

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.3611 of 2015

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ORDER:

Heard the learned Senior counsel for the petitioner, learned Government Pleader for Mines representing official respondents and Sri B.Vijaysen Reddy, learned counsel appearing for the 5th respondent.

The order impugned in this writ petition is the one passed by the 2nd respondent, dated 07-02-2015 (Ex.P-47), wherein the 2nd respondent considered the show-cause notice and the replies and came to the conclusion that the petitioner, who was a lessee of 20 acres of mining lease, was found holding 1.42 acres excess and consequently, the 4th respondent was directed to demarcate the excess land in the presence of the petitioner and fix boundaries as per survey and inspection report and execute the supplementary lease deed, as per the revised sketch for the actual area of 20-00 acres granted to the petitioner in accordance with the APMMC Rules, 1966.

Prior to the present writ petition, the petitioner had approached this Court in W.P.No.2189 of 2015 alleging that the official respondents are entertaining the application of the 5th respondent and in that writ petition, the petitioner had also questioned a show-cause notice issued to it on the provisional conclusion that it was holding Ac.1-42 acres of excess land. The petitioner was called upon to submit its reply against the said allegation. In the said writ petition, learned Senior counsel for the petitioner and the learned Government Pleader for Mines were heard. However, notice to the 5th respondent herein was not issued, as there were no proceedings in his favour. The said writ petition was ultimately disposed of by order, dated 05-02-

2015 with the following directions:-

“Hence, at this stage I am not inclined to entertain the writ petition as no lease deed is granted to respondent No.6 nor the petitioner’s leased area is diminished as on today. Since, petitioner has already filed an interim objection to the show cause notice requesting two weeks time to file the objections, in my view, it would be just and appropriate to permit the petitioner to file his detailed objections with a liberty to raise all his legal and factual pleas, which he proposes to raise, and thereafter the Director shall take a decision in the matter in accordance with law. The petitioner is, therefore, granted time to file the objections on or before 21.02.2015 and after the said objections are received, respondent No.2 shall consider the entire matter keeping in view the facts and circumstances of the case and take a reasoned decision in the matter. It is needless to point out that the petitioner’s leased area of Ac.20-00 shall not be diminished and the petitioner shall not be obstructed or disturbed pending consideration of the show cause notice and objections as directed above.”

Though in the aforesaid order, this Court granted time to the petitioner till 21-02-2015 to file its objections, even before the petitioner could file its objections, the present impugned order was passed on 07-02-2015, clearly in ignorance of the aforesaid order of this Court.

When this writ petition came up for hearing on 19-02-2015, while issuing notice before admission, passed the following order:-

“The impugned order, dated 07-02-2015, is passed in ignorance of the order of this Court in W.P.No.2189 of 2015, dated 05-02-2015. Therefore, the petitioner is questioning the said order, as it was not in conformity with the order of this Court in the aforesaid writ petition.

Let the Government Pleader for Mines to get instructions.

Pending further orders, the impugned

order shall remain stayed.

Post after two weeks in 'ML'."

Learned Senior counsel for the petitioner reiterates his contention that the petitioner was denied opportunity of filing objections and its consideration in spite of directions issued by this Court, as extracted above.

Learned Government Pleader for Mines is unable to get instructions.

Learned counsel for the 5th respondent herein takes strong objection as to the manner in which the petitioner is allegedly dragging the proceedings and submits that the petitioner is continuing to occupy excess extent merely on the basis of interim orders passed by this Court from time to time.

Though various contentions are raised on behalf of the learned counsel on either side, I do not propose to go into the said aspects in view of the fact that the order of this Court extracted above is required to be implemented.

Though the order referred to above was passed in the presence of the learned Government Pleader and after hearing him, the 2nd respondent ought to have permitted the petitioner to file its objections and then ought to have passed a reasoned order, after considering the said objections.

Since the impugned order is clearly in ignorance of the said order, the same cannot be sustained and it is accordingly set aside.

Learned Senior Counsel for the petitioner states that the objections of the petitioner are ready and they will be filed by tomorrow.

Let the 2nd respondent fix the date of hearing on 04-04-2015, hear the parties and pass appropriate orders in accordance with law.

With the above direction, the writ petition is, accordingly, allowed. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

VILAS V.AFZULPURKAR, J

Date: 23-03-2015

Note:

Registry to communicate
this order within three days

(B/o)

Prv

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

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