

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.33210 of 2017

ORDER:

This Writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

‘to issue an appropriate writ, order or direction, more particularly one in the nature of writ of Mandamus declaring the action of the respondents No.5 & 6 in not permitting the petitioner to execute the excavation work pursuant to agreement dated 01.06.2016 at Rampur Agraharam Village, Eturunagaram Mandal, Warangal District, as arbitrary, illegal and consequently direct the respondents to permit the petitioner to execute the work of excavation of sand from the specified sand bearing area Rampur Agraharam Vilalge, Eturnagaram Mandal, Warangal District as per the resolution dated 31.05.2016 and agreement dated 01.06.2016 and pass such other order...’

2. I have heard the submissions of Sri A.Sudershan Reddy, learned senior counsel representing Sri G. Madhusudhan Reddy, learned counsel for the petitioner, of the learned GP appearing for the respondents 1,2 & 4, of the learned GP appearing for respondents 3 & 5, and of Sri V. Pratap Reddy, learned standing counsel representing the 6th respondent and perused the material record.

3. The case of the writ petitioner, in brief, is as follows: - ‘As per the new Sand Mining Policy, 2014, for the State of Telangana, the Telangana State Sand Mining Rules, 2015 [hereinafter, ‘Rules 2015’] regulate the mining and transportation of sand in the State of Telangana. The new policy was published vide G.O.Ms.No.38, Industries & Commerce (Mines.I) Department, dated 12.12.2014. The Rules 2015, were published in the State Gazette, vide G.O.Ms.No.3, Industries & Commerce (Mines-I) Department, dated 08.01.2015. The mining activity in the State of Telangana is entrusted to M/s.Telangana State Mineral Development Corporation/ 6th respondent (TSMDC) which is a public sector undertaking of the State. In the State of Telangana, the mining

in scheduled areas is regulated by Rule 2(iii) of Rules 2015. As per the said provision sand bearing areas located partially/ fully in scheduled areas shall be dealt with as per the Panchayats Extension to Scheduled Areas Rules, 2011 (PESA Rules), 2011, with technical and administrative support from Integrated Tribal Development Authorities (ITDA) under the direct supervision and control of the Agency Magistrate/ District Collector concerned. For the purpose of sand extraction in I-V order, streams are to be identified as per rules. Sand extraction in I-II order streams shall not be permitted in notified over-exploited areas, except for local use in villages or towns bordering the streams for *bona fide* purposes other than commercial operations/public trading/stocking etcetera. However, in III, IV and above order, streams/ rivers and sand bearing areas shall be identified for extraction of the sand by the District Level Sand Committee (DLSC). DLSC is constituted under Rule 4(1) of the Rules 2015. The Assistant Director of Mines and Geology concerned shall identify the sand bearing areas on regular basis and place proposals before DLSC and thereafter the Chairman of the DLSC shall order for joint inspection of identified sand bearing areas and obtain reports for feasibility of sand mining. After reports and clearances are obtained from the above authorities, the Collector and Chairman, DLSC, shall finalise the sand bearing area for extraction and allot the same to TSMDC/ 6th respondent, which in turn shall obtain the statutory clearances. After obtaining the statutory clearances, the Chairman, DLSC, shall finally allot the specified sand bearing area for extraction of sand by the TSMDC and the TSMDC shall execute a lease deed with Assistant Director of Mines and Geology and with the local society if it is a Scheduled Area. In the instant case, after necessary clearances, 6th respondent/ TSMDC entered into an agreement with the 7th respondent Society, on 31.05.2016, for extraction of sand from the specified sand bearing area, that is, Rampur Agraharam, Eturunagaram Mandal, Jayashankar Bupallapally of erstwhile Warangal District, for a quantity of 2,21,628 cubic metres per annum. As per the scope of the

work, the allottee shall extract sand from the said place and transport the extracted sand from reaches to the specified stock yard of TSMDC manually through tractors having capacity of not more than 3 cubic metres and for the same the allottee will be paid amounts @ Rs.220/- per each cubic metre. While so, the petitioner entered into raising agreement with the 7th respondent, on 01.06.2016, for excavation of sand from the reach and transport to dumping yard @ Rs.180/- per cubic metre. The entire contract between the petitioner and the 7th respondent was with the approval and consent of the 5th respondent, that is, Project Officer, ITDA, Eturunagaram, in accordance with Rule 2(iii) of Rules 2015. The period of excavation is from 01.06.2016 to 31.05.2019. The petitioner invested considerable money for developing the site and laying approach road to the reach for excavation of sand and dumping the same at the dumping yard identified by the 6th respondent/ TSMDC. The petitioner has been excavating and executing the work from the agreement date pursuant to the agreement between the petitioner and the 7th respondent. Respondents 5 & 6 have to ensure payment of the raising contractor charges every month to the petitioner. That agreement between the 7th respondent and the petitioner is valid up to 31.05.2019. It is in vogue. However, the 7th respondent is not permitting the petitioner to execute the excavation work in accordance with that agreement. Respondents 5 & 6 are trying to permit M/ S Sri Hemachala Laxmi Narasimha Swamy Minerals to execute the very same work which was allotted to the petitioner. The execution of the agreement by the 7th respondent with Sri Hemachala Laxmi Narasimha Swamy Minerals is illegal and contrary to the agreement, dated 01.06.2016. Respondents 5 to 7 have no concern with the internal differences between the partners of the petitioner's firm. Though the petitioner made representation, on 30.01.2017, to the 5th respondent requesting to release the raising contractor charges to the petitioner since agreement, dated 01.06.2016, between the petitioner and the 7th respondent is

in force, the respondents 5 to 7 have not taken any action. The petitioner is entitled to seek a direction to the respondents to permit the petitioner to execute the excavation work at the subject place/ area pursuant to the agreement, dated 01.06.2016. Hence, the present writ petition is filed.'

