IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF

ANDHRA PRADESH

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WRIT PETITION NOS.37370 AND 37637 OF 2012

W.P.No.37370 of 2012:

Between:

M/s. Sri Sai Chinnamman Mines .. Petitioner

and

The State of Andhra Pradesh represented

by its Principal Secretary, Department of

Industries & Commerce (M-I) and others .. Respondents

DATE OF JUDGMENT PRONOUNCED: 13th NOVEMBER, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

1.	Whether Reporters of Local newspapersmay be allowed to see the Judgment?	Yes/No
2.	Whether copies of the Judgment may be marked to Law Reporters/Journals	Yes/No
3.	Whether His Lordship wishes to see the fair copy of the Judgment?	Yes/No

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION NOS.37370 AND 37637 OF 2012

C O M M O N O R D E R

The petitioner in both these cases is the same firm and the issues raised are interwoven. They are therefore amenable to a conjoined disposal.

In W.P.No.37370 of 2012, the petitioner firm assailed the letter dated 27.11.2012 of the Assistant Director of Mines & Geology, SPSR Nellore District, directing it to stop mining operations in respect of its two mining leases over certain extents of land in Sy.No.256/P of Vellapalem Village, Chillakuru Mandal, Nellore District, and to surrender unused transit forms.

In W.P.No.37637 of 2012, the petitioner firm assailed the earlier proceedings dated 19.11.2012 issued by the State of Andhra Pradesh, through its Principal Secretary, Industries & Commerce Department, whereby the Director of Mines & Geology, Andhra Pradesh, was asked to conduct a detailed enquiry with regard to

the petitioner firm and, in the meanwhile, keeping the orders issued vide G.O.Ms.No.83 dated 18.02.2002, G.O.Ms.No.37 dated 09.02.2004 and Memo dated 27.06.2005 in abeyance. Challenge was also made to the consequential order and letter, both dated 27.11.2012, issued by the Assistant Director of Mines & Geology, SPSR Nellore District.

By order dated 06.12.2012 passed in W.P.No.37637 of 2012, this Court *prima facie* found that the State had not cited any provision which enabled it to direct a validly granted mining lease to be kept in abeyance and accordingly suspended the impugned proceedings dated 19.11.2012. The respondent authorities were however given freedom to proceed with the enquiry, if any, and the petitioner firm was directed to cooperate in the same. In the light of the aforestated order, this Court passed order dated 06.12.2012 in W.P.No.37370 of 2012 suspending the letter dated 27.11.2012 impugned therein.

It is an admitted fact that the enquiry, which was permitted to go on, concluded but the report submitted by the Director of Mines & Geology, Andhra Pradesh, has not been acted upon till date and it is still under examination by the Government.

The facts, to the extent relevant, are as under:

Three persons, viz., Oggu Srihari, the fourth respondent in both the cases, B.S. Chalapathi Rao and S.K. Mastan Saheb, entered into a partnership on 29.09.1994 for carrying on mining business under the name and style of M/s. Lakshmi Silica Mines. This partnership was not registered. This partnership firm made applications to the State for grant of leases for mining silica over extents of 50 acres and 100 acres in Sy.No.256 of Vellapalem village, Chillakuru Mandal, Nellore District. While these applications were in process, Mastan Saheb died on 01.06.1998. B.S. Chalapathi Rao also retired from the partnership and Aruna Rama Murthy entered the firm. A reconstitution deed was stated to have been submitted to the Registrar of Firms. Thereafter, another reconstitution took place, whereby Shanmugam Balaji entered the partnership on 03.03.2005 while Aruna Rama Murthy retired and the same was also registered with the Registrar of Firms.

The State granted a lease for mining silica sand in favour of M/s. Lakshmi Silica Mines over an extent of Ac.25.00 in Sy.No.256 of Vellapalem Village,

Chillakuru Mandal, Nellore District, under G.O.Ms.No.83 dated 18.02.2002. Another mining lease was granted over an extent of Ac.25.00 in the same survey number under G.O.Ms.No.37 dated 09.02.2004. Mining operations commenced in the year 2002. The change in the name of the firm to M/s. Sri Sai Chinnamman Mines was effected in accordance with the due procedure under Memo dated 27.06.2005.

