HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 24459 of 2006

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the proceedings No.12100/R4-1/2006, dated 23.09.2006 issued by respondent No.1 as illegal, arbitrary and violative of Article 14 of the Constitution of India; and consequently direct the respondents to permit the petitioners to take away the already extracted 29,700 Metric Tons iron Ore dump available in the petitioners' lease land by not allowing the respondents to grant any fresh lease in respect of the same area.

2) The averments in the affidavit filed in support of the writ petition would show that the first petitioner is a registered partnership firm, represented by its partners ie. petitioner Nos.2 to 5. Petitioner Nos.2 to 5 are the sons of late Tapal Timmappa. Late Tapal Timmappa was granted a mining lease on 16.05.1957 in 231 Acres of land situated in Sy.Nos.1 and 2 of Malpangudi Village, Hirehal Mandal, Raidurg Taluq, Anantapur District, for extraction of Iron Ore and Red Oxide. Before the expiry of lease period of 20 years, the lessee made an application for renewal of the lease. Pending consideration of the said application, he died. Though the lease period expired, the authorities did not grant any fresh mining lease but however a notification came to be issued, pursuant to which petitioner Nos.2 to 5 made an application on 15.01.2005. It is to be noted that while making the application,

petitioner No.1 herein informed the authorities ie. respondent No.3 herein that when the lease was subsisting, about one lakh Metric Ton of Low Grade Iron Ore was extracted but could not be marketed through M.M.T.C. as the Low Grade Iron Ore was not saleable at that time. Since it was salable at the time of making the application, sought for removal of the same after paying necessary royalty and other charges. In response to the said application, respondent No.1 addressed a letter dated 05.06.2006, to respondent No.3, calling upon him to inspect and submit a report. It was learnt by the petitioners herein that respondent No.3 submitted a detailed report but however respondent No.1 referred the same to respondent No.2, who inturn submitted comments vide letter dated 22.08.2006. The averments in the affidavit also show that, to a letter written by the writ petitioners as to whether there were any dues payable by their father, it was stated by respondent No.3 vide letter dated 27.02.2006, that there are no dues. The inaction on the part of the respondents, in allowing the petitioners to take away the iron ore led to filing of W.P.No.13985 of 2006, which was disposed of directing respondent No.3 to dispose of the representation made by the petitioners, in accordance with law, within six months. Thereafter, the impugned order dated 23.09.2006 came to be passed, rejecting the request of the petitioners, which is subject matter of challenge in the present writ petition.

3) By an order dated 24.11.2006, this Court while admitting the writ petition passed the following interim order:

"Notice. Learned Government Pleader for Mines and Geology undertakes to file a counter by the next date of hearing. Meanwhile, *status quo* as on date, with respect to extraction for carting away of the major mineral in the schedule land, shall be maintained."

4) Though the learned counsel for the petitioners raised various grounds but the short question that falls for consideration is whether the petitioners are entitled to 29,700 M.Ts. of second grade iron ore, extracted by late Tapal Timmappa, who was the lease holder?

5) A reading of the impugned order shows that the request of the petitioners was rejected on three grounds. Firstly, there was only 5 MT iron ore by the end of March, 1976 and as such the request of the petitioners for lifting 29,700 Metric Tons of Ore by the date of expiry of lease ie. on 15.05.1977, has no basis. Secondly, as per Covenant Part IX (5) of Lease Deed "K" read with Rule 27 (2) (Ia) of Mineral Concession Rules, 1960, the lessee can remove any Ore extracted during the currency of the lease within six calendar months from the date of determination of expiry of the lease. Referring to Rule 27 (2) (Ia) of the Mineral Concession Rules, 1960, the period during which the dump can be lifted is only six months but as the said period expired long back, the petitioners are not entitled for lifting even if such mineral exists at the site. Thirdly it was stated that the area falls under Reserve Forest and therefore the same cannot be lifted.

6) Insofar as the rejection of the request on the ground that Part-IX of the lease deed prohibits lifting the same, in my view the same appears to be total lack of application of mind. Clause (5) of Part-IX of the lease deed deals with a different situation altogether, which reads as under:

> "The lessee may at any time determine this lease by giving not less than twelve calendar months, notice in writing to the Collector and upon the expiration of such notice and provided the lessee shall upon such expiration render and pay all rents, royalties, compensation for damage and other moneys which damage and other moneys which may then be due and payable under these presents to the Governor or any other person or persons and shall deliver up these presents to the Collector then this present lease and the said term and the liberties powers and privileges hereby granted shall absolutely cease and determine but without prejudice to any right or remedy of the Governor in respect of any breach of any of the covenants or agreements contained in these presents."

