

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.36885 of 2015

ORDER:

This writ petition was filed assailing the demand notice dated 29.08.2015 issued by the Deputy Director of Mines and Geology, Kakinada, East Godavari District.

This Court normally would not have entertained the writ petition as the statute provides for an alternative efficacious remedy by way of an appeal/revision. However, in the present case interference is warranted owing to the following facts.

The impugned demand notice was issued in the context of the alleged illegal mining of the mineral, Laterite. It is not in dispute that Laterite has been de-notified as a major mineral under notification dated 10.02.2015 issued by the Ministry of Mines, Government of India, and therefore, it became a minor mineral from the said date. It is also not in dispute that the law applicable to major minerals and minor minerals varies as Laterite, as long as it was classified as a major mineral, was governed by the Mineral Concession Rules, 1960, but after de-notification, it would be governed by the State Legislation, the Andhra Pradesh Minor Mineral Concession Rules, 1966.

Though the show cause notice issued to the petitioner, which forms the basis for the impugned demand notice, dates back to the year 2013, the fact remains that the status of the mineral underwent the aforesaid change during the pendency of the proceedings and over six months before the issuance of the impugned demand notice. Notwithstanding the same, the authority continued to apply the Mineral Concession Rules, 1960, to the case. This is unsustainable as the said legislation no longer had application after de-notification of the mineral. The impugned demand notice therefore suffers on the ground of this jurisdictional defect and is accordingly set aside. This order shall however not preclude the authorities from taking appropriate action afresh in accordance with law.

The writ petition is allowed to the extent indicated above.

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

SANJAY KUMAR, J

Date:16.11.2015

GJ