THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION Nos.32228 of 2013 & 35577 of 2013

COMMON ORDER:

Both these writ petitions can be disposed of by a common order as they were instituted by the same set of petitioners against the same set of respondents excepting that the District Collector, Ranga Reddy District is not impleaded to W.P.No.32228 of 2013 and the cause espoused in both these cases is also almost identical with each other.

Heard Sri S.Niranjan Reddy and Sri Harsha Reddy, learned counsel for the petitioners, learned Government Pleader for Revenue (Telangana Area), who has accepted notice on behalf of the State Government, 5th respondent – the Deputy Director of Survey and Land Records, the Tahsildar-cum-Mandal Revenue Officer, Kandukur Mandal and also on behalf of the District Collector, Ranga Reddy District in W.P.No.35577 of 2013, learned Government Pleader for Mines and Geology who accepted notice on behalf of the respondent Nos.1 to 4. On behalf of the un-official respondents Sri Dattanand entered appearance and on his behalf Sri N. Ramachandara Rao, learned senior counsel advanced arguments.

The case of the petitioners is that the 1st petitioner is an absolute owner and possessor of the land admeasuring Ac.18.33 cents situated in Sy.No.75/A, Murali Nagar, Kandukur Mandal, Ranga Reddy District. He has acquired title to this property through a registered sale deed executed by Smt.Kamini Rani Guptha, W/o Sri Madan Lal, on 22.08.2002. It appears that the 1st petitioner filed an application on 07.06.2003 for grant of mining lease since it was found that the land is having deposits of Quartz & Feldspar. Considering the said application, Assistant Director of Mines and Geology, Hyderabad has called for a report from the Tahsildar- cum – Mandal Revenue Officer, Kandukur Mandal with regard to the classification and availability of the area applied for. It appears that the 1st petitioner was subsequently elected to the A.P. Legislative Assembly for two terms and consequently he could not pursue the matter any further because of his full time activity as a public representative. In the meantime, the unofficial respondent – firm applied for a mining lease and started undertaking mining activity in the land. But however, the unofficial respondent started interfering with the right of the writ petitioner to hold the land and his peaceful possession and enjoyment of the land by trying to extract the mineral therein by using machinery. Therefore, the petitioner with the local help available, could resist the illegal mining on 30.09.2013 and immediately brought the illegal mining activity to the notice of the Assistant Director of Mines and Geology, Hyderabad. Since there was no response, the present writ petitions are instituted.

It is the specific case of the petitioner that the Mines and Geology Department has never accorded any permission for the unofficial respondent for extracting any mineral from the land situated in Sy.No.75/A of Murali Nagar. Hence, the writ petitioner instituted W.P.No.32228 of 2013 seeking a Writ of Mandamus for declaring the action of the respondent Nos.1 to 5 therein in not taking any action against the illegal mining activity carried on by the respondent No.7 in the land situated in Sy.No.75/A admeasuring Ac.18.33 cents of Murali Nagar Village, Kandukur Mandal.

The writ petitioner has gathered further information from the Mines and Geology Department and thereupon he realized that on the application submitted by the 1st petitioner on 07.06.2003, the Assistant Director of Mines and Geology, Hyderabad has inspected the subject land on 28.06.2003 and recommended for grant of mining lease in favour of the 1st petitioner. The Tahsildar – cum – Mandal Revenue Officer, Kandukur Mandal has also made a recommendation on 16.10.2003 for grant of a mining lease in favour of the 1st petitioner and it is at that stage the matter was kept pending. The 1st petitioner has also come to know that the predecessors in interest of the unofficial 8th respondent in W.P.No.35577 of 2013 has applied for and secured a grant for mining lease in respect of the land situated in Sy.Nos.73, 74 and 75 to a total extent of Ac.58.16 cts, whereas the 8th respondent, in a separate application, has sought for grant of mining rights in respect of the land situated in Sy.Nos.74 and 75/2. The total extent of land comprised in Sy.No.75, prior to it's sub-division, is of an extent of Ac.21.04 Cts. Upon determination of the land holding, in terms of and in accordance with the A.P.Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the original pattadar has surrendered land of an extent of Ac.2.11 Cts situated in Sy.No.75, which was declared as surplus. Hence, considering the application of the 8th respondent mining grant was accorded including the land of Ac.2.29 cents lying in Sy.No.75, Muralinagar Village.

At this stage, in my opinion, it will be important to notice the following facts, which are culled out from the file produced by the learned Government Pleader for Revenue (Telangana Area).

