

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NOS.38686 AND 39004 OF 2015

COMMON ORDER

Parties being common and issues interlinked, these two writ petitions are amenable to a conjoined disposal.

The petitioner in these cases, K.Balakrishna Reddy, represented by his General Power of Attorney holder (GPA), C.Naveen Kumar Reddy, claims to be the owner of an extent of Ac.2.50 cents in Sy.No.584/1 of Chimakurthy Village, Prakasam District. According to him, this land was leased by him to Viva Granites for using it as a dump yard under lease deed dated 11.12.1993. While so, the third respondent in these cases, Manne Sree Rama Murthy, was stated to have applied for a prospecting licence for black granite, including the subject extent of Ac.2.50 cents, without obtaining his consent.

Thereupon, the petitioner, through his GPA, filed W.P.No.91 of 2002 seeking to restrain the mining authorities from granting a prospecting licence to the third respondent. This writ petition was dismissed by a learned Judge of this Court on 05.03.2002. Aggrieved thereby, the petitioner filed W.A.No.1389 of 2002. However, despite securing an interim order in the appeal restraining the mining authorities from issuing a prospecting licence to the third respondent, the petitioner chose to withdraw the appeal when it was taken up for hearing on 25.10.2007.

In the meanwhile, the petitioner's GPA filed W.P.No.3092 of 2004 in his own name. Therein, he espoused the cause of Viva Granites, the lessee of the petitioner. Challenge in this writ petition was to the notice dated 16.02.2004 whereby the mining authorities directed removal of the waste dumped by Viva Granites and Swathi Granites from the buffer zone adjacent to the road. The said writ petition was dismissed by a learned Judge of this Court on 21.09.2006. Perusal of the said order reflects that the GPA of the petitioner had claimed that the extent of Ac.2.50 cents in Sy.No.584/1 of Chimakurthy Village was purchased for dumping mineral

waste. The mining authorities, on the other hand, took the stand that Sy.No.584 of Chimakurthy Village was categorized as assessed waste land in the village records. They further asserted that waste material was dumped therein by Viva Granites and Swathi Granites. The claim of the petitioner therein that the extent of Ac.2.50 cents was purchased for dumping waste material was denied.

Dealing with these rival contentions, the learned Judge observed that as no reply affidavit had been filed denying the counter-affidavit averments, it had to be inferred that such averments stood admitted. The learned Judge further observed that even if the petitioner therein had purchased the land admeasuring Ac.2.50 cents in Sy.No.584/1 of Chimakurthy Mandal and earmarked the same as a dumping yard, he had to maintain the distance of 50 metres from the road and as the Mandal Revenue Officer had found that the petitioner therein had dumped mineral waste partly in Sy.No.584/3, which was classified as assessed waste, no fault could be found with the impugned notice. It was on this basis that the said writ petition was dismissed.

The petitioner herein then filed W.P.No.25938 of 2007, through his GPA, assailing the proceedings dated 27.11.2007 of the Director, Mines and Geology, Andhra Pradesh, whereby the third respondent was granted a prospecting licence. By order dated 05.06.2012, a learned Judge of this Court dismissed the said writ petition as infructuous. The reason recorded therefor was that the prospecting licence granted under the proceedings dated 27.11.2007 was for a period of two years and the said period had expired. Notably, the learned counsel for the petitioner contended that though the period of the licence had expired, the illegality committed by the authorities would not be washed out and that the same needed to be considered. However, the learned Judge opined that examining the validity of the impugned proceedings was only a futile exercise as it ceased to have force due to the expiry of the period reserved thereunder. The petitioner however did not choose to file an appeal against this order.

Prior thereto, the petitioner, along with Viva Granites, filed

O.S.No.33 of 2002 before the learned Principal Senior Civil Judge, Ongole, seeking a permanent injunction restraining the third respondent herein from interfering with their possession and enjoyment of the extent of Ac.2.50 cents in Sy.No.584/1 of Chimakurthy Village. The said suit was dismissed by judgment and decree dated 04.04.2007. Aggrieved thereby, they preferred A.S.No.117 of 2007 before the learned IV Additional District Judge (FTC), Ongole. By judgment dated 04.04.2008, the appellate Court reversed the judgment and decree of the trial Court. Perusal thereof reflects that the appellate Court also held that the permanent injunction granted thereunder would not preclude the State revenue authorities from taking recourse to appropriate legal measures subject to showing that the land was covered by the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977, and upon following the due procedure laid down therein.

