

HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.9593 OF 2009

ORDER:

Heard Mr.Rishik Reddy for petitioner and the learned Assistant Government Pleader (industries) for respondents.

The issue arises under Mines and Minerals (Development and Regulation) Act, 1957 (for short 'the Act') and A.P. Minor Mineral Concession Rules 1966 (for short 'the Rules').

The petitioner challenges final notice dated 06.04.2009 as illegal, arbitrary and without jurisdiction. To appreciate the principal objection of petitioner against the final notice dated 06.04.2009, this Court finds it convenient to reproduce the impugned notice hereunder.

"Date:06.04.2009.

FINAL NOTICE

- | | |
|------|-------------------------------------|
| Ref: | 1. This office notice dt.20-03-2009 |
| | 2. This office notice dt.28.03.2009 |
| | 3. Your Letter dt.02.04.2009 |

M/s.Gharonda Builders & Developers, Opp: Hanuman Vyayamashala School, K.S.Lane, Sulthan Bazar, Hyderabad, are hereby informed that you were requested to produce the documentary evidences/seigniorage fee paid (i.e. Transit forms/Transit Passes) for Gravel/Earth and Metal Excavated and transported at H.No.1-8-678/20, Azamabad (i.e. GHARONDA CHAMUNDESHWARI), Hyderabad, vide reference cited.

With reference to the 3rd cited above, you sent a reply to this office by mentioning the some sections under **the mines Act 1952 & 1957.**

The Notices were issued to you as per the **A. P. Minor Mineral Concession Rules, 1966 26(1) & 26(2).**

26.Penalty for unauthorized quarrying:- { (1) } if any person carries on quarrying operations or transports minor minerals in contravention of these rules, he shall be liable to pay

as penalty, such enhanced seigniorage fee together with assessments as may be imposed by an Officer nominated by the Director of Mines and Geology.

(2) Whenever any person raises or transports minor minerals without any lawful authority, such minerals may be seized by an officer nominated by the Director of Mines and Geology in this behalf in addition to the imposition of the penalty under sub rule (1):

Provided that in no case, the penalty shall exceed ten times the normal seigniorage fee and the lease or permit already granted may, at the discretion of the Deputy Director, be liable to be terminated or cancelled.

Therefore, you are once again requested to produce supporting documentary evidence for having paid the seigniorage fee for the quantities of materials excavated and transported by you in the said area within (7) days from the date of receipt of this notice, failing which the action deemed fit will be initiated treating that you have no documentary evidences of having paid the seigniorage charges, **as per rule 26(2) of AP Minor Mineral Concession Rules 1966.**

REGIONAL VIGILANCE &
ENFORCEMENT OFFICER,
HYDERABAD CITY-I “

The case of petitioner is that on 20.03.2009, the petitioner received notice from 2nd respondent directing the petitioner to produce the documents referred in the notice; the notice has been issued on the assumption that the construction activities carried on or undertaken by petitioner at H.No.1-8-678/20, Azamabad, Hyderabad (Gharonda Chamundeshwari) and at H.No.1-2-412/19, Gaganmahal Colony, Domalguda, Hyderabad (Gharonda Constructions) attract the Act and the Rules. The petitioner, on 25.03.2009 and 30.03.2009 filed reply and additional reply to notice dated 20.03.2009. The gist of petitioner's reply is that the construction activity undertaken by petitioner at the subject sites does not attract the Act or the Rules. Stated in other words,

according to petitioner, the activity undertaken by petitioner is particularly one in the nature of construction of building and the construction is undertaken after obtaining permission from the authorities. If excavation has been undertaken, it is either for footings or construction of stilt as the case may be. So far as the minerals i.e. sand/gravel etc. are concerned, according to petitioner, they have been purchased from quarry owners and there is proof of payment of seigniorage fee on these inputs. Therefore, the petitioner further contends that it is not under obligation to pay seigniorage fee for excavation undertaken by it either for laying footings/pillars or construction of stilt. According to petitioner, the notice is without jurisdiction and prays for withdrawing the same.

The 2nd respondent issued final notice calling upon the petitioner to produce documentary evidence in support of payment of seigniorage fee for the quantities of materials excavated and transported by the petitioner. Hence, the writ petition.

Mr. Rishik Reddy for petitioner contends that the notice impugned in the writ petition is liable to be set aside firstly that the 2nd respondent on assumption that the construction activities carried by the petitioner attract the provisions of the Act and the Rules the notice has been issued and secondly that when a fact in issue touching on jurisdiction is raised as one of the objections, the 2nd respondent before calling upon the petitioner to show the proof of payment of seigniorage fee ought to have referred to these

objections and recorded a finding of fact on the activities undertaken by petitioner and whether these attract the Act and the Rules. In the absence of such finding, the 2nd respondent cannot straightaway call upon the petitioner to prove the payment of seigniorage fee for these activities. On applicability of the Act and the Rules to construction activity, he relies upon the decision in *Indian Hume Pipe Company Limited v. State of Andhra Pradesh*¹ and contends that the notice is liable to be set aside.

The Assistant Government Pleader contends that the petitioner challenges final notice dated 06.04.2009 under Article 226 of the Constitution of India without exhausting remedies of appeal/revision under the Act/Rules and on the ground that the petitioner has effective alternative remedy, the writ petition is liable to be dismissed. On merits, the counsel places strong reliance upon the counter affidavit filed by the 1st respondent and contends that the construction activity undertaken by petitioner does in fact attract the meaning of winning mineral, for in the process of constructing a stilt there is excavation and the burden is on the petitioner to prove that the activity has been quarried and transported in accordance with the provisions of the Act and the Rules. As the petitioner failed to place the documentary evidence before the 2nd respondent, she contends that this Court in its jurisdiction under Article 226 of the Constitution of India ought not to accept the submission of petitioner to record a finding that the construction activity undertaken by petitioner does not attract the Act/Rules. She prays for dismissing the writ petition.

¹ AIR 2013 AP 120

I have perused the material available on record and taken note of submissions of learned counsel for parties.

The circumstances are not again reiterated for brevity. It is not in dispute that against the final notice, the petitioner has statutory remedies both before the Director of Mines and Minerals and the Government. In the case on hand, the petitioner challenges the final notice under Article 226 of the Constitution of India. The basis for invoking jurisdiction of this Court under Article 226 of the Constitution of India is that the final notice is issued without jurisdiction and authority. Further the 2nd respondent violated principles of natural justice in the sense that though opportunity is given to file reply dated 25.03.2009 and additional reply dated 30.03.2009, in the final notice hardly any objection raised by the petitioner is taken note by the 2nd respondent. Therefore, according to petitioner, the final notice shall have to be read as completely violating the principles of natural justice and also that the notice does not speak anything. The 1st respondent filed counter affidavit giving reasons for issuing the final notice. It is no more *res integra* that the legality of order under challenge is examined on the reasons reflected in the order, but not by referring to the reasons supplemented by the authority in the counter affidavit. After perusing the material available on record, I am satisfied that the mode and manner of exercise of jurisdiction by 2nd respondent, by mere appreciation of dates and events and the content of final notice dated 06.04.2009 is untenable. Consequently, final notice dated 06.04.2009 is set aside and the

matter remitted to 2nd respondent for disposal in accordance with law. The 2nd respondent is directed to give opportunity of hearing to petitioner before a decision is taken in this behalf. The 2nd respondent is directed to complete the hearing and pass orders within three months from the date of receipt of a copy of this order.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date:19.01.2017
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S. V. BHATT, J