

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 26108 of 2016

ORDER:

1) The present writ petition came to be filed with the following prayer:

“issuance of writ of mandamus declaring the action of the third respondent in issuing the proceedings No.7417/ A1/ 2015, dated 29.01.2016, granting quarry lease for building stone and road metal over an extent of Ac.9.00 hectares in Sy.No.298 of Ibrahimpatnam Village and Mandal, Karimnagar District, in favour of the seventh respondent without following the procedure as laid under G.O.Ms.No.2, dated 02.01.2013, before granting such lease and granting the same adjacent to agricultural lands, water storage tank named Keshavakunta, near to orphanage ashram and to an ancient temple constructed in 8th century and not passing any orders for canceling the said lease by considering the representation, dated 28.07.2016 submitted by the petitioner before the respondents 2 and 3 is nothing but arbitrary, illegal, null and void and violative of principles of natural justice.”

2) The averments in the affidavit filed in support of the writ petition would show that the petitioner claims to be owner and possessor of agricultural land admeasuring Ac.2.09 gts., in Sy.No.490 of Ibrahimpatnam Village and Mandal, Karimnagar District. It is stated that the respondent No.3 granted quarry lease in favour of respondent No.7 for a period of ten years, which is contrary to G.O.Ms.No.2, dated 02.01.2013. It is stated that if

respondent No.7 proceeds quarrying the building stone and road metal in the above survey number, which is adjacent to the agriculture land of the petitioner, he along with adjacent farmers will suffer irreparable loss and injury and it will directly effect their agriculture process. It is also stated that before granting the lease in favour of respondent No.7, respondent No.3 has not inspected the land and not at all looked into topography of the said land. It is said that there is a water storage tank named Keshavakunta at a distance of 100 meters from the quarry land. There is orphanage ashram at a distance of 600 meters and an ancient temple constructed in 8th century at a distance of 700 meters. It is also stated that the only source of water to the agriculture of land of the petitioner is the said tank. There is also a forest, where there is lot of wild animals. By granting lease, the wild life would get affected. It is also stated that the Government had issued G.O.Ms.No.2, dated 02.01.2013, in which a specific procedure is prescribed in issuing no objection certificate for granting the mining lease. As per clause (vi) of the said G.O. the District Level Screening Committee under the Chairmanship of District Collector, is having power to issue N.O.C. But no such procedure is followed before granting the quarry lease in favour of respondent No.7. On coming to know about the lease, the petitioner approached respondent Nos.2 and 3 and submitted a detailed representation dated 28.07.2016, requesting them to cancel the said lease, but no action has been taken by them, which lead to filing of the writ petition.

3) By an order, dated 05.08.2016, this Court while admitting the writ petition granted interim direction as prayed for.

4) Respondent No.3 filed counter stating that the lease was granted by the 2nd respondent and not 3rd respondent. It is stated that after following due procedure under rules and Regulations laid down in T.S.M.M.C.Rules, 1966, the lease was granted. The 7th respondent made an application for grant of quarry lease in Sy.No.298 for a period of 15 years to the 3rd respondent. On receipt of the quarry lease application and as per procedure, the 3rd respondent addressed a letter to the 6th respondent for issuance of No Objection Certificate, in the light of G.O.Ms.No.4, dated 19.01.2015. It is stated that the government issued G.O.Ms.No.4, modifying G.O.Ms.No.2 dated 02.01.2013 and also issued guidelines for issuance of No objection Certificate in respect of mining leases/ quarry leases to Government and Patta Land. The Revenue Department shall certify the following while issuing No Objection Certificate.

1. Extent of Land
2. Classification of Land
3. Proximity of Forest, tank, lake or irrigation source
4. Proximity to habitation
5. Whether mining will effect habitation and
6. Whether mining will effect agriculture in neighbouring lands.

In response to the said letter, the 6th respondent issued No Objection Certificate, certifying that there are no Forest, Tank or

other irrigation sources, in proximity to the area and mining will not affect the habitation and agriculture in neighbouring lands. After obtaining no objection certificate, the Technical Staff conducted joint inspection and survey along with the Surveyor to demarcate the area on the ground. After demarcation, the area arrived at was only 9.00 hectares and accordingly submitted proposal to the 2nd respondent, who in turn granted quarry lease for a period of 10 years subject to condition that 7th respondent shall obtain the Environmental Clearance (E.C.) before the commencement of quarry operations. G.O.Ms.No.2 is no more in force and the District Level Screening Committee is also not in existence. As on the date of granting of lease, G.O.Ms.No.4 is in force. In view of the above, it is stated that there are no merits in the writ petition.

5) Respondent No.7, in whose favour the quarry lease was granted, also filed counter denying the contents made in the affidavit filed in support of the writ petition. It is stated that the petitioner approached the Court with unclean hands, suppressing several material facts. The petitioner failed to bring to the notice of the Court about the subsequent G.O.s issued by the Government empowering the Tahsildar to issue no-objection. It is stated that the 3rd respondent rightly followed the procedure while granting quarry lease and there is no illegality in granting quarry lease. It is stated that the land in which the quarry lease was granted is not notified as forest or reserve forest land. The Keshavakunta tank has no fixed ayacut and it is far away from the

subject land. It is also stated that the land of the petitioner is far away from the land where lease has been granted.

