

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

WRIT PETITION No.1214 of 2009

ORDER

This Writ Petition filed under Article 226 of the Constitution of India assails the order passed by the Deputy Director, Mines and Geology, Visakhapatnam, 2nd respondent herein vide proceedings No.3781/Q2A/2007 dated 18.12.2008.

2. Heard Sri Ravi Kondaveeti, learned counsel for the petitioner, learned Government Pleader for respondents 1 and 2 and

Sri V.L.Surendra, learned counsel for respondent No.3 apart from perusing the material available on record.

3. According to the petitioner, it submitted an application for grant of quarry lease for road mental on 28.07.2005 over an area admeasuring 1.75 Hectars in Sy.No.109 of Mamidipalem Village, Anakapalli Mandal, Visakhapatnam District. The Deputy Director of Mines and Geology issued a show cause notice bearing No.2855/Q2/2005 dated 08.02.2006 calling upon the petitioner to show cause as to why action should not be taken for rejection of the quarry lease application on the ground of non receipt of the No-objection Certificate from the Mandal Revenue Officer, Anakapalli, even after lapse of 16 months. Subsequently, while indicating that no reply was received from the petitioner, the Deputy Director of Mines and Geology passed an order vide proceedings No.2855/Q2/2005 dated 04.05.2007, rejecting the quarry lease application of the petitioner.

4. Questioning the validity of the said order of rejection, the petitioner herein filed a statutory revision under Rule 35A of the

Andhra Pradesh Minor and Mineral Concession Rules, 1966 (for short 'the Rules') before the State Government. Thereafter, complaining inaction in disposal of the said revision, petitioner filed W.P.No.21465 of 2007 before this Court and this Court, by way of an order dated 09.10.2007, disposed of the said writ petition directing the revisional authority to dispose of the revision within a period of six weeks from the date of receipt of a copy of the said order. Pursuant to the said order of this Court, the State Government, by way of a memo bearing No.2013/M.II(1)/2008-2 dated 13.10.2008 disposed of the said revision granting two months time for production of the No-objection Certificate from the Revenue Department. Subsequently, by virtue of an order issued by the Deputy Director of Mines and Geology vide proceedings No.3781/Q2A/2007

dated 18.12.2008, the authorities rejected the application of the petitioner herein while granting lease in respect of the third respondent herein. The said order is under challenge in the present writ petition.

5. When the matter is taken up, a preliminary objection with regard to the maintainability of the writ petition is taken by the learned Government Pleader so also the learned counsel for the third respondent by contending that as against the orders passed by the Deputy Director of Mines and Geology, a statutory appeal lies to the Director of Mines and Geology and the present writ petition is liable to be rejected in view of the availability of alternative remedy of statutory appeal to the Director of Mines and Geology.

6. Rule 35 of the Rules reads as under;

"Appeal:- An appeal against any order passed by the

Assistant Director or Deputy Director under these rules shall lie to the Director within a period of two months from the date of communication of such order to the party aggrieved and an appeal against an order of the Director passed under Rule 26 shall be to the Government in like manner."

It is very much evident from a reading of the above Rule that any order passed by the Assistant Director or Deputy Director of Mines and Geology is appealable to the Director of Mines and Geology.

7. A perusal of the order under challenge shows that the Deputy Director of Mines and Geology came to a conclusion that it would not be possible to consider the request of the petitioner on the ground that the area applied by the petitioner and the area physically opted on ground are different and the area opted is partly overlapping the area applied and demarcated to the third respondent and partly with the existing leased area in Sy.No.75 of Bowlwada Village held by M/s.Sri Venkata Sasi Stone Crusher. While referring to that, it is the submission of the learned counsel for the petitioner that there is no basis for the said conclusion arrived at by the Deputy Director of Mines and Geology. In the considered opinion of this Court that the said aspect requires factual verification and the same cannot be undertaken now by this Court under Article 226 of the Constitution of India.

8. In view of the above reasons, this Court is of the considered opinion that ends of justice would be served if the petitioner is relegated to the alternative remedy of appeal as provided under Rule 35 of the Rules by granting some time.

9. For the aforesaid reasons, the Writ Petition stands disposed of, leaving liberty to the petitioner to file a statutory appeal under

Rule 35 of the Rules as against the orders impugned in the present writ petition passed by the Deputy Director of Mines and Geology before the Director of Mines and Geology, within a period of one month from the date of receipt of a copy of this order. If any such appeal is filed, the Director of Mines and Geology shall make an endeavor to dispose of the same within a reasonable time as expeditiously as possible.

There shall be no order as to costs. The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A. V. SESA SAI, J

27th June, 2016

sj