While so, it appears that the Director of Mines and Geology, Andhra Pradesh, acting upon the application filed by the third respondent for a quarry lease, received by the mining authorities on 02.12.2009, issued notice dated 23.03.2015 calling upon the third respondent to submit a mining plan for the precise area proposed for grant of the quarry lease. This notice is subjected to challenge presently by the petitioner, through his GPA, in W.P.No.38686 of 2015. Perusal of the impugned notice reflects that the Assistant Director of Mines and Geology, Ongole, under his letter dated 19.01.2015, had recommended grant of a quarry lease to the third respondent in relation to black galaxy granite over an extent of 0.615 hectares (1.52 acres) in Sy.No.584/1(P) of Chimakurthy Village and Mandal, Prakasam District, for a period of 20 years. Having agreed in principle with the said recommendation, the Director requested the third respondent to submit his mining plan. No interim orders were granted in this writ petition.

The third respondent filed a counter-affidavit in this writ petition, wherein he stated that the writ petition was not maintainable as the impugned notice dated 23.03.2015 was only consequential to the prospecting licence granted in his favour and in relation to which, the

petitioner's challenge had already failed in W.P.No.25938 of 2007. He disputed the claim of the petitioner that he was the absolute owner of the subject extent of Ac.2.50 cents in Sy.No.584/1 of Chimakurthy Village. Conceding without accepting that the petitioner was the owner of the subject extent, the third respondent contended that in the light of the law laid down by the Supreme Court in **STATE OF TAMILNADU V /s. M.P.P.KAVERI CHETTY**^[1], there was no need to obtain his consent prior to grant of a quarry lease as sub-soil rights would vest with the Government. The third respondent reiterated his assertion that the subject land was Government land and that the injunction secured by the petitioner against him would not bind the Government. He pointed out that issuance of the impugned notice was strictly in accordance with the due procedure.

While matters stood thus, the mining authorities granted permission to the third respondent to lift/dispose of the granite waste dumped in the subject land under Memo dated 18.11.2015 of the Director of Mines and Geology, Andhra Pradesh. Aggrieved thereby, the petitioner filed W.P.No.39004 of 2015, through his GPA.

By order dated 01.12.2015, this Court took note of the averment made that there was a dispute as to the right of the third respondent to lift granite waste from the subject land and directed the respondent authorities to maintain *status quo* as regards further steps pursuant to the impugned Memo dated 18.11.2015. W.V.M.P.No.473 of 2016 was filed by the third respondent to vacate the above order. In the counter filed in support thereof, the third respondent reiterated the averments made by him in the counter filed in the earlier writ petition, W.P.No.38686 of 2015.

The mining authorities did not choose to file their counter affidavits in either of the cases, despite the matters being adjourned time and again. Miscellaneous petitions were filed by the petitioner in both the writ petitions seeking to raise an additional ground. Both these miscellaneous petitions were ordered on 18.02.2016. The additional ground sought to be raised was that under the Andhra Pradesh Minor

Mineral Concession Rules, 1966, the area of land leased for quarrying had to be not less than one hectare, whereas in the present case, the third respondent was being granted a lease in relation to 0.615 hectares. This, according to the petitioner, is in violation of the statutory mandate and the mining authorities could not proceed with the matter.

Written arguments were filed by Sri M. Venkataramana and Sri M. Govind Reddy, learned counsel for the petitioner, and Sri Pannala Srinivas, learned counsel for the third respondent.

After narrating the facts as set out *supra*, it was contended by the learned counsel for the petitioner that the mining authorities ought to have given an opportunity to the petitioner, as he was the owner of the land, before dealing with the mining application of the third respondent. The procedure adopted by the mining authorities was castigated as being in violation of the legal position. It was stated that the failure on the part of the mining authorities in taking permission from the owner and occupier of the land was in violation of the law laid down in **PALLAVA GRANITES INDUSTRIES INDIA (P) LTD. V/s. GOVERNMENT OF ANDHRA PRADESH**^[2]. Lastly, it was contended that in terms of the minimum area to be granted by way of a mining lease, the action of the mining authorities in proposing to grant a lease of a lesser extent was legally unsustainable.

