

THE HON'BLE SRI A.V.SESHA SAI

W.P.No.11895 of 2012

-

%22.01.2010

M/s.BSCPL Infrastructure Limited.

...Petitioner

VERSUS

\$ The Government of Andhra Pradesh and four others.

...Respondents

< **GIST:**

> **HEAD NOTE:**

!Counsel for Petitioner: Smt.N.Shoba

^Counsel for Respondents:

G.P for Revenue

G.P. Mines and

Geology

? Cases referred

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

W.P.No.11895 of 2012

ORDER:

In the present writ petition, challenge is to the notice bearing No.9315/Q/2011, dated 11.04.2012 issued by the Assistant Director of Mines and Geology, Ongole, Prakasam District/fifth respondent herein and the proceedings of the District Collector, Prakasam District/third respondent herein vide Rc.No.E1/780/2012, dated 03.04.2012.

2. On an application made by the petitioner on 26.11.2010 for grant of quarry lease for Road Metal and Gravel in respect of area admeasuring Ac.10.000 hectares in Sy.No.788/2 of Bodduvanipalem Village, Korisepadu Mandal, Prakasam District, the Assistant Director of Mines and Geology/fifth respondent herein called for the report from the Tahsildar, Korisepadu as to the classification of the land and its availability. Responding to the same, the Tahsildar vide Proceedings No.L.P/161/2011, dated 03.05.2011, issued No-Objection for grant of lease. Pursuant to the same, the Deputy Director of Mines and Geology, Guntur, vide proceedings No.8564/Q3/2010, dated 11.05.2011, granted quarry lease in favour of the petitioner for a period of 15 years under Rule 13 (1) and 15 of the A.P. Minor Mineral Concession Rules, 1966 (hereinafter called 'the Rules'). Thereafter, on 18.05.2011, a lease deed was executed and later the Assistant Director of Mines and Geology/fifth respondent herein issued a work order vide proceedings No.9315/Q/2011, dated 16.05.2011, permitting the petitioner to commence the quarry operations for a period of 15 years commencing from 16.05.2011 to 15.05.2026.

3. While the things being so, the District Collector, Prakasam District/Third respondent herein vide proceedings in

Rc.No.E1/780/2012 dated 03.04.2012, asked the Assistant Director of Mines and Geology not to permit any quarry operations in the above area on the ground that the Tahsildar issued No-Objection certificate without properly verifying the rights of the pattedars of the land and without obtaining the prior permission of the District Collector and on the ground of contemplation of full-fledged enquiry into the same. As a sequel to the same, the Assistant Director of Mines and Geology issued a notice dated 11.04.2012 directing the petitioner to stop quarrying operations in the leased area until further orders.

4. In the above background, assailing the validity and the legal sustainability of the above proceedings dated 03.04.2012 of the District Collector and the notice of the Assistant Director of Mines and Geology dated 11.04.2012, the present writ petition came to be instituted.

5. This Court, on 24.04.2012, passed interim order, permitting the petitioner to conduct quarry and transport operations as per the terms of the lease while keeping it open for the authorities to conduct enquiry and to pass appropriate orders pursuant to the impugned proceedings.

6. Counter affidavits have been filed by the respondents 3 and 5 and reply is also filed by the writ petitioner to the counter affidavit filed by the third respondent.

7. Heard Smt. N.Shoba, learned counsel for the petitioner and the learned Government Pleaders for Revenue and Mines and Geology for the respondents.

8. Submissions/contentions of Smt.N.Shoba, learned counsel for the petitioner.

8.1 The impugned action on the part of the respondents 3 and 5 is highly illegal, arbitrary, unreasonable, without jurisdiction and violative of Articles 14 and 300-A of the Constitution of India

- 8.2. The questioned action is opposed to the very spirit and object of the provisions of the Mines and Minerals Regulation and Development Act, 1957 and the A.P. Minor Mineral Concession Rules, 1966.
- 8.3. The action impugned is not in consonance with the orders of the State Government issued vide G.O.Ms.No.181, Industries & Commerce (M.I) Department, dated 28.05.1998. Since it is never the case of the respondents that the subject properties are Government lands, the action impugned is unauthorised and impermissible.
- 8.4. The impugned action is also violative of principles of natural justice as the same being not preceded by any notice nor opportunity of being heard to the petitioner.
- 8.5. Only after due and through verification of the connected revenue records, the Tahsildar issued No-Objection certificate on 03.05.2011 and the Tahsildar forwarded the same to the District Collector.

9. Submissions/contentions of the learned Government Pleader for Revenue:

- 9.1. There is no illegality nor there is any infirmity in the impugned action, as such, the present writ petition is not maintainable and the petitioner is not entitled for any relief from this Court.
- 9.2. The present writ petition is not maintainable under Article 226 of the Constitution of India in view of availability of the alternative remedy of appeal to the Director of Mines and Geology under Rule 35 of the A.P. Minor Mineral Concession Rules, 1966.

