

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
I.A.No.2 of 2018 & I.A.No.3 of 2018 in W.P.No.3233 of 2018
&
W.P.No.3233 of 2018

ORDER:

Heard Sri M.Vijaykumar Goud, learned counsel for the petitioner, Learned Government Pleader for Industries, State of Andhra Pradesh, for respondent Nos.1, 5 and 6, Learned Government Pleader for Revenue for Respondent Nos.2 to 4 and Sri Challa Dhananjaya, advocate for Sri G.Kalyan Chakravarthi, learned counsel for respondent No.9.

2. The petitioner is a society registered under the A.P. Societies Registration Act, 2001 with Regn. No.254/2017 at Naginayanicheruvu Thanda, (NNC Thanda), Velagamakulapally village, Somandapally Mandal, Anantapuram District.

3. It has filed this Writ Petition challenging the action of the respondent Nos.1 to 6 in not stopping respondent Nos.7 to 9 from operating stone crushing machinery in land admeasuring 9.712 hectares or Ac.24.00 cts in Sy. No.743 of Somandepally village and Mandal, Anantapur District and also in 4.9 hectares in Sy. No.65/2B of Velagamakulapally village.

4. It is not in dispute that in the above area previously a quarry lease was granted in favour of M/s.C.G.G.C-Soma JV vide proceedings No.25/Q/2007 dt.22-01-2007, that the said company later surrendered the lease. The 7th respondent had been granted lease of

9.712 hectares in sy. No.743 of Somandepally village on 10-08-2016. This was transferred to respondent No.9 on 28-11-2016 after prior approval of the Assistant Director of Mines and Geology, Ananthapur (Respondent No.5). Similarly respondent No.8 was also granted quarry lease of 4.9 hectares in Sy. No.65/2B of Velagamakulapally village on 10-08-2016 and this was transferred to respondent No.9 on 28-11-2016 after prior approval from respondent No.5.

5. It is not in dispute that the Gram Panchayat of Somandepally passed a resolution on 02-08-2017 permitting for transfer of quarry lease by respondent No.8 to respondent No.9 for the land in Sy. No.65/2B of Velagamakulapally village.

CONTENTIONS OF THE PETITIONER:

6. It is the contention of the petitioner-society in the Writ Petition that its President is a native of NNC Thanda, Somandepally village, Ananthapur District; that in the said Thanda, there is a hill by name Velupukonda also known as Akkamma Temple Hill; that there is a temple on top of the hill called Velupukonda Akkamma Temple in Sy. No.743 of Somandepally village, which is more than 100 years old; villagers of neighbouring four villages perform temple festival together and devotees come for the same from the entire district; that in fact there is only Ac.0.65 cts of land available in Sy. No.65/2B of Velagamakulapally village, but quarry lease permission was granted for 4.900 hectares or Ac.12.11 cts in the said survey number to the 9th respondent; that the quarrying activity is causing pollution in the area;

within 100 meters of the area leased to 9th respondent, there are people residing; that there is a drinking water pond nearby which got polluted and dried up; blasting activities conducted by 9th respondent are damaging the houses of four villages nearby; there is also Kasturba Gandhi Girls School 10 meters away from the stone crushers and the girls are getting scared with the sound of blastings which occur not only at night time but also during the teaching and study hours. It is further alleged that the respondent No.9 is threatening the villagers by closing the way to the temple on the hill and local police and revenue authorities are not taking any action.

7. Learned counsel for the petitioner also referred to representation dt.30-10-2017 of the petitioner-society made to respondent Nos.2 to 5 requesting the stoppage of quarry activity by 9th respondent and another representation dt.30-10-2017 given by the Mandal Educational Officer, Mandal Parishad, Somandepally, Ananthapur addressed to the same officers to stop blasting activity near the Kasturba Gandhi Girls School. He also relied upon a print out of a revenue record mentioning about land admeasuring Ac.0.65 cts in Sy. No.65/2B of Velagamakulapally apart from a pahani issued on 20-12-2017 regarding the same.

THE INTERIM ORDER DT.02-02-2018 IN W.P.No.3233 of 2018:

8. On 02-02-2018, by directing notice before admission, this Court posted the matter to 05-03-2018 and directed that in the meantime, the respondent Nos.1 to 6 shall not issue quarry permits.

