

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 35332 OF 2016

ORDER:

This writ petition is filed seeking to declare the orders passed by the 1st respondent in Letter No.1836/M.I(2)/2016-2 dated 06.07.2016 and Letter No.1836/M.I(2)/2016 dated 02.03.2016 returning the revision and the Demand Notice issued by the 3rd respondent in Notice No.1873/Vg/2014 dated 27.12.2014 as arbitrary and illegal.

2. The case of the petitioners is that they are absolute owners and possessors of land to an extent of Ac.3-13 cents in Survey No.400/1 at Pithapuram Village and Mandal, East Godavari District. Petitioners intended to make their land into plots by developing layout as it is not fit for agriculture and low yield. Petitioners leveled the said land so as to make the land for layout for which about 3500 cums of gravel was purchased from authorized lease holder under valid permits issued by the Assistant Director of Mines and Geology to leaseholder. Thus, the petitioners developed the land for layout by making the same into plots. While so, on receipt of the Demand Notice No.1873/Vg/2014-3, dated 06.06.2015 from the third respondent, whereby the petitioners are directed to pay Rs.77,770/- towards one time seignorage fee along with Rs.3,38,850/- towards five times penalty, the 1st petitioner approached the office of the third respondent, who in turn informed about the issuance of notice on 26.09.2014 asking them to submit

documentary evidence for difference quantity 3535 cbms of gravel consumed and that as there was no response from the petitioners, the third respondent issued demand notice. It is further stated that on enquiry, petitioners came to know that both notices were received by one of their family members and they were not informed of the same and hence, the petitioners could not respond to the notices issued by the third respondent. Further, on the advise of the office of the Assistant Director of Mines and Geology, petitioners have paid one time seignorage fee of Rs.77,770/- so that further proceedings would be dropped. However, when the third respondent informed that they have no power to waive the penalty, petitioners have preferred revision questioning the reminder demand notice dated 06.06.2015. The said Revision was returned by the Revisional Authority by order dated 02.03.2016 on the ground that the revision was filed against the reminder demand notice and not on the original Demand Notice dated 27.12.2014 and that no application for condonation is filed. Thereby petitioners re-submitted the revision complying with the requirements and also seeking condonation of delay, which was also returned by order dated 06.07.2016. Hence the writ petition.

3. Learned Government Pleader, by drawing attention to the contents of the affidavit filed by the petitioners that the demand notice was received by one of the family members of the petitioners, contends

that the writ petition does not deserve any consideration as the petitioners have failed to avail the opportunity given to them.

4. Perused the record. It is not disputed that petitioners had utilized the gravel for the purpose of laying out and leveling the agricultural land which was uneven. The allegations leveled against the petitioners are that they had utilized 8,035 cubic metres of Gravel & and on that seignorage fee @ Rs.77,770/- and penalty of Rs.3,88,850/-, in total Rs.4,66,620/-, was imposed on the petitioners. The petitioners have also not paid the said amount. On merits, petitioners submit that the gravel was not procured from outside but was generated in the agricultural field. In the delay condonation petition, petitioners have categorically stated the reasons and the impugned order does not disclose why the explanation submitted by the petitioners was not acceptable. Except referring to the medical certificate produced by the petitioners, no reasons were assigned as to why the same was not accepted. In the normal circumstances, condonation of delay petitions are viewed liberally unless there is a great prejudice that is to be caused to the respondents. In the case on hand, an agriculturist is sought to be mulcated with huge amount of penalty.

5. Considering the facts and circumstances of the case and in view of the fact that the petitioners have already paid the seignorage fees and as the matter relates to payment or waiver of penalty, the rejection of the delay condonation petition is not justifiable and is liable to be set

aside. The first respondent shall take the revision filed by the petitioners on file and dispose of the same in accordance with law on merits.

With the above observations, the Writ Petition is disposed of. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

October 20, 2016
LMV



JUSTICE CHALLA KODANDA RAM