Choudhary, Zila Pramukh, Jodhpur;
4. Shri Gaurav Goyal, Commissioner, Jodhpur Development Authority;
5. Shri P. P. Mathur, Additional Chief Engineer, P.W.D., Jodhpur;
6. Shri P. R. Beniwal, Deputy Town Planner, Jodhpur;
7. Shri A. K. Bohra, S.E. (City Circle, Jodhpur) P.H.E.D., as representative of Additional Chief Engineer, P.H.E.D., Jodhpur;
8. Shri A. K. Soni, Ex. En, J.V.V.N.L., as representative of Chief Managing Director, Jodhpur Vidyut Vitaran Nigam Ltd., Jodhpur; and
9. Shri R. C. Rayal, Resident Engineer, Jodhpur, Rajasthan Housing Board, as representative of Deputy Housing Commissioner, Rajasthan Housing Board, Jodhpur.

In addition, the following officers were also present as special invitees, without voting rights:

1. Shri Santosh Kumar Sharma, ADM (III), Jodhpur;
2. Shri Tarachand Meena, Secretary, Jodhpur Development Authority;
3. Shri N. K. Dave, Director (Law), Jodhpur Development Authority;
4. Shri Y. S. Sahwal, Mining Engineer, Jodhpur; and
5. Shri Manish Verma, Assistant Mining Engineer, Jodhpur.

At the very outset, the Authority members noted the permission granted by the State Election Commission to hold its special meeting to discuss the specified agenda items and to take a decision thereon, as intimated by letter dated 3/11/2009 of the State Election Commission in response to request made by the Secretary, JDA vide letter number 667 dated 30/10/2009.

Agenda Item # 1:

The Authority noted the existing directions of the Government of Rajasthan, in respect of lands vested in UIT Jodhpur, that are in force since 16/8/2007 as contained in the minutes of a meeting held on 31/7/2007 chaired by the Hon'ble Minister, Mining Department, Government of Rajasthan circulated vide letter dated 16/8/2007. In these instructions, the Government of Rajasthan had directed that the plots are required to be delineated and allotment of quarry licenses is required to be made as per rules. The Authority noted that the Rule 22 (relating to grant of quarry licenses) of Rajasthan Minor Mineral Concession Rules 1986 require notification of intent in the gazette and in newspapers; and that Rule 22 applies to all lands in which minerals vest in the Mining Department as per sections 10 to 12 of the Mines and Minerals (Development and Regulation) Act, 1957, including lands vested in the Government or lands vested in public local authorities.

The Authority further noted that mining is included in the definition of "development" as per section 1(5) of the Jodhpur Development Authority Act 2009 (hereinafter referred to as the "Act"). Further, as per section 48(1) of this Act, JDA may dispose off lands vested in it for purposes of this Act by way of allotment, regularization or auction is subject to conditions and restrictions as may be prescribed by the State Government, and that no development of any land can be undertaken except by or under the supervision of the Authority as per section 48(2) of the Act. The restriction prescribed by Government of Rajasthan vide decisions taken in meeting held on 31/7/2007, the minutes of which were circulated vide letter dated 16/8/2007, were therefore noted in this context.

The Authority also noted that some of its prime responsibilities are to provide for preservation, conservation and development of natural resources (section 21(2)(iii) of the Act); prevention of erosion and provision for afforestation or re-forestation (section 21(2)(v) of the Act); and allocation of land and the extent to which it may be used for mineral exploitation (section 21(2)(xiv) of the Act).

The Authority therefore resolved that the implementation of orders dated 16/8/2007 of the Government of Rajasthan should continue to be undertaken with due regard to the Authority's responsibilities under the JDA Act for conservation of natural resources.

The Authority also noted that while JDA is a local authority as specified under section 3(3) of the Act, it is a "State" within the meaning of Article 12 of the Constitution of India, and land is held by JDA for "public purposes" as defined under section 2(17) of the JDA Act. The Authority therefore noted that its actions are subject to judicial review for compliance with the right to equality guaranteed by Article 14 of the Constitution of India. Disposal or management of lands or any rights therein by JDA through an NOC therefore need to be consistent with the principles of transparency and equality as mandated by the Hon'ble Supreme Court in orders dated 7/12/2006 in Appeal (Civil) 5673 of 2006 arising out of SLP(Civil) No. 10174 of 2006 (Nagar Nigam, Meerut v. Al Faheem Meat Exports Pvt. Ltd & Others).

The Authority therefore further resolved that any management of immoveable property vested in it, as authorised under section 16(k) of the JDA Act, should continue to be guided by principles of openness and transparency through public invitation of applications as provided for in letter and spirit of orders dated 16/8/2007 of the Government of Rajasthan and as directed by the Hon'ble Supreme Court vide orders dated 7/12/2006 in Appeal (Civil) 5673 of 2006 arising out of SLP(Civil) No. 10174 of 2006.

