

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION Nos.2089 & 29163 of 2008

Between:

M/s.Siddi Silica Mines

....Petitioner

and

Government of Andhra Pradesh,
Industries & Commerce (M.I-II) Department,
Rep.by its Secretary,
Secretariat, Hyderabad,
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 26.04.2016

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether His Lordship wishes to : No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION Nos.2089 & 29163 of 2008

COMMON ORDER:

Since the facts and the petitioner in these two Writ Petitions are common, they are being disposed of by this common order.

The petitioner is a proprietary concern which was granted a mining lease for Silica Sand over an extent of Acs.35.05 cents in

Survey No.1 of Karlapudi Village, Kota Mandal, Nellore District, for a period of 20 years by the 1st respondent. The proceedings were issued in G.O.Ms.No.92 dated 01.04.2004. Later on, a lease deed was also executed. The 3rd respondent issued proceedings on 06.08.2004 permitting the petitioner to commence the mining operations for a period of 20 years from 31.07.2004 to 30.07.2024 and the petitioner started mining activity duly obtaining permission from the 3rd respondent. The petitioner states that in view of his old age, he permitted the 4th respondent to look after the export of mining material and in that connection, a General Power of Attorney (GPA) was executed on 21.06.2006. He states that he cancelled the said GPA by a notice dated 17.02.2007 and submitted the same to the 3rd respondent. He further states that on 01.02.2008, when he went to the office of the 3rd respondent, he came to know that the 1st respondent issued G.O.Ms.No.313 dated 21.11.2007 according permission to the petitioner to transfer the mining lease in favour of the 4th respondent for the unexpired portion of lease period upto 30.07.2024. Since the petitioner was not communicated with the copy of the G.O. and though the G.O. states that the same was issued pursuant to his application dated 06.01.2007, he states that no such application was filed. Challenging the said G.O.Ms.No.313 dated 21.11.2007, the petitioner filed W.P.No.2089 of 2008.

No interim order was granted in W.P.No.2089 of 2008.

After filing the Writ Petition on 04.02.2008, he received a notice from the 3rd respondent dated 06.11.2008 calling upon him to execute the transfer deed in favour of the 4th respondent and further informing that in case of failure to execute the agreement, the transfer lease deed would be executed in his absence. After receipt of the said notice, he sent a reply through his counsel on 27.11.2008 informing the 3rd

respondent about the pendency of W.P.No.2089 of 2008 and also expressing his unwillingness to transfer the lease. He further states that he came to know about the execution of a transfer agreement in favour of the 4th respondent in the absence of the petitioner and without his consent by order dated 27.11.2008 vide proceedings No.605/M2/95. Challenging the same, the petitioner filed W.P.No.29163 of 2008.

In W.P.No.29163 of 2008, this Court, while ordering notice before admission on 31.12.2008, granted interim suspension for a period of four weeks while directing the listing of the case on 20.01.2009 for admission. The proceedings of this Court show that the petitioner did not evince any interest thereafter and the interim order was not extended. However, on applications filed by the 4th respondent in WVMP.Nos.75 and by the respondents 1 to 3 in 646 of 2009, this Court passed an order on 24.06.2011 holding that in view of the expiry of the interim order after four weeks, no further orders are necessary and the vacate petitions have become infructuous.

It appears that the petitioner expired on 02.01.2009. Though an application was filed on 07.07.2009 in W.P.M.P.No.17630 of 2009 for impleading petitioners 2 to 5 as legal representatives of the deceased sole petitioner, no steps were taken till 09.02.2016 when this Court directed production of record. Thus, from 2008 to 2016, the 4th respondent has been continuing his mining activity.

The 3rd respondent filed a counter affidavit admitting the lease in favour of the petitioner for a period of 20 years from 31.07.2004 to 30.07.2024. The counter affidavit further states that the petitioner executed GPA by notarized affidavit on 21.06.2006 in favour of the 4th respondent to file an application for proper approval and also submitted a letter which was received by the 3rd respondent on

23.06.2006 addressed to the 1st respondent requesting for transfer of mining lease in favour of the

