

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.Nos.1 and 2 of 2017

(WVMP.Nos.868 and 1393 of 2017)

in/and

W.P. No.30256 of 2015

and

W.P. No.20446 of 2017

COMMON ORDER:

The issue in both these Writ Petitions is as to whether M/s Imperial Granites Private Limited (IGPL), petitioner in W.P.No.30256 of 2015 is in possession of more area than was granted to it under the quarry lease.

2. It is not in dispute that the petitioner in W.P.No.30256 of 2015 was originally granted a quarry lease for 30 years in survey No.123 of Gurijepalli Village, Santhamagalur Mandal of Prakasam District and that subsequently lessee surrendered Acs.10.00 cents leaving behind Acs.20.00 cents. The quarry lease had annexed to it a sketch plan which showed towards the southern part a measurement of 153 chains. The said lease is subsisting.

3. Sri B.Ramakrishna, petitioner in W.P.No.20446 of 2017, also applied for a quarry lease on 09.07.2009 vide application dt.06.07.2009 for an extent of Acs.2.47 cents in survey No.123 of Gurijepalli Village, Santhamagalur Mandal of Prakasam District.

4. IGPL had also made an application on 30.03.2007 for quarry lease of Acs.3.75 cents, including Acs.2.00 cents in survey No.121/2 and Acs.1.75 cents in survey No.123, of the said village in addition to the land which it already had in survey No.123.

5. The IGPL's application had been rejected on 16.04.2010.

6. The same was questioned in W.P.No.10223 of 2010 before this Court.

7. On the pretext that the said Writ Petition was pending, B.Ramakrishna's application was rejected.

8. The W.P.No.10223 of 2010 came to be disposed of on 29.10.2010 and IGPL was directed to file Revision under Section 35A of the A.P. Minor Mineral Concession Rules, 1966 (for short 'the Rules'), and a direction was given to the authorities not to grant lease to anyone for two (02) weeks.

9. Thereafter, Revision was filed by the IGPL before the competent authority.

10. When the Revision was not disposed of, IGPL filed W.P.No.12905 of 2010 which was disposed of on 09.06.2010 directing not to grant lease to any person, including Sri

B.Ramakrishna, till the disposal of the Revision filed by the IGPL.

11. Then, B.Ramakrishna filed W.P.No.22847 of 2010 to declare the action of the respondents 2 and 3 therein i.e., Director of Mines and Geology and Assistant Director of Mines and Geology, in not granting quarry lease pursuant to his application dt.09.07.2009 in respect of Acs.2.47 cents in survey No.123. He also contended that the order dt.29.04.2010 in W.P.No.22847 of 2010 did not come in the way of grant of NOC to him.

12. Ultimately, the said Revision came to be disposed of on 03.02.2016 by the State Government setting aside the order dt.16.04.2010 passed by the Director of Mines and Geology. The matter was remanded to the Director of Mines and Geology to reexamine the issues in the light of Rule 12(5)(b) of the Rules.

13. In the meantime, the Director of Mines and Geology issued proceedings dt.07.02.2015 directing the Assistant Director of Mines and Geology, Ongole to delete excess area on the quarry lease held by IGPL and to execute supplementary lease deed as per revised sketch over an extent of Acs.20.00 cents in the subject area.

14. This was challenged in W.P.No.3611 of 2015 and the said order was stayed on 19.02.2015. Ultimately the said Writ Petition came to be disposed of on 23.03.2015 directing the 2nd respondent therein to fix the date of hearing on 04.04.2015, hear the parties, and pass appropriate orders in accordance with law.

15. Personal hearing was then conducted on 04.04.2015 & 25.05.2015; the Deputy Director of Mines and Geology, Guntur was directed to conduct survey and inspection by calling the representatives and counsels of the respective sides, and to submit comprehensive report in consultation with Assistant Director, Survey and Land Records, Ongole. The Commissioner of Survey and Land Records, Hyderabad was also requested to direct the Assistant Director, Survey and Land Records, Ongole to complete the survey within seven days vide letter dt.25.05.2015 of the Director of Mines and Geology.

16. On 10.08.2015 the Deputy Director of Mines and Geology, Guntur, submitted a detailed report after conducting joint survey and inspection on 04.05.2015 by the Officials of Mines & Geology Department and also representatives of both the companies. Further, the Deputy Director of Mines and Geology, Guntur reported that the joint survey conducted by the Assistant Director of Mines and Geology, Ongole on

20.08.2014 holds good and requested to consider for grant of quarry lease over an extent of Acres 2.47 cents in favour of Sri B.Ramakrishna, which is available for grant.

17. Thereupon, the Director of Mines and Geology passed order on 26.08.2015 deleting excess area of Ac.1.42 cents, which was occupied additionally by IGPL, from quarry lease held by it in survey No.123 of Gurijepalli Village from the total extent of Acs.21.42 cents recommended by the Assistant Director of Mines and Geology, Ongole based on the joint survey and inspection report.