While so, respondent No.4 was stated to have made representation dated 10.09.2012 alleging that the leases granted under G.O.Ms.No.83 dated 18.02.2002 and G.O.Ms.No.37 dated 09.02.2004 were not being operated by him but by Aruna Rama Murthy and requesting the authorities to remove her name and to grant permission in the name of B.S. Chalapathi Rao as Managing Partner of M/s. Lakshmi Silica Mines and to hand over the leased lands to him. Significantly, Aruna Rama Murthy and B.S. Chalapathi Rao were not even in the picture at that point of time. However, under the impugned proceedings dated 19.11.2012, the State called upon the Director of Mines & Geology, Andhra Pradesh, to cause an enquiry upon this representation. This, in turn, fell upon the Assistant Director of Mines & Geology, SPSR Nellore District, under the Memo dated 24.11.2012 of the Director of Mines & Geology, Andhra Pradesh. While directing an enquiry under the said proceedings, the State also kept the leases granted in abeyance.

Upon undertaking the enquiry as directed, the Assistant Director of Mines & Geology, SPSR Nellore District, issued letter dated 27.11.2012 calling upon the petitioner firm to stop mining operations pursuant to its two mining leases and to surrender its unused transit forms. Under a separate order dated 27.11.2012, the Assistant Director of Mines & Geology, SPSR Nellore District, also called upon the petitioner firm to produce all the relevant documents relating to changes made in the partnership firm from the date of the mining lease applications in 1994, failing which he proposed to take necessary action in respect of the two mining leases on the ground of misrepresentation of facts as per the rules in force.

Admittedly, the fourth respondent submitted his representation only on 10.09.2012, which formed the substratum for the actions of the State authorities, impugned in these writ petitions. It is also an admitted fact that mining operations commenced pursuant to the grant of the two leases as long back as in the year 2002. It is also a matter of record that there were several changes effected in the constitution of the partnership firm and in its very name itself. Whether such reconstitution of the firm was legal or otherwise is the dispute sought to be raised by

the fourth respondent in his representation dated 10.09.2012. However, the question that arises presently is whether the State and the mining authorities were empowered in law to enquire into such an issue.

Heard Sri V. Ravinder Rao, learned counsel representing Sri A.K. Kishore Reddy, learned counsel for the petitioner firm, Sri G.V. Shivaji, learned counsel for the fourth respondent in both the writ petitions, and the learned Assistant Government Pleader for Mines & Geology representing the State.

Sri G.V. Shivaji, learned counsel, would contend that the fourth respondent was neither removed from the firm nor did he retire therefrom and therefore, the reconstitutions effected without his participation would be invalid in the eye of law. Learned counsel would further contend that a fraud was committed in the guise of such reconstitutions and that it would be open to the mining authorities to look into the same. However, the learned counsel was unable to show any provision in the extant mining laws which authorize the mining authorities to look into an allegation of fraud or to interfere with mining operations on the ground of an internal dispute within a firm which was granted a mining lease. Similarly, the learned Assistant Government Pleader also had no answer to offer as to the source of power for the State and the mining authorities to undertake an enquiry upon the allegation made by the fourth respondent as to what was essentially an internal dispute within the firm. All the more so, as the fourth respondent woke up only upon the lapse of ten years after the commencement of mining operations. That being said, it is not for this Court to go into the merits of the dispute sought to be raised by the fourth respondent in this writ petition. The only issue that presently falls for consideration before this Court is as to whether the State and its authorities were justified in interfering with the mining operations of the petitioner firm under the valid and subsisting mining leases granted to it at the behest of the fourth respondent and in seeking to undertake an enquiry into the internal disputes of the firm.

Despite the matter having undergone several adjournments since the year 2012, the State did not choose to file a counter affidavit in W.P.No.37637 of 2012.

In the counter affidavit filed in W.P.No.37370 of 2012, the Assistant Director of Mines & Geology, SPSR Nellore District, stated that the petitioner firm had not submitted the deeds of its reconstitution. However, he did not cite any legal provision which required the petitioner firm to do so as a condition precedent for

operating the mining leases granted to it. Further, it was admitted that the partnership deed, whereby S. Balaji and B. Kavitha joined the firm, was available in the records along with the partnership deed dated 08.04.2002. He also admitted that pursuant to Rule 62 of the Mineral Concession Rules, 1960 (for brevity, 'the Rules of 1960'), the petitioner firm was allowed to change its name from M/s. Lakshmi Silica Mines to M/s. Sri Sai Chinnamman Mines. Reference was also made to the fact that the unregistered partnership deed dated 08.04.2002 had been submitted to the mining department, as per which, Aruna Rama Murthy, S. Rama Murthy and B.N. Annapurnamma were the partners. Thereafter, on 03.03.2005 S. Balaji and B. Kavitha joined as partners. M/s. Sri Sai Chinnamman Mines was registered with the Registrar of Firms, Nellore, on 19.04.2005. After permission was accorded for the name transfer by the Government under Memo dated 27.06.2005, the three partners, namely, Aruna Rama Murthy, S. Rama Murthy and B.N. Annapurnamma retired from the firm leaving behind S. Balaji and B. Kavitha as the partners. This deed dated 14.09.2006 was also stated to have been registered with the Registrar of Firms.

