

THE HONOURABLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.24515 of 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue Writ of Mandamus to declare the action of the Respondent No.3 in issuing the impugned order Vide Notice No.2148/Q1/2014 dated 20-07-2015 without conducting proper measurement/enquiry is illegal, arbitrary, without jurisdiction and violation of principles of natural justice and without any evidence and contrary to the Articles 14 and 19(1)(g) of the Constitution of India and consequently set aside the Notice No.2148/Q1/2014 dated 20-07-2015 in the interest of justice”.

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

The petitioner submitted an application to the Assistant Director of Mines and Geology, Gandhipuram, Rajahmundry-3rd respondent for grant of quarrying lease for gravel for an extent of Acs.10.07 cents in Survey No.28 of Balabhadrapuram Village, Biccavole Mandal, East Godavari District. Respondent No.3 *vide* his proceedings No.2148/Q1/2014, dated 16.04.2014 granted quarry lease in favour of the petitioner in respect of the said extent for a period of five years commencing from 13.04.2014 to 15.04.2019. Subsequently, R3 *vide* proceedings No.2148/Q1/2014, dated 16.04.2014 issued work order also in favour of the petitioner.

The 3rd respondent issued a notice bearing No.2148/Q1/2014 dated 19.06.2015, asking the petitioner to show-cause as to why action should not be initiated against him under Rule 26(1) read with 34(1) of Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short ‘the Rules’) on the ground that the latter excavated and transported 48,946 Cu.m of gravel from the leased area over and above the permitted quantity without lawful authority. Questioning the said show-cause notice, the petitioner filed W.P.No.2221 of 2015 and the same is pending consideration before this Court. While things stood thus, 3rd respondent issued the present impugned notice, directing the petitioner to pay normal seigniorage fee of Rs.10,76,812/- along with five times penalty of Rs.53,84,060/-, totalling to a tune of Rs.64,60,872/-.

It is submitted by the learned counsel for the petitioner that the impugned notice dated 20.07.2015 is illegal, arbitrary, unreasonable and is in total violation of principles of natural justice, besides being opposed to the very spirit and object of the said Rules. It is further submitted that the petitioner submitted a representation, asking the 3rd respondent to furnish certain information and without furnishing the said information, straight away R3 passed the impugned order and in view of the same the action cannot be sustained in the eye of law as the same is in violation of the doctrine of *audi alteram partem*.

On the contrary, it is vehemently contended by the learned Government Pleader that the impugned notice is in accordance with the Rules and there is no illegality nor any procedural infirmity in the impugned action which culminated in the issuance of the impugned notice, as such, the present writ petition is not maintainable and the petitioner is not entitled to the relief under Article 226 of the Constitution of India.

There is absolutely no dispute with regard to the fact that the petitioner filed W.P.No.2221 of 2015 before this Court, challenging the show-cause notice dated 19.06.2015 and the same is pending consideration. There is also no controversy with regard to the reality that the petitioner submitted a representation to the 3rd respondent requesting for the following information.

- “1. The Base map and the contour levels over the area, you have considered to compare the present pits levels.
2. The thickness of overburden considered on the top layer.
3. The scientific method which you have adopted to assess volumes in undulated terrains
4. Sketches or maps relief upon by you at the time of survey.
5. Sketches and maps etc., prepared by you after completion of survey.”

A perusal of the impugned notice dated 20.07.2015 in clear terms discloses the factum of request made by the petitioner to furnish certain information, but R3

without responding to the same and without assigning any proper reasons for not furnishing the same, issued impugned notice dated 20.07.2015, asking the petitioner to pay the normal seigniorage fee along with five times penalty. This action, in the considered opinion of this Court, is in total violation of the principles of natural justice.

It is settled and well established proposition of law that any action by the authorities which has civil consequences must necessarily be preceded by the notice and full-fledged opportunity. In the instant case, the material on record discloses total absence of the same. It is also pointed out by the learned Government Pleader that there is an effective alternative remedy available to the petitioner under the provisions of Section 35 of the Rules against the impugned notice.

In view of non-adherence to the principles of natural justice, this Court is inclined to entertain the present writ petition even though alternative remedy is available to the writ petitioner.

For the above reasons, this Writ Petition is allowed, setting aside the notice bearing No.2148/Q1/2014, dated 20.07.2015 issued by the 3rd respondent and the matter is remanded back to the 3rd respondent with a direction to furnish the information required by the petitioner and take appropriate action in accordance with law after issuing notice and giving an opportunity of being heard to the petitioner. This exercise shall be completed within a period of one month from the date of receipt of a copy of this order. Till then, no coercive steps shall be taken against the petitioner pursuant to the impugned notice.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

A.V. SESA SAI, J

Date : 05.08.2015

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