Smt. Kamani Rani Gupta, W/o Madan Lal Gupta filed a declaration on 11.04.1975 in accordance with Section 8(1) of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, on behalf of her niece, Smt. Sobha Rani Gupta W/o Suresh Gupta showing the latter's total holding of land as Ac.109.22 cents lying in Sy.Nos.71 to 77 and 80 of Muralinagar Village, of the erstwhile Ibrahimpatan Taluk, Hyderabad District. In Sy.No.71 she claimed land of an extent of Ac.13.85 cts, while in Sy.No.72 Ac.11.08 cts; in Sy.No.73 Ac.15.02 cts; in Sy.No.74 Ac.15.50 cts; in Sy.No.75 Ac.15.82 cts; in Sy.No.76 Ac.14.00 cts; in Sy.No.77 Ac.12.00 cts; in Sy.No.80 Ac.11.95 cts. Thus, totaling to Ac.109.22 cts. A public notice in Form-IV containing the particulars of the land and the persons holding such lands in respect of the declaration received was accordingly published by affixing a copy thereof on the notice boards of the office of the Land Reforms Tribunal, Taluk Office and the Office of the Gram Panchayat in whose jurisdiction the lands are situate on 22.06.1975 and 28.06.1975. The fact of receipt of declaration and its availability for public inspection in the office of the Land Reforms Tribunal was also announced by beat of tom-tom in the village on 28.06.1975. The declaration was also referred, as required under Rule 4(5) of the Rules to the Tahsildar, Ibrahimpatan, who later on submitted verification and inspection report. The Tahsildar computed the land holding of the individual as Ac.163.45 cents lying in Sy.Nos.2, 3, 71 to 77 and 80 of Muralinagar Village and after allowing one standard holding, he has worked out the land held in excess of 1.7251 standard holding. It, further emerges that one Sri B. Bala Rajeshwar Rao, Advocate, who appeared on behalf of the declarant has contended that, out of the land shown to have been held by Smt. Shobha Rani as pattedar in the verification report, land measuring Ac.75.74 cents were sold away to different persons by the declarant and the purchasers were put in possession of such lands for the past 20 years. Certified copies of the pahanis were also produced for the year 1962-1963 upto 1974-1975 in respect of land lying in Sy.Nos.71 to 73, 76 & 77. Upon verification of the material, the Land Reforms Tribunal has found that the lands lying in Sy.Nos.71 to 73, 76 & 77 are in possession of Sri Mala China Malliah, Sri Goske Ramachandraiah, Sri Rampuran Laxmaiah, Sri Valla Brahmaiah, Sri Kovloo Malliah and others as purchasers for more than 12 years. Thus, the land of a total extent of Ac.75.74 cents was deleted from the computation of declarant holding. So far as the contention with regard to the land lying in Sy.Nos. 2 & 3 of the village, since no documentary evidence has been produced by the declarants, the Tribunal declined to delete it from the holding of the declarant. The Land Reforms Tribunal proceeded to finalize the enquiry and held that the net holding of land by the declarant Smt. Shobha Rani works out to Ac.87.75 cents equivalent to 1.3540 standard holding and since she is entitled to hold land of one standard holding, the declarant was determined under Section 9 of the Act as holding land in excess of the ceiling limit as on the notified date namely 01.01.1975 equivalent to 0.3540 standard holdings. Thus, under Section 10 of the Act, the declarant was liable to surrender the said excess land.

After conducting the necessary enquiry the Land Reforms Tribunal, Hyderabad, South Division of Hyderabad District passed orders through proceedings C.C.No.2738/I/75 dated 07.06.1977 that the declarant held land of 0.3540 standard holding in excess of the ceiling limits as on the notified date namely 01.01.1975 and consequently it was ordered that the declarant is liable to surrender the excess land under Section 10 of the Act. On 03.09.1977

Sri Madanlal Gupta, husband of the original declarant, acting on her behalf, filed an application before the Land Reforms Tribunal surrendering land of a total extent of Ac.22.94 cts, which is equivalent to 0.3540 standard holding, which is held as excess land in the hands of the declarant. A petition was filed listing out in detail the land which the declarant has proposed to surrender and it comprised of a land of an extent of Ac.20.65 cts in Sy.No.74 and land of an extent of Ac.2.29 cts in Sy.No.75. In fact a plan was also drawn detailing as to how the declarant has proposed to surrender the total extent of Ac.22.94 cts. Thereafter, an enquiry in accordance with Section 7(4) of the Ceiling Act has been conducted and followed by a notice under Section 10. While the Major chunk of the land required to be surrendered lying in Sy.No.74 is accepted, land of an extent of Ac.2.29 cts, in Sy.No.75 has also been accepted. It is indeed surprising that land of an extent of Ac.20.65 cents lying in Sy.No.74 has been accepted to be surrendered, whereas, in the declaration the claimant has claimed land of an extent of Ac.15.50 cents as owned by her.

