

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.37693 OF 2016

Dated:16.11.2016

Between:

Kakani Ramu, S/o. K. Nagalingeswara
Rao, aged 40 years, Occ: Business,
R/o. Malkapuram Village, Jaggaiahpet
Mandal, Krishna District, Andhra Pradesh .. Petitioner

And

The State of Telangana, rep., by its
Principal Secretary, Mines and
Geology Department, Secretariat,
Hyderabad and others .. Respondents



The Court made the following:

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ORDER:

This Writ Petition is filed for the following relief:

“.. to issue a writ or order/s more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in withholding payment of an amount of Rs.83,35,875/- payable to the petitioner towards decasting of sand in his patta land in Survey No.58/1/1 situated at Pedamandava Village of Mudigonda Mandal in Khammam District, as being illegal, arbitrary and unconstitutional, and consequently to direct the respondent No.3 to forthwith release the said amount to the petitioner; and be pleased to pass such other order/s as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. The petitioner states that he owns and possesses land to an extent of Acs.9.00 in Survey No.58/1/1 situated at Pedamandava Village of Mudigonda Mandal, Khammam District. He made an application on 17.06.2015 for de-casting of sand in the said land. On conducting enquiry, the 3rd respondent accorded permission for de-casting of sand for an estimated quantity of 54,633 cubic meters vide proceedings, dated 30.06.2015 and accordingly, an agreement dated 01.07.2015 was entered into with the 2nd respondent. In terms of the agreement, the petitioner claims to have delivered the entire quantity of sand to the 2nd respondent. However, he was paid Rs.19,36,125/- towards the value of 7744.5 cubic meters of sand and yet to receive the balance amount of Rs.83,35,875/-. The petitioner states that in spite of making several representations, the said amount is not released. He further states that on a complaint made by him, mining operations were stopped and detailed enquiry and a joint

inspection of the said land was conducted by respondents 5 and 6 and boundaries were re-fixed in the subject land and thereafter de-casting is started again within the newly fixed boundaries. Thereafter, though the petitioner made representations before the authorities for releasing the amounts for the sand removed, the said amount is not released.

3. On 07.04.2016, the 3rd respondent filed a report, wherein it is stated that the District Level Sand Committee in its Meeting held on 30.10.2015 directed the Telangana State Mineral Development Corporation not to release payment to pattadar for sale of sand from 17.10.2015 due to the fact that enquiry is going on with regard to the title and extent of patta land of the petitioner in Survey No.58. The petitioner averred in paragraph No.7 of the affidavit that having verified the title and after conducting thorough enquiry by the respondents, the 2nd respondent entered into an agreement with him to de-caste the sand. There is no legal basis to deny the amounts payable to the petitioner and he therefore contends that not releasing the amounts due to him, amounts to arbitrary exercise of power.

4. When the Writ Petition is taken up for consideration, learned Government Pleader for Mines and Geology produced the written instructions, which show the history of the litigation. It appears that P.I.L.No.344 of 2015 was filed by Sri S. Rajaiah and 13 others of Pedamandava Village praying to conduct enquiry and to declare the proceedings, dated 30.06.2015, as illegal. By order dated 23.11.2015, the Division Bench of this Court disposed of the said P.I.L., wherein the petitioner herein was arrayed as

7th respondent. In terms of the undertaking given before this Court in the above P.I.L., the petitioner therein and others filed an application on 01.12.2015 before the Joint Collector requesting him to stop illegal quarrying of sand in Survey No.58/1/1 and to cancel the irregular pattadar passbook and title deed issued for the lands in Survey Nos.54 to 58. It is seen from the said note that the report, dated 07.04.2016, on which reliance is placed by the petitioner, was recalled *suo motu* and the proceedings are reopened by notice dated 24.09.2016 and the petitioner was directed to appear before the Joint Collector on 29.09.2016. On 29.09.2016, the Joint Collector heard and reserved the file for passing orders. Since the said Joint Collector was transferred, in the meantime, the new Joint Collector has posted the case for hearing on 18.11.2016. At this stage, this writ Petition is filed. Having regard to these facts, learned Government Pleader has submitted that there was a clear suppression of fact of pending enquiry and deliberately he has not disclosed the reopening of the case and conducting of enquiry by the Joint Collector and therefore the petitioner is not entitled to the relief claimed.

5. Having realised that the relevant and crucial facts are not placed before this Court, the petitioner filed additional affidavit explaining that he could not state these facts since he was under the impression that these facts are not relevant for the purpose of claim made in the Writ Petition and according to him, only the proceedings, dated 07.04.2016, would be relevant. In these circumstances, the earlier and subsequent history was not referred to in the affidavit, however, he realises his mistake and expresses his unconditional apology for not placing the true facts.

6. The issue as to whether the petitioner is entitled to the amount claimed by him on the ground that huge quantity of sand was de-casted from the land in survey No.58/1/1 is contested by the rivals and the matter is pending before the competent authority. The notice of enquiry was served on the petitioner. The petitioner appeared before the Joint Collector on 29.06.2016 and at that stage, the matter was, in fact, reserved for passing orders, and only on account of change of the Joint Collector, no orders were passed and the case was reopened and the matter was posted to 18.11.2016 for hearing. Thus, it cannot be said that the petitioner was not aware of these proceedings pending against him and innocently claimed that the sand was de-casted from his land and he is entitled to claim the amount due to him. The petitioner did not state the true and correct facts for claiming equitable relief before this Court. The petitioner was not *bona fide* in prosecuting the case and he intended to somehow get an order from this Court and to get the money before the Joint Collector would take up further enquiry and pass orders. The petitioner has not disclosed the true and correct facts and was not *bona fide* in prosecuting the litigation before this Court. Hence, this Court is not inclined to entertain the Writ Petition. First and foremost the Writ Court expects that the person prosecuting the litigation places before this Court all facts concerning the issue and makes genuine claim on his entitlement, to exercise the equitable jurisdiction under Article 226 of the Constitution of India. It is clear that there is no disclosure of true and correct facts while seeking the relief before this Court.

7. Having regard to the apology expressed by the petitioner, no further orders are passed on penal consequences of such conduct of petitioner.

8. The Writ Petition is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, filed in this Writ Petition shall stand closed.

P. NAVEEN RAO, J

Date:16.11.2016

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