18. This is assailed by IGPL in W.P.No.30256 of 2015.

19. It is pointed out that the order dt.26.08.2015 is erroneous because on the same day when the said order was passed, the Assistant Director of Survey and Land Records, Ongole had addressed the Assistant Director of Mines and Geology, Ongole that if allowance is given to survey error of Ac.0-05 cents per acre as per A.P. Survey and Boundaries Act, 1923 when traditional way of survey is taken up, there would be a permissible variation up to Ac.1.00 and in that view of the matter, there would not be any excess extent of land available for IGPL to do the survey.

20. The Government Pleader appearing for Industries Department supported the contention of the counsel for IGPL

and stated that in view of the subsequent survey, the order dt.26.08.2015 would not survive.

21. However, Sri S.Ravi, Senior Counsel appearing for Sri B.Vijaysen Reddy, counsel for petitioner in W.P.No.20446 of 2017, pointed out that the measurements done by the survey department are not in accordance with the sketch plan annexed to the quarry lease granted to the petitioner in W.P.No.30256 of 2015. He pointed out that the length of 153 chains shown in Ex.P20 sketch plan in W.P.No.20446 of 2017(which was annexed to the quarry lease of the IGPL) was not the basis for the survey done by the Assistant Director of Survey and Land Records, Ongole. He pointed out that 153 chains shown in the said sketch plan had shrunk to 66 chains in the survey report dt.26.08.2015 submitted by the Assistant Director of Survey and Land Records, and became 63 chains in the sketch plan annexed to survey report dt.13.11.2015 prepared by the same officials. He pointed out that when the survey has not been done by the Assistant Director of Survey and Land Records in accordance with the sketch plan annexed to the IGPL lease deed, IGPL cannot be given a clean chit on the basis of the said survey report and totally exonerated.

22. The Government Pleader for Revenue appearing for Director of Survey and Land Records and the Assistant

Director of Survey and Land Records, the Government of Andhra Pradesh, is unable to explain how 153 chains shown in the sketch plan annexed to IGPL's quarry lease shrank to 66 chains and 63 chains, subsequently.

23. In fact, no counter affidavit has been filed by them explaining this in any way. However, basing on the above surveys made by the Assistant Director, letters had been issued on 26.08.2015 and 13.11.2015 by the Assistant Director of Survey and Land Records, Ongole to the Assistant Director of Mines and Geology, Ongole.

24. The said letters were assailed by Sri B.Ramakrishna in W.P.No.20446 of 2017.

25. In the absence of any valid explanation being given by the Revenue authorities as to how there could be such a serious discrepancy of almost 90 chains to the sketch plans annexed to the IGPL's lease deed and survey report submitted by the Assistant Director of Survey and Land Records, Ongole, I am of the opinion that a proper survey, keeping in mind the sketch plan annexed to IGPL's lease document, has not been done by the Assistant Director of Survey and Land Records, and the manner in which more than once the Assistant Director of Survey and Land Records has conducted survey, gives an impression that the appropriate method of survey is unlikely to be followed by him in future also.

Therefore this Court is left with no option but to direct an independent survey of the area, which had been granted quarry lease to IGPL and which is in its occupation, by an independent agency such as Survey of India, Government of India.

26. Accordingly, the Writ Petition No.30256 of 2015 is allowed; the order dt.26.08.2015 in proceedings No.12334/R2-2/2011 dt.26.08.2015 of the Director of Mines and Geology, Hyderabad is set aside; the Writ Petition No.20446 of 2017 is also allowed; the letters Rc.No.A4/412/2015 dt.13.11.2015 and Rc.No.A4/412/2015 dt.26.08.2015 issued by the Assistant Director of Survey and Land Records, Government of Andhra Pradesh, Ongole, Prakasam District are also set aside; the Additional Surveyor General, Indian Institute of Survey and Mapping, Uppal, Hyderabad-500039 is directed to cause a survey of the land in occupation of the IGPL, after giving notice to IGPL and Sri B.Ramakrishna, petitioners in both the writ petitions, on payment of expenses for said survey equally by both of them; and then submit report to both parties as well as the Director of Mines and Geology, Government of Andhra Pradesh, Ibrahimpatnam, Vijayawada, Krishna District within two (02) months. Subject to the result of said survey, the application for grant of quarry lease made by IGPL for Ac.1.75 cents in survey No.123 of Gurijepalli Village, Santhamagalur Mandal

of Prakasam District, and that made by Sri B.Ramakrishna for Acs.2.47 cents in the said survey no. shall be considered in accordance with law, after giving notice to both parties and after passing a reasoned order, which is to be communicated to both parties. It is made clear that this Court has not expressed any opinion on the claims of either party in the Writ Petitions.

27. Consequently, all the interim orders in the Writ Petitions shall stand dissolved and the vacate stay petitions i.e., I.A.Nos.1 and 2 of 2017 (WVMP.Nos.868 and 1393 of 2017) in W.P.No.30256 of 2015 are accordingly disposed of. No order as to costs in both the Writ Petitions.

28. Miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

09th April, 2018.

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