The Tribunal has pronounced it's order on 07.06.1977. Scanned copy of the same is marked as Annexure-I to this judgment.

Thereafterwards, the Land Reforms Tribunal, Hyderabad (South), Hyderabad, through its proceedings dated 09.06.1977 forwarded to the Tahsildar, Ibrahimpatan Taluk, copy of the orders passed under Section 9 of the Act along with a notice in Form-VI with a request to obtain the information relating to the lands desired to be surrendered by the declarant, which should be unencumbered and undisputed and to be sent to the office of the Tribunal by 25.06.1977. It was further made clear by the Tribunal that, in case the declarant does not furnish the particulars of the land to be surrendered, the Tahsildar was requested to select the undisputed and unencumbered lands equivalent to the surplus determined already and to furnish the same to the tribunal along with a sketch in duplicate by 25.06.1977. Copy of this proceeding dated 09.06.1977 is marked as Annexure-II to this judgment.

I could not find any document reflecting the choice of land, lying within specified boundaries, preferred to be surrendered by the declarant. I, therefore infer that, in it's absence, the Tahsildar, Ibrahimpatan, has finalized the land to be accepted for surrender. However, I could find from the file that a sketch was prepared on 03.09.1977 disclosing the extent of excess land to be surrendered to the Government by the declarant. Interestingly, in this sketch, land of an extent of Ac.20.65 cents in Sy.No.74 is completely marked as liable to be surrendered to the Government. The balance extent of Ac.2.29 cents of land is sought to be selected by sub dividing the land lying in Sy.No.75, land of an extent of Ac.2.29 cents has been earmarked and assigned Sub Division No.75/2. <u>This extent of land was shown in the sketch as lying vertical in Sy.No.75 running from North to South</u>. By this vertical compartmentalization of land in Sy.No.75, it was sought to be notified as if it will form contiguous basis with the adjoining land lying in Sy.No.74. This sketch is marked as Annexure-III to this judgment. Thereafter, the Land Reforms Tribunal has issued notice in Form No.8 in terms of Rule 7 (4) of the Rules declaring the particulars of the land which have been accepted for surrender by the Tribunal comprising of the whole of the land lying in Sy.No.74 to an extent of Ac.20.65 cents and the balance required land of Ac.2.29 cents is to be surrendered from Sy.No.75. This public notice has been published on 13.09.1977, inviting objections. This is marked as Annexure No. IV to this judgment.

Thereafter, one Sri M. Raj Kumar, Revenue Inspector, Maheswaram, who was authorized by the Sub-Collector (East), Hyderabad, has accepted the surrender and taken possession of the excess land on 15.11.1977. The certificate of taking possession is published in Form-X in terms of Sub-Rule (3) of Rule 8. This is marked as Annexure-V to this judgment. Thus, the event of surrender of land by the original declarant and accepted by the State Government has attained finality. Such land has vested in the State free of all encumbrances. On 21.03.1978, the amount of compensation of Rs.660/- determined as payable to the declarant towards the excess land surrendered by her has been published in Form-13. Copy of this proceeding is marked as Annexure-VI. The file thereafter contained a Tounch Plot, (Plan) drawn to a scale disclosing the ceiling sub division of the land in Sy.No.75. This, sub division of land has shown the entire land lying in Sy.No.74 in tact and land in Sy.No.75 has been sub divided as parts 1 & 2. Land in Sy.No.75/1 is the retainable one and land of an extent of.2.29 cents lying in Sy.No.75 is shown as land ceiling surplus surrendered land. The scanned copy of this Sub Division Tounch Plot (Plan) is marked as Annexure-VII to this judgment. But, this ceiling sub division tounch plot (plan) has departed to the extent of locating the surplus land from the plan marked as Annexure-III. The surrendered land in Sy.No.75 in this plan (Annexure-VII) is shown as running from North-East to North-West, horizontally instead of running from North to South vertically as per the plan prepared on 03.09.1977 (Annexure-III). This ceiling sub division Tounch Plot plan is prepared by the Revenue Officials and it is relating to the Ceiling Case No.2738/I/75, which relates to the case of Smt. Shobha Rani. There is no authentication found in the record as to whether this plan was prepared by the Department of Survey and Land Records. In juxtaposition, the plan annexed to the sale deed of the petitioner discloses that the surplus surrendered land of Ac.2.29