THE COUNTER AFFIDAVIT OF 5TH RESPONDENT:

9. I.A.No.3 of 2018 was filed by 5th respondent on behalf of himself and 1st respondent to vacate the said order. The 5th respondent filed a counter affidavit stating that at the time of grant of lease to M/s.CGGC-Soma JV, The Royalty Inspector submitted a report on 22-09-2016 stating that the above JV had extracted 5.00 lakhs Cu.M of road metal and stated as under:

“1. The leased area is away to the Papireddy Palli village about 800 meters and more than 100 meters away to the “tank bund” and as per Regulation 127-2 (b) of Metalliferous Mines Regulations, 1961, 15 meters enough from either bank (or) a river (or) canal (or) from the boundary of a lake, tank (or) other surface reservoir.

2. The cultivable lands are having about 200 meters away from the foot hill of the leased area.

3. The quarry can start at eastern side and also not effect on the lands.

4. The China Akkamma temple is about side the leased area and the temple will not damage with blasting.”

10. The 5th respondent stated that this was submitted to the District Collector, Ananthapuram vide letter No.5029/QL/2016 dt.24-09-2016; the 4th respondent had issued NOC on 23-01-2015 to the 3rd respondent, that 3rd respondent issued NOC to 2nd respondent on 29-04-2015 recommending for grant of quarry lease to respondent No.7 and even the Divisional Forest Officer, Ananthapur had issued NOC in favour of 7th respondent. He stated that basing on the same,

the 2nd respondent i.e. the District Collector, Ananthapur issued NOC on 05-12-2015.

11. He further stated that even with regard to grant of mining lease to respondent No.8, the 4th respondent gave NOC on 23-01-2015 to 3rd respondent, that 3rd respondent issued NOC to 2nd respondent and the 2nd respondent issued NOC on 30-05-2015 recommending for grant of quarry lease to 8th respondent. He also stated that the Divisional Forest Officer had issued NOC in favour of respondent No.8. He further stated that the State Level Environment Impact Assessment Authority (SEIAA), Andhra Pradesh, had issued environment clearance vide order No.SEIAA/AP/ANT/MIN/03/2017/297 dt.05-06-2017 in favour of respondent No.8 and only thereafter quarry leases were granted.

12. He referred to the transfer of quarry leases in favour of 9th respondent referred to above by respondent Nos.7 and 8. He pointed out that as per adangal furnished by 4th respondent in his proceedings dt.23-01-2015, the land available in Sy. No.65/2B of Velagamakulapally village is Ac.12.65 cts and not as contended by petitioner.

13. He stated that the land in possession is unfit for cultivation and is waste land free from encroachments and there are no trees, wells, tombs, residential houses or other permanent structures in the land. According to him, the land is located 500 meters away from NH-44 and 100 meters away from Papireddypally

Cheruvu and 800 meters from Kasturba Gandhi Girls School. He also stated that no objections have been received from neighbouring ryots.

14. He also stated that on the representation of the petitioners, 2nd respondent directed on 03-01-2018 a joint inspection to be conducted by officials of the revenue department and mining department and that a joint inspection was done on 28-02-2018 and the following are the findings:

“(i) Leased area falls in the survey of India Topo-Sheet No.57G/9.

(ii) Leased area is situated at a distance of 800 m to Papireddy Palli Village.

(iii). In the hill, there is a small Akkamma temple and the same is outside the leased area. Akkamma temple is situated in the top of the hill. Hill is having 100m height.

(iv). Akkamma temple is situated North-West side of the lease at a distance about 200m. from Lease B point.

(v). Akkamma temple GPS reading are N 14 00 33.2 E 77 38 07.6. All lease GPS readings mention in the sketch enclosed to this report.

(vi). The lease are granted after obtaining NOC from concerned authorities.

(vii). The leases are situated at a distance about 500 m to KGBV School Papireddy Palli Village and 300 m to tank bund.

(viii). At the foot hills “konda poraboku land” (Govt Land) is there and agricultural lands are situated at a distance about 200 m to foot hills of the leased area.”

15. He referred to the sketch filed along with the Joint Inspection Report, the consent order for establishment issued by the

A.P.Pollution Control Board, Kurnool, apart from proceedings Rc.No.G4/10524/2013 dt.05-12-2015 of the District Collector, Ananthapur granting NOC for quarry lease in the above areas in favour of respondent Nos.7 and 8.

