

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

WRIT PETITION Nos.678 and 16294 of 2014

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COMMON ORDER:

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Since the outcome of W.P.No.678 of 2014 will have some bearing on the result of W.P.No.16294 of 2014, this Court deems it apposite to dispose of these two writ petitions by way of this common order.

2. In W.P.No.678 of 2014, the challenge is to the order passed by the Director of Mines and Geology vide proceedings No.31351/R3-2/2010 dated 03.04.2013 as confirmed by the State Government vide Memo No.13355/M.II(2)/2013-4 dated 17.12.2013.

3. In W.P.No.16294 of 2014, the grievance of the petitioner is the inaction of the Director Mines and Geology and the Assistant Director of Mines and Geology, Guntur, Guntur District in disposing the application dated 10.04.2013 submitted by the petitioner for grant of quarry lease for Black Granite in an extent of 4.000 hectares in Sy.No.381/10 of Edevalli Village, Chilakaluripet Mandal, Guntur district.

4. According to the petitioner, in W.P.No.678 of 2014, the first respondent State Government vide proceedings No.3087/Q4/2001 dated 14.11.2002 granted quarry lease in its favour for an extent of 2 hectares in Sy.No.381/10 of Edevalli Village, Chilakaluripet Mandal, Guntur district, for a period of 20 years under Rule 12 (5) (a) (i) of Andhra Pradesh Minor Mineral Concession Rules, 1966 (hereinafter called 'the Rules').

5. The Director of Mines and Geology issued a show-cause notice bearing No.31351/R3-2/2010-2 dated 18.10.2012, asking the petitioner to show-cause as to why action should not be initiated for determination of quarry lease and to forfeit the security deposit under Rule 12 (5) (h) (xii) of the Rules while alleging that the petitioner assigned the quarry lease in favour of M/s. Universal Granites/seventh respondent herein. In response to the said show-cause notice, petitioner submitted an explanation dated 09.12.2012, denying the allegations.

6. Thereafter, the Director of Mines and Geology, by virtue of an order issued vide proceedings No.31351/R3-2/2010 dated 03.04.2013 determined the quarry lease on the ground of violation of Rule 12 (5) (h) (viii) of the Rules and covenant No.8 of the lease agreement under Rule 12 (5) (h) (xii) of the Rules. Earlier, challenging the said order of determination, the petitioner herein filed WP.No.14498 of 2013 and this Court dismissed the said writ petition on 30.07.2013 with a liberty to the petitioner to avail the alternative remedy before the first respondent State Government under Rule 35 of the Rules. Then, the petitioner preferred the same on 07.08.2013 and the first respondent State Government vide Memo. No.13355/M.II(2)/2013-4 dated 17.12.2013, rejected the revision of the petitioner, confirming the orders of determination of lease passed by the Director of Mines and Geology.

7. Calling in question, the validity and the legal sustainability of the said orders passed by the State Government and the Director of Mines and Geology, W.P.No.678/2014 came to be filed and this Court on 09.01.2014, granted order of *status quo*.

8. Respondents 1 and 2 and 6 have filed WVMP.Nos.2651 and 3627 of 2014, respectively, supported by counter affidavits and the respondents 5 and 7 have filed counter affidavits, denying the allegations and averments made in the affidavit filed in support of the writ petition.

9. Coming to W.P.No.16294 of 2014, it is a writ petition filed by one Mr.Kakarla Srinivas Rao, questioning the inaction on the part of the respondents 2 and 3 i.e., the Director of Mines and Geology and the Assistant Director of Mines and Geology, Guntur, in processing the quarry lease application dated 10.04.2013 said to have been made by him for grant of quarry lease for Black Granite over an extent of 4.000 hectares in Sy.No381/10 of Edevalli Village, Chilakaluripet Mandal, Guntur district.

10. Heard Sri Ramarao, learned Senior Counsel representing the counsel for the petitioner on record, Sri G.Sridhar in W.P.No.678/2014, learned Government Pleader for the State, Smt N.Shobha, learned counsel for respondent No.5, Sri K.Anand Rao, learned counsel for respondent No.6, Sri G.Krishnamurthy, learned counsel for respondent No.7,

Sri S.Laxmikanth, learned counsel for the petitioner in W.P.No.16294 of 2014 and the learned Government Pleader for respondents apart from perusing the material available on record.

