

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.31691 of 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue writ of Mandamus to declare the action of the Respondent No. 3 in rejecting the application submitted by the petitioner for issuance of the temporary permit for transport of silt over an extent of 2.11 Acres in Survey No.569 of Padamati Palem Village, Sangam Mandal, SPSR Nellore District and determining the mineral available in the area as ordinary sand and not silt vide impugned proceeding in Memo No. 2368/TP/NLR/2014-3 dated 12/8/2015 as arbitrary and illegal, offending Article 14 of the Constitution of India being contrary to AP Minor Mineral construction Rules 1966 as amended from time to time and contrary to the Provisions of Mines and Minerals (Development & Regulation) Act, 1957 and issue a consequential direction to the respondents to grant temporary permit as sought for vide representation of the petitioner made on 6/7/2015.”

Heard Sri D. Panduranga Reddy, learned counsel for the petitioner and learned Government Pleader for Mines and Geology for respondents, apart from perusing the material available before this Court.

In the present writ petition challenge is to the Memo No.2368/TP-NLR/2014-3 dated 12/8/2015 issued by the Deputy Director of Mines and Geology, Guntur – 3rd respondent herein. By virtue of the said memo the Deputy Director of Mines and Geology rejected the application, dated 06-07-2015 submitted by the petitioner herein for grant of temporary permits for silt over an extent of 2.11 Acres in Survey No.569 of Padamati Palem village, Sangam mandal, SPSR Nellore District.

The petitioner herein claims to be the owner of the land admeasuring 2.11 Acres in Survey No.569 of Padamati Palem village, Sangam mandal, SPSR Nellore District. According to the petitioner, the said land was originally under cultivation and subsequently due to accumulation of silt over the past few years

the same has become unfit for agriculture purpose. The petitioner herein submitted an application to the Tahsildar, Sangam Mandal, SPSR Nellore District for removal of silt in the said land and according to the petitioner, the Tahsildar has conducted an enquiry through the Village Revenue Officer and has submitted a report to the 4th respondent herein expressing no objection for according permission for removal of silt. Earlier the petitioner herein filed W.P.No.23171 of 2015 before this Court and this Court on 27-07-2015 in W.P.M.P.No.29970 of 2015 passed an interim order directing the Deputy Director and Assistant Director of Mines and Geology, respondents 3 and 4 therein to consider the representation made by the petitioner on 06-07-2015 and pass appropriate orders, in accordance with law. In pursuance of the above said orders passed by this Court the Deputy Director of Mines and Geology, Guntur vide Memo No.2368/TP-NLR/2014-3, dated 12/8/2015 rejected the application submitted by the petitioner herein on 06-07-2015.

Calling in question the validity and legal sustainability of the said order passed by the Deputy Director of Mines and Geology – 3rd respondent herein, the present writ petition has been filed.

At the hearing it is submitted by the learned counsel for the petitioner that the action impugned is highly arbitrary, illegal, unreasonable and violative of Article 14 of the Constitution of India. It is further submitted that the National Council for Cement and Building Materials (Under Administrative Control of Ministry of Commerce and Industry, Government of India) vide reference No.NCB-H/CRT/2015-16, dated 26-08-2015 opined that the sample results are meeting the requirements of Zone-IV as per IS:383-1970.

It is also submitted by the learned counsel for the petitioner that the Assistant Director of Mines and Geology, SPSR Nellore sent a letter to the Director of Mines and Geology, Hyderabad vide Lr.No.4328/T.P./2014/, dated 30-01-2015, wherein the last paragraph of the said letter reads as under:

“In view of the above I request the Director of Mines and Geology, Hyderabad to kindly issue further instructions to this office in consultation with the Government after obtaining necessary amendments in the Schedule I & II of Rule 10 of A.P. Minor Mineral Concession Rules, 1966 for issue of either Temporary Permits or for grant of Quarry lease to the Silt using for filling material by fixing the Seniorage fee to be realized in the matter and may issue further instructions to dispose the requisition made by Sri Y. Satish Reddy for extraction and transportation of Silt using for filling material for the remaining Quantity of 80562 Cbm over an extent of 12.40 Acres in Sy.No.946 of Padamatapalem village, Sangam Mandal, SPSR Nellore District as well necessary directions may be issued to DMG, IT Cell for providing option for filing applications if any through online in the prescribed form “B” for Silt using for filling material it will help to encourage the Quarry lease instead of Temporary Permit and subject to finding of the enquiry and subject to satisfaction of APMMC Rules, 1966.”

While referring to the above said paragraph it is submitted by the learned counsel for the petitioner that no action has been taken on the said letter till date. It is further submitted by the learned counsel for the petitioner that because of the impugned action the petitioner herein is put to hardship and irreparable loss.

On the contrary, it is submitted by the learned Government Pleader that in view of the availability of alternative remedy of appeal to the Director of Mines and Geology under Rule 35 of A.P. Minor Mineral Concession Rules, 1966, the present writ petition is not maintainable under Article 226 of the Constitution of India. It is further submitted by the learned Government Pleader that since a number of technical aspects are involved in the matter, the petitioner may be relegated to the said alternative remedy.

In view of the above submissions and having regard to the nature of controversy and keeping in view various technical aspects involved in the matter, this Court deems it appropriate to relegate the petitioner herein to the alternative remedy of appeal under Rule 35 of the A.P. Minor Mineral Concession Rules, 1966.

For the aforesaid reasons, the writ petition is disposed of, permitting the petitioner herein to file an appeal against the impugned Memo No.2368/TP-NLR/2014-3 dated 12/8/2015 issued by the Deputy Director of Mines and Geology, Guntur before the Director of Mines and Geology under Rule 35 of the A.P. Minor Mineral Concession Rules, 1966 within one week from the date of receipt of a copy of this order. If any such appeal is filed within the time stipulated same be considered and appropriate orders be passed within a period of one month thereafter. It is made clear that the petitioner herein is entitled to place all the relevant material before the Director of Mines and Geology. The Director of Mines and Geology shall enquire into the matter after giving notice and opportunity of being heard to the petitioner herein.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. There shall be no order as to costs.

A.V. SESA SAI, J

October 07, 2015

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