HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
&

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT APPEAL No. 711 of 2014

JUDGMENT: (Per MSM,J)

The petitioner in W.P.No.4730 of 2014, aggrieved by the order passed by the single Judge of this court dated 18.03.2014, preferred this Appeal challenging the impugned order passed by the Single Judge on various grounds.

The appellant was the petitioner and the respondents were the respondents before the Single Judge, they will hereinafter be referred as petitioners and respondents for convenience.

The petitioner challenged the order passed by the Director of Mines and Geology through memo dated 19.12.2013 requiring the Assistant Director of Mines and Geology, Nizamabad, to submit proposals to transfer mining lease applications after obtaining consent from the legal heirs and the present mining lease holder, for taking further action in the matter.

The petitioner also sought consequential direction to the 1st respondent to pass appropriate order by transferring the unexpired period of mining lease of Quartz in an extent of 3.920 hectares in Sy.No.629/2 of Nandipet Village and Sy.Nos.62 & 63 of Chimarajpally Village, Nandipet Mandal, Nizamabad district, in favour of the petitioner, pursuant to the recommendation made by the respondents 2, 3 & 4.

By G.O.Ms.No.352, Industries and Commerce (M-II) Department, dated 17.12.2007, granted mining lease for Quartz in an extent of 3.920

hectares in Sy.No.629/2 of Nandipet Village and Sy.No.s62 & 63 of Chimarajpally village, Nandipet Mandal, Nizamabad district for a period of 20 years in favour of M/s.Sri Venkateswara Minerals, subject to obtaining consent for establishment (CFE) from A.P. Pollution Control Board, Mineral Concession Rules, 1960 and the provisions of Mines and Minerals (Development and Regulation) Act, 1957. The State Government further ordered through their Memo No.1090 dated 11.02.2009, after due consideration of the request of M/s.Sri Venkateswara Minerals, extended time for further period of six months from the last date of expiry for execution of lease deed.

In view of extension of period for execution of lease deed, upon satisfactorily complying with all statutory requirements and other related formalities, a mining lease has been executed on 28.07.2009 for a period of 20 years i.e. upto 27.07.2029, according permission to commence mining operations over the leased land.

The petitioner submitted an application dated 28.10.2009 for transfer of the mining lease for unexpired portion in favour of the writ petitioner. Sri Mohd.Abdul Hai, the sole proprietor of M/s.Sri Venkateswara Minerals, signed the transfer application and also filed an affidavit setting out that due to financial and age related problems, he desires to transfer the mining lease in favour of the petitioner for the unexpired lease period upto 27.07.2029 and the same was processed by the Assistant Director of Mines and Geology, Nizamabad, who recommended the transfer to be accorded. The Zonal Director, Mines and Geology, Hyderabad, also considered the matter

and agreed with the recommendations of Assistant Director of Mines and Geology for transfer of mining lease in favour of the writ petitioner for the unexpired period of lease. The Director of Mines and Geology through his communication dated 02.06.2010, requires Sri Mohd.Abdul Hai to submit necessary declaration within 15 days by way of notarized affidavit with regard to the consideration amount received by the transferor from the transferee so as to consider the justification for the transfer proposals and also to make an assessment as to whether the transfer proposal is a speculative one or not. In pursuance of the memo, Sri Mohd.Abdul Hai submitted notarized affidavit stating the fact that he has received an amount of Rs.50,000/- towards consideration for the transfer of mining lease in favour of the petitioner as he incurred that amount towards preliminary expenditure. Thereafter, the proposal was processed to the Director of Mines and Geology for his consideration.

At this stage, Abdul Hai, the original lessee, expired on 26.09.2010 and his wife, 5th respondent herein, filed an application before Assistant Director of Mines and Geology, who passed an order dated 03.05.2012 declaring that she succeeded the lease executed in favour of her husband Sri Abdul Hai. More curiously, the petitioner challenged the legality of the said order dated 03.05.2012 by W.P.No.22279 of 2012 before this court urging that as by 03.05.2012, the transfer application of the lease in his favour is pending for consideration. Thereby the 5th respondent could not have been declared as successor but the Writ Petition was disposed off by the court holding that the legal heir of the deceased Abdul Hai is certainly

entitled to succeed the mining lease and no exception can be taken there to by this petitioner herein.

The main contention of the petitioner before the single Judge and this court is that when the department recommended for transfer of lease at all levels from bottom to higher authority, based on objection raised by the wife of deceased Abdul Hai, the original lessee declining to transfer lease by the department is illegal.

Upon hearing the argument of both the counsel, the single Judge of this court based on Rule 37 of Mineral Concession Rules, negated the relief of transfer of lease.

Aggrieved by the order of the single Judge, the present Appeal is filed on various grounds; mainly on the ground that Rule 37 was wrongly interpreted by the single Judge and as the word 'transfer' has not been defined under Mines and Minerals Development Regulation Act, 1957 and the Mineral Concession Rules, 1960 which were promulgated under section 13 of the Act, the general meaning of the transfer has been defined under section 5 and section 8 of Transfer of Property Act ought to have been considered by the Single Judge, but the Single Judge failed to consider Section 5 of Transfer of Property Act and operation of transfer within the meaning of Section 8 of Transfer of Property Act, committed an error and dismissed the petition.

