

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.26526 of 2017

ORDER:

Heard.

Whether, in the facts and circumstances of the case, the respondents are justified in asking the petitioner to produce legal heir certificate for transfer of the mining lease in favour of the petitioner herein?.

Initially, the State Government, vide G.O.Ms.No.42, Industries and Commerce (M.III) Department, dated 06.03.1997, granted mining lease for Manganese Ore over an extent of 29.48 Hectares in favour of the father-in-law of the petitioner and, after his death, the authorities transferred the same in favour of the husband of the petitioner herein i.e. Sri Y.P.Rama Rao, by way of proceedings No.760/M/97 dated 10.10.2006, by declaring him as legal heir of late Sri Y.V.Krishna Rao. The husband of the petitioner-Sri Y.P.Rama Rao passed away on 25.01.2017. Thereafter, the petitioner herein made an application for transfer of the lease in her favour for the unexpired period. The Assistant Director of Mines & Geology-third respondent herein, vide letter No.760/M/1997 dated 02.03.2017, asked the petitioner herein to produce legal heir certificate from the Court of the Judicial First Class Magistrate

so as to take further action to declare the petitioner herein as the legal heir in respect of the mining lease held by Sri Y.P.Rama Rao. Subsequently the petitioner herein filed S.O.P.No.29 of 2017 on the file of the Court of the learned Senior Civil Judge, Vizianagaram under the provisions of Section 372 of the Indian Succession Act, 1925 for issuance of succession certificate in her favour in respect of the mining lease for the unexpired period of lease upto 26.08.2017. The learned Senior Civil Judge, Vizianagaram, by way of an order dated 01.08.2017, dismissed the said S.O.P. on the ground of maintainability and held that the petitioner was wrongly advised to file the S.O.P. In the above background, the petitioner herein is before this Court by way of the present Writ Petition, challenging the very action of the Assistant Director of Mines & Geology-third respondent herein in insisting to obtain legal heir certificate in favour of the petitioner herein.

According to the learned counsel for the petitioner, the very action on the part of the Assistant Director of Mines & Geology-third respondent herein, in insisting on the petitioner to produce legal heir certificate from the Court of the learned Judicial First Class Magistrate, in the absence of any such provision under the Mines & Mineral Regulation & Development Act, 1957 and the Mineral Concession Rules, 1960, is unwarranted, illegal and

arbitrary. It is further submitted by the learned counsel for the petitioner that, earlier when her father-in-law late Sri Y.V.Krishna Rao died, the authorities transferred the lease in favour of the husband of the petitioner herein without insisting on the legal heir certificate.

Per contra, it is contended by the learned Government Pleader that there is no illegality nor there exists any infirmity in the impugned action and, in the absence of the same, the present Writ Petition is not maintainable and the petitioner herein is not entitled for any relief under Article 226 of the Constitution of India.

It is to be noted that no provision of law, which obligates the petitioner herein to produce the legal heir/succession certificate in the absence of any rival claim, could be brought to the notice of this Court by the respondents. Neither the relationship with the deceased nor the entitlement of the petitioner to claim the transfer is disputed. There is no controversy that, earlier when the husband of the petitioner herein made similar request, consequent upon the death of his father (the original lessee) the respondent authorities considered the said request and transferred the lease in his favour without insisting on production of any legal heir/succession certificate. The order issued by the Assistant Director of Mines & Geology,

Vizianagaram-third respondent herein vide proceedings No.760/M/97 dated 10.10.2006, declaring the husband of the petitioner herein as legal heir and permitting him to carry on the mining operations, is placed on record as a material paper.

A perusal of the said order, in clear and vivid terms, discloses that the husband of the petitioner herein produced the Death Certificate of his father issued by the Municipal Health Officer and Registrar of Births and Deaths, Vizianagaram Municipality, Family Member Certificate, issued by the Mandal Revenue Officer, Vizianagaram, and an affidavit on N.J.stamp papers worth Rs.100/- duly notarized, expressing no objection for transfer of mining lease in his favour and, basing on the same, the respondent authorities permitted him to carry on the mining operations. Therefore, this Court does not find any sort of justification on the part of the respondents in insisting on production of legal heir/succession certificate in the absence of any rival claim.

For the aforesaid reasons, the Writ Petition is allowed, declaring the action of the third respondent-Assistant Director of Mines & Geology, Vizianagaram, in asking the petitioner to produce legal heir certificate vide letter No.760/M/2017 dated 02.03.2017 as illegal and, consequently, respondents are directed to consider the application of the petitioner herein

without insisting on the same but subject to compliance of all other requirements.

As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

18th August, 2017

Note:

*Furnish C.C. of the order
within three days.*

B/o

Tsy

