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

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Writ Petition No.19481 of 2015

ORDER:

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This writ petition is filed under Article 226 of the Constitution of India, with the following prayer:

“to issue a Writ of Mandamus, declaring the action of the third respondent in issuing the Demand Notice No.2017/Q/2005, dt.04-06-2015 thereby demanding to pay Rs.11,83,550/- (N.S.Fee Rs.1,97,250/- + 5 times Penalty Rs.9,86,250/-) and Rs.36,51,450/- (N.S. Fee of Rs.3,31,950/- +10 times penalty Rs.33,19,500/-) on the allegations of excess and illegal excavation of building stone in an extent of 0.500 hectares in R.S.No.254 of Bhimolu Village, Gopalapuram Mandal, West Godavari District, as illegal, without jurisdiction, contrary to the provisions of the A.P. Minor, Mineral Concession Rules, 1966 and consequentially set aside the Demand Notice No.2017/Q/2005, dt.04-06-2015 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Sri M. learned counsel for the petitioner and learned Government Pleader for Mines and Geology, for the respondents.

The Assistant Director of Mines and Geology, Elur, the 3rd respondent herein issued notice bearing No.2017/Q/D5, dated 01-05-2015, asking the petitioner herein to show cause as to why action should not be initiated under Rule 26(3) of the A.P. Minor Mineral Concession Rules, 1966 (for short 'the Rules'), alleging extraction and transportation of 10584 KM of ---stone unlawfully. In response to the said show cause notice issued by the 3rd

respondent, the petitioner herein submitted an explanation and the same was received by the office of the

3rd respondent on 13-05-2015. After receipt of the said explanation, the 3rd respondent, Assistant Director issued the impugned demand notice dated 04-06-2015, directing the petitioner herein to pay an amount of Rs.11,83,550/-, which includes nominal seignorage fee of Rs.9,70--- 5 times of penalty i.e. 9,86,250/-.

Assailing the validity and the legal sustainability of the said demand notice, dated 04-06-2015, issued by the 3rd respondent, Assistant Director of Mines and Geology, the present writ petition has been filed.

It is contended by the learned counsel for the petitioner that the impugned demand notice dated 04-06-2015 is highly illegal, arbitrary and unreasonable and violative of Article 14 of the Constitution of India and opposed to the very spirit of the provisions of the Rules. It is further submitted that the 3rd respondent herein did not take into consideration the explanation submitted by the petitioner herein to the show cause notice and issued the impugned notice without assigning any reason whatsoever.

Per contra, it is vehemently contended by the learned Government Pleader that the questioned demand notice is in accordance with the provisions of the Rules and there is no illegality nor any procedural infirmity in the demand notice issued by the 3rd respondent and in the absence of the same, the present writ petition is not maintainable and the petitioner is not entitled to seek any relief under Article 226 of the Constitution of India.

It is further emphatically submitted by the learned Government Pleader that the present writ petition is not maintainable in view of the effective and efficacious remedy of

appeal available to the petitioner under Rule 35 of the Rules, before the Director of Mines and Geology.

The material available before this Court manifestly discloses that in response to the show cause notice dated 01-05-2015 issued by the 3rd respondent, the petitioner herein submitted an elaborate explanation denying the allegations made in the show cause notice. A perusal of the impugned demand notice dated 04-06-2015 makes it manifest that the 3rd respondent except referring to the explanation offered by the petitioner herein, did not consider the contents of the explanation offered by the petitioner herein. This action on the part of the 3rd respondent cannot be sustained in the eye of law.

Coming to the maintainability of the writ petition, it is the submission of the learned Government Pleader that as per the provisions of Rule 35 of the Rules, an alternative remedy of appeal is available to the petitioner herein against the impugned demand notice to the Director of Mines and Geology. Rule 35 of the Rules read,

“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.”

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In view of the above provisions of law, which enables the petitioner herein to prefer appeal against the impugned demand notice before the Director of Mines and Geology, this Court is not inclined to interfere with the impugned demand notice, however, it is open for the petitioner herein to file appeal against the impugned demand notice before the Director of Mines and Geology.

For the foregoing reasons, the writ petition is disposed of leaving it open to the petitioner herein to file appeal against the impugned demand notice dated 04-06-2015 within the time stipulated under Rule 35 of the Rules. If such an appeal is filed within the time stipulated under the Rules, the same shall be considered by the Director of Mines and Geology in accordance with law and appropriate orders be passed within a period of one month thereafter. Till this exercise attains finality, no coercive action shall be taken against the petitioner herein pursuant to the impugned demand notice dated 04-06-2015. It is also made clear that if no appeal is filed by the petitioner herein as observed supra, it shall be open for the respondents-authorities to proceed in accordance with law.

The miscellaneous petitions, if any, filed in the writ petition shall also stand disposed of. There shall be no order as to costs.

A.V. SESA SAI, J.

Dt.02-07-2015.

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