7) A plain reading of Part-IX amply establish beyond doubt that the same do not apply to the case of the petitioners as it deals with termination of lease.

8) Insofar as the applicability of Rule 27 (2) (la) is concerned, it would be appropriate to refer the said Rule which reads as under:

"the time limit for removal of mineral, ore, plant, machinery and other properties from the leasehold area after expiration, or sooner determination or surrender or abandonment of the mining lease."

9) The said Rule is not applicable for two reasons namely; in the lease agreement which was executed in the year 1957, there was no Part IX (5) in the said lease deed. Therefore, the question of lifting the mineral within a period of six months as stated in Covenant XI (5) has no application to the case on hand. Rule 27 (2) (Ia) does not prescribe any time limit within which the Ore has to be lifted.

10) The other ground on which the request came to be rejected, was that the subject area falls within the Reserve Forest Area.

11) Insofar as the third reason is concerned, it is to be noted that subsequent to the impugned proceedings, the area was again leased out to un-official respondent, which was subject matter of challenge before this Court in different proceedings. If really, the said area fell within the Reserve Forest Area, it is strange as to how the lease was granted to un-official respondents. Therefore, the said reason also has no basis to reject the request of the petitioners.

12) The counter filed by the respondents show that pursuant to the instructions of Director of Mines and Geology, Hyderabad, the area was inspected on 10.07.2006 and a report came to be

submitted to the Director of Mines and Geology, Hyderabad. Thereafter, the said area was again inspected by the Deputy Director of Mines and Geology, Kurnool along with the Assistant Director and a detailed report was submitted wherein it was stated that about 29,700 M.T. of old waste dump was available at the site. But, as seen from the accounts furnished by the lease holder, during the currency of lease period, the closing stock available at the end of March, 1976 was only 5 M.T. only. The lease period expired on 15.05.1977 and no production of any mineral was reported during the year 1976-77. Therefore, it is urged that the plea of the petitioners that there was 29,700 M.T.s of old dump is false and baseless. It is further stated in Para No.10 of the counter that the mining operations, taken up for recovery of mineral from the dumps, need not be a 'winning' as urged by the petitioners in para No.7 of the affidavit. It is stated that the dump got accumulated during the currency of the lease and due to efflux of time the same got consolidated and covered by jungle growth. It is stated that excavations are at the height of about 300 mts and there is no approach road to the said excavation. It is also urged that removing of dumps and conveying it to the ground level involves cutting of jungle growth which would be in violation of the provisions of the Forest Conservation Act. Having regard to the above, it is urged that the petitioners are not entitled either to the waste dump, as claimed or to any compensation for the said dump.

13) The question that now falls for consideration is whether the petitioners are entitled for 29,700 M.T. waste iron ore dump or only to 5 M.T. iron ore dump or for any suitable compensation?

14) A reading of the impugned proceedings dated 23.09.2006 clearly reveal that the Deputy Director of Mines and Geology, Kurnool submitted a report stating that during his inspection on 22.08.2006, he found about 29,700 MTS of old dump. However, the returns filed by Tapal Timmappa and sons, show the stock of iron ore available at the end of March, 1976 was only 5 MT. Admittedly, no mining was done during the year 1976-77.

15) The claim of the petitioners is not with regard to 5 MT of iron ore but with regard to 29,700 MT of old waste dump. According to the petitioners, the said iron ore dump is a second grade iron ore which can be put to be use, whereas the plea of the respondents is that the said iron ore is of no use and the same has to be put back in the mine, after completion of the excavation process. Such a plea was never raised in the counter filed by the official respondents. On the other hand, it is the plea of the respondents that the excavations are at a height of about 300 mts covered by the jungle growth and it is difficult to convey such dumps to the ground, at this point of time. Admittedly, the father of petitioner Nos.2 to 5 was a lessee of the said mine for a period of twenty years, which expired in the year 1977 and thereafter no excavation was done from the said site. Therefore, the dump, whatever it is worth, belongs to the father of the

petitioners. The value of the said dump cannot be assessed by the Court, as varying versions are put forth before the Court with regard to its grading, value and its use. But one fact which can be stated, without any doubt, is that the said dump was from the mine leased out to the father of the petitioners. Since the dump cannot be removed now due to afflux of time, and since no permission will be granted to cart the same, at this relevant point of time, they are entitled for monitory benefit.

16) Hence, the writ petition is disposed of directing the petitioners to make a suitable representation before the authorities concerned claiming compensation to which they are entitled to, in which event, the authorities shall deal with the same by assessing its usage, value and grading and pass orders in accordance with law.

17) There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

20.04.2017
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