

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.6155 of 2009

ORDER:

The 1st petitioner was granted a quarry lease for a period of ten years in an extent of 1.00 hector in Survey No.109 of Mamidipalem Village, Ananakapalli Mandal, Visakhapatnam District, by proceedings dated 28.08.2003. Similarly another lease was granted in favour of the 2nd petitioner for the same period by proceedings dated 28.09.1995. After expiry of the lease of the

2nd petitioner, he sought for renewal and the same was granted by the Department. However, it appears that an inspection was carried out by the Regional Vigilance and Enforcement Department, Visakhapatnam, based on which a show cause notice was issued to all the quarry owners on 26.10.2006 alleging that they have been excavating the mineral outside their leased areas and the Department wanted to enforce the normal seigniorage fee with ten times penalty for the mineral excavated outside their leased areas. The petitioners submitted their explanations on 10.12.2006 and 04.11.2006. Having not been satisfied with the explanations submitted by the petitioners, the

3rd respondent passed orders demanding payment of normal seigniorage fee with ten times penalty by proceedings dated 09.11.2006. Challenging the same, the petitioners filed a revision before the 1st respondent. On 17.01.2008, the 1st respondent disposed of the said revision and reduced the penalty to one time and modified the orders of payment with normal seigniorage fee and one time penalty. Challenging the same, the present Writ Petition is filed.

2. A counter affidavit is filed by the 3rd respondent stating that in the joint inspection conducted by the Regional Vigilance and Enforcement Department and the Royalty Inspector, Surveyors of the Offices of the Assistant Director of Mines and Geology, Visakhapatnam

and Tekkali, it was found that the petitioners were working beyond the leased areas in Survey No.109 of Mamidipalem Village, Anakapalli Mandal, Visakhapatnam District. It was also noticed that the petitioners have excavated 3491 Cubic Meters and 9798 Cubic Meters of Road Metal and Building Stone respectively in contravention of Rule 26 of the Andhra Pradesh Minor Mineral Concession Rules, 1966. Accordingly, a show cause notice was issued on 26.10.2006 and the petitioners submitted their explanations on 07.11.2006. Since the explanations submitted by the petitioners were not satisfactory, a demand notice was issued for payment of normal seigniorage fee along with ten times penalty. Challenging the same, they filed a revision petition before the 1st respondent and against the order passed by the 1st respondent, the present Writ Petition is filed.

3. Learned counsel for the petitioners submits that there is no evidence to show that the petitioners quarried the metal in excess of the area allotted to them and in the joint inspection conducted by the Regional Vigilance and Enforcement Department along with the Surveyors of the Assistant Director of Mines and Geology, no notice was issued to the petitioners.

4. Learned Government Pleader for Pleader Mines and Geology on the other hand submits that there were several violations, which were noticed by the inspecting officials and the main violation relates to non-maintenance of boundary pillars which enabled to quarry outside the leased areas.

5. It is clear from the facts that the demand notices were issued pursuant to the joint inspection conducted by the Vigilance and Enforcement Department and Surveyors of the Office of the Assistant Director of Mines and Geology. It appears that there are several leases existing in the same survey number and deeds executed in

favour of the lessees clearly showed the boundaries.

If there are any violations of the conditions of the lease, separate proceedings should have been taken by respondents 2 and 3, and no notice was issued with regard to the violations but a joint inspection was conducted by the Vigilance and Enforcement Department and based on the same, the demand notices were issued. When the demand notices were issued for payment of one time seigniorage fee with ten times penalty, the 1st respondent has passed an order in revision reducing the penalty to one time without giving a finding with regard to the violations made by the petitioners. The operative portion of the order passed by the

1st respondent reads as follows.

“The matter has been examined in detail and in order to dispose of the Revision Application a personal hearing was conducted on 01.12.2007. The petitioner has attended for the hearing and put-forth his grievances. During the hearing the petitioner requested to waive the penalty. After hearing the arguments and taking the opinion of the departmental officials with regard to the rule position obtaining in this matter, Government by exercising the powers conferred under rule 35-A of APMMC Rules, 1966, hereby decided to reduce the penalty from five time to one time, i.e., the petitioner shall pay the normal seigniorage fee plus one time penalty. The Revision Application is disposed of accordingly.”

6. In the facts of the case and in the absence of any finding with regard to the violations committed by the petitioners, this Court is not satisfied with the imposition of penalty, but, however since the quarried mineral was noticed by the Department and no seigniorage fee was paid to the said mineral, the petitioners are liable to pay the normal seigniorage fee.

7. This Court, while admitting the Writ Petition on 24.03.2009, granted interim suspension of penalty only and the petitioners were directed to pay the seigniorage fee. In these

circumstances, since the petitioners did not pay the normal seigniorage fee, it is open to the respondents to recover the same from them. However, the imposition of penalty is set aside.

8. The Writ Petition is accordingly allowed to the extent of imposition of penalty. There shall be no order as to costs.

9. The miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A. RAMALINGESWARA RAO, J

Date:19.04.2016

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