

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.1925 OF 2017

ORDER:

1. This writ petition is filed by the petitioners challenging the memo issued by the 2nd respondent-District Collector, dated 2.1.2017 rejecting the application of the petitioners for grant of permission for de-casting of sand in Sy.Nos.334/17, 18 and 19, in an extent of Ac.15.00 situated at Kodicherla Village, Kotagiri Mandal, Nizamabad District.

2. The case of the petitioners is as follows:

The petitioners are the possessors of agricultural land of an extent of Ac.15.00 in Sy.No.334/17,18 and 19 situated at Kodicherla Village, Kotagiri Mandal, and they have been cultivating the same. While so, as there was heavy accumulation of sand in the land in question, the petitioners are unable to conduct agricultural operations in the above land. As per the rules, the petitioners submitted an application to the Assistant Director of Mines and Geology for grant of permission for de-casting the sand accumulated on the land in question, on 5.8.2015. The said application was processed in terms of G.O.Ms.No.3, Industries & Commerce (M.1) Department, dated 8.1.2015. The District Level Sand Committee instructed the Assistant Director of Mines and Geology to address the pattadars to process the application through R.D.O. The said Assistant Director requested the Deputy Director, Ground Water Department, Nizamabad, the Tahsildar, Kotagiri Mandal, Nizamabad, the Assistant Director, Survey and Land Records, Nizamabad and the officer in charge, Telangana State Mineral Development Corporation, Nizambad for conducting joint inspection on 1.6.2016. A joint inspection was conducted. The Executive Engineer, Irrigation and Command Area Development submitted a report stating that they inspected the land in question, which is abutting to the left

flank of Manjeera river, and that if de-casting of sand is done the flow of river will not be affected. The Revenue Divisional Officer vide proceedings dated 29.8.2016 furnished a report. The Mandal Agricultural Officer submitted a report stating that the lands in question are located adjacent to the Manjeera river and they are casted with sand due to floods. The Deputy Director, Ground Water Department recommended for issuance of permission. After obtaining all the reports, the Assistant Director of Mines and Geology forwarded the same to the District Collector for grant of permission. The District Collector issued the impugned memo informing that in the meeting held on 28.12.2016, the District Level Sand Committee (DLSC) rejected the application of the petitioners as the proposed area for de-casting is within the river course. Aggrieved by the same, the petitioners filed this writ petition.

3. The averments in the counter-affidavit filed on behalf of the respondents are as follows:

(i) The District Level Sand Committee convened a meeting on 28.12.2016 to scrutiny and dispose of the issues pertaining to de-casting of sand. The committee examined the records and reports submitted by the concerned officers and rejected the application of the petitioners for excavation of sand in the subject land as the subject land is within the river course.

(ii) The petitioners have been assigned the land of an extent of Ac.5.00 each in Sy.No.334/17, 18 and 19 of Kodicherla village of Kotagiri Mandal. As per the pahani for the year 1961-62 the last survey number of Kodicherla village is 332 only. As per the verification report of the Tahsildar, survey No.334 has been created newly and assigned in panadi area to three beneficiaries. It was found that the then Tahsildar, Kogagiri had violated the rules of assignment and made irregular assignment.

(iii) As per the inspection report, the petitioners are not in possession of the land in question and they never cultivated the same since assignment as the lands are covered by Manjeera river. The petitioners herein are non-residents of Kodicherla village of Kotagiri Mandal. The Officers concerned, except Tahsildar, Kotagiri, submitted their reports recommending for excavation of sand.

(iv) The proposals were placed before DLSC on 1.11.2016 and 28.12.2016 and as per the decision of DLSC on 1.11.2016, the Revenue Divisional Officer, Bodhan was asked to submit a report in due consultation with the Deputy Director, Mines and Geology, and Deputy Director, Ground Water Department. Accordingly, the Revenue Divisional Officer, Bodhan submitted a report stating that the petitioners were assigned with the land in Sy.Nos.334/17, 18 and 19 and their names are recorded in the revenue records i.e., Pahani since 2004-05. A specific report was called from the Revenue Divisional Officer. Again, he reported that de-casting may be permitted as per the recommendations containing in the reports. The proposals were placed before DLSC once again on 28.12.2016. The DLSC rejected the de-casting proposal of sand in the land in question.

4. The learned Counsel for the petitioners relying on the recommendations made by the officers, who conducted joint inspection, submitted that proceedings issued by the District Collector vide impugned memo, dated 2.1.2017 without assigning any reasons, is arbitrary and illegal. He further submitted that in similarly situated circumstances, the other pattadars, whose lands are situated adjacent to the subject land, were given permission to remove the sand and do cultivation and therefore, the case of the petitioners may be considered.