The aforestated averments made in the counter-affidavit clearly demonstrate that the allegation that the petitioner firm did not submit the reconstitution deeds to the mining authorities is doubtful, as the Assistant Director could not have adverted to these facts without having relevant documents. In any event, the Assistant Director remained pointedly silent on the question of his power to undertake an enquiry into the internal disputes of the firm.

In a separate counter affidavit, the Principal Secretary to the Government, Industries & Commerce Department, Andhra Pradesh, stated that grant of the two mining leases was in favour of M/s. Lakshmi Silica Mines and that the said lease documents were signed on behalf of the firm by Aruna Rama Murthy, by submitting partnership deed dated 08.04.2002. Therein, Aruna Rama Murthy, S. Rama Murthy and B.N. Annapurnamma were shown as the partners. Reference was made to the fact that on 03.03.2005, S. Balaji and B. Kavitha joined the firm and S. Rama Murthy and B.N. Annapurnamma exited. Thereafter, on 19.04.2005 the firm changed its name to M/s. Sai Chinnamman Mines and was stated to have been registered with three partners, Aruna Rama Murthy, S. Balaji and B. Kavitha. He also admitted that the Director of Mines & Geology, Andhra Pradesh, permitted the change of the name of the firm under Rule 62 of the Rules of 1960 and Memo dated 27.06.2005 was

issued by the Government in this regard. Reference was also made to the fact that on 14.09.2006, only two partners, S. Balaji and B. Kavitha, remained under the registered partnership deed dated 20.09.2006. The Principal Secretary stated that representations were received not only from the fourth respondent but also from B. Chalapathi Rao and Fathima Bee, widow of Sk. Mastan Saheb, the erstwhile partners, raising certain issues. It was on the basis of all these representations that the Secretary sought to justify the proceedings impugned in these writ petitions. However, this counter also is studiously silent as to the source of power for the State and its authorities to undertake an enquiry into issues, which were purely internal to the partnership firm.

Significantly, the Director of Mines & Geology, Andhra Pradesh, under letters dated 28.02.2014 and 11.03.2015 addressed to the Secretary to the Government, Industries & Commerce Department, Government of Andhra Pradesh, stated that after careful examination of the entire issue, he found that the dispute was between the partners of the firm and requested the Government to drop further action pursuant to the impugned proceedings dated 19.11.2002. It is this proposal which is stated to be pending consideration before the Government. However, this Court finds no legal justification to allow the Government to even consider the said proposal, as it is not demonstrated before this Court that the Government and its authorities have any power to undertake an enquiry into the dispute raised by the fourth respondent, which is essentially of a private nature. It is no doubt true that fraud would vitiate the entire proceedings but a conclusion as to whether a fraud was committed would have to be rendered by a competent Court of law and there is no provision in the mining laws which enabled the State or its authorities to undertake such an enquiry.

Relevant to note, the Rules of 1960 do not postulate any power in the mining authorities to undertake an enquiry into the internal disputes within a partnership firm which is granted a mining lease. In the absence of such power, it is not open to the authorities to assume unto themselves such power on the ground that a fraud may have been committed. There is not even a stipulation as to filing of a partnership deed by a firm along with the mining lease application. Form I is the prescribed application for such a mining lease, under Rule 22 (1) of the Rules of 1960, and does not posit this requirement and only the nationality of all the partners of the firm is to be disclosed.

In that view of the matter, this Court has no hesitation in holding that the action of the State and the mining authorities in proposing to embark upon such an exercise in the present case at the behest of the fourth respondent and in seeking to stall the mining operations of the petitioner firm, notwithstanding the valid and subsisting mining leases granted in its favour, was wholly illegal and without jurisdiction. The proceedings impugned in both the writ petitions are accordingly set aside. It is however made clear that this Court has not ventured into the merits of the dispute raised by the fourth respondent and it shall be open to the fourth respondent to take recourse to appropriate remedies in accordance with law as regards his grievances, if any.

The writ petitions are accordingly allowed. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR, J

13th NOVEMBER, 2015

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