Countering the same, the learned counsel for the third respondent stated in his written brief that his client had applied for a prospecting licence for black granite on 27.02.2001 over an extent of Ac.4.80 cents in Sy.Nos.584/1, 2 and 3 of Chimakurthy Village. The Mandal Revenue Officer, Chimakurthy Mandal, was stated to have given a 'No Objection Certificate' on 15.12.2001 certifying that the land admeasuring Ac.4.80 cents was classified as Government land, but the available area in Sy.Nos.584/1 and 3 was only Ac.2.90 cents and that this land was covered with a waste dump. However, on 05.01.2002, the Assistant Director of Mines and Geology was stated to have opined upon inspection of the site that a 50 metre buffer zone had to be left and

therefore, the available area would be only 0.615 hectare. Tracing out the lineal history of the case, the third respondent contended that the petitioner had no *locus* to maintain these writ petitions as there was no consistency in his claim of title and that the defeat suffered by him in the earlier rounds of litigation precluded him from re-agitating settled issues.

Though the mining authorities have not filed counters in either of these cases, this Court is of the opinion that the matters are amenable to final disposal even in the absence thereof on the basis of the undisputed facts and the material on record.

It is an admitted fact that the petitioner earlier filed W.P. No.91 of 2002 and upon dismissal thereof on 05.03.2002; he filed W.A.No.1389 of 2002 which was dismissed as withdrawn on 25.10.2007. Perusal of the affidavit filed in support of W.P.No.91 of 2002 reflects that the petitioner, speaking through his GPA, specifically contended that he had not given any consent to the third respondent for quarrying black granite in the land claimed by him as his own. His basic grievance in the said writ petition was therefore with regard to his consent not being obtained for processing the application of the third respondent for grant of a prospecting licence. This writ petition was dismissed on merits and the writ appeal arising therefrom was dismissed as withdrawn. The petitioner has therefore effectively lost this ground and cannot raise it again at this stage.

That apart, taking note of the fact that Section 24A of the Mines and Minerals (Development and Regulation) Act, 1957, empowers the holder of a mining lease to enter the land in respect of which lease has been granted and carry out mining operations, subject to compensating the land owner for any loss or damage that his operations may cause, the Supreme Court observed in ***M.P.P.KAVERY CHETTY***¹ that consent of the occupier would be required only when the holder of the lease desired entry into any building or enclosed court or garden. This being the legal situation, the petitioner's contention that his consent is a pre-requisite is therefore without basis. This judgment, being of a three Judge Bench of the Supreme Court, would prevail over the contrary view expressed by a

two Judge Bench of the Supreme Court in **PALLAVA GRANITES INDUSTRIES INDIA (P) LTD.**² which did not advert to the earlier judgment.

Further, after dismissal of the writ appeal, the third respondent was granted a prospecting licence under proceedings dated 27.11.2007. These proceedings manifest that the third respondent had applied for a licence in relation to the larger extent of Ac.4.80 cents in Sy.Nos.584/1, 2 and 3 of Chimakurthy Village. The proceedings also record the fact that after survey and demarcation, the Assistant Director of Mines and Geology, Ongole, found that only an extent of 0.615 hectare was available. The third respondent was accordingly granted a prospecting licence over the said extent for two years. This was challenged by the petitioner in W.P.No.25938 of 2007. However, this writ petition was dismissed as infructuous on 05.06.2012 as the life of the prospecting licence was only two years. Significantly, the learned counsel for the petitioner raised the contention that expiry of the period of the licence would not derogate from the illegalities allegedly committed by the mining authorities and that the same needed to be considered. However, though the learned Judge disagreed with this contention and dismissed the writ petition, no steps were taken to file an appeal against such dismissal. In effect, grant of the prospecting licence to the third respondent attained finality.

In this regard, it would be relevant to note the legal position at this stage. The Andhra Pradesh Minor Mineral Concession Rules, 1966 (for brevity, 'the Rules of 1966'), govern the issue as black galaxy granite is a minor mineral. Rule 12(5) of these Rules deals with grant of a prospecting licence or a quarry lease for granite useful for cutting and polishing. Rule 12(5)(f) deals with the period and the extent to be granted for a prospecting licence or a quarry lease and reads as under:

‘(f) *Period and Extent to be granted for P.L. or Q.L.*:-

- (i) A prospecting licence for granite and marble shall be granted for a period not exceeding two years. The area covered by prospecting licence for granite shall not be

less than one hectare, but not exceeding fifty hectares. The area covered by prospecting licence for marble shall not be less than four hectares with a restriction that the dimension of any one side of such area shall not be less than two hundred metres but not exceeding fifty hectares.

- (ii) The maximum period for which a quarry lease for granite and marble may be granted shall not exceed thirty years.

Provided that the minimum period for which any such quarry lease may be granted shall not be less than twenty years. The area covered by lease for granite shall not exceed fifty hectares and minimum area shall not be less than one hectare. The area covered by quarry lease for marble shall not be less than four hectares with the restriction that the dimension on any one side of such area shall not be less than two hundred metres, but not exceeding fifty hectares.

