

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.7377 of 2013

ORDER:

In the present writ petition challenge is to the demand notice bearing No.6002/M5/2012-13, dated 22-02-2013 issued by the Deputy Director of Mines and Geology, Guntur – 3rd respondent herein.

The State Government vide G.O.Ms.No.202 Industries & Commerce (M.I(2)) Department, dated 18-07-2005 granted mining lease in favour of the petitioner herein for Silica sand in respect of an extent of 40-74 acres in Sy.Nos.257/P, 263/P and 271/P of Vallapalem village, Chillakur mandal, Nellore District for a period of twenty (20) years. The said lease is valid till 26-08-2025.

Earlier, the Deputy Director of Mines and Geology, Guntur issued a demand notice No.6002/M5/2012-13, dated 23-11-2012, asking the petitioner to pay a sum of Rs.12,07,483/- on the ground of alleged illegal excavation of Silica sand. The petitioner herein filed W.P.No.38881 of 2012 assailing the said demand notice issued by the Deputy Director of Mines and Geology. This Court by way of an order, dated 17-12-2012 disposed of the said writ petition and the operative portion of the said order reads as under:

“Hence, the writ petition is disposed of, directing that the demand notice dated 23-11-2012, issued by the 3rd respondent, shall be treated as a show cause notice, by itself, and the petitioner is granted (15) days time to submit the explanation. It shall be open to the 3rd respondent to pass appropriate orders, after considering the explanation. Till such time, it is directed that permit shall be issued for transporting silica, extracted by the petitioner, in case it is proved that it is extracted from the land leased to it.”

In pursuance of the said order the petitioner herein filed a reply, dated 24-12-2012 to the demand notice, dated 23-11-2012. The Deputy Director of Mines and Geology by virtue of impugned notice bearing No.6002/M5/2012-13, dated 22-02-2013 directed the petitioner herein to pay a sum of Rs.12,07,483/- towards penalty.

Calling in question the validity and legal sustainability of the said demand notice, dated 22-02-2013 the present writ petition came to be filed.

Heard Sri Venkat Reddy Donthi Reddy, learned counsel for the petitioner and learned Government Pleader for Mines and Geology for respondents, apart from perusing the material available before this Court.

It is contended by the learned counsel for the petitioner that the demand notice under challenge in the present writ petition is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 19 (1)(g) of the Constitution of India. It is also submitted by the learned counsel that the Deputy Director of Mines and Geology issued demand notice without considering the contents of the reply filed by the petitioner herein pursuant to the orders of this Court in W.P.No.38881 of 2012. It is also submitted by the learned counsel that the impugned notice is also given without any authority. It is also argued by the learned counsel that without giving any opportunity of being heard to the petitioner herein the 3rd respondent issued the impugned demand notice and the same is in violation of principles of natural justice. It is also submitted that had the contents of reply been considered from proper perspective

the impugned demand notice would not have emanated.

Per contra, reiterating the contents of the counter-affidavit it is vehemently argued by the learned Government Pleader that there is no illegality nor any procedural infirmity in the impugned action, as such, the present writ petition is not maintainable and the petitioner herein is not entitled for any relief under Article 226 of Constitution of India. It is also submitted by the learned Government Pleader that only after meticulous consideration of the explanation offered by the petitioner herein the Deputy Director of Mines and Geology issued the impugned demand notice.

The material available before this Court manifestly reveal that pursuant to the orders in W.P.No.38881 of 2012, dated 17-12-2012 the petitioner herein submitted an elaborate explanation/reply raising a number of grounds for consideration of the Deputy Director of Mines and Geology. In the said reply the petitioner herein at paragraph Nos.3 did set out the following reasons:

“3. I/we submit that we shall not be made liable to pay the penalty amount as demanded in the notice for the following reasons:-

- a. The notice issued on us for payment of Rs.12,07,483 for alleged illegal extraction of silica sand is bad in law as it is given without any authority.
- b. No representative of our firm was authorized to represent in the panchnama proceedings claimed to have been conducted.
- c. No notice has been served on us to participate in panchnama proceedings.
- d. The alleged illegal extraction of silica sand is claimed to have occurred in Survey No.256 which does not belong to us.
- e. There is no necessity for us to illegally quarry the silica sand as we are already quarrying the silica sand over an extent of Ac.40.74 in Survey No. 257/P, 263/P, 271/P of Vallapalem (Village), Chillakur (M), Nellore District by virtue of lease agreement entered by Mines Department.

- f. We are carrying out mining legally and transporting the material silica sand with valid transit permits issued by mining officers. At no point of time, our vehicles are caught by your officials for illegal mining.
- g. On several occasions, we have brought to the notice of authorities about the illegal extraction of silica sand by the villagers for construction purpose but no action has been taken by mining officials, revenue officials and police authorities.
- h. The notice under reply is issued on us without any basis and the material claimed to have been lifted beyond the boundaries of the lease granted to us is on hypothetical consideration.
- i. We are the valid leaseholders and we cannot be made a Scapegoat for the fault of others. In the absence of any valid proof, we cannot be subjected for penalty.
- j. The notice under reply is given on assumptions and presumptions stating in general that "There is every possibility to lift the material by the mining lease holders at the adjacent vacant land" and it is arbitrary, illegal and not in accordance law.
- k. We may be given reasonable opportunity of being heard in person in order to bring clarity in the matter."

A perusal of the impugned demand notice, dated 22-02-2013 makes it abundantly clear that except indicating the reply, dated 24-12-2012 submitted by the petitioner herein as one of the references in the demand notice, the Deputy Director of Mines and Geology – 3rd respondent herein did not consider the contents of the explanation nor dealt with any one of the reasons assigned by the petitioner in the reply which are extracted above.

It is settled and well established proposition of law that when an action has civil consequences it is obligatory and incumbent on the part of the authorities to consider the issues thoroughly, meticulously and to assign the reasons for discarding or accepting the same. In the impugned order the said exercise is conspicuously absent.

Another significant aspect, which is brought to the notice of this Court by the learned counsel for the petitioner is that without giving any opportunity of being heard to the petitioner herein the Deputy Director of Mines and Geology passed the impugned order. This, in the considered opinion of this Court is also fatal to the entire exercise undertaken by the Deputy Director of Mines and Geology.

In these circumstances, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the impugned action which culminated in issuance of demand notice, dated 22-02-2013 cannot be sustained in the eye of law and this Court is also of the opinion that the matter requires re-consideration by the Deputy Director of Mines and Geology after considering the explanation offered by the petitioner herein and after giving opportunity of being heard to the petitioner.

For the aforesaid reasons, the writ petition is allowed, setting aside the demand notice, dated 22-02-2013 and the matter is remanded to the Deputy Director of Mines and Geology – 3rd respondent herein for fresh consideration and passing orders, in accordance with law, after giving opportunity of being heard to the petitioner herein within a period of two (2) months from the date of receipt of a copy of this order.

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

A.V. SETHA SAI, J

August 19, 2015

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