9.3. Since the Tahsildar issued the No-Objection certificate without properly verifying the records and without verifying properly the ownership, there is no illegality in the impugned action on the part of the respondents 3 and 5.

9.4. In view of the enquiry already ordered by the third respondent/District Collector, vide Rc.No.E1/780/2012, dated 09.09.2015, appointing the Revenue Divisional Officer, Ongole as enquiry officer, the petitioner herein cannot be allowed to pursue the present writ petition further.

10. It is the submission of the learned Government Pleader for Mines and Geology that the fifth respondent issued the impugned notice as a sequel to the orders passed by the District collector on 03.04.2011.

11. In the above backdrop, now the issues that emerge for consideration of this Court are:

1. Whether the action of the respondents in restraining the petitioner from carrying on the quarry operations during the subsistence of the lease is in accordance with law and whether the respondents 3 and 5 have jurisdiction to do so?
2. Whether the present writ petition filed under Article 226 of the Constitution of India is maintainable in view of the statutory remedy under Rule 35 of the A.P. Minor Mineral Concession Rules, 1966?
3. Whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India?

12. The procedure for grant of leases for Minor Minerals is stipulated under Rule 13 of the Minor Mineral Concession Rules, 1966 framed under Section 15 of the Mines and Minerals Regulation and Development Act, 1957. The said Rule Stipulates as under:

“13. Disposal of applications:— (I) The applications for the grant of quarry leases for any minor minerals 2[except sand, granite useful for cutting and polishing and marble] shall be

disposed of by the Deputy Director concerned. The Deputy Director concerned shall reject the applications in the event of default on the part of the applicants for not attending inspection or survey or non-submission of Mineral Revenue Clearance Certificate or any other material papers as required by Deputy Director. The lease deed shall be executed within ninety days from the date of grant or within such further period as the Director may allow in this behalf provided the grantee applies for extension of time within thirty days from the date of expiry of the period stipulated for execution. Such extensions can be granted by the Director not exceeding two times and such time not exceeding thirty days. If no lease deed is executed within the stipulated period or extended period due to any default on the part of the applicant, the authority who is competent to grant quarry lease shall revoke the order granting lease.]

(2) The application for the renewal of a quarry lease 2[the application for the renewal of a quarry lease shall be accompanied by a Treasury or Bank challan for rupees one thousand in token of remittance towards fee and] shall be made at least ninety days before the expiry of the period of lease to the [Deputy Director] and it shall be disposed of before the expiry of the lease period.”

13. In the instant case, the petitioner submitted quarry lease application before the Assistant Director of Mines and Geology and on receipt of the same, the Assistant Director sought information from the Tahsildar as to the classification and availability of the land for grant of quarry lease. In this context, it may be appropriate to refer to the instructions of the State Government issued vide G.O.Ms.No.181, Industries and Commerce Department, dated 28.05.1998.

14. According to the said Governmental order, immediately after receipt of the applications, the Director of Mines and Geology shall acknowledge the and fix the date of inspection and send one set of applications to the Mandal Revenue Officer (Tahsildar) concerned to report on the category and availability of land for grant of Prospecting Licence/Mining Lease or Quarry Lease and the Tahsildar, within 30 days thereafter, has to send his report to the Assistant Director of Mines and Geology duly marking a copy of the report to the District Collector

concerned and the said report need not be routed through the Revenue Divisional Officer/Sub-Collector. The said instructions issued by the State Government further say at paragraph 4 that if the District Collector is in agreement with the report of the Mandal Revenue Officer, the District Collector need not make any further report to the Director of Mines and Geology and in the event of there being any disagreement, the District Collector is required to send recommendations to the Director of Mines and Geology within 30 days from the date of receipt of the report from the Tahsildar. It is also very much clear from the said instructions that if no report is received from the District Collector, within the stipulated time of 30 days, it needs to be presumed that the District Collector has no objection for grant of lease.

15. In the instant case, absolutely there is no dispute with regard to the reality that immediately after receipt of the petitioner's application, the Assistant Director of Mines and Geology/fifth respondent herein sought information as per G.O.Ms.No.181, dated 28.05.1998, and vide L.P/161/2011 dated 03.05.2011, the Tahsildar, Koresipdeu granted No-Objection while categorically stating that the subject land is a patta land. As per the procedure contemplated under Rule 13 of the A.P. Minor Mineral Concession Rules, 1966, the Deputy Director of Mines and Geology, Guntur vide Proceedings No.8564/Q3/2010 dated 11.05.2011 granted lease in favour of the petitioner for a period 15 years and the same was followed by execution of the quarry lease for the period, commencing from 16.05.2011 to 15.05.2026 in Form-G and Work Order of the Assistant Director of Mines and Geology vide proceedings No.9315/Q/2010, dated 16.05.2011, permitting the petitioner to commence operations in the leased area. The information available before this Court discloses that thereafter after a lapse of nearly one year, the District Collector, the third respondent herein vide Rc.No.E1/780/2012, dated 03.04.2012, asked the Assistant Director of Mines and Geology/fifth respondent herein not to allow any quarry operations saying that the Tahsildar, Koresipadu without properly

verifying as to the rights of the pattedars and without obtaining prior permission of the District Collector granted lease. As a sequel to the same, the Assistant Director of Mines and Geology, by way of notice No.9315/Q/2011, dated 11.04.2014, directed the petitioner to stop operations till further orders.

