

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

WRIT PETITION No.21757 of 2007

ORDER:

This writ petition is filed under Article 226 of the Constitution of India challenging the Demand Notice bearing No.3733/VG/2007, dated 24-09-2007 issued by the Assistant Director of Mines and Geology, Hyderabad – respondent herein.

By virtue of the said Demand Notice the Assistant Director of Mines and Geology directed the petitioner to pay a sum of Rs.25,87,637/- towards normal seigniorage fee together with 5-times penalty on the quantities of minor minerals consumed in the construction under Rule 26 (3)(ii) of A.P. Minor Mineral Concession Rules, 1966 (for short, 'the Rules').

Heard Sri K.V. Satyanarayana, learned counsel for the petitioner and learned Government Pleader for Industries and Commerce for respondent, apart from perusing the material available before the Court.

According to the petitioner, it gave a contract to M/s.Larsen and Tourbo Limited (ECC Division) for construction of Atria Mall in Abids. The respondent herein issued a show cause notice No.3733/VG/2007, 20-06-2007 asking the petitioner herein to show cause as to why necessary action should not be initiated for levy and collection of 5-times penalty together with normal seigniorage fee as per Rule 26 (3)(ii) of the Rules.

In response to the said show cause notice, according to the petitioner, it submitted an explanation, dated 21-07-2007. The Assistant Director of Mines and Geology, Hyderabad – respondent herein vide Demand Notice bearing No.3733/VG/2007, dated 24-09-2007 directed the petitioner to pay a sum of Rs.25,87,637/- towards normal seigniorage fee together with 5-times penalty on the quantities of minor

minerals consumed in the construction under Rule 26 (3) (ii) of the Rules.

Assailing the said Demand Notice, dated 24-09-2007 the present writ petition came to be filed. This Court while issuing *rule nisi* on 11-10-2007 in W.P.M.P.No.28209 of 2007 granted interim stay on condition of the petitioner depositing a sum of Rs.4,57,000/- within a period of four weeks. Subsequently, on noticing the compliance of the said order made by the petitioner, this Court made the interim order absolute on 15-06-2010. Today, when the matter is taken up it is strenuously contended by the learned Government Pleader that the present writ petition filed by the petitioner herein is not maintainable in view of the provisions of Rule 35 of the Rules, which reads as under:

“35. Appeal:- An appeal against any order passed by the Assistant Director or Deputy Director, Joint Director under these rules shall lie to the Director within a period of two months from the date of communication of such order to the party aggrieved and an appeal against an order of the Director shall be to the Government in like manner.”

Now, it is clear from the above provision of law that any order passed by the Assistant Director of Mines and Geology under the Rules is appealable to the Director of Mines and Geology. In view of the said legal position this Court is not inclined to go into the other merits and demerits of the issues and this Court is inclined to relegate the petitioner to the said remedy of the statutory appeal as provided under Rule 35 of the Rules.

It is also the plea of the petitioner herein that as per the contract the contractor namely M/s.Larsen and Turbo Limited undertook to pay seigniorage fee, as such the petitioner herein is not liable to pay the demanded amount.

For the aforesaid reasons, the writ petition is disposed of permitting the petitioner herein to file appeal before the Director of Mines and Geology, Hyderabad against the impugned Demand Notice under Rule 35 of the Rules within a period of two (2) months from the date of receipt of a copy of this order

and it is also made clear that the petitioner herein is at liberty to add its above said Contractor as a party respondent in the said appeal. If any such appeal is filed before the Director of Mines and Geology the same shall be considered and appropriate orders be passed within a period of two (2) months thereafter. It is also made clear that till such exercise attains finality before the Director of Mines and Geology no coercive steps shall be taken against the petitioner. It is further made clear that if no such appeal is filed within the time stipulated above the Demand Notice impugned in the present writ petition stands automatically revived and it is open for the respondent to take appropriate action. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SESA SAI, J

April 28, 2015

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