

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

W.P.No.16173 of 2015

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the orders passed by the Director of Mines and Geology, Hyderabad/second respondent herein, vide Appeal proceedings No.4501/R2/AH/2015 dated 12.05.2015, whereby and where-under, the Director of Mines and Geology/Second respondent herein, dismissed the appeal filed by the petitioner herein under the provisions of Rule 35 of the A.P. Minor Mineral Concession Rules, 1966.

2. The facts and circumstances leading to the filing of the present writ petition are, as under:

3. The State Government by virtue of G.O.Ms.No.299, Industries & Commerce (Mines-I) Department, dated 16.11.2007, granted mining lease in favour of the petitioner herein for Quartz and Felspar in respect of an extent of 3.073 hectares situated in Sy.No.242, 248, 252 and 253 of Machupally Village, Kodair Mandal, Mahaboobnagar District, for a period of 20 years. The Deputy Director of Mines and Geology/third respondent herein, issued a show-cause notice bearing No.5008/ML/MBNR/2014, dated 20.11.2014, directing the petitioner herein to show-cause as to why action should not be taken for collection of evaded royalty along with the price of mineral amounting to Rs.45,34,892/- on the allegation of encroachment of the area outside the leased area and on the allegation of illegal mining.

Responding to the said show-cause notice, petitioner herein submitted explanation on 16.12.2014. The Deputy Director of Mines and Geology/third respondent herein issued a demand notice bearing No.5008/ML/MBNR/2014, dated 28.02.2015 asking the petitioner to pay a sum of Rs.45,34,892/- as indicated in the show-cause notice earlier.

4. Felt aggrieved by the said demand notice issued by the Deputy

Director of Mines and Geology/third respondent herein, petitioner herein filed appeal before the Director of Mines and Geology under Rule 35 of the A.P. Minor Mineral Concession Rules, 1966. Subsequently, the Director of Mines and Geology, Hyderabad/second respondent herein, dismissed the said appeal filed by the petitioner, stating that the same being not tenable under Rule 35 of the A.P. Minor Mineral Concession Rules, 1966 and the demand notice was issued under Section 21 of the Mines and Minerals (Development & Regulation) Act, 1957.

5. Calling in question, the validity and legal sustainability of the said orders passed by the Director of Mines and Geology dismissing the appeal filed by the petitioner herein, the present writ petition has been filed.

6. Heard Sri Hari Sreedhar, learned counsel for the petitioner and the learned Government Pleader for Mines and Geology for the respondents apart from perusing the material available before the Court.

7. It is contended by the learned counsel for the petitioner that the questioned order passed by the Director of Mines and Geology is highly illegal, arbitrary, unreasonable and opposed to the very spirit and object of the provisions of A.P. Minor Mineral Concession Rules, 1966. It is further submitted by the learned counsel that the conclusion arrived at by the Director of Mines and Geology is contrary to the provisions of the Mines and Minerals (Development & Regulation) Act, 1957 and the Rules made

there-under. It is further submitted that by virtue of notification dated 10.02.2015, the Union of India declared Quartz and Felspar as minor mineral, as such, the rejection of appeal filed by the petitioner herein by the Director of Mines and Geology is untenable .

8. Per contra, it is contended by the learned Government Pleader that there is no illegality nor any procedural infirmity in the impugned order, as such, the present writ petition is not maintainable and the petitioner herein is not entitled for any relief from this Court under Article 226 of the

Constitution of India.

9. The information available before this Court manifestly discloses that as against the demand notice issued by the Deputy Director of Mines and Geology on 28.02.2015, the petitioner herein preferred a statutory appeal on 27.03.2015, before the Director of Mines and Geology under Rule 35 of the A.P. Minor Mineral Concession Rules, 1966. According to Rule 35 of the A.P. Minor Mineral Concession Rules, 1966 any order passed by the Assistant Director or Deputy Director of Mines and Geology is appealable to the Director of Mines and Geology, within a period of two months from the date of communication. In the instant case, the petitioner herein filed the said statutory appeal within the time prescribed.