The Authority further resolved that a committee consisting of Commissioner JDA, one nominee of Collector Jodhpur not below the rank of an ADM, Secretary JDA, Director (Law) JDA, the Mining Engineer and the District Forest Officer should go into the modalities of the orders dated 16/8/2007 through which lands fit for grant of quarry licenses or mining permits/leases in any form can be managed, and place the same before the Authority for further deliberations.

Agenda Item # 2:

The Authority noted that the Hon'ble High Court vide orders dated 6/8/2009 in S.B. Civil Writ Petition 1619/2008, has directed JDA to receive an amount from certain private persons (petitioners) and issue a No-Objection Certificate (NOC) in their favor with the appropriate condition that after the mineral Sandstone is exhausted from the area, the land shall vest back to JDA. The Hon'ble High Court has also directed that after an NOC as aforesaid is issued by JDA, Mining Engineer Jodhpur shall grant quarry licenses in favour of the very same private parties (petitioners).

In relation to these orders dated 6/8/2009, the Authority examined all documents relating to the facts and circumstances of the case, and after due deliberations, decided to prefer an appeal before the D. B. of the Hon'ble High Court with a request for immediate stay, while authorizing Commissioner, Jodhpur Development Authority to appoint a suitable and competent lawyer at appropriate fees. The Authority also resolved to request the Government of Rajasthan in the Department of Mining and the Department of UDH to file a similar appeal in the instant case, and to appoint Hon'ble Advocate General, Government of Rajasthan to appear on behalf of the State Government in view of the serious policy-related and financial implications of the orders dated 6/8/2009.

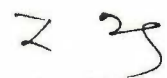
The grounds of appeal as discussed and indicated by the Authority, inter alia, are as follows:

1. That the land in question was reserved for use of UIT by the Collector Jodhpur vide orders dated 4/2/1998 issued under section 92 of the Rajasthan Land Revenue Act, 1957 for a special purpose, i.e. a UIT Scheme, and as such, no mining lease can be granted in respect of such lands in view of the bar under Rule 4(5) of the Rajasthan Minor Mineral Concession Rules 1986.
2. That even otherwise, the land in question vests in the JDA as per section 48(1) read with section 96(1)(c) and (n) of the Act, and as such, the JDA has no authority to permit the vesting of such lands with any other authority, even temporarily, as has been directed by the Hon'ble High Court in orders dated 6/8/2009 at page 11 of the order.
3. That even otherwise, JDA is not the "khatedar" of the land in question as finds mention at page 3 of the said order, or in certain letters of the Mining Engineer; but that lands vest in the JDA under section 48 of the JDA Act and JDA is the landowner and not a khatedari tenant. As such, the grant of quarry licenses on lands vested in JDA is not governed by the same procedures in force grant of such licenses where private persons are recorded khatedars. It is only on private khatedari lands that the khatedar can grant an NOC to any private person as he or she may choose; and the issue of quarry licenses in respect of lands in which mineral rights vest in the Government is squarely covered by Rule 22 of the Rajasthan Minor Mineral Concession Rules 1986, which has not been amended or modified by orders dated 1/4/1991, orders dated 5/3/1998, or orders dated 18/4/1998. The Authority noted that only Rules 18, 25, 28 and 29 have been modified by orders dated 18/4/1998.
4. That even otherwise, orders dated 6/8/2009 of the Hon'ble High Court are contrary to policy decisions taken by the Government of Rajasthan as contained in the minutes of a meeting chaired by the Hon'ble Minister, Mining Department, Government of Rajasthan as circulated vide letter dated 16/8/2007, where such plots would be delineated and allotment of quarry licenses be made as per rules. The Authority noted that the Rule 22 (relating to grant of quarry licenses) of Rajasthan Minor Mineral Concession Rules 1986 require notification of intent in the gazette and in newspapers; and that Rule 22 applies to all lands in which minerals vest in the Mining Department as per sections 10 to 12 of the Mines and Minerals (Development and Regulation) Act, 1957, including lands vested in the Government or lands vested in public local authorities. The Authority noted that if lands are vested, even temporarily, to the Mining Department as directed by the Hon'ble High Court vide orders dated 6/8/2009, or even if the rights to minerals are vested in the Mining Department by JDA, JDA and the Mining Department would be bound to follow the procedures contained in Rule 22 of Rajasthan Minor Mineral Concession Rules 1986 and grant quarry licenses after due publicity which had not been done in the instant case.