It is further contended that the date of execution of lease deed by Abdul Hai, the original lessee, in favour of this petitioner is the date of

execution of the lease deed and therefore, obtaining consent of the legal heirs of deceased Abdul Hai is unnecessary. Consequently, based on objections raised by the legal heirs, the 5th respondent herein, wife of Abdul Hai, contended that transfer of lease cannot be denied and prayed to set aside the order passed by the single Judge of this court.

During hearing, the counsel for the respondent Sri U.Muralidhar Rao reiterated the grounds urged in the grounds of appeal while contending that Section 4 of Mines and Minerals (Development and Regulation) Act, 1957 and Rule 37 and 37(A) of Mineral Concession Rules were not interpreted in proper perspective and the single Judge totally ignored the general meaning of transfer and effect of operation of transfer, either provisions of Act or the Rules requires prior consent of the legal heirs of the deceased, hence, rejection of the request of this petitioner is serious illegality and requested to set-aside the order passed by the court while ordering transfer of unexpired period of mining lease of Quartz in an extent of 3.920 hectares in Sy.No.629/2 of Nandipet Village and Sy.Nos.62 and 63 of Chimarajpally Village, Nandipet Mandal, Nizamabad district in favour of the appellant pursuant to the recommendation made by the 2nd, 3rd and 4th respondent in the File No.11523/R8/2010.

The learned Government Pleader for Mines and Geology supported the order in all respects while contending that consent of the Government is the pre-requisite for transfer of lease in view of specific Rule i.e. Rule 37 of Mineral Concession Rules, original lessee for transfer of lease, the original

lessee Abdul Hai, did not obtain prior consent of the Government for transfer of unexpired portion of lease in favour of this petitioner and in the absence of prior consent of Government, the petitioner is disentitled to claim transfer of lease in his favour by Abdul Hai or by his legal representatives and therefore, the order does not suffer from any illegality warranting interference of division bench of this court and requested to dismiss the Writ Appeal.

The undisputed facts are that pursuant to the order passed by State Government G.O.Ms.No.352, Industries and Commerce (M.III) Department, dated 17.12.2007 granted mining lease for Quartz in an extent of 3.920 Hectares in favour of M/s.Sri Venkateswara Minerals and Mining lease was executed on 28.07.2009 it subsists till 27.07.2029. In three months time thereafter, i.e. on 28.10.2009, the petitioner herein filed application for transfer of the mining lease for the balance period of time and the transfer application was signed by Mohd.Abdul Hai. Sri Mohd.Abdul Hai pursuant to the communication dated 02.06.2010, from Director of Mines and Geology submitted a declaration form in the form of notarized affidavit vouching receipt of RS.50,000/- towards consideration amount for the proposed transfer of lease from the petitioner herein. The proposal has been recommended by the Assistant Director of Mines and Geology and Joint Director of Mines and Geology which was also considered by the Director of Mines and Geology. However, on 26.10.2010, Abdul Hai expired before effecting transfer.

Upon death of original lessee, Abdul Hai, his wife submitted an application to the Assistant Director of Mines and Geology, Nizamabad, who in turn passed an order dated 03.05.2012, recognizing her as successor of the lease of Abdul Hai, the original lessee and it was challenged before this court in W.P.No.22279/2012. But this court upheld the order passed by the Assistant Director and dismissed the Writ petition.

The transfer of mining lease was declined only on the ground that prior consent of the Government was not obtained for transfer of the lease. Therefore, in view of little controversy with regard to the requirement of prior consent of the Government, it is unnecessary to dwell upon any other aspects which govern mining leases, except the provision relating to transfer of mining lease i.e. Rule 37 of Mineral Concession Rules.

The Single Judge of this court after extracting various provisions i.e. Section 13 of Mines and Minerals (Development and Regulation) Act, 1957 and Rule 22, 25(a), 27, extracted Rule 37 of the Mineral Concession Rules which reads as under :-

> ***"37. Transfer of lease:- (1) The lessee shall not, without the previous consent in writing of the State Government [1][and in the case of mining lease in respect of any mineral specified in [2][part A and Part B of] the First Schedule to the Act, without the previous approval of the Central Government] –***
>
> ***(a) assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right , title or interest therein, or***
>
> ***(b) enter into or make any [bona fide] arrangement, contract or understanding whereby the lessee will or may be directly or indirectly financed to a substantial extent by, or under which the lessee's operations or undertakings will or may be substantially controlled by, any person or body of persons other than the lessee.***
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> ***[***]***

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[1] Ins.by G.S.R.129(E), dated 20th February 1991
[2] Ins.by GSR 56(E), dated 17th January, 2000

[3][Provided further that where the mortgagee is an institution or a Bank or a Corporation specified in Schedule V, it shall not be necessary for the lessee to obtain any such consent of the State Government.]

[4][(1A) The State Government shall not give its consent to transfer of mining lease unless the transferee has accepted all the conditions and liabilities which the transferor was having in respect of such mining lease.]

