

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.18545 and 18799 of 2008

Common Order :

Since the subject matter of these two writ petitions is practically the same and the petitioner is also the same, this Court deems it apposite to dispose of these cases by way of this common order.

Heard Sri Seetharam Chaparla, learned counsel for the petitioner and the learned Government Pleader for respondents, apart from perusing the material available before this Court.

The complaint in the present writ petitions, filed under Article 226 of the Constitution of India, is that without considering the explanation submitted by the petitioner, the respondents resorted to the impugned action directing the petitioner to pay a sum of Rs.1,00,98,000/-.

Filtering the unnecessary details, the particulars that are essential for disposal of the writ petitions are that earlier the petitioner filed Writ Petition No.20279 of 2004 before this Court questioning the notice in Rc.No.630/2003/A2, dated 18.10.2004 issued by the District Panchayat Officer, Kadapa, Kadapa District wherein the District Panchayat Officer directed the petitioner to pay a sum of Rs.9,18,000/- towards seigniorage fee and penalty at 10 times i.e. total of Rs.1,00,98,000/-. This Court by way of its order dated 4.11.2004 disposed of the said Writ Petition No.20279 of 2004 with certain directions and the operative portion of the said order reads as under :

“ Admittedly, the respondents have not issued any prior notice to the petitioner, nor given any opportunity to submit his explanation, but straight away called upon him to pay the seigniorage charges as per

the assessment.

If that be the case, the impugned notice can be treated as only a show cause notice and the petitioner is entitled to file his explanation to the same, within a period of three weeks from the date of receipt of a copy of this order. On filing such explanation, the respondents have to determine the exact quantity of the sand lifted and transported unauthorisedly, if any, by providing opportunity to the petitioner. Till such determination is made, no coercive steps shall be taken by the respondents to the impugned notice.”

In pursuance of the said order, according to the petitioner, he submitted his explanation on 31.12.2004 to the District Panchayat Officer. In the meanwhile, with the advent of amended rules vide G.O.Ms.No.1 there is change of the competent authority and the Assistant Director of Mines and Geology, the 3rd respondent is conferred with the power to deal with the present issue.

By way of Lr.No.1347/Sand/2007 dated 28.6.2008 the Assistant Director of Mines and Geology, Kadapa requested the Mandal Tahsildar, Chennur Mandal, Kadapa District to identify and inform the movable and immovable properties of the petitioner for recovery of the above mentioned amounts. Questioning the said letter dated 28.6.2008, the petitioner herein filed Writ Petition No.18545 of 2008. Thereafter, the District Panchayat Officer vide notice Rc.No.717/2006-A4 dated nil.08.2008 directed the petitioner to pay a sum of Rs.1,00,98,000/-. Assailing the said notice, Writ Petition No.18799 of 2008 came to be filed.

A perusal of the said impugned letter and notice show clearly that objections of the petitioner made in his explanation dated 31.12.2004 were not considered nor there is any evidence to show that any opportunity was given to the petitioner as directed by this Court in Writ Petition No.20279 of 2004 dated 4.11.2004. This action on the part of the respondents, in the considered opinion of this Court, is arbitrary and in violation of principles of natural justice. This Court finds no justification on the part of the authorities in not considering

the explanation submitted by the petitioner and not giving any opportunity of being heard to the petitioner. Therefore, without going into the merits or demerits of the matter, this Court deems it appropriate to remand the matter to the respondents for fresh consideration in accordance with law.

For the aforesaid reasons, the writ petitions are allowed and the impugned letter No.1347/sand/2007 dated 28.6.2008 of the Assistant Director, Mines and Geology, Kadapa and notice No.717/2006-A4 dated nil.08.2008 of the District Panchayat Officer, Kadapa are set aside and the matter is remanded to the respondent-authorities for consideration afresh. The respondents shall consider the explanation submitted by the petitioner on 31.12.2004 and also shall give opportunity of being heard to the petitioner. Thereafter it shall be open for the authorities to pass appropriate orders as per law. The petitioner shall also be entitled to submit his further explanation if any within one month from the date of receipt of copy of this order. Till such exercise attains finality, there shall be no coercive action against the petitioner. No costs. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A.V.SESHA SAI

KK/Dt: 27.4.2015

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.18545 and 18799 of 2008

27.4.2015