16. A perusal of the contents of the G.O.Ms.No.181, dated 28.05.1998, in clear and unequivocal terms, demonstrates that it is obligatory and mandatory on the part of the District Collector to respond on the report of the Tahsildar within 30 days from the date of receipt of the report from the Tahsildar. In the instant case, there is absolutely no dispute with regard to the fact that the District Collector did neither act nor respond in the manner indicated in G.O.Ms.No.181 dated 28.05.1998. No such power which enables the District Collector to meddle with the No-Objection certificate after the expiry of the period as contemplated under G.O.Ms.No.181, dated 28.05.1998 could be pointed out by the learned Government Pleader.

17. Another significant aspect which render the impugned action invalid is that no notice was issued and no opportunity of being heard was afforded to the petitioner by the respondents before resorting to the impugned action. Therefore, the impugned action on the part of the respondents in seeking to restrain the petitioner from carrying on the quarrying operations is also a patent violation of the principles of natural justice.

18. Yet an another vital aspect which renders impugned action invalid is that the grant of lease made in favour of the petitioner in the year 2011 is still intact and no provision of law could be pointed out by the respondents which enables the respondents to restrain the petitioner from operating the quarry lease during the currency of the lease. In this context it is pertinent to refer to Rule 20 of the A.P. Minor Mineral Concession Rules, 1966, which read as under:

“20. Rights under a Lease:— Subject to a contract to the

contrary, a quarry lease granted under the rules shall confer on the lessee, the right to quarry, carry away, sell or dispose of the minor mineral or minerals specified in the lease deed and found upon under the lands specified therein”

19. It is succinctly clearly from the above provision of law that as long as the lease continues to be in force, petitioner herein, the lessee, is entitled to carry on the operations.

20. The justification sought to be offered by the third respondent/collector by way of filing counter is that the Tahsildar did not properly examine and verify the provisions of the Hindu Succession Act and the process of devolution of property. In the considered opinion of this Court, the said course of action is impermissible under the instructions of the Government vide G.O.Ms.No.181. In fact, the only duty entrusted to the Tahsildar concerned is to verify the classification and the availability of the land, but not the title and the process of devolution. Another reason assigned in the proceedings of the District Collector dated 03.04.2012 is that the Tahsildar did not obtain prior permission of the District Collector before sending the report and before expressing no-objection. A reading of the instructions issued in G.O.Ms.No.181 candidly discloses that there is no such stipulation nor there is any obligation on the part of the Tahsildar to obtain prior permission of the District collector. It is very much obvious from the averments in the counter affidavit of the third respondent/District Collector that the entries in revenue records were erroneously made. It is to be noted that so long as the entries in the revenue records continue such presumption stands in favour of the petitioner and his vendors. In the definite opinion of this Court, the enquiry with regard to the rights and title of the petitioners and the devolution of rights under the Hindu Succession Act by any stretch of imagination cannot be enquired into by the revenue authorities. In the name of initiating enquiry the rights of the petitioner under a validly granted lease cannot be denied.

21. The contention with regard to non-maintainability of the writ

petition before this Court in view of the availability of alternative remedy of appeal to the Director of Mines and Geology under the provisions of Rule 35 of the A.P. Minor Mineral Concession Rules 1966, in the considered opinion of this Court, cannot stand in view of the reason that only as a sequel to the orders of the District Collector, the Assistant Director of Mines and Geology directed the petitioner to stop the operations. It is also required to be noted that admittedly the impugned action was not preceded by any notice and opportunity of being heard, as such, the same is in violation of the principles of natural justice. Therefore, the present writ petition is certainly maintainable before this Court and the contention raised by the learned Government Pleader for Revenue is accordingly answered in negative.

22. It is also required to be noted that there is no rival claim with regard to the title to the property by any third parties. If there is any claim of the Government with regard to the subject property, the same can be agitated in a properly instituted proceedings before an appropriate forum of law, if it is permissible, as per law.

23. In the circumstances, this Court has absolutely no scintilla of hesitation nor are any traces of doubt to hold that the impugned proceedings issued by the respondents 3 and 4 are unsustainable in the eye of law and are liable to be set aside.

24. For the aforesaid reasons, the writ petition is allowed, setting aside the proceedings of the District Collector, Prakasam District/third respondent herein vide Rc.No.E1/780/2012 dated 03.04.2012 and the proceedings of the Assistant Director of Mines and Geology, Ongole, Prakasam District/fifth respondent herein vide proceedings No.9315/Q/2011, dated 11.04.2012. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:22.01.2016

grk

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

W.P.No.11895 of 2012

Dated:22nd January, 2016

grk