5. That even otherwise, JDA is a local authority within the meaning of the "State" as per Article 12 of the Constitution of India; and as such, disposal or management of lands or any rights therein by JDA through an NOC need to be consistent with the principles of transparency and equality as mandated by the Hon'ble Supreme Court in orders dated 7/12/2006 in Appeal (Civil) 5673 of 2006 arising out of SLP(Civil) No. 10174 of 2006 (Nagar Nigam, Meerut v. Al Faheem Meat Exports Pvt. Ltd & Others), where the Hon'ble Supreme Court has held that local authorities are "State" within the meaning of Article 12 of the Constitution, and that a State cannot distribute its largesse at its own sweet will, but that actions of the State must comply with the requirements of Article 14 of the Constitution and ensure that all contracts must be entered into while maintaining full transparency. The Authority also noted that the applications for NOCs were never invited publicly, but that certain private parties signed applications on 11/7/2006 (which were apparently submitted to the Mining Engineer on 19/7/2007) just one day after a meeting Chaired by the Hon'ble Minister, Mining Department, Government of Rajasthan (the fact of a meeting being held on 10/7/2009 is contained in letter dated 10/7/2006 of Mining Engineer addressed to Secretary, UIT, Jodhpur). Neither the UIT, nor the Mining Department made any public advertisement of the option of obtaining an NOC from the JDA, and the entire process was shrouded in secrecy and was completely non-transparent. The Authority noted that no minutes of this meeting dated 10/7/2007 seem to ever have been issued, not were any applications invited publicly, and hence, the recommendation, if any, made by Secretary, UIT to award any NOC to any private persons suffers from a complete lack of transparency and is in violation of the principles laid down by the Hon'ble Supreme Court in Appeal (Civil) 5673 of 2006 arising out of SLP(Civil) No. 10174 of 2006.

6. That even otherwise, the Hon'ble High Court vide orders dated 6/8/2009 has mandated an uncertain and a potentially indefinite time period for which JDA is to vest the lands with the Mining Department. All that has been indicated in these orders of the Hon'ble High Court is that the lands shall vest back in the JDA once the mineral Sandstone is exhausted from the area, thus effectively granting a quarry license to certain persons for an indefinite and uncertain period, which is not in conformity with Rule 16 of the Rajasthan Minor Mineral Concession Rules 1986. The Authority noted that this direction of the Hon'ble High Court (and especially in the context of the fact that the orders of the Hon'ble High Court are also contrary to policy decisions of the Government as contained in minutes of meeting held on 31/7/2007 as circulated vide orders dated 16/8/2007) is not in conformity with the decision of the Hon'ble Supreme Court as contained in orders dated 7/12/2006 in Appeal (Civil) 5673 of 2006 arising out of SLP(Civil) No. 10174 of 2006 (Nagar Nigam, Meerut v. Al Faheem Meat Exports Pvt. Ltd & Others). In this Appeal of 2006, the Hon'ble Supreme Court has clearly directed that it is not for the High Court to fix the terms and conditions of the contract, which is for concerned executive agencies to decide; and that such fixation of terms and conditions is not within the domain of the Courts.

The meeting ended with a vote of thanks to all members present.



(Tarachand Meena)
Secretary
Jodhpur Development Authority

No. 45-61

Dated: Jodhpur, the 3rd of November, 2009

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Copy for kind information and necessary action to:

1. Principal Secretary to Government, Department of Urban Development & Housing, Government of Rajasthan, Jaipur, with a request to file a similar appeal in the instant case, and to appoint Hon'ble Advocate General, Government of Rajasthan to appear on behalf of the State Government.
2. Principal Secretary to Government, Department of Mining, Government of Rajasthan, Jaipur, with a request to file a similar appeal in the instant case, and to appoint Hon'ble Advocate General, Government of Rajasthan to appear on behalf of the State Government.
3. Chairman, Jodhpur Development Authority, Jodhpur.
4. Collector & District Magistrate, Jodhpur.
5. Zila Pramukh, Jodhpur.
6. Commissioner, Jodhpur Development Authority.
7. Chief Managing Director, Jodhpur Vidyut Vitaran Nigam Ltd., Jodhpur.
8. Additional Chief Engineer, P.W.D., Jodhpur.
10. Additional Chief Engineer, P.H.E.D., Jodhpur.
11. Deputy Housing Commissioner, Rajasthan Housing Board, Jodhpur.
12. Deputy Town Planner, Jodhpur.
13. All Deputy Commissioners, Jodhpur Development Authority.
14. Secretary, Jodhpur Development Authority.
15. Director (Finance), Jodhpur Development Authority.
16. Director (Law), Jodhpur Development Authority.
17. Mining Engineer, Jodhpur.

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Secretary

Jodhpur Development Authority