

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.30161 of 2016

O R D E R:

Heard counsel for the petitioner and the Special Government Pleader appearing for respondents 1 & 2, the Government Pleader for Revenue appearing for 3rd respondent, and Sri M.Ajay Kumar, Standing Counsel appearing for 4th respondent.

2. Petitioner has questioned proceedings dt.06.07.2016 of the 3rd respondent refusing No Objection Certificate (NOC) to the petitioner who had applied for mining lease for Laterite (Minor Mineral) in respect of two parcels of land of 14.70 hectares and 14.53 hectares in survey No.47/p of Muppam Village, Dharmasagar Mandal, Warangal District.

3. The 3rd respondent in the impugned order stated that the land in question has been decided by the 1st respondent to be utilized for establishment of a textile park and therefore NOC cannot be granted to the petitioner.

4. Counsel for the petitioner contends that the 3rd respondent, while considering whether or not to grant NOC in the light of G.O.Ms.No.4 Revenue (Assignments-I) Department, dt.19.01.2015, can only go into the issue of 'extent of land, classification of land, proximity to forest, tank, lake or irrigation source, proximity to habitation, whether mining will affect habitation, and whether mining will affect agriculture in

neighboring lands' and cannot transgress beyond these parameters. He further contended that the State Government had issued G.O.Ms.No.74, Industries and Commerce (MI)Department, dt.16.02.2002 directing the District Collectors not to issue NOCs for purposes other than mining in respect of lands having a concentration of Mineral Wealth, that there is no dispute that Laterite mineral is found in the subject land, that in violation of the policy in G.O.Ms.No.74, it is not open to the State to earmark mineral rich land like the subject land for textile park or for other purposes without changing the policy declared by it in G.O.Ms.No.74.

5. In the counter affidavit filed by the 1st respondent the factum of issuance of G.O.Ms.No.74 is not disputed. However, it is contended that the lands can be used for other than mining purposes, if it is useful for the public at large as per the priorities of the Government and that the State is entitled to refuse an NOC even for mining lease applications, if according to its priority, such NOC is not warranted.

6. The Special Government Pleader appearing for respondents 1 to 3 states that proposal to modify G.O.Ms.No.74 dt.16.02.2002 is pending consideration before the 1st respondent and in any event the 1st respondent has power under Rule 11(1)(a) of the Rules framed under the Mines and Minerals (Regulation and Development) Act, 1957 to cancel a quarry lease granted and executed if it is considered necessary

to do so either due to change in the policy or in the public interest.

7. Sri Vedula Venkata Ramana, Senior Counsel appearing for the petitioner states that since no mining lease is yet granted, the occasion of the Government to invoke Rule 11(1)(a) has not arisen, and in any event, in expectation of a change in the policy, the respondents cannot deny NOC to the petitioner, which the petitioner is entitled to as per the existing policy contained in G.O.Ms.No.74. He further contended that the State Government has issued Memo No.8613/M.I(1)/2015, dt.04.08.2016 directing that all existing pending applications for minor minerals, if not disposed of either by grant or rejection by 30.09.2016, will not be considered thereafter.

8. The policy of the Government for allotment of mineral rich lands is contained in G.O.Ms.NO.74, which reads as under:

“It has been brought to the notice of the Government that House site pattas have been granted in certain districts on lands which are having rich/rare mineral wealth. Allotment of Mineral rich areas for such general purposes has an adverse impact on industrial growth and Government revenues. Since minerals are location specific and are essential for the industrial development of the State it has been decided that lands having rich/concentrated Mineral Wealth should not be allotted for any mining.

The Director of Mines & Geology is therefore requested to take necessary action to identify the lands/cluster of lands having a concentration of Mineral Wealth and inform all the district Collectors about the occurrences of such minerals. The District Collectors are requested not to issue NOCs for such identified lands for any purpose other than mining.”

9. It is not the case of the respondents that the policy contained herein has been varied by the Government as on date.

Merely because the Government is contemplating to change its policy, it cannot avoid extending the existing policy till such change is made in accordance with law. The 3rd respondent is bound to consider application for grant of NOC in terms of G.O.Ms.No.4 dt.19.01.2015 within the parameters mentioned there under and cannot traverse beyond the said parameters and reject the application for NOC on the ground that the subject land is earmarked for a textile park.

10. In view of the above circumstances and in view of the Memo dt.04.08.2016 issued by the 1st respondent that applications for grant of lease of minor mineral would not be considered after 30.09.2016, the impugned proceeding dt.06.07.2016 of the 3rd respondent rejecting the NOC for the proposed minor mineral lease of the petitioner in respect of the subject land, is set aside. The 3rd respondent is directed to consider the petitioner's application for NOC without reference to the earmarking of the subject land for the textile park on or before 30.09.2016 in accordance with law. It is made clear that the right of the Government to change its policy contained in G.O.Ms.No.74 dt.16.02.2002 is recognized, but till such a change is made in accordance with law, the respondents are held bound to follow the policy contained in G.O.Ms.No.74. The 1st respondent shall also consider the petitioner's application for grant of mining lease on or before 30.09.2016 in the light of the decision of the 3rd respondent.

11. The Writ Petition is disposed of as above. There shall be no order as to costs.

12. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

23rd September, 2016
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Note: Issue CC by 26.09.2016
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