6) Learned counsel for the petitioner submits that though the land of the petitioner and the land of other farmers are existing around the said survey number, the 6th respondent had issued no objection certificate enabling the 3rd respondent to issue lease in favour of the 7th respondent. Aggrieved by the same, the petitioner along with other farmers made representation to the District Collector, requesting him to take necessary action. He further submits that as per G.O.Ms.No.2, the Tahsildar is not having power to issue no objection certificate and a District Level Screening Committee under the Chairmanship of District Collector, is only empowered to issue no objection certificate. He further submits that adjacent to the quarry land, there is a tank namely Keshavakunta, which is only the source of irrigation to the petitioner and other farmers.

7) Learned counsel for the 7th respondent would submit that subsequent to issuance of G.O.Ms.No.2, the Government issued G.O.Ms.No.4 superseding the G.O.Ms.No.2. The contention of the petitioner that his land is adjacent to the quarry land is totally false, as the land of the petitioner is situated in Sy.No.490 whereas the lease was granted in Sy.No.298. He further submits that the petitioner has no locus to file the writ petition. He also submits that the 7th respondent invested huge amount and dumped all the machinery and other equipments in the land and

paying rent for the machinery and other equipments because of stay granted by this Court, he is put to irreparable loss.

8) The question that arises for consideration is whether the Tahsildar has followed the procedure while issuing no objection certificate.

9) The grievance of the petitioner is that while issuing no objection certificate, the Tahsildar has not followed the procedure as laid down in G.O.Ms.No.2 dated 02.01.2013. It is to be noted that the lease was granted on 29.01.2016. As on that date, the Government issued G.O.Ms.No.4, dated 19.01.2015, superseding the earlier G.O. issued in G.O.Ms.No.2, dated 02.01.2013 and also issued uniform guidelines for issue of No objection Certificate by the Revenue Authorities in respect of licenses for mining leases and quarry leases of Government/ Patta Lands. Before proceeding further, it would be useful to refer the contents of the G.O., which are as under:-

“The proposal of Industries and Commerce Department has been examined in consultation with the Chief Commissioner of Land Administration and after careful examination of the matter Government, in partial modification of the orders issued in G.O.Ms.No.2, hereby issue the following new guidelines for issue of ‘No objection Certificate’ (NOC) for mining leases and quarry leases in respect of Government/ Patta lands.

S.No.	Classification of Lands	Extent in (Hectors)	Competent Authority	Mandatory time frame
1.	Govt. Land	Upto 15.00 HA	Tahsildar	30 days from the date receipt of the letter from AD/ DD, Mines & Geology and approval is deemed to have been sanctioned if no action is taken in 30 days.
2.	Govt. Land	Upto 15.00 HA to 30.00 Ha	RDO/ Sub-Collector	
3.	Govt. Land	Above 30.00 Ha	Joint collector (Revenue)	
4.	Patta Land	No limit	Tahsildar	

The Competent Revenue Authority shall certify the following while issuing “No objection Certificate”:

- 1) Extent of Land
- 2) Classification of Land
- 3) Proximity of Forest, Tank, Lake or Irrigation Source
- 4) Proximity to habitation
- 5) Whether mining will affect habitation
- 6) Whether mining will affect agriculture in neighbouring lands.

The Chief Commissioner of Land Administration/ all District Collectors shall take further necessary action in the matter accordingly”

10) From the above, it is clear that while issuing ‘No objection Certificate’ in respect of lands to an extent of 15 HA, the Tahsildar should verify that there are no Forests, Tanks, bunds or other irrigation sources in proximity to the area and mining will not effect the habitation and agriculture in the neighbouring lands. The petitioner and other neighbouring land owners made a

representation to the District Collector stating that there is a tank namely Keshavakunta at a distance of 100 meters to the said quarry land, which is the only source of irrigation to their agriculture land. It is urged that if mining is allowed to go on, the petitioner and other farmers would be put to irreparable loss. It is to be noted that in the No Objection Certificate, the Tahsildar simply mentioned the word “no” with regard to proximity to Forest, Tank, Lake or Irrigation Source, Proximity to habitation, whether mining will affect habitation and whether mining will affect agriculture in neighbouring lands. But the sketch which has been filed along with counter, shows existence of land in Sy.Nos. 297, 299, 293 and 303 etc. around the land allotted for mining. Therefore, it may not be correct for the Tahsildar, to say that there are no lands around the disputed land.

11) Since the issue requires consideration on factual aspects, the order under challenge is *set aside* and the concerned Revenue Divisional Officer is directed to conduct an independent enquiry, in the presence of all concerned and submit a fresh report to the authorities concerned as to whether the land allotted for mining lease is in proximity to Forest, Tank, Lake or Irrigation Source, Proximity to habitation, agriculture in terms of G.O.Ms.No.4 within a period of two (02) weeks from today.

12) With the above direction, the writ petition is disposed of. There shall be no order as to costs.

13) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

10.04.2017

Note: Issue C.C. today.

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