

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Appeal No.1049 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred by the 4th respondent in W.P. No.20058 of 2017 aggrieved by the order passed by the Learned Single Judge on 30.06.2017. The 1st respondent herein filed W.P. No.20058 of 2017 to declare the action of the respondents therein, in not processing their application dated 14.12.2016, and in not granting mining lease in their favour for an extent of Ac.166.97 cents in an un Surveyed Hill Portion (USHP) of Vanthada Village, Pathepadu, East Godavari District, as arbitrary and illegal.

By the order under appeal, the Learned Single judge directed the official respondents in the writ petition to process the application of the 1st respondent-writ petitioner dated 14.12.2016, and pass appropriate orders in accordance with law. It was made clear that the said order would be subject to the outcome of W.P. No.3634 of 2017.

Sri A. Sudershan Reddy, learned Senior Counsel appearing on behalf of the appellant, would submit that the appellant herein was granted a lease earlier for the very same extent of land; a show cause notice was issued on 20.07.2016; and an order terminating the lease was passed on 06.12.2016.

Questioning the said order of termination, the appellant herein filed W.P.No.3634 of 2017 and, by order dated 02.02.2017, a Learned Single Judge of this Court granted interim suspension with respect to grant of new lease, in respect of the subject land, to third parties

initially for a period of 12 weeks. The said order has been extended thereafter from time to time. While the interim order passed in W.P. No.3634 of 2017 dated 02.02.2017 would disable the official respondents from granting a new lease in respect of the subject land to third parties, the question which necessitates examination is whether the Learned Single Judge was justified in directing the official respondents to process the application submitted by the 1st respondent-writ petitioner dated 14.12.2016.

Sri A. Sudershan Reddy, learned Senior Counsel appearing on behalf of the appellant, would place reliance on Rule 9-A of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short “the 1966 Rules”) to contend that whenever a mining lease is granted in favour of a person, the Government can grant a mining lease afresh, after termination of the earlier lease, only on its issuing a notification in terms of Rules 9-A(2) of the 1966 Rules. Learned Senior Counsel would submit, placing reliance on Rules 59 and 60 of the Mineral Concession Rules, 1960 (for short “the 1960 Rules”), that the language used in Rule 9-A(2) of the 1966 Rules is in *pari materia* with Rules 59 and 60 of the 1960 Rules; and, therefore, the application of the 1st respondent-writ petitioner cannot even be processed or considered.

Both the Learned Government Pleader for Mines and Geology and Sri P. Venugopal, learned Senior Counsel appearing on behalf of the 1st respondent-writ petitioner, would submit that, while no lease can be granted in favour of the 1st respondent-writ petitioner, in view of the interim order passed in W.P. No.3634 of 2017, neither the Rules, nor the interim order passed in W.P. No.3634 of 2017, disables the official respondents from processing the application; and even if, after processing, the official respondents are of the view that a lease should

be granted in favour of the 1st respondent-writ petitioner, they are precluded from granting a mining lease as long as the interim order passed in W.P. No.3634 of 20176 continues to remain in force.

Rule 9-A of the 1966 Rules reads as under:

9-A (1) Reservation of areas for exploitation in the public sector,

etc: The State Government may, by notification in the Official Gazette, reserve any area for exploitation by the Government, a Corporation established by any Central, State or Provincial Act or a Government Company within the meaning of Section 617 of the Companies Act, 1956 (Central Act 1 of 1956).

(2) Availability of area for regrant to be notified:- No area which has been reserved by the Government under Rule 9-A(1) shall be available for grant of quarry lease unless the availability of the area for grant is notified in the Official Gazette specifying a date (being a date not earlier than thirty days from the date of the publication of such notification in the Official Gazette) from which such area shall be available for grant.

(3) Premature applications:- Applications for the grant of a quarry lease in respect of areas whose availability for grant is required to be notified under Rule 9-A(2) shall if, -

- (a) No notification has been issued under that rule; or
- (b) Where any such notification has been issued the period specified in notification has not expired, shall be deemed to be premature and shall not be entertained; and the application fee thereon, if any paid, shall be refunded.

