IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

WRIT PETITION NO.4109 OF 2012

Between:

M/s.KVVSN Associates, rep. by its
Managing Partner KVV Satyanarayana,
Tanuku, East Godavari District.

… Petitioner

and

The State of Andhra Pradesh, rep. by its
Principal Secretary, Industries and Commerce
Department, Secretariat, Hyderabad, and others.

… Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 11th AUGUST, 2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether their Lordship wishes to see the fair copy of the judgment? Yes/No

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.4109 OF 2012

<u>O R D E R</u>

The petitioner firm was granted a sand quarrying lease for about two years from 01.05.2010 to 31.03.2012 in respect of Ankampalem sand reach, Athreeyapuram Mandal, East Godavari District. The Ground Water Department identified the Geo co-ordinates which demarcated the leased area and the petitioner commenced quarrying operations. While so, the Deputy Director of Mines and Geology, Kakinada, issued show-cause notice dated 07.01.2012 to the petitioner alleging that it had undertaken excavation of sand outside the leased area in violation of law and proposed to levy the following amounts.

Sl. No.	Particulars	Quantity (in Cum)	Rate of Seig.Fee	Normal Seig.Fee (In Rs.)	10 times Penalty (in Rs.)	Total (in Rs)
1.	Sand excavated and transported 1186 Cum of sand beyond 1.00 MT depth	1186	Rs.40/-	47,440	4,74,400	5,21,840
	TOTAL:					5,21,840

The petitioner accepted that the said show-cause notice was served upon one of its daily wage workers but claimed that the same was never handed over to it and therefore, it remained unaware of it. It further stated that only upon approaching the mining authorities for issuance of way bills, it was served with the consequent demand notice dated 31.01.2012 requiring it to deposit the amounts mentioned therein, viz., the same amounts as were mentioned in the show-cause notice dated 07.01.2012. The demand notice dated 31.01.2012 was subjected to challenge in this writ petition on grounds, both factual and legal.

By order dated 16.02.2012, this Court suspended the impugned demand notice until further orders subject to payment of the normal seigniorage fee demanded thereunder. This amount is stated to have been deposited.

The petitioner contended that the Deputy Director of Mines and Geology, Kakinada, was not competent to issue the impugned demand notice. This aspect was however contested by the learned Assistant Government Pleader for Mines and Geology, who asserted that there was requisite delegation of power to the Deputy Director of Mines and Geology concerned to impose penalty under Rule 26 of the Andhra Pradesh Minor Mineral Concession Rules, 1966.

The petitioner also raised various contentions on factual aspects of the matter as well as legal issues.

Perusal of the demand notice reflects that the mining authorities did not catch the petitioner red-handed while it was undertaking quarrying operations illegally. According to the show-cause notice as well as the impugned demand notice, the Assistant Director of Mines and Geology, Rajahmundry, reported that he along with others inspected the sand quarry lease area on 20.12.2011 and noticed that the lease holder, the petitioner herein, had excavated and transported 1186 Cum of sand beyond 1.00 Mt depth duly violating Rule 9-X(e) of the Rules of 1966.

It is not evident from the show-cause notice or the demand notice as to whether only the petitioner alone could have had access to the excavated pits. Unless the mining authorities found it to be so, there was no possibility of straightaway attaching liability and responsibility as regards such illegal quarrying operations upon the petitioner. As the petitioner failed to respond to the show-cause notice, be it for whatever reason, this aspect of the matter was not examined by the mining authorities prior to issuance of the impugned demand notice. It is however the petitioner's case before this Court that it did not undertake such illegal quarrying operations.

This disputed question of fact is not amenable to resolution in a writ petition filed under Article 226 of the Constitution. The petitioner was afforded efficacious alternative remedies under the statute, but it chose to directly approach this Court by way of this writ petition. However, as stated *supra*, the extraordinary writ jurisdiction of this Court would normally not extend to undertaking determination of disputed questions of fact. Therefore, the petitioner would have been better off had it approached the statutory authority and invoked a remedy afforded to it under the statute, as such authority can undertake an enquiry into these factual aspects. It would also be open to the said authority to determine the issue of jurisdiction raised by the petitioner.

As this writ petition was filed almost immediately after issuance of the impugned demand notice and as it was entertained by this Court, the interest of justice would be sufficiently served by relegating the petitioner to the statutory remedy at least at this stage. As this Court granted interim suspension of the impugned demand notice subject to the condition that the petitioner pays the normal seigniorage fee demanded under the impugned demand notice, which is stated to have been complied with, the said protection shall continue pending disposal of the matter by the statutory authority.

The writ petition is accordingly disposed of permitting the petitioner to avail the alternative remedy afforded to it under the statute within four weeks from the date of receipt of a copy of this order. It would be open to the petitioner to raise before the statutory authority all the points urged by it before this Court in the present writ petition. The statutory authority shall thereupon adjudicate the matter after giving due opportunity of hearing to both parties and render a reasoned decision. By way of the said decision, it would be open to the statutory authority to confirm, modify or cancel the impugned demand notice. This exercise shall be completed expeditiously and in any event, not later than four weeks from the date of filing of the statutory appeal or revision, as the case may be. In the event the petitioner fails to avail such statutory remedy within the time stipulated above, this order would stand re-called and the mining authorities would be at liberty to enforce the impugned demand notice. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

11th AUGUST, 2015

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