4th respondent duly enclosing necessary notarized affidavits. This fact was suppressed by the petitioner in his affidavit. However, the petitioner issued a registered legal notice to the 3rd respondent on 17.02.2007 stating that he cancelled the GPA executed on 21.06.2006 in favour of the 4th respondent. But, the petitioner did not submit any application for rejection of his application dated 23.06.2006. On the basis of the application submitted by the petitioner on 23.06.2006, the file was processed and G.O.Ms.No.313 dated 21.11.2007 was issued according permission to the petitioner for unexpired portion of lease period upto 30.07.2024 to transfer the mining lease in favour of the 4th respondent. Though the transferee submitted the required documents, the petitioner failed to execute the transfer deed. The Government issued Memo No.14602/M-I(1)/2008, dated 05.11.2008 granting extension of time for execution of the lease up to 30.11.2008. The Director of Mines and Geology, Hyderabad, issued a Memo according permission to the 3rd respondent to request the petitioner to attend for execution of transfer lease deed by giving seven days time and failing the same to execute the transfer lease deed without the presence of the transferor. Accordingly, a notice was issued to the petitioner on 06.11.2008. Since the petitioner failed to attend for execution of transfer lease deed within the stipulated time, the 3rd respondent executed the transfer lease deed on 27.11.2008 and issued work orders on the same day. At that stage, W.P.No.29163 of 2008 was filed. Though an alternative remedy of revision under Rule 54 of the Mineral Concession Rules, 1960, read with Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957, was available to the petitioner, he filed W.P.No.29163 of 2008. The petitioner did not file any letter for recalling his transfer application.

The 4th respondent also filed a counter affidavit stating that the petitioner approached it for transfer of mining lease as he was undergoing financial constraints and unable to continue with mining operations. The petitioner himself submitted the transfer application along with his affidavit dated 23.06.2006 followed by a covering letter to the 1st respondent by himself. The entire expenses towards the clearance of mineral and other formalities were borne by the 4th respondent. The same is evidenced by the treasury challans. The 2nd respondent forwarded the letter of the petitioner to the 1st respondent on 24.04.2007 recommending for according permission for transfer of mining lease. Accordingly the Government issued G.O.Ms.No.313 dated 21.11.2007 directing the execution of lease deed within three months. The counter affidavit further states that the GPA enables him only to file application for operating Silica Sand, but no powers were given for filing transfer application. Hence, the petitioner himself filed the transfer application and it was not filed by the GPA holder. No notice of cancellation of the said GPA was sent to the 4th respondent. In view of the limited power given under the GPA, even if it is assumed that it was cancelled, it would have no bearing on the transfer application. In the absence of the petitioner, the lease deed was executed by the 3rd respondent on 27.11.2008 and it has been working since that date.

Learned counsel for the petitioner vehemently contended that the petitioner was not aware of the application for transfer of lease dated 06.01.2007, the transfer which took place behind his back was a fraud played by the 4th respondent and hence in the impugned G.O.Ms.No.313, dated 21.11.2007 and the consequential proceedings dated 27.11.2008 of the 3rd respondent should be set aside. He relied on the judgments in ***State of Andhra Pradesh v. T. Suryachandra***

Rao^[1] and **Bhaurao Dagdu Paralkar v. State of Maharastra**^[2].

Learned Senior Counsel, Sri C.V. Mohan Reddy appearing for the 4th respondent submits that the transfer was effected on the basis of the letter issued by the petitioner and it cannot be held illegal. He further submits that after executing necessary documents, the present Writ Petitions were filed in order to extract more money from the 4th respondent. He relied on an unreported judgment of this Court in W.A.No.1 of 2006 dated 07.03.2006 and submitted that when the department acted on the basis of the transfer application filed by the petitioner, the petitioner cannot be allowed to take advantage of his own wrong even though he sent notice through his counsel on 17.02.2007 withdrawing the power of attorney.

The facts in the cases are not in dispute though there is some dispute with regard to the execution of two documents. Admittedly, the petitioner was a lessee for Silica Sand in an extent of Acs.35.05 cents in Survey No.1 of Karlapudi Village, Kota Mandal, Nellore District, for a period of 20 years granted to him in G.O.Ms.No.92 dated 01.04.2004. The period of lease is from 31.07.2004 to 30.07.2024. The petitioner executed a GPA in favour of the 4th respondent on 21.06.2006. He addressed a letter to the 1st respondent on 23.06.2006 seeking transfer of the mining lease in favour of the 4th respondent. Along with the same, he filed two notarized affidavits, one executed by him and another by the 4th respondent. The required challan was also enclosed with transfer application. Thereafter, on 17.02.2007 he got issued

a notice through his counsel to the 3rd respondent asking him not to correspond with the 4th respondent but with the petitioner only. The relevant portion of the said notice reads as under:

“5. In pursuance of his ability and confidence, he has decided to rescind and may cancel his pro-time General

Power of Attorney deed in favour of VSO Bala Krishnan and its transfer of mining lease from M/s. Siddi Silica Mine to M/s. Modern Minerals, Chennai. This is also communicated to him.”