11. Reiterating the contents of the writ affidavit, it is contended by the learned Senior Counsel that the order of determination of lease passed by the Director of Mines and Geology as confirmed by the State Government in the revision is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 19 (1) (g) of the Constitution of India. It is further submitted by the learned Senior Counsel that the authorities ought not to have simply relied upon the statements said to have been made on behalf of M/s. Universal Granites and M/s.Manu Granites in the absence of any evidence of sub-lease in favour of any third parties. It is also argued that the Director of Mines and Geology erred in determining the lease basing on the false complaint of one K. Vasudeva Reddy, though he never appeared before the authorities. It is further submitted that the authorities did not consider the explanation offered by the petitioner. The learned Senior Counsel further argues that the Director of Mines and Geology grossly erred in determining the lease on the ground of alleged variation in the quantity of mineral. It is also the further submission of the learned Senior Counsel that the first respondent State Government mechanically confirmed the order of Director of Mines and Geology without actually looking into the material available on record.

12. Per contra, it is contended by the learned Government Pleader for Mines and Geology and the learned Advocates for the unofficial respondents that there is no illegality nor there is any procedural infirmity in the impugned action of determination of lease and in the absence of the same, writ petition is not maintainable and the petitioner in W.P.No.678/2014 is not entitled for any relief from this Court under Article 226 of the Constitution of India. It is also submitted that the Director of Mines and Geology, only after calling for the explanation and after considering the entire material available on record and only by assigning cogent and convincing reasons, ordered determination of the quarry lease. It is further submitted that the first respondent State government also considered the revision thoroughly and passed the order, confirming the order passed by the Director of Mines and Geology. It is further submitted that since both the authorities concurrently and uniformly held against the petitioner, the orders impugned are not amenable for any judicial review under Article 226 of the Constitution of India. It is also submitted that since the petitioner acted in contravention of Rule 12 of the Rules, the petitioner herein in WP.No.678 of 2014 is not entitled for any indulgence of this Court.

13. In the above background, now the issue that emerges for consideration of this

Court is__

“Whether the order of determination of lease passed by the Director of Mines and Geology and the order of the State Government, confirming the same, are in accordance with law or whether the same warrant any interference of this Court under Article 226 of the Constitution of India?”

14. The material available before this Court vividly discloses that the Director of Mines and Geology pressed into service the provisions of the Rules followed by a showcase notice, and on receipt of the explanation offered by the petitioner, the Director of Mines and Geology, by way of an order vide proceedings No.31351/R3-2/2010 dated 03.04.2013, ordered determination of quarry lease granted in favour of the petitioner earlier in the year 2002.

15. A perusal of the said order of determination clearly discloses that the Director of Mines and Geology recorded the following reasons:

“1. Sri K.Vasu Deva Reddy submitted a copy of “Royalty Lease Agreement dt: 26.06.2007 entered between Sri T.Venkateswara Rao, Mg. P: M/s. Vijaya Granite Exports and Sri I.V.Nanda Gopal of M/s. Universal Granites for (36) months. As per noting it is stated “giving out the quarry on Royalty basis” for an amount of Rs.10.00 Lakhs which shall be adjusted against Royalty fees only in the last (07) months i.e., from 30th month to 36th month of the contract along with transaction details including payment of Rs.5.00 Lakhs before 31.10.2007. As part of Royalty Lease Agreement, it is stated “the first party (M/s.Vijaya Granite Exports) agrees to handover the quarry for production and sales of Granite Blocks and put the party of the 2nd party (M/s. Universal Granites) in possession of the quarry to enable the party of the 2nd part to carry out the quarrying activities and see that the quarry will be free from all encumbrances and litigation”. Therefore, the allegation that the lease holder given sub-lease to M/s. Universal Granites is proved.

2. The Assistant Director of Mines and Geology, Guntur vide Lr.No.3087/Q /2001, dt: 20.08.2011 submitted a detailed report to the Director of Mines and Geology on the representation filed by Sri K.Vasu Deva Reddy before the Government stating that M/s. Vijaya Granite Exports made agreement with M/s.Universal Granites for a period of (36) months vide agreement dt: 26.06.2007 for production and selling of Granite Blocks on Royalty basis which is violation of condition (3) of the appendix enclosed to the grant Proceedings No.27145/R3-3/2001,dt: 19.10.2002 of DM&G and violation of covenant 5 of the lease deed conditions by subletting the lease to M/s. Universal Granites without prior permission to the competent authorities. Finally, the Assistant Director of Mines and Geology, Guntur requested the Director of Mines and Geology to take action against the quarry lease held by M/s Vijaya Granite Exports for violation of subletting the lease to

M/s.Universal Granites if the allegations are proved subject to satisfaction of APMMC Rules, 1966.

