

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 19038 of 2016

ORDER:

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Heard Smt. N.Shobha, learned counsel for the petitioner and Government Pleader for Mines and Geology. With consent of both the parties, the present writ petition is taken up for disposal at the admission stage itself.

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the fourth respondent in refusing to issue dispatch permits for transportation of mineral laterite pursuant to the mining lease granted over an extent of Ac.12.05 gts. (4.856 hectares) in Sy.Nos. 2/2, 3/2, 4/2 and 5/2 of Mallampally Village, Mulugu Mandal, Warangal District vide G.O.Ms.No.170, Industries and Commerce (M.I) Department, dated 23.07.1997, is arbitrary, illegal and contrary to the Mines and Minerals (Development and Regulation) Act, 1957 and A.P. Minor Mineral Concession Rules, 1966.

The facts in issue are as under:

The petitioner was granted mining lease for laterite in the above mentioned area which was executed on 18.11.1997. The work orders were issued by the fourth respondent for a period of twenty years starting from 18.11.1997. While things stood thus, a show-cause notice dated 28.05.2010 came to be issued by the third respondent referring to the illegal mining of the operations being taken up by the petitioner. An explanation to the said notice came to be submitted stating that it was the petitioner, who was complaining about the illegal mining by others. In spite of

submitting an explanation, a demand notice dated 27.02.2012 came to be issued. Questioning the same, a revision was preferred before the Revisional Authority, New Delhi, which was disposed of remanding the matter to the State Government. Questioning the final order dated 17.04.2015 the petitioner filed W.P.No.25533 of 2011 before this Court which was disposed of directing the State Government to pass appropriate orders in the revision which was remanded by the Central Government. That being the position, the Mandal Revenue Officer, vide proceedings No.A/877/2015-3 dated 07.08.2015 started trying to interfere with the mining operations on the ground that the said area is a forest land. Questioning the same, the petitioner was constrained to file W.P.No.4524 of 2016. An interim order came to be passed by this Court in W.P.M.P.No.5795 of 2016, suspending the order dated 07.08.2016.

On 03.06.2015 the Deputy Director of Mines and Geology issued a show-cause notice asking the petitioner to explain as to why he is carrying out the operations beyond the leased area in Sy.Nos. 45/2 and 44/2 and accordingly directed to pay royalty of Rs.38/- on 11763.72 MT plus the price of the mineral at Rs.151/-. A detailed explanation came to be submitted on 19.06.2015 denying the averments made in the show-cause notice. Apart from giving explanation, the petitioner also filed O.S.No.274 of 2015 before the II Additional Senior Civil Judge, Warangal, wherein he also sought for appointment of Court Commissioner to inspect the property. In I.A.No.366 of 2015, the Court appointed an Advocate-Commissioner for fixing the boundary stones around the suit schedule property. In spite of receipt of details explanation, a demand notice dated 09.10.2015 came to be

issued by the third respondent directing the petitioner to pay Rs.22,23,343/- within fifteen day from the date of receipt of the demand notice as per sub-Section 5 of Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 for illegal excavation of 11763.72 MT of laterite outside the leased area. Challenging the demand notice, the petitioner preferred a revision before the State Government under Andhra Pradesh Minor Mineral Concession Rules, 1966 explaining in detail the situation and also seeking condonation of delay in filing the revision apart from seeking stay of the operation of demand notice. Without disposing of the revision and also the stay application, the fourth respondent is refusing to issue dispatch permits on the ground that the proceedings against the demand notice are still pending consideration. The inaction of the respondents in issuing the dispatch permits is subject matter of challenge in the present writ petition.

Learned counsel for the petitioner mainly contended that neither the statute nor the rules made there under prescribe restrictions for issuance of dispatch permits during the subsistence of lease. Apart from that the counsel mainly contended that laterite which was a major mineral is now declared as minor mineral from February, 2015 and as such the demand notice dated 09.10.2015 which was issued subsequent to its conversion as a minor mineral does not stand the test of legal scrutiny. She placed on record the judgment of a learned Single Judge of this Court in W.P.No.539 of 2016 in support of her argument. Learned counsel for the petitioner also took me through the various rules to show that there is no embargo for issuing permits as long as the lease is in existence.

On the other hand, the Government Pleader for Mines and Geology opposed the same. A counter came to be filed by the Assistant Director of Mines and Geology denying the averments made in the affidavit except to the extent admitted by them. Reiterating the averments made in the counter the Government Pleader for Mines and Geology contends that after the survey and demarcation as per the enclosed sketch it was noticed that the mining operation conducted by the petitioner is falling outside the leased area and a panchanama to that effect was also conducted on 25.04.2015. He submits that total quantity of laterite which was illegally mined is 11763.72 MT and pursuant to the report, a show-cause notice came to be issued demanding the petitioner to pay royalty. It is stated that without paying any amount the petitioner preferred the revision but till date no orders are passed in the said revision. Relying upon the Government Memo issued by the Government in the year 1997, the learned Government Pleader for Mines and Geology submits that once the petitioner is found due to the government question of issuing permits would not arise. It is said that though various surveys are conducted for fixing the boundaries but the survey to be conducted by the Advocate-Commissioner is getting postponed on pretext or the other and the same is not yet completed till date. However, he submits that the area leased out for mining is not in the forest land as such the petitioner is liable to pay the amount to the Government.

A perusal of the material on record would show that earlier the petitioner filed W.P.No.4524 of 2016, wherein this Hon'ble Court in W.P.M.P.No.5797 of 2016 passed the following order:

“As the impugned proceedings reflect that there is a

boundary dispute but the mining lease is in relation to a large extent of 12 Hectares, the impugned proceedings dated 07.08.2015 shall stand suspended to the extent of allowing the petitioner to carry on the mining operations in all area except the disputed area in relation to which there is a boundary dispute.”

Prior to filing of the writ petition, a demand notice dated 09.10.2015 came to be issued directing the petitioner to pay royalty to an extent of Rs.22.23,343/-. A revision came to be filed before the Government challenging said demand notice along with the delay application and stay application. While things stood thus issue of dispatch permits to transport the mineral from the lease area are denied by the authorities on the ground the revision filed against the demand notice dated 09.10.2015 directing the petitioner to pay the royalty is still pending consideration

It is to be noted that the earlier laterite which was a major mineral was converted into a minor mineral by the Central Government in the month of February, 2015. Though the impugned notice dated 09.10.2015 came to be issued much later to its conversion, still the same was issued under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 instead of issuing it under Andhra Pradesh Minor Mineral Concession Rules, 1966. Revision came to be filed before the State Government challenging the demand notice on various grounds including the ground of jurisdiction. Since the plea of the respondents appears to be that dispatch permits are not issued in view of the pendency of the revision, the authority before whom the revision is pending shall dispose of the revision in accordance with law, as expeditiously as possible, preferably, within a period of three (03) weeks from the date of receipt of a copy of the order

by taking into consideration the orders passed by this Court in W.P.No.539 of 2016.

With the above direction, the writ petition is disposed of. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

11.07.2016
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