

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.17107 of 2018

ORDER:

Heard Sri N.Pramod, learned Counsel for the petitioner and the learned Government Pleader for Mines and Geology for the respondents.

2. According to the petitioner, she is the absolute owner of property admeasuring Ac.0.70 cents in Sy.Nos.32 and 34 of Tippavarappadu village, Chennu Bit-I, Gudur Mandal, SPSR Nellore District and acquired the same by way of registered sale deed. It is further stated that there are pattedar pass-book and title deed issued by the revenue authorities in her favour. It is further stated that the petitioner herein submitted an application to the respondent-authorities on 02.02.2015 seeking permission for de-casting of the sand. Earlier, the Tahasildar, Gudur, vide letter Rc.No.B/949/2014, dated 04.04.2015, addressed to the District Panchayat Officer, Nellore, expressed *no objection* for grant of permission for de-casting of the sand in respect of the subject land. The Assistant Director of Mines and Geology, vide letter No.1100/Sand/2014, dated 22.06.2015, also made recommendation in favour of the petitioner for grant of de-casting of ordinary sand. Subsequently, when the application of the petitioner was rejected, she filed W.P.No.35728 of 2015 before this Court and this Court disposed of the said Writ Petition, on 03.11.2015, directing to reconsider the

application of the petitioner. The petitioner here also filed W.P.No.7914 of 2018, alleging inaction on the part of the District Collector, SPSR Nellore District, in considering her applications, dated 27.07.2017 and 02.02.2015. The said Writ Petition was disposed of by this Court by way of an Order, dated 12.03.2018, and the operative portion of the said Order, at paragraph Nos.3 and 4, reads as under:-

“It is the grievance of the petitioner from the affidavit averments in support of the prayer that despite direction of this Court dated 03.11.2015 in W.P.No.35728 of 2015 to reconsider the application of the petitioner to take proper action and despite subsequent G.O.Ms.No.104, dated 26.07.2017, and pursuant to which also the latest application is dated 27.07.2017 acknowledged on 04.08.2017, the respondents are not disposing of the same.

Having regard to the above, this Writ Petition is disposed of directing respondent Nos.2 and 3 to consider the said application of the petitioner on own merits and pass appropriate orders, preferably within five weeks from the date of receipt of copy of this Order and communicate the same to the petitioner. Further grievance of the petitioner is left open.”

3. Now, by virtue of the impugned Order, dated 19.03.2018, the Assistant Director of Mines and Geology/3rd respondent herein rejected the application of the petitioner.

4. According to the learned Counsel for the petitioner, the impugned Order passed by the 3rd respondent is highly

illegal, arbitrary, without jurisdiction and violative of Article 14 of Article 14 of the Constitution of India and contrary to the instructions of the State Government's Sand Policy enunciated vide G.O.Ms.No.104, Industries & Commerce (M.II) Department, dated 26.07.2017.

5. On the other hand, it is contended emphatically by the learned Government Pleader that there is no illegality nor there exists any infirmity in the impugned action and in the absence of the same, the questioned action is not amenable for any judicial review under Article 226 of the Constitution of India. It is also the submission of the learned Government Pleader that only after inspecting the subject land on 12.03.2018, the Assistant Director of Mines and Geology/3rd respondent passed the impugned order and no case is made out by the petitioner herein.

6. The issue in the present writ petition is required to be examined in the light of the Sand Policy enunciated by the State Government vide G.O.Ms.No.104, Industries & Commerce (M.II) Department, dated 26.07.2017. Clause 4 of the said Government Order reads as under:-

“The District Collectors shall take necessary steps:

- (a) To constitute a Price monitoring Task Force at Mandal level with the officials of Revenue, Police and Panchayat Raj Departments to implement the notified prices and the violators of the notified prices shall be punished in accordance with sub-rule 4 of Rule 9 (B) of APMMC Rules 1966 as per G.O.Ms.No.42,

Industries & Commerce (M.II) Department,
dated 29.03.2016.

(b) To ensure proper availability of sand in the District, the following activities shall be take up on regular basis:

(i) Identify new reaches and obtain statutory clearances such as EC, CFE from competent authorities.

(ii) Sanction as many permissions for de-casting of sand from patta lands.

(iii) Identify areas for de-siltation purpose.

(c) To establish border check-posts and strengthen the existing boarder check-posts with the officials of Police, Revenue and Transport Departments in the routes to other States, in consultation with Superintendent of Police, to curb illegal transportation of sand to other States.”

7. A read of the above clause, in clear and vivid terms, demonstrates that the District Collector is the competent authority for granting permissions for de-casting of the sand in the patta land. In the instant case, as submitted by the learned Counsel for the petitioner, the Assistant Director of Mines and Geology/3rd respondent had taken a decision and passed the impugned Order, rejecting the request of the petitioner herein. On this ground alone, the impugned Order is liable to be set aside and in the considered opinion of this Court, the issues requires re-consideration by the competent authority in accordance with the instructions of the State Government, as indicated supra.

8. For the aforesaid reasons, the Writ Petitions is allowed, setting aside the impugned Order passed by the Assistant Director of the Mines and Geology/3rd respondent vide Procs.No.3146/SAND-PATTA LAND/2017, dated 19.03.2018. The application of the petitioner stands restored to file for fresh consideration by the competent authority, strictly in accordance with law, and for passing appropriate orders, within a period of three weeks from the date of receipt of a copy of this order.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed. No costs.

25th June, 2018
smr

A.V.SESHA SAI,J