3. Sri P.Nithin submitted a notarized affidavit dt: 12.12.2011 as partner M/s. Vijaya Granite Exports stating that the lease holder not gave the quarry lease on sub-lease and if it is found that the quarry was given sub-lease, the Department shall take action for cancellation of quarry lease. This affidavit was submitted for necessary instructions to Assistant Director of Mines and Geology, Guntur to issue dispatch permits.

4. Further, there is a “Memorandum of Understanding” entered between Ch.Subbayamma and M/s.Vijaya Granite Exports.

5. Similarly there is an “agreement” entered between M/s.Vijaya Granite Exports and M/s.Manu Granites on 18.03.2011.

6. There is a “Raising Agreement’ entered between M/s. Vijaya Granite Exports and M/s. Manu Granites on 18.03.2011 along with cheques showing monetary transaction to M/s.Vijaya Granite Exports for Rs.10.00 Lakhs, 5.00 Lakhs, 0.98 Lakhs, (2) cheques issue by Sri M.Subba Rao of M/s.Manu Granites Rs.2.50 lakhs each favoring Timmisetty Koteswara Rao.

7. There is a joint inspection report submitted by the Deputy Director of Mines and Geology, Guntur vide Lr.No.5499/Q1/2010, dt: 03.07.2012 requesting the Director of Mines and Geology to take necessary action for determination of quarry lease held by M/s. Vijaya Granite Exports for violation of Rule, 12 (5) (h) (vii) of APMMC Rules, 1966 by assigning the lease to M/s. Universal Granites and thereon to M/s.Manu Granites without obtaining prior permission from the Director of Mines and Geology.

8. There is a representation from M/s. Universal Granites address to the Deputy Director of Mines and Geology, Guntur regarding the giving of sub-lease.

Further, the reply submitted by M/s Vijaya Granite Exports, Mg.P: Sri S.Venkateswara Rao was examined in detail, with reference to the reports submitted by the Deputy Director of Mines and Geology, Guntur vide Lr.No.5499/Q1/2010, dt:03.07.2012 and the Assistant Director of Mines and Geology, Guntur and also as per available records, which reveals that M/s Vijaya Granite Exports, Mg.P: Sri T.S.Venkateswara Rao entered in to lease agreement in Form-G with the Assistant Director of Mines and Geology, Guntur on 14.11.2002. In the said agreement under covenant/condition No.8(5) it was mentioned that ‘not to assign, underlet or part with the possession of the demised land or any part thereof without the written consent of the lesser first obtained”.

In this connection, the true extract of Rule, 12 (5) (h) (vii) is given below:

“The licensee or lessee shall not assign, sub-let, transfer or otherwise dispose of the under license or lease without obtaining the previous sanction in writing of the Director. The transfer application shall be made to the Assistant Director of the District concerned in Form-R along with non-refundable application fee of Rs.5000/-. The license or lease shall be executed as per provision under clause (e):

Provided that such sanction shall be accorded that there is no speculation involved in the transfer of licence or lease:

Provided further that the transferor and the transferee shall not be in arrears of any mineral revenue to the Government.”

As per Rule 12 (5) (h) (viii) of APMMC Rules, 1966, the licensee or lessee shall not assign, sub-let, transfer or otherwise dispose of the under licence or lease without obtaining the previous sanction in writing of the Director.

As per records, M/s Vijaya Granite Exports entered into the Royalty lease agreement with one Sri I.V.Nandagopal on behalf of M/s Universal Granites on 26.06.2007 and one memorandum of understanding with Smt Chanduru Subbayamma on 26.12.2010. Under those two documents the lease holder (i.e) Sri T.S.Venkateswara Rao, Mg.P: M/s Vijaya Granite Exports agreed to deliver possession of the leased area to the respective parties by collecting some amounts from them, by imposing certain terms and conditions. The lease holder did not obtain prior permission on both the occasions which is a clear violation of covenant/condition No.8 (5) of lease deed in Form-G executed under Rule, 8 of APMMC Rules, 1966 entered between Assistant Director of Mines and Geology, Guntur and M/sVijaya Granite Exports and also contrary to the Rule, 12 (5) (h) (viii) of APMMC Rule, 1966.