The 1st respondent issued G.O.Ms.No.313, dated 21.11.2007 according permission to transfer the mining lease in favour of the 4th respondent. Challenging the same, the petitioner filed WP.No.2089 of 2008. Thereafter, a notice was issued to the petitioner on 06.11.2008 to attend the office of the 3rd respondent for execution of transfer agreement. After receipt of the notice, the petitioner got issued a reply through his counsel on 27.11.2008 admitting the transfer but stating that in view of the mischief played by the 4th respondent causing loss and mental agony, he was forced to file W.P.No.2089 of 2008. He further stated that he was deeply concerned about the attitude of the transferee and stated that he was unable to attend the office of the 3rd respondent and sought further time. Simultaneously on the same day, since the prescribed period of seven days was over, the 3rd respondent issued proceedings dated 27.11.2008 transferring the lease in favour of the 4th respondent. In this connection, it is necessary to extract the legal notice issued on behalf of the petitioner and the same is as under:

“	
	Gudur,
	Dt.27.11.2008
From	To
P. Haranath Prasada Rao M.A. BL.,	The Assistant Director
Advocate,	of Mines & Geology,
Narasingaraopet,	Nellore,
Gudur – 524 101,	SPSR Nellore District.
Nellore District.	

Sir,

Under the instructions of my client M/s. Siddi Silica Mines, Prop. Y.Pulla Reddy of Vallipedu village, Chillakuru Mandal, Nellore District, I issue the following reply to your notice No.605/M2/05, dt.06.11.2008.

1. In pursuance of the execution of the transfer lease deed and period between my client and one M/s.Modern Minerlas, Chennai

(TN) over an extent of Ac.35.05 cents covered by survey No.1 of Karlapudi village, Kota Mandal, Nellore District is correct.

2. In lieu of its execution and transactions of the said M/s. Modern Minerals, who part played by fraud committed mischief and misrepresentation against my client and caused loss and mental agony. My client filed the W.P.No.2089/2008 against them before the High Court of Judicature, A.P., Hyderabad seeking direction to cancel the grant of Transfer Lease against G.O.Ms.No.313 Land and Com (MI), dt.21.11.2007.
3. the authority by you are well versed and knew about the law procedure and its results especially the Writ is pending before the High Court of A.P. Hyderabad which was posted for counter and hearing of both sides, the issuance of the notice No.605/M2/05, dt.06.11.2008 by you is not trustworthy and it becomes illegal arbitrary and oppose to Natural Justice.
4. My client is deeply contested about the attitude of the alleged transferee. When the matter is pending and there is no clear indications of the appropriate reliefs from the appealable court. No authority can insist about it and could not made any abrupt methods. My client is unable to attend your office as directed by you due to sickness.

Therefore, my intimates your and requests you to consider the above facts and circumstances supra and give him further chance to make his appeal before you and give some more time to him.

Please be consider accordingly.

ADVOCATE.”

The petitioner expired on 02.01.2009 and as stated above, no steps were taken to pursue the case by legal representatives though an application was filed to come on record on 07.07.2009.

There is no dispute with regard to the submission of a letter by the petitioner for transfer of the lease in favour of the 4th respondent addressed to the 1st respondent on 23.06.2006. This is evident from the admission made by the petitioner in his reply dated 27.11.2008 as above to the letter of the 3rd respondent dated 06.11.2008. A careful reading of the reply shows that though he was not opposed to the transfer in favour of the 4th respondent, because of the mischief committed by the 4th respondent, he was not happy with the transfer. The Government Order in G.O.Ms.No.313 dated

21.11.2007 was issued permitting transfer of the lease and after filing W.P.No.2089 of 2008, no steps were taken by the petitioner for challenging the transfer till the actual transfer was effected on 27.11.2008, one year after the permission. As rightly pointed out by the 4th respondent in his counter affidavit, the petitioner did not issue any notice cancelling the GPA to the 1st respondent in order to interdict the transfer but issued a notice on 17.02.2007 to the 3rd respondent only. Even assuming that the GPA was cancelled, since the power was given only for a limited period to represent him, the cancellation would have no effect on the application of transfer made by the petitioner himself. At the relevant time, the mind of the petitioner could be discerned from the reply issued on 27.11.2008 through his counsel, as extracted above, to the notice of the 3rd respondent dated 06.11.2008. He did not challenge the transfer but expressed his grievance. Thus, this Court has no hesitation to hold that G.O.Ms.No.313 dated 21.11.2007 was issued *bona fide* by the 1st respondent who has no notice from the petitioner for stopping the transfer. The absence of any action by the petitioner for a period of nearly one year when the 4th respondent was continuing the mining activity clearly shows that he was not serious enough to challenge the transfer but wanted to extract more consideration. This Court cannot be a play field for the petitioner for extracting money from the 4th respondent by alleging illegality against respondents 1 to 3 in issuing G.O.Ms.No.313 dated 21.11.2007 and order dated 27.11.2008.

Hence, these Writ Petitions are totally devoid of *bona fides* and they are liable to be dismissed.

These Writ Petitions are accordingly dismissed. There shall be no order as to costs.

The miscellaneous petitions, if any, pending in these Writ
Petitions shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 26.04.2016
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[\[1\]](#) 2005 (6) SCC 149
[\[2\]](#) 2005 (7) SCC 605