

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER**

Writ Appeal No.189 of 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.2735 of 2017 dated 30.01.2017 relegating the appellant-writ petitioner to the alternate remedy of an appeal to the Director of Mines and Geology. The proceedings under challenge in the writ petition are several show cause notices, and the consequential demand notices whereby the appellant-writ petitioner appears to have been called upon to pay a sum in excess of Rs.153 crores under three different leases.

Sri T.Sreedhar, learned counsel for the appellant-writ petitioner, would question the order of the Learned Single Judge on four grounds viz., (i) while the original measurement of the leased area was determined several years ago by use of link chains, the appellant-writ petitioner has been found in the year 2016, to have carried on mining operations beyond the leased area, on the leased area being demarcated using an electronic instrument called the total station; (ii) while the entire area, leased out to several lessees, was measured using this equipment, the other lessees were not proceeded against, and were permitted to retain the leased area as determined earlier using link chains by amending the sketch; (iii) the show cause notices issued to the appellant-writ petitioner is pre-determined and, as the 3rd respondent had pre-judged the issue, no useful purpose was served in furnishing a reply thereto; and (4) the 3rd respondent

lacks jurisdiction, to direct the appellant-writ petitioner not to carry on mining operations, and his failure to furnish the material documents, sought for by the appellant-writ petitioner, before issuing the impugned demand notices vitiates the demand notices.

Before examining the submissions, urged on behalf of the appellant-writ petitioner, by Sri T.Sreedhar, Learned Counsel, it is necessary to note that, in an intra-court appeal under Clause 15 of the Letters Patent, the scope of interference is extremely limited. It is only if the order under appeal suffers from a patent illegality, would interference be justified. The Learned Single Judge has merely relegated the appellant-writ petitioner to the remedy of an appeal to the 2nd respondent. Sri T.Sreedhar, learned counsel for the appellant-writ petitioner, would fairly state that the appellant-writ petitioner has the remedy of a statutory appeal to the Director of Mines and Geology or, in the alternative, the remedy of a revision to the Minister under the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short "the Rules"). His contention is that the plea of discrimination can only be urged before this Court in proceedings under Article 226 of the Constitution of India, and all the other contentions can also be urged in writ proceedings.

The question whether a writ petition should be entertained, or the petitioner should be relegated to the statutory remedy of an appeal/revision, are matters of discretion, and this Court, in proceedings under Article 226 of the Constitution of India, is not obligated to entertain a writ petition even though the petitioner has the alternative remedy of preferring an appeal. The Learned Single Judge has exercised his discretion not to entertain the writ petition, and to relegate the appellant-writ petitioner to the remedy

of an appeal. Even if the appellant-writ petitioner is able to persuade us that the contentions urged by the petitioner may justify the writ petition being entertained, a Division bench, exercising jurisdiction under Clause 15 of the Letters Patent, would not interfere with the order under appeal, if the view taken by the Learned Single Judge, not to entertain the Writ Petition, is a possible view even if the alternate view canvassed by the petitioner before the Division Bench is also a possible view.

The contentions, urged on behalf of the appellant-writ petitioner, that the show cause notices were pre-determined, the material sought for by the appellant-writ petitioner was not supplied to him, and the Assistant Director lacked jurisdiction to restrain the appellant-writ petitioner from carrying on mining operations for non-payment of the amount demanded, are all matters which can also be urged in an appeal before the 2nd respondent.

The only question which cannot possibly be urged, before the Appellate Authority under the Rules, is the plea of discrimination. While the onus is on the petitioner to establish that he was subjected to discrimination by the State, resulting in violation of his fundamental rights under Article 14 of the Constitution, such a plea could have been examined by this Court only if the persons, vis-à-vis whom the appellant-writ petitioner claims to have been discriminated against, were arrayed as respondents in the writ petition.

While Sri T. Sreedhar, learned counsel for the appellant-writ petitioner, would contend that the other lessees need not be arrayed as respondents, since the appellant-writ petitioner does

not have any grievance, the fact remains that, in so far as the Government had chosen not to take any action against them, the questions whether the Government was justified in re-drawing the boundaries of the leased area based on the new equipment called a total station; whether the leased area should have, instead, been determined based on the boundaries drawn with the use of link chains; and whether re-drawing the boundaries of the leased area of the appellant-writ petitioner by use of the total station, while not doing so in respect of others, could have been examined only if the other lessees were parties before this Court for, even if this Court were to be satisfied, with regards other lessees, that the boundaries drawn, using the total station, should prevail, no mandamus can be issued to the Government to re-draw the boundaries of the other lessees, as determined by the total station, without their being arrayed as respondents in the writ petition.

As held by the Supreme Court in **Chandigarh Administration vs. Jagjit Singh**¹, the plea of discrimination would, ordinarily, be examined only if the persons, vis-à-vis whom the appellant-writ petitioner claims to be discriminated against, are arrayed as respondents in the writ petition and, in the absence of the other lessees being made parties to these proceedings, it would be wholly inappropriate for us to examine the plea of discrimination.

As all the other contentions can as well be urged in an appeal, we find no error in the order of the Learned Single Judge, much less a patent illegality, necessitating interference in proceedings under Clause 15 of the Letters Patent. Suffice it to

¹ AIR 1995 SC 705

make it clear that, in case the appellant-writ petitioner were to avail the remedy of an appeal or a revision under the Rules, it shall be examined on its own merits uninfluenced by any observations made either in this order, or in the order under appeal. As the time stipulated, in the order under appeal, to prefer an appeal has expired, we extend the time, to prefer an appeal, by a further period of two weeks from today.

Subject to the above observations, the Writ Appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

16th February, 2017
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Date: 16.02.2017

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