- (iii) The Director of Mines and Geology if he is satisfied on the basis of production level, Geological or Topographical condition may for reasons to be recorded in writing, grant or renew a licence or lease over an area more than the maximum area or less than the minimum area specified under this rule.'

The aforestated sub-rule makes it clear that the minimum area prescribed is not absolute and that the Director of Mines and Geology is empowered under Clause (iii) thereof to grant or renew a licence or a lease over an area less than the minimum area specified. Presently, as the petitioner's challenge to the grant of a prospecting licence to the third respondent under the proceedings dated 27.11.2007 has already suffered irreversible defeat; the applicability of the sub-rule would arise only at the stage of grant of a quarry lease to him. This stage is yet to come as the third respondent has only been asked to provide a mining plan under the proceedings dated 23.03.2015, which is subjected to challenge in W.P.No.38686 of 2015. The ground urged in this regard is therefore premature at this stage and is accordingly eschewed from consideration.

Under the second proviso to Rule 12(5)(b), the prospecting licence

had been granted to the third respondent. Such a licensee is given a preferential right of obtaining a quarry lease in respect of that land, subject to his submitting a quarry lease application within three months after expiry of the prospecting licence period. As the third respondent did so, he now enjoys a preferential right and in terms thereof, the mining authorities have called upon him, by way of the proceedings dated 23.03.2015, to submit his mining plan. As this preferential right was conferred upon him consequent to the prospecting licence dated 27.11.2007 and as the petitioner has already suffered defeat in his challenge to the same, he has no right to again raise any of the contentions earlier urged by him. Further, as stated *supra*, the stage is yet to come when the petitioner can claim to have a crystallized cause of action as no quarry lease has been granted to the third respondent as yet and steps are only being taken presently to process his application as per the statute.

However, in so far as the Memo dated 18.11.2015, impugned in W.P.No.39004 of 2015, is concerned it is noticed that the Director of Mines and Geology, Andhra Pradesh, granted permission thereunder to the third respondent to lift/dispose of the granite waste in the subject area. The details of the 'subject area' are however not spelt out in the Memo. It is an admitted fact that a permanent injunction has been granted against the third respondent by the appellate Court in A.S.No.117 of 2007 filed by the petitioner and another. As long as the said injunction continues to operate, the third respondent cannot lawfully act in violation thereof. No doubt, the State of Andhra Pradesh was not a party to the said suit proceedings and the injunction granted therein would not bind it. However, it would not be open to the State to sanction any permission to the third respondent to act in violation of the injunction which binds him. Without enquiring into this aspect and without determining the factual area covered by such injunction, it appears that the Director of Mines and Geology, Andhra Pradesh, blindly issued the impugned Memo dated 18.11.2015 permitting the third respondent to lift/dispose of the granite waste. As it is the specific contention of the

petitioner that this granite waste is lying upon the land which is the subject matter of the permanent injunction granted in his favour in A.S.No.117 of 2007, this Court finds that the impugned Memo dated 18.11.2015 cannot be permitted to be acted upon by the third respondent, if there is even a remote possibility of his violating the permanent injunction in the guise of acting thereunder. The impugned Memo dated 18.11.2015 is therefore liable to be set aside on this ground.

On the above analysis, this Court finds that the petitioner's challenge to the proceedings dated 23.03.2015 is without merit. However, this order shall not preclude the petitioner from taking recourse to appropriate remedies in accordance with law in the event the third respondent is granted a quarry lease, but it would not be open to him to re-agitate any of the issues which were considered and rejected in the earlier rounds of litigation.

In so far as W.P.No.39004 of 2015 is concerned, this Court finds that the permission granted by the mining authorities under the impugned Memo dated 18.11.2015 is without proper application of mind to the scope of the permanent injunction decree granted in favour of the petitioner and against the third respondent in A.S.No.117 of 2007. The State, though it was not a party to the said proceedings, cannot authorize disobedience thereto by the third respondent, who is bound thereby. On this short ground, the impugned Memo dated 18.11.2015 is set aside.

In summation, W.P.No.38686 of 2015 is dismissed and W.P.No.39004 of 2015 is allowed.

Pending miscellaneous petitions in both the writ petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

29th MARCH, 2016

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[\[1\]](#) (1995) 2 SCC 402 = AIR 1995 SC 858

[\[2\]](#) 1997(3) Supreme 678 = AIR 1997 SC 2098