

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

W.P.No.17760 of 2017

ORDER:

This writ petition is filed questioning the order passed by the Director of Mines and Geology, Ibrahimpatnam, A.P. vide D.Dis.Proc.No.484/R1-2/2017, declaring the mining lease application of the petitioner dated 2.3.2015 as ineligible.

2. The State Government by way of G.O.Ms.No.239 Industries and Commerce (M.III) Department dated 29.12.1995, granted mining lease for quartz over an extent of 10.15 acres in S.No.330 of Bheemasingi Village, Jami Mandal, Vizianagaram District for a period of 20 years in favour of the petitioner. The said grant was followed by execution of lease deed dated 22.2.1996 for the period from 29.3.1996 to 28.3.2016. According to the petitioner, without knowledge of the amendments made to Mines and Minerals Regulation and Development Act, 1957 and insertion of Section 8A and the notification issued by Union of India, declaring quartz and quartzite, in accordance with the un-amended provisions of law, petitioner made an application to 4th respondent-Assistant Director of Mines and Geology on 2.3.2015 for renewal of mining lease which was valid till 28.3.2016. Questioning the action of 4th respondent-Assistant Director of Mines and Geology in not issuing despatch permits, petitioner filed W.P.No.9719 of 2017 and is pending.

3. Now the 2nd respondent-Director of Mines and Geology issued the impugned order vide D.Dis.Proc.No.484/R1-2/2017 dated 30.3.2017, declaring the mining lease application dated 2.3.2015 as ineligible while stating that the Assistant Director of Mines and Geology and Zonal Joint

Director of Mines and Geology have recommended for rejection of the application of the petitioner on the ground that the petitioner did not file application in full shape and did not enclose the valid documents and paid the application fee to the wrong head of account and that the Union declared the mineral as minor mineral vide G.S.R.No.423(e) dated 10.11.2015 and State Government vide G.O.Ms.No.56 dated 30.4.2016 amended Andhra Pradesh Minor Mineral Concession Rules, 1966.

4. This writ petition challenges the validity and the legal sustainability of the order of the 2nd respondent dated 30.3.2017. This Court on 12.6.2017 passed an interim order, directing the respondents not to create any third party interest over the lands in question. W.V.M.P.No.2931 of 2017, supported by a counter affidavit deposited by 4th respondent-Assistant Director of Mines and Geology is filed on behalf the respondents. With the consent of the learned counsel for the petitioner and the learned Government Pleader, this writ petition is being heard and disposed of at this stage.

5. Heard Sri O.Manohar Reddy, learned counsel for the petitioner and the learned Government Pleader for the respondents, apart from perusing the material available on record.

6. It is contended by the learned counsel for the petitioner that the questioned action is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India besides being opposed to the very spirit and object of the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (for short 'the Act') and the A.P. Minor Mineral Concession Rules, 1966. In elaboration, learned counsel further submits that in view of Section 8 of the Act, the lease is deemed to be valid for fifty

years from the date of original grant and there is no necessity for the petitioner to apply for renewal.

7. Per contra, it is vehemently contended 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 further submitted by the learned Government Pleader that in view of Section 8A(9) of the Act, the request of the petitioner is not acceptable.

8. In order to resolve the issue in the present writ petition, it is highly essential to refer to the relevant provisions of the Mines and Minerals (Regulation and Development) Act, 1957. The Government of India brought in certain amendments to the said Act by way of an ordinance promulgated on 12.1.2015 and vide Act 10/2015, the said amendments were published on 27.3.2015. As per Clause 1(2) of the amended Act 10/2015, the amendments shall be deemed to have come into force from 12.1.2015 i.e., the date of ordinance. Section 8A inserted by way of the said amendment, which reads as under:

“8A. (1) The provisions of this section shall apply to minerals other than those specified in Part A and Part B of the First Schedule.

(2) On and from the date of the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, all mining leases shall be granted for the period of fifty years.

(3) All mining leases granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be deemed to have been granted for a period of fifty years.

(4) On the expiry of the lease period, the lease shall be put up for auction as per the procedure specified in this Act.

(5) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2030 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(6) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for other than captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2020 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(7) Any holder of a lease granted, where mineral is used for captive purpose, shall have the right of first refusal at the time of auction held for such lease after the expiry of the lease period.

(8) Notwithstanding anything contained in this section, the period of mining leases, including existing mining leases, of Government companies or corporations shall be such as may be prescribed by the Central Government.

(9) The provisions of this section, notwithstanding anything contained therein, shall not apply to a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, for which renewal has been rejected, or which has been determined, or lapsed. ”.

9. In the instant case, the State Government granted lease in favour of the petitioner vide G.O.Ms.No.239 Industries and Commerce Department dated 29.12.1995 and it is also not in dispute that the said lease period was valid till 28.3.2016. Amended Section 8A came into force with effect from 12.1.2015 and by which date the lease was admittedly in force. The impugned order rejecting the request of the petitioner was passed on 30.3.2017. Therefore as per sub section (3) of Section 8A, the lease granted in favour of the petitioner in the year 1996 and existing as on the date of the advent of the said provision is deemed to have been granted for fifty years from the date of initial grant. It is also clear from sub section 6 of Section 8A that the lease granted prior to the advent of the Amended Act is required to be extended and deemed to have been extended upto a period ending on 31.3.2020 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any or a period of fifty years from the date of grant of lease whichever is later.

10. In the considered opinion of this Court, Section 8A(9) of the Act would not justify the impugned action as there was neither rejection of renewal prior to the advent of the amended provisions nor there was order of determination nor the period lapsed before commencement of the amendment. Therefore, the contention contra advanced by the learned Government Pleader is liable to be rejected and is accordingly rejected.

11. For the aforesaid reasons, the writ petition is allowed, setting aside the order passed by the 2nd respondent-Director of Mines Geology Government of Andhra Pradesh Vijayawada Krishna District vide proceedings D.Dis.Proc.No.484/R1-2/2017 dated 30.3.2017. Consequently it is declared that the petitioner is entitled to the benefit of Section 8A(3) and (6) of the Mines and Minerals Regulation and Development Act, 1957

and the petitioner is entitled to operate the mine as lessee of the subject lease of quartz pertaining to the land admeasuring Ac.10-15 cents in S.No.330 of Bheemasingi Village, Jami Mandal, Vizianagaram District for a period of fifty years from the date of starting of original lease period i.e., from 29.3.1996. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 10.9.2018
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



10.9.2018

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