

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.21372 of 2017

ORDER:

Interference of the third respondent/Forest Range Officer in the mining operations and the transportation of minerals viz., Mica, Quartz, Feldspar and Vermiculate is the complaint of the petitioner in the present writ petition.

2. Heard the learned counsel for the petitioner, learned Government Pleader for Mines and Geology for the respondents 1 and 2 and the learned Government Pleader for Forests for the third respondent.

3. Vide G.O.Ms.No.98, Industries & Commerce (M.IV) Department, dated 24.01.1990, the State Government Granted mining lease in favour of husband of the petitioner for the above said minerals for a period of 20 years over an extent of Ac.36-50 cents in Sy.No.28 of Nandivai village, Podalakur Mandal, Nellore district.

4. On 09.06.2001, the husband of the petitioner died and thereafter on the application made by the petitioner herein, by virtue of the proceedings No.2681/M.II/81, dated 06.07.2001, the Assistant Director of Mines and Geology, Nellore, declared the petitioner as successor lessee to the mining lease held by her husband. Thereafter, on 10.07.2009, petitioner submitted an application for renewal. According to the petitioner, in view of the subsequent amendments to Mines and Minerals (Development & Regulation) Act, 1957 carried out in the year 2015, the lease period is deemed to have been extended till 18.07.2040.

5. The third respondent/Forest Range Officer, issued a notice bearing Rc.No.49/2017 stating that the petitioner has illegally occupied reserve forest area which is an offence under Section 20 (i) C (iii) & (viii) of the A.P. Forest Act and while saying so the third respondent asked the petitioner to file objections in writing. On 17.06.2017, petitioner submitted objections/reply.

6. In the above background, the present writ petition has been filed, alleging illegal interference of the forest authorities with the mining and transportation operations. Counter affidavits have been filed by the respondents.

7. It is contended by the learned counsel for the petitioner that the impugned action on the part of the third respondent in interfering with the mining operations of the petitioners herein is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 19 (1) (g) of the Constitution of India. It is further submitted that the petitioner herein is holding a valid mining lease and is operating the mine without there being any complaints. It is also the submission of the learned counsel for the petitioner that during the year 2003, Joint Survey was conducted in respect of the adjacent lease in Sy.No.28 held by one Mr.Chandrasekhar Reddy and the report submitted consequent upon the said Joint Survey shows that the land in Sy.No.28 of Nandivayi village, Podalakur mandal, Nellore District falls outside the forest area. It is further submitted that the petitioner herein is conducting operations by leaving buffer area also.

7. Learned Government Pleader for Forests, reiterating the averments made in the counter affidavit filed by the third respondent, submitted that the subject area is a forest area and the petitioner herein cannot be permitted to undertake any mining operations in the area and that the Mines and Revenue departments granted No-Objection Certificate without the knowledge. It is

further submitted that as per the survey undertaken on 08.06.2017, it is found that the subject area is a forest area.

8. There is absolutely no dispute with regard to the fact that the mining authorities granted the subject lease only after obtaining No-Objection from the revenue authorities after conducting survey. It is also not in dispute that the mining lease standing in the name of the petitioner herein is still intact as on today. According to the counter of the third respondent, on 08.06.2017 a survey was conducted by the forest authorities. Admittedly, the said survey said to have been conducted was not a joint survey. It is also required to be noted that earlier a joint survey was conducted on 05.08.2003 with regard to the present Sy.No.28 of Nandiyavi village. In the said survey, mining, revenue and the forest department officials participated so also the adjacent lessee Sri V.Chandrasekhar Reddy participated. In fact, a copy of the said joint survey report dated 05.08.2003 is filed along with the reply.

9. A perusal of the Joint Survey and the inspection report shows that the said survey concluded that the area proposed for mining in Sy.No.28 would fall outside the reserve forest area, but adjacent to reserve forest. The Adangal/pahani copy filed along with the reply by the petitioner herein obtained on 12.06.2017 from the Tahsildar, Podalakur also shows that the land belongs to the Government and it is a grazing poramboke. It is also significant to note that at paragraph 4 of the counter affidavit of the third respondent it is stated that the area proposed for mining in Sy.No.28 of Nandiyavi village is falling outside the reserve forest but adjacent to the reserve forest. Therefore, the interference of the third respondent with the mining activities of the petitioner herein in the absence of any joint survey undertaken in respect of the subject area so long as the mining lease granted in favour of the petitioner subsists can neither be approved nor

countenanced. However, it is open for the forest authorities to undertake joint survey with the mining, revenue and other relevant authorities in the presence of the petitioner herein to proceed further.

10. For the aforesaid reasons, writ petition is allowed, directing the respondents herein not to interfere with the mining activities of the petitioner herein in respect of the subject lease so long as the lease in favour of the petitioner subsists. However, this order will not preclude the respondents from undertaking joint survey by giving opportunity to the petitioner herein also and to proceed further, in accordance with law. As a sequel, miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

Date: .08.2017
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A.V.SESHA SAI, J

THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.21372 of 2017

Dated: .08.2017

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