Further, the prohibitory orders issued on 18.10.2012 were set-a-side by the Hon’ble High Court vide order dt: 26.11.2012 in W.P.No.34224/12.

Thus the prohibitory orders are inforce from 18.10.2012 to 26.11.2012 during which period the officials of Regional Vigilance Enforcement Office along with the officials of ADM&G, Guntur inspected the quarry lease area and reported that out of (97) blocks which were recorded during the inspection on 20.10.2012. The measurements of two blocks are not tallying during the course of inspection on 29.11.2012. The volume of two blocks is arrived at 21.907 CUM for which the Assistant Director of Mines and Geology, Guntur issued Demand notice on 29.12.2012 for an amount of Rs.54,220/- towards Normal Seigniorage fee and Rs.2,71,100/- towards 5-times penalty total Rs.3,25,320/-, but so far the lessee neither paid the penalty nor filed any appeal/Revision under APMMC Rules, 1966, Hence it is concluded that the lease holder is abitudated in violating the APMMC Rules 1966 by indulging illegal activity and by way of sub-lease to the others without knowledge of the Department as per sub-rule 12 (5) (h) (viii). Hence the lease is liable for cancellation.”

16. The Director of Mines and Geology, as evident from the order of determination, took into consideration the reports of the Deputy Director of Mines and Geology and also elaborately considered the entire material available on record apart from considering the impact of the provisions of Rule 12 (5) (h) (viii) of the Rules, which prohibit assigning, subletting, transfer of lease without previous sanction of the Director and the Director of Mines and Geology also took into account covenant 8 (5) of the lease deed in Form-G entered into between the Assistant Director of Mines and Geology and the petitioner and eventually ordered cancellation of lease under Rule 12 (5) (h) (xii) of the Rules and also forfeited the security deposit. The Director of Mines and Geology incidentally also took into account the variation in the measurement of the blocks.

Felt aggrieved by the said order of determination, the petitioner herein approached this Court by way of filing W.P.No.14498 of 2013, and this Court, by way of order dated 30.07.2013 relegated the petitioner to alternative remedy under Rule 35 of the Rules. Thereafter, the petitioner approached the State Government under Rule 35 of the Rules and the first respondent State Government by way of the impugned memo dated 17.12.2013 rejected the revision filed by the petitioner and confirmed the order of determination passed by the Director of Mines and Geology. From a reading of the order of the Government vide memo dated 17.12.2013, it would be quite limpid that at paragraph No.5, the State Government categorically considered the aspect of violation of the provisions of Rule 12 (5) (h) (viii) of the Rules and arrived at a conclusion against the petitioner and the said conclusions reached by the Director of Mines and Geology and the Government, by any stretch of imagination, cannot be said to be unreasonable and baseless in view of the valid and cogent reasons assigned in the impugned orders. One of the grounds assigned by the petitioner in the pleadings is that there is no sub-lease and it is only a license. Absolutely there is no justification in the said reason offered by the petitioner herein in the teeth of the language employed in the statutory rules.

17. Raising Agreement dated 18.03.2011 entered into in between the M/s.Vijaya Granites and M/s. Manu Granites/fifth respondent and the Memorandum of Understanding dated 07.12.2010 entered into between M/s.Vijaya Granites and the sixth respondent and the Royalty Lease Agreement dated 26.06.2007 entered into in between M/s.Vijaya Granite and Universal Granites/seventh respondent herein would undoubtedly attract the violation as contemplated under Rule 12 of the Rules.

Therefore, this Court does not find any illegality in the impugned action.

18. For the foregoing reasons, W.P. No.678 of 2014 is dismissed and W.P.No.16294 of 2014 is disposed of, directing the respondent authorities to process the quarry lease application dated 10.04.2013 submitted by the petitioner along with other applications, if any, as per law. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 05-10-2015

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WRIT PETITION Nos.678 and 16294 of 2014

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Dated 05th October, 2015

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