

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 2735 OF 2017

ORDER :

In this Writ Petition, show cause notices dated 13.06.2016 and 30.06.2016, additional show cause notices dated 07.10.2016 and consequential demand notices dated 30.11.2016 are under challenge.

The principal grievance of the petitioner, in sum and substance, is that at the time of granting the lease, he was given a sketch demarcating the area in which he could carry on the quarrying operations and demarcation was made on the ground that the boundaries were not fixed by the department. From the time of granting lease till date, the petitioner has quarried substantial mineral (black granite) and the same was cleared by paying the requisite royalty and seigniorage fees. However, on account of acquisition of new equipment by the respondent authorities, they had, once again, re-surveyed the area, wherein it transpired that the petitioner had excavated the mineral from the area other than the area, which has been granted to him. In other words, the precise contention of the petitioner is that the area demarcated was, in fact, not the area which was granted to him earlier, as is discovered now on account of the survey. The petitioner raised certain objection that it is not his fault as the area was demarcated by the department itself. The petitioner contends that he was demanded the market value of the mineral extracted, at Rs.135 crores, which is unjustified.

Learned counsel for the petitioner submits that the precise question, which requires to be considered is whether the petitioner can be found fault with for the mistake, which has been committed by the department and in this context, the learned counsel draws the attention of this Court to the counter-affidavit filed by the respondent authorities in Writ Petition No. 32895 of 2016.

Learned Government Pleader for Mines & Geology opposes the Writ Petition and submits that these are all disputed questions of fact and at any rate, the effective alternative remedy of appeal lies against the impugned orders of the Assistant Director of Mines & Geology under Rule 35 of the Andhra Pradesh Minor Mineral Concession Rules, 1966 and in the present case, on account of the demand involved, the remedy lies to the 2nd respondent.

On a perusal of the affidavit filed in support of this Writ Petition as well as the impugned orders, the question hinges on the aspect is whether what has been granted to the petitioner at the time of granting the lease and thereafter, the demarcation, which was alleged to have been made by the petitioner, and the excavation which he was carried on now falls in different areas is by way of mistake or is a deliberate act on the part of the petitioner, is a question of fact, which requires examination of a detailed material on record, both available with the petitioner as well as the department.

Inasmuch as it is an appealable order and the disputed questions of fact are involved, leaving the question, which the petitioner raises in this Writ Petition, to be considered at an appropriate stage, without expressing any opinion, liberty is given

to the petitioner to file appeals within one week from today before the 2nd respondent and the same shall be considered within eight weeks from the date of receipt of a copy of this order.

Subject to the above, the Writ Petition stands disposed of.
No costs.

Consequently, the miscellaneous Applications, if any shall also stand disposed of.

CHALLA KODANDA RAM, J

30th January 2017

Issue CC in two days.
ksld