cents in Sy.No.75 of Muralinagar is falling in the South-West corner of the land lying in Sy.No.75/2. Thus, we have three different plans existing before us all of which are indicative of the land ceiling surplus land surrendered by the original declarant. In a strict sense, I am not so much concerned with the plan annexed to the sale deed of the writ petitioner. It could be the result of understanding of the parties. It is not the understanding of the parties as to the location of the surrendered ceiling surplus land, so far as land lying in Sy.No.75 that matters. But, what matters is the two different plans which are available in the Government file and which are marked as annexures III & VII to this judgment. While Annexure III Indicates the surplus ceiling land as forming contiguous zone with the land lying in Sy.No.74 running from North to South, Annexure VII discloses the ceiling surplus land as lying in a horizontal strip running from North-East to North-West of land in Sy.No.75. This is where the whole controversy has cropped up.

The Government would be entitled and justified to grant any mining lease on outright basis in favour of any third parties in accordance with the statutory scheme so long as the land belongs to it. If the land does not belong to it, then, different set of considerations will have to flow before mining rights can be granted in favour of a third party. The consent of the third party becomes essential in such circumstances. If the land surrendered by the original declarant, insofar as in Sy.No.75 is concerned, is in contiguous zone to the land lying in Sy.No.74, running from North to South, then, that strip of land of Ac.2.29 cents in Sy.No.75 can be treated as land belonging to the Government and the Government can grant mining rights over it. If, on the other hand, the strip of land in Sy.No.75 of an extent of Ac.2.29 cents is lying horizontally, running from North-East to North-West of land lying in Sy.No.75, only such a strip can be used for mining activities, but not the land lying contiguously to that of the land in Sy.No.74. Hence, it is for the State Revenue Administration together with the Department of Land Survey to first of all determine and localize which is the strip of Ac.2.29 cents of land lying in Sy.No.75, which has been taken possession of by it as ceiling surplus land from the declarant Smt. Shobha Rani Gupta. Without that factor being firmly established, the Government could not have proceeded to consider granting mining lease in favour of the unofficial respondent No. 8 to the extent of land lying in Sy.No.75 of an extent of Ac.2.29 cents. The objection raised by the petitioner herein to this extent therefore is a significant objection. To this extent, the petitioner has a legitimate grievance. Without first, resolving this factual controversy, the department ought not have allowed mining activity. It is essential that the State Government should first localize the land that is vested in it, first.

Hence, for the aforesaid reasons, I, direct the State Government in its Revenue Administration first of all to localize and identify, in the presence of the petitioners herein and the respondent No. 8, the land taken possession of by the Government (ceiling surplus surrendered land) to the extent of Ac.2.29 cents lying in Sy.No.75 of Muralinagar Village and to that extent of land only, the mining activity of respondent No. 8 should be confined and if necessary, an appropriate modification of the mining grant in favour of the unofficial respondents be finalized. Simultaneously the application submitted by the petitioner for grant of mining lease on 07.06.2007 shall be finalized, for the remaining extent of land held and owned by him in Sy.No.75/1 of Muralinagar Village.

Till such time, the issue is determined, the grant of mining lease insofar as the land lying in Sy.No.75 in favour of respondent No. 8 shall be stopped and no mining activity therein shall be permitted to be carried out by the unofficial respondents.

The writ petitions stand disposed of accordingly. Miscellaneous petitions pending shall stand closed. No costs.

INDEX OF ANNEXURES		
Annexure No.	Description	Page No.
I	Proceedings of the Land Reforms Tribunal dated 07.06.1977.	14
II	Letter from the Land Reforms Tribunal addressed to the Tahsildar, Ibrahimpatan Taluk dated 09.06.1977.	16
III	Sketch showing the land of an extent of Ac.2.29 cents has been earmarked and assigned Sub-Division No.75/2, dated 03.09.1977.	17
IV	Public notice issued in Form-8 on 13.09.1977.	18
V	Certificate of taking possession of excess land in Form-X dated 15.11.1977.	21
VI	Amount of compensation of Rs.660/- determined as payable to the declarant towards the excess land surrendered by her, published in Form-13 dated 21.03.1978.	22
VII	Ceiling Sub-Division Tounch Plot disclosing the ceiling surplus land as lying in horizontal strip running from North-East to North-West of land in Sy.No.75.	24

JUSTICE NOOTY RAMAMOHANA RAO

19.01.2015
Ksp/sp