16. He therefore contended that the pleas raised by the petitioner are not true having regard to the above Joint Inspection Report and the petitioner-society itself has no locus to file the Writ Petition.

THE COUNTER OF 9TH RESPONDENT:

17. I.A.No.2 of 2018 was filed by 9th respondent to vacate the order dt.02-02-2018 in W.P.No.3233 of 2018.

18. In the said counter affidavit, 9th respondent reiterated the stand taken by respondent No.5. It contended that the petitioner-society itself was formed in 2017 only for the purpose of filing this Writ Petition; that the temple on top of the hill was formed only to stall the quarry operations; there was no temple before the grant of quarry lease to respondent Nos.7 and 8; there is nothing to show that it is 100 year old temple; that all the statutory permissions including the one from the Gram Panchayat, Pollution Control Board etc. were obtained for carrying out quarrying activity by respondent Nos.7 to 9; and there is no danger either to the temple or to villagers of Papireddy Palli Village or students of the school of the Kasturba Gandhi Girls School. The allegations leveled against the 9th respondent about

threatening the villagers were denied and it is alleged that some villagers demanded money from the 9th respondent and threatened to stop the quarrying activity if they were not paid of by 9th respondent. It is denied that the 9th respondent employees blocked access to the temple on top of the hill and it is contended that the temple mentioned by the petitioner is on the other side of the hill.

THE POINT FOR CONSIDERATION:

19. In view of the rival contentions, the point which arises for consideration is “*whether the continuation of quarrying activity by respondent No.9 is causing harm to environment or is likely to cause danger to lives of people or to the temple on top of the Velupukonda Hill?*”

CONSIDERATION BY THE COURT:

20. The principle contention of the counsel for petitioner was that the quarrying activity being carried on by 9th respondent is likely to damage the Akkamma Temple on top of the hill.

21. The Joint Inspection Report dt.03-02-2018 of the Joint Inspection done on 28-02-2018 as per directions of the 2nd respondent issued on 03-01-2018 states that the temple falls outside the leased area and is on the north-west side of the land leased at a distance of 200 meters from lease B point. The photographs of the temple filed by the 5th respondent shows that the alleged temple is a very small structure of height less than 4’ made of stones. No material is filed by

the petitioner to show that it was in existence for more than 100 years. Though much argument was advanced on this aspect, it is important to note that in the complaint dt.30-10-2017 given by petitioner-society to the District Collector, Ananthapur and others, there is no mention of the temple at all. If really there was any danger to the temple in question, the petitioner would not have left the same in the said representation. Therefore, in my considered opinion, the contention in this regard raised by the petitioner is without any merit and there is no danger to the temple in view of the Joint Inspection Report referred to above.

22. As regards the objection of the Executive Officer, Grama Panchayat of Somandepally Village in reference Rc.No.33/2017 dt.12-10-2017 given to the Revenue and police officials, the same cannot be countenanced because the Resolution No.108 dt.02-08-2017 of the Gudipally Gram Panchayat in the same Mandal giving NOC for the transfer of quarry lease to 9th respondent.

23. I also do not see how the lives of the students of the Kasturba Gandhi Girls School in Papireddy Palli Village are likely to be affected as alleged by the petitioner when the leases are situated 500 m from the said school.

24. The petitioner-society has not disputed the NOCs granted by the revenue officials, consent from the AP Pollution Control Board as well as permission granted to 7th respondent by the State Level Environment Impact Assessment Authority, Andhra Pradesh, on

05-06-2017 in respect of grant of quarry lease for 9.712 hectares in Sy. No.743 of Somandepally village to 7th respondent. Once the revenue officials have certified and granted NOC for quarrying purpose in the subject land in both Sy. No.743 of Somandepally and also in Sy. No.65/2B of Velagamakulapalli, the contention of the petitioner that there is lesser land area in Sy. No.65/2B of Velagamakulapalli village cannot be countenanced.

25. I am therefore of the opinion that the material placed on record by the respondents is sufficient to come to a conclusion that there is no merit in the contentions raised by the Writ Petitioner.

26. The Writ Petition accordingly fails and is dismissed. Consequently, I.A.Nos.2 and 3 of 2018 are allowed and the order dt.02-02-2018 in W.P.No.3233 of 2018 is vacated. No costs.

27. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-05-2018
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