5. Before going into the merits of the case, it has to be noted that Rules 7 (1) to (5) have been amended by virtue of G.O.Ms.No:30, Industries (Mines I Department), dated 6.5.2015. As per rule 7(2) of the Rules vide G.O.Ms.No:3, dated 8.1.2015, after receipt of joint inspection report, the Assistant Director of Mines and Geology shall submit the proposals duly stipulating the period of de-casting to the District Collector and as per rule 7(3) vide G.O.Ms.No:3, dated 8.1.2015, the District Collector after scrutiny shall submit proposals to the Government whereas as per rule 7 (2) of the Rules vide G.O.Ms.No:30, dated 6.5.2015, after receipt of Joint Inspection report, the Assistant Director of Mines and Geology concerned shall stipulate the period of de-casting and place the proposals for de-casting sand before the District Level Sand Committee and as per Rule 7 (3) of the Rules vide G.O.Ms.No:30, dated 6.5.2015, the DLSC Committee shall examine the proposals on de-casting sand from patta land and accord its approval. At the same time, it is also made clear that as per rule 7(4) of the Rules vide G.O.Ms.No:30, dated 6.5.2015, the word "Government" shall be substituted by "District Level Sand Committee".

6. A perusal of the material papers goes to show that the petitioners submitted their applications on 5.8.2015 i.e., after the amendment of rule 7 (1) to (3) vide G.O.Ms.No:30, dated 6.5.2015. The relief sought by the petitioners is to direct the District Collector to re-consider the application of the petitioners and grant permission in terms of G.O.Ms.No.54, Industries & Commerce (M.1) Department, dated 21.8.2015. The respondents in their counter at paragraph No.6 submitted that the applications of the petitioners were rejected as per the provisions of Rule 7(1) of Telangana State Sand Mining Rules, 2015 issued vide G.O.Ms.No.3, dated 8.1.2015. The contentions of both the parties are contrary to the amended Rule 7 of the Rules under G.O.Ms.No.30, dated 6.5.2015.

7. In the instant case, rule 7 (1) to (3) of the Rules as amended under G.O.Ms.No:30, dated 6.5.2015 are relevant to be followed in the instant case while considering the applications of the petitioners, but not G.O.Ms.No:54, dated 21.8.2015 as rule 7 (1) to (3) have not been amended therein. After taking steps under rule 7(1) to (3) of Rules under G.O.Ms.No.30, dated 6.5.2015, the other sub-rules of 7 of the Rules as amended G.O.Ms.No.54, can be made applicable, as the rules are amended in G.O.Ms.No.54, from sub-rule 4 of rule 7 of the Rules. It is apparent on the face of the record that such a procedure as contemplated under amended rule 7 (1) to (3) vide G.O.Ms.No:30, dated 6.5.2015, has not been followed properly in the instant case.

8. Now, it has to be examined as to whether there are any reasons assigned by the District Collector for rejection of the application of the petitioners.

9. It is sought for in the application of the petitioners that they may be permitted to decaste the sand in their land, so as to make the land fit for cultivation. The memo impugned goes to show that the application of the petitioners was rejected on the ground that the land is within river course. The learned Counsel for the petitioners relied upon the recommendations and report of the authorities concerned for de-casting. Admittedly, the memo impugned does not disclose any reasons for rejection of the application of the petitioners. Except stating that an objection was raised as to the assignment of the land in question to the petitioners and as to their possession over the land in question, the respondents have not filed any material before this Court under which such objection was raised. It is evident from the record that nowhere the respondents took a plea that the petitioners are not the persons, who were assigned with the land in

question. It is submitted on behalf of the respondents that in the meeting conducted by DLSC, it was recorded that the lands were not assigned to the petitioners herein. But contrary to that the learned Government Pleader relied upon the document placed before this Court, in which, the Revenue Divisional Officer categorically admitted that the petitioners were assigned with the lands in question.

10. Mainly, it is the case of the respondents that DLSC committee rejected the application of the petitioners for de-casting and the said decision was informed by the District Collector through the impugned memo. In the counter, the respondents raised many grounds for rejection. But such grounds are not reflected in the order/memo impugned.

11. In view of the above discussion and in view of the provisions of rule 7(1) to (3) of the Rules vide G.O.Ms.No.30, dated 6.5.2015, this Court is of the view that the proceedings vide memo impugned herein are liable to be set aside. However, the respondents-authorities concerned are directed to reconsider the case of the petitioners and pass orders afresh.

12. Accordingly, the Writ Petition is disposed of setting aside the Memo impugned. However, the respondents-authorities concerned are directed to reconsider the case of the petitioners and pass orders afresh as expeditiously as possible, preferably, within a period of six weeks from the date of receipt of a copy of this order, after considering all the documents placed by the petitioners.

JUSTICE RAJA ELANGO

Dated: 22nd June, 2017
Nn.

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