Under Clause (1) of Rule 9-A of the 1966 Rules, the State Government is empowered, by notification in the Gazette, to reserve any area for exploitation by the Government, a Statutory Corporation, or a Government Company. In terms of Clause (2) of Rule 9-A of the 1966 Rules, no area reserved under Clause (1) shall be available for grant of quarry lease without it being notified in the Official Gazette. It is not even the case of the appellant that the subject land has been reserved for exploitation of the Government or a Statutory Corporation or a Government Company. Their claim is that, since the mining lease was granted in their favour earlier, the Government cannot, thereafter, renew the grant unless it causes publication in the Official Gazette, and invites applications from interested parties. A plain reading of Clause

(2) of Section 9-A of the 1966 Rules does not support such a view. Clause (2) of Rule 9-A would apply only in respect of areas reserved under Clause (1) of Rule 9-A of the Rules.

Rules 59 and 60 of the 1960 Rules read as under:

59. Availability of area for regrant to be notified

(1) No area –

- (a) which was previously held or which is being held under a Reconnaissance permit or a prospecting licence or a mining lease ; or
- (b) which has been reserved by the Government or any local authority for any purpose other than mining ; or
- (c) in respect of which the order granting a permit or licence or lease has been revoked under sub-rule (1) of rule 7A or sub-rule (1) of rule 15 or sub-rule (1) of rule 31, as the case may be; or
- (d) in respect of which a notification has been issued under the sub-section (2) or sub-section (4) of section 17; or
- (e) which has been reserved by the State Government or under section 17A of the Act; shall be available for grant unless –
 - (i) an entry to the effect that the area is available for grant is made in the register referred to in sub-rule (2) of rule 7D or sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as the case may be; and
 - (ii) the availability of the area for grant is notified in the Official Gazette and specifying a date (being a date not earlier than thirty days from the date of the publication of such notification in the Official Gazette) from which such area shall be available for grant:

PROVIDED that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs notwithstanding the fact that the lease has already expired :

PROVIDED FURTHER that where an area reserved under rule 58 or under section 17A of the Act is proposed to be granted to a Government Company, no notification under clause (ii) shall be required to be issued:

PROVIDED also that where an area held under a reconnaissance permit, or a prospecting licence, as the case may be, is granted in terms of sub - section (1) of section 11, no notification under clause (ii) shall be required to be issued.

(2) The Central Government may, for reasons to be recorded in writing, relax the provisions of sub-rule (1) in any special case.

60. Premature applications:

Applications for the grant of a reconnaissance permit, prospecting licence or mining lease in respect of areas whose availability for grant is required to be notified under rule 59 shall, if –

- (a) no notification has been issued, under that rule; or

(b) where any such notification has been issued, the period specified in the notification has not expired, shall be deemed to be premature and shall not be entertained.

In terms of Rule 59(1)(a) of 1960 Rules no area, which was previously held under a mining lease, shall be made available for grant unless, among others, the availability of the area for grant is notified in the Official Gazette. Unlike Rule 59 of the 1960 Rules, Rule 9-A of the 1966 Rules has no application to areas for which a mining lease was previously granted. Rule 60 of the 1960 Rules renders applications, with respect to those areas whose availability for grant was required to be notified under Rule 59, premature in the absence of a notification being issued in terms of that Rule. Unlike Rule 59(1)(a) of the 1960 Rules, which disables any area for which a mining lease was previously granted to be made available for re-grant unless it is notified in the Official Gazette, Rule 9-A(1) of the 1966 Rules does not prescribe any such restriction for areas for which a mining lease was granted earlier.

We are satisfied, therefore, that the official respondents are not precluded from processing the application of the 1st respondent-writ petitioner. They cannot, however, grant a mining lease in favour of the 1st respondent-writ petitioner, as long as the interim order passed by the Learned Single Judge in W.P. No.3634 of 2017 continues to remain in force. We make it clear that our observations shall not be construed as requiring the official respondents to consider the application of the 1st respondent-writ petitioner favourably. All that we have held is that neither Section 9-A of the 1966 Rules, nor the order passed by the Learned Single Judge in W.P. No.3634 of 2017, disables them from processing the application of the 1st respondent-writ petitioner in accordance with law. We reiterate that, as long as the interim order passed in W.P. No.3634 of 2017 continues to remain in force, no mining

lease can be granted even if the official respondents consider the application of the 1st respondent-writ petitioner favourably.

Subject to the aforesaid observations, the Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

01st August, 2017
JSU



**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI**



Writ Appeal No.1049 of 2017

Date: 01.08.2017

JSU