10. The impugned order passed by the Director of Mines and Geology/second respondent herein candidly discloses that the Director of Mines and Geology refused to entertain the appeal on the ground that the Deputy Director of Mines and Geology, issued the demand notice dated 28.02.2015 under Section 21 of the Mines and Minerals (Development & Regulation) Act, 1957, as such, the revision would lie to the Union of India under the Central Rule 54 of the Mineral Concession Rules, 1960. This, in the considered opinion of this Court is unsustainable. At this juncture, it would be pertinent to note that the Union of India by way of a notification bearing S.O.423 (E) dated 10.02.2015 declared Quartz and Felspar as Minor Minerals under Section 3 (e) of the Mines and Minerals (Development and Regulation) Act, 1957. Therefore, the second respondent/Director of Mines and Geology ought to have entertained the appeal and decided the same on merits under Rule 35 of the A.P. Minor Mineral Concession Rules, 1966. In this context, it may be appropriate to refer to the judgment of this Court in the case of **VALLABHANENI LAKSHMANA SWAMY AND OTHERS v. VALLURU BASAVAIAH AND OTHERS**^[1]. In the said Judgment, the Full Bench of this Court at paragraph 73 laid down certain guidelines while dealing with the

provisions of A.P. Civil Courts (Amendment) Act 30 of 1989 and the paragraph 73 of the said judgment reads as under:-

“73. Therefore, we reached the following conclusions:

1. That the Civil Court (Amendment) Act 30 of 1989 is applicable prospectively from 1.12.1989.
2. Even in case of suits which were filed earlier to the amendment and they are pending disposal as on the date of the amendment came into force, the appeal if any has to be necessarily filed before the Forum created under the amended Act depending on the pecuniary limits. To this limited extent, the decision in Kotina Papaiah's case (supra) and Kameshwaramma's case (supra) and Haragopal's case (supra) stand modified.
3. Any appeal having been presented before date of amended Act coming into force and the appeals pending as on the said date are required to be disposed of by the Courts, wherever they were pending and the amendment will not have any effect on pending appeals either presented or pending.
4. The suits or petitions in which decrees were passed prior to 1.12.1989, they will be dealt with in accordance with the pre-amended procedure.
5. In the cases before us, even after the amendment came into force on 1.12.1989, number of appeals having value less than Rs. one/3 lakhs were admitted by this Court and some of them were disposed of by virtue of the judgment of the Division Bench in Kameshwaramma's case (supra) subsequent cases though in fact they do not fall within the category of either pending appeals or appeals presented, before the amendment. The pecuniary limits and forum go together and the amendment being prospective in operation, the appeals ought to have been filed before the amended forum. But, taking into consideration that large number of appeals were already admitted by this Court, and they are pending for a considerable length of time and keeping in view the maxim that "Actus curiae neminem gravabit" (An act of the Court shall prejudice no man), we declare that such of the cases which were filed subsequent to amendment are deemed to have been transferred to this Court under Section [24](#) of Code of Civil Procedure for their disposal in accordance with law.”

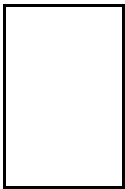
11. In view of the above facts and circumstances of the case and having regard to the legal position as enumerated *supra*, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the order passed by the second respondent/Director of Mines and Geology, is not tenable in the eye of law.

12. For the aforesaid reasons, writ petition is allowed, setting aside the order passed by the Second respondent/Director of Mines and Geology vide Appeal proceedings No.4501/R2/AH/2015, dated 12.05.2015 and the matter is remanded to the Director of Mines and Geology for fresh consideration and for passing appropriate orders on the appeal filed by the petitioner herein on 27.03.2015 against the demand notice bearing No.5008/ML/MBNR/2014, dated 28.02.2015, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order, after giving notice and opportunity to the petitioner. Till such exercise attains finality, the interim order granted earlier on 10.06.2015 shall continue. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No costs.

A.V.SESHA SAI, J

Date: 12.08.2015

grk



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

— — — — —

W.P.No.16173 of 2015

-

-

-

-

Dated 12th August, 2015

grk

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

W.P.No.16173 of 2015

Date: 12th August, 2015

-

Between:

M/s.Sri Anjaneya Minerals,
H.No.2-26, Nidudaveli village, Kesampet Mandal,
Mahabubnagar District-509408,
represented by its Managing partner.

... Petitioner

and

The State of Telangana represented by its
Principal Secretary, Industries and Commerce (Mines),
Department, Telangana Secretariat and three others.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 12th August, 2015

SUBMITTED FOR APPROVAL: 12th August, 2015

-

-

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

- | | |
|---|--------|
| 1. Whether Reporters of Local Newspapers
May be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Lordship wish to see the
Fair copy of the judgment? | Yes/No |

[\[1\]](#) 2004 (5) alt 755 (L.B.)