4. Though no counters are filed by the official respondents and the 7th respondent, the writ petition is orally resisted.

5. Learned senior counsel for the petitioner, while reiterating the submissions made in the writ petition, has drawn the attention of the Court to the terms of the following documents: (i) agreement, dated 07.05.2016, between the Assistant Director of Mines & Geology, Warangal District/ 4th respondent and Telangana State Mineral Development Corporation Limited/ 6th respondent; (ii) the agreement with raising contractor (society) for extraction of sand from specified sand bearing area, dated 31.05.2016, between the Project Officer, Warangal/ 5th respondent on behalf of the 6th respondent/ TSMDC and the 7th respondent Society; and, (iii) the agreement, dated 01.06.2016, between the petitioner and the 7th respondent; and, *inter alia*, contended that the agreement, dated 01.06.2016, between the 7th respondent and the petitioner is in vogue and that it was entered into with the approval and consent of the 5th respondent, that is, Project Officer, ITDA, Eturunagaram, and that, therefore, no obstruction shall be caused to the petitioner in executing the work and transporting the sand to the dumping yard and that in view of the obstruction being caused for the petitioner executing excavation work pursuant to the agreement, dated 01.06.2016, the present writ petition is filed. He would also submit that the respondents may be restrained from causing any obstruction for the execution of the work by the petitioner subject to the rider that such obstruction may not be caused and the petitioner may be permitted to execute the excavation work provided the agreement, dated 01.06.2016, is in vogue.

6. However, learned standing counsel would submit as follows: - 'The 4th respondent entered into an agreement, dated 07.05.2016, with the 6th respondent is true. It is also true that, on 31.05.2016, the Project Officer/ 5th respondent on behalf of the 6th respondent/ TSMDC entered into an agreement with Raising Contractor (Society)/ 7th respondent Society for extraction of sand from specified sand bearing area. As per the agreement entered into on behalf of the 6th respondent with the 7th respondent Society, the 7th respondent Society is the raising contractor for extraction of sand from specified sand bearing area; the said contract is subject to terms and conditions mentioned therein. As per the said terms and conditions, the 7th respondent Society/ allottee shall extract sand from the specified sand bearing area and transport the extracted sand to the specified stockyard manually through tractors having capacity of not more than three cubic metres; the rate for manual excavation of sand at specified sand bearing area and transportation through tractors up to specified stockyard mentioned by TSMDC and again reloading of sand by machinery into the lorries is @ Rs.220/- per cubic metre. As per the terms and conditions of the said agreement, dated 31.05.2016, between the 6th respondent and the 7th respondent, the agreement is not transferable. Therefore, the agreement, dated 01.06.2016, between the 7th respondent and the petitioner is invalid and not binding on the 6th respondent. The arrangement, if any, between the 7th respondent and the petitioner under the agreement, dated 01.06.2016, is in violation of the condition mentioned in the agreement, dated 31.05.2016, that the agreement is not transferable. As such, the same cannot be enforced by means of the present writ petition.'

7. I have given earnest consideration to the facts and submissions. In the light of the admitted facts which are narrated supra and the contentions of the parties, it is to be noted in the first place that, by an agreement, dated 07.05.2016, entered into between the 4th respondent and the 6th respondent, the scope of work, period of agreement, quantity of sand to be extracted by

the allottee, payment of seigniorage fee and the conditions which the allottee has to comply with are stated therein. Later, the 5th respondent on behalf of the 6th respondent entered into an agreement with the 7th respondent Society, on 31.05.2016, for extraction of sand from the specified sand bearing area and in that agreement there is a specific term that the agreement is not transferable. Therefore, the agreement, dated 01.06.2016, between the petitioner and the 7th respondent Society contrary to the said term is not binding on the 6th respondent is a contention which merits consideration. Therefore, the petitioner's contention that the agreement was entered, on 01.06.2016, between the petitioner and the 7th respondent with the concurrence of the 5th respondent which is contrary to terms of the agreement, dated 31.05.2016, cannot be countenanced and any claim based on such unenforceable agreement cannot be entertained by this Court. Since the writ petitioner entered into such agreement with the 7th respondent contrary to the condition that the agreement between the 6th respondent and 7th respondent is not transferable, the writ petitioner is not entitled to the relief claimed in the writ petition more particularly when the petitioner failed to establish that the case on hand is a fit case for granting the discretionary relief.

8. In the result, the Writ Petition is dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

06.11.2017
Vjl

M. Seetharama Murthi, J