

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.28791 OF 2008

DATED 14th JULY, 2015

Between:

Smt.K.Demullamma

... Petitioner

and

The Principal Secretary,
Department of Mines and Geology,
Secretariat Buildings, Hyderabad,
and others.

... Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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ORDER

Challenge in this writ petition is to the proceedings dated 04.12.2008 passed by the Director of Mines and Geology, Andhra Pradesh, allowing the appeal filed by the eighth respondent herein and directing the mining authorities to take further necessary action in the matter.

By order dated 30.12.2008, this Court directed *status quo* obtaining as on that date to be maintained pending further orders and the said order was made absolute on 24.06.2011.

The facts of the case, as culled out from the counter-affidavit of the Assistant Director of Mines and Geology, Visakhapatnam, are as under:

Three applications were received for grant of quarry leases in respect of road metal and building stone in Sy.No.20 of Devarapalli Village and Mandal, Visakhapatnam District. The first application, which was received on 11.12.2006, in respect of 3-00 Hectares of land in the said survey number was from the eighth respondent herein. The petitioner submitted application dated 19.02.2008, which was received on 28.02.2008, and the same related to 10.00 Hectares of land in the very same survey number. The third application was later in point of time and as of now, has no relevance to this case.

The three applications were forwarded by the mining authorities to the Tahsildar, Devarapalli, for a report on the classification of the land

and its availability for grant of mining lease(s). By letter dated 26.03.2008, the Tahsildar, Devarapalli, informed the mining authorities that the Gram Panchayat, Devarapalli, had resolved in March, 2008, that there was no objection to the grant of a mining lease in favour of the eighth respondent. The Tahsildar therefore certified that he had no objection for grant of a mining lease to the eighth respondent over an extent of 3-00 Hectares in Sy.No.20 of Devarapalli Village.

However, the Tahsildar, Devarapalli, thereafter addressed letter dated 02.04.2008 informing the mining authorities that the Gram Panchayat, Devarapalli, resolved on 28.03.2008 for grant of the quarry lease in favour of the petitioner only and no resolution had been passed in favour of the eighth respondent. The Tahsildar therefore stated that the no objection certificate issued in favour of the eighth respondent was under a mistake of fact and requested the mining authorities not to act upon the same. Basing on the withdrawal of the earlier no objection certificate issued to the eighth respondent, the Assistant Director of Mines and Geology, Visakhapatnam, submitted rejection proposals as regards the application of the eighth respondent. Thereupon, the Deputy Director of Mines and Geology, Visakhapatnam, rejected the quarry lease application of the eighth respondent under proceedings dated 30.09.2008.

Aggrieved thereby, the eighth respondent preferred an appeal before the Director of Mines and Geology, Andhra Pradesh, Hyderabad, under Rule 35 of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for brevity, 'the Rules of 1966'). By the impugned proceedings dated 04.12.2008, the Director of Mines and Geology allowed the said appeal. Aggrieved thereby, the petitioner filed the present case.

Perusal of the impugned proceedings dated 04.12.2008 reflects that the appellate authority took note of the fact that the Tahsildar had earlier issued a no objection certificate in favour of the eighth respondent and thereafter withdrew the same on the ground that the Gram Panchayat, Devarapalli, had favoured the petitioner herein and

allowed the appeal, setting aside the rejection of the eighth respondent's quarry lease application by the Deputy Director of Mines and Geology, Visakhapatnam. The consequence thereof was that the quarry lease application filed by the eighth respondent stood revived.

Sri Ch.Ravi Kumar, learned counsel representing Sri T.M.K. Chaitanya, learned counsel for the petitioner, contended that the appellate authority did not put the petitioner on notice and therefore, the impugned proceedings suffer from violation of the principles of natural justice. He would further contend that the Gram Panchayat, Devarapalli, did not recommend grant of a lease in favour of the eighth respondent and thus, there was no illegality on the part of Tahsildar, Devarapalli, in withdrawing the no objection certificate granted earlier to the eighth respondent.

So far as the second contention is concerned, Sri Ch.Ravi Kumar, learned counsel, fairly conceded that there was no requirement in the statutory scheme under the Rules of 1966 that the desire and recommendation of the Gram Panchayat concerned should be taken into account by the mining authorities while granting a quarry lease. The Gram Panchayat concerned has no role to play in deciding which applicant should be granted a quarry lease. Further, the role of the Tahsildar concerned is also limited to certifying the classification of the land over which a quarry lease is sought and confirming its availability for grant of such lease. The Tahsildar has no role to play in deciding as to who should be granted a quarry lease.

In the present case, the quarry lease application of the eighth respondent was rejected only on the ground that the Gram Panchayat, Devarapalli, and the Tahsildar, Devarapalli, spoke in favour of granting the lease to the petitioner as against the eighth respondent. This, clearly, was outside the scope of their power and jurisdiction in the scheme of things. It was for the mining authorities alone to independently determine in accordance with the rules as to which of the applicants enjoyed priority and deal with their applications accordingly.

Though the impugned proceedings dated 04.12.2008 leave a lot to be desired in so far as the manner in which the appellate authority went about dealing with the matter, the end result thereof cannot be found fault with. No doubt, lack of proper reasoning would also constitute violation of the principles of natural justice but, trite to state, every violation of the principles of natural justice would not vitiate the proceedings. Actual prejudice must be demonstrated by the party complaining of such violation to warrant interference. There is no indication of any such prejudice having been caused to the petitioner by the shoddy reasoning of the appellate authority while allowing the eight respondent's appeal.

As regards the other contention urged by Sri Ch.Ravi Kumar, learned counsel, this Court is of the opinion that it was not at all necessary for the appellate authority to put the petitioner on notice in the eight respondent's appeal. The subject matter of the said appeal was only the rejection of the quarry lease application of the eighth respondent. At that stage, no lease has been granted in favour of the petitioner, whereby she could claim any pre-emptive right over the eighth respondent. Further, by way of the impugned proceedings, the appellate authority merely set aside the rejection of the quarry lease application of the eighth respondent and directed the mining authorities to take necessary further action in the matter in accordance with law. That would only mean consideration of all the applications in accordance with the relevant rules. Therefore, affording an opportunity of hearing to the petitioner by the appellate authority was not required at that stage by any stretch of imagination. This Court therefore finds no reason to invalidate the impugned proceedings dated 04.12.2008.

The mining authorities shall therefore consider the applications received in respect of the subject land for grant of quarry lease(s) in accordance with the relevant rules and take necessary appropriate action thereon expeditiously.

The Writ Petition is dismissed subject to the above observation.

Pending miscellaneous petitions, if any, shall also stand dismissed in consequence. No order as to costs.

SANJAY KUMAR, J

14th JULY, 2015
PGS