

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION Nos.30841 and 31485 of 2011

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COMMON ORDER:

The petitioner is the same in these two cases. She was granted a lease for quarrying gravel over an extent of four hectares of land in Survey No.283 of Golagam Village, Anakapalli Mandal, Visakhapatnam District.

While so, the Assistant Director of Mines and Geology, Anakapalli, addressed notice dated 15.11.2011 to the petitioner stating that the Tahsildar, Anakapalli, had informed him that the conditional No Objection Certificate (NOC) dated 12.03.2011 issued in favour of the petitioner was no longer operative, owing to the completion of the NREGS works in Anakapalli Mandal and requested him to cancel the petitioner's quarry lease. The Assistant Director of Mines and Geology therefore called upon the petitioner to stop operating the quarry lease with immediate effect. The aforesaid notice dated 15.11.2011 is subjected to challenge in W.P.No.30841 of 2011.

It appears that immediately thereafter, the Deputy Director of Mines and Geology, Visakhapatnam, issued proceedings dated 21.11.2011 determining the quarry lease granted to the petitioner under Rule 31(xvi) of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for brevity 'the Rules of 1966'). This determination was also based on the same reason as was mentioned in the notice dated 15.11.2011, i.e., that the conditional NOC issued in favour of the petitioner by the Tahasildar, Anakapalli, was no longer operative in view of the completion of NREGS works in Anakapalli Mandal.

Significantly, the determination of the lease effected by the Deputy Director of Mines and Geology, Visakhapatnam, was stated to

be in exercise of power under Rule 31(xvi) of the Rules of 1966. This Rule however authorises determination of a lease on the ground of any breach by the lessee of any covenant or condition. Further, the Rule requires the defaulter to be given an opportunity prior to the determination of the lease. There is no indication in the impugned proceedings dated 21.11.2011 that the petitioner was ever put on notice prior to the determination or was given an opportunity of hearing. There is thus a clear violation of the procedure prescribed in the rule.

Further, the Rule itself was wholly inapplicable to the fact situation on the basis of which the petitioner's lease was determined. It was not the case of the mining authorities that the petitioner had committed a breach of any covenant or condition. On the other hand, it was their case that the Tahasildar had issued the NOC, which was conditional, and that the condition had worked itself out.

However, it is relevant to note that the Tahasildar, Anakapalli Mandal, issued a NOC to the petitioner on 20.03.2008, wherein no condition whatsoever was mentioned. The said certificate merely recorded that there was no objection for grant of a quarry lease for rough stone and gravel in respect of the said land. It was only in the subsequent communication dated 12.03.2011 addressed by the Tahasildar, Anakapalli Mandal, to the Assistant Director of Mines and Geology, Anakapalli, that mention was made of the NREGS works which necessitated quarrying of gravel for utilisation therein. This communication also concluded with the statement of the Tahasildar, Anakapalli Mandal, that the NOC already issued on 20.03.2008 in favour of the petitioner should be considered for grant of a quarry lease to her. On the basis of the aforesaid certification by the Tahasildar, Anakapalli Mandal, the mining authorities executed a lease deed in favour of the petitioner on 15.06.2011. This lease was valid up to 14.06.2016.

Having thus committed themselves to a definite lease period on the basis of the certification by the Tahasildar, Anakapalli Mandal, it is not open to the revenue authorities or the mining authorities of the State to back out before the completion of the lease period on the ostensible ground that the earlier certification in favour of the petitioner was conditional. No such condition is apparent from the record. Further, by virtue of the interim orders granted by this Court in these cases, the petitioner has been operating the quarry lease and only the last year of the said lease remains.

On the above analysis, this Court is of the considered opinion that the action of the mining authorities in acting upon the changing stands of the Tahasildar, Anakapalli Mandal, cannot be countenanced, as the lease executed in favour of the petitioner was for a fixed tenure. In the light thereof, the lease cannot be set at naught by the mining authorities only on the ground that the Tahasildar, Anakapalli Mandal, now seeks to introduce a condition in his initial certification, which was not there earlier.

Both the writ petitions are therefore allowed setting aside the notice dated 15.11.2011 and the proceedings 21.11.2011 impugned therein.

Pending Miscellaneous Petitions, if any, shall stand closed. No order as to costs.

SANJAY KUMAR, J

Date:25.06.2015

GJ