(2) Without prejudice to the provisions of sub-rule (1) the lessee may, [***] transfer his lease or any right, title or interest therein to person [who has filed an affidavit stating that he has filed an up to date income tax returns, paid the income tax assessed on him and paid the income tax on the basis of self-assessment as provided in the Income Tax Act, 1961 (43 if 1961), on payment of a fee of five hundred rupees] to the State Government.

Provided that the lessee shall make available to the transferee the original or certified copies of all plans of abandoned workings in the area and in a belt 65 metres wide surrounding it:

[Provided further that where the mortgagee is an institution or a Bank or a Corporation specified in Schedule V, it shall not be necessary for any such institution or Bank or Corporation [to meet with the requirement relating to income tax]]

[Provided further that the lessee shall not charge or accept from the transferee any premium in addition to the sum spent by him in obtaining the lease, and for conducting all or any of the operations referred to in rule 30 in or over the land leased to him:]

[***]

(3) The State Government may, by order in writing determine any lease at any time if the lessee has, in the opinion of the State Government, committed a breach of any of the provisions of sub-rule 91) [or sub-rule (1A) [***]] or has transferred any lease or any right, title, or interest therein otherwise than in accordance with sub-rule 92):

Provided that no such order shall be made without giving the lessee a reasonable opportunity of stating his case."

Rule 37 deals with transfer of lease. According to sub-rule 1 of Rule 37, the lessee shall not, without prior consent in writing of the State Government and in the case of granting lease in respect of any mining specified in Part-A and Part –B of the first schedule to the Act, without the previous approval of the Central Government. Therefore, the Rule makes it clear that for transfer of lease, the consent of the State Government in writing to be obtained by the lessee. It is not the case of the petitioner at any

[3] Ins.by GSR 345, dated 13th March 1973.
[4] Subs. By GSR 724 (E), dated 27th September, 1994

stage that the lessee i.e. Abdul Hai who executed transfer deed, received Rs.50,000 as consideration for transfer of the lease for the unexpired lease period, did not obtain any prior consent from the State Government for effecting such transfer. Therefore, in the absence of consent obtained by the lessee, he shall not assign or sublet or in any manner transfer the mining lease held by him or can he transfer any interest in the mining lease in favour of the third party. Power is also conferred on the State Government to determine lease at any time if the original lessee committed breach of sub rule 1 of Rule 37. But in the present facts of the case, the original lessee Abdul Hai, committed breach of Sub-Rule (1) of Rule 37 of Mineral Concession Rules, as it failed to obtain prior consent of the government in writing for transfer of mining lease for the unexpired portion and execution of lease transfer deed on receipt of Rs.50,000 is affirmened by filing a notarized affidavit, as called upon by the Assistant Director of Mines and Geology. Therefore, the lessee, i.e. Abdul Hai, breached sub-rule (1) of Rule 37 of Mineral Concession Rules and in such case, power is conferred on the Government to determine the lease.

As the lessee Abdul Hai who died during pendency of the application for transfer of lease with the authority concerned, did not apply for transfer of lease in Form No. 'O' contemplated under Rule 37-A of the Rules and in fact, it is not the case of this petitioner but the petitioner himself approached the authorities concerned for transfer of lease. In those circumstances, the petitioner is disentitled to claim transfer of lease for the unexpired period of

lease as the original lessee Abdul Hai did not obtain prior consent as required under Sub-Rule 1 of Rule 37 of Mineral Concession Rules by making an application in Form 'O' or in form as nearer there to as possible within three months of the date of consent or within such further period as the State Government may allow . Since prior consent was not obtained, the question of making application in Form No.'O' does not arise and consequently, the procedure adopted by this petitioner to obtain transfer of lease from the original lessee, is contrary to the rules, this court cannot compel the authorities to transfer the lease in his favour. Therefore, the single Judge of this court after analyzing the requirement as per Rule 37 of the Mineral Concession Rules, framed in view of the power conferred on the State Government by Section 13 of Mines and Minerals (Development and Regulation) Act and thereby, the petitioner is disentitled to claim such transfer of lease and apart from that, the 5th respondent, wife of deceased, objected for transfer of lease in favour of this petitioner and though she succeeded the lease obtained by her husband, Sri Abdul Hai, being the legal heir of deceased, she raised serious objection for transfer of lease in favour of this petitioner.

In those circumstances, the Single Judge of this court having no other alternative, dismissed the writ petition holding that due to non-compliance of requirement under Rule 37(1) of Mineral Concession Rules by Abdul Hai during his life time, original lessee, no direction can be given to the 1st respondent though a recommendation was made by respondents 2, 3 & 4 and since the recommendation is contrary to the Rule 37(1), therefore, we find

no merit in this Writ Appeal and it deserves to be dismissed.

In the result, the Writ Appeal is dismissed confirming the order passed by the Single Judge by this court in W.P.No.4730 of 2014.

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RAGHVENDRA SINGH CHAUHAN, J

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M.SATYANARAYANA MURTHY, J

Date: 31.12.2018
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HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
&

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT APPEAL No. 711 of 2014

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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Writ Appeal No.711 of 2014

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