

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

W.P.No.20876 of 2018

ORDER:

In this writ petition, challenge is to the action of the respondents in not permitting the petitioner herein to de-cast the sand pursuant to the Memo No.311/M.1 (1)/2015-1, dated 30.01.2015 issued by the State Government and the Proceedings No.981/Sand/PL/2015, dated 19.05.2015, issued by the District Collector & Chairman/the third respondent herein and consequently the petitioner herein is praying for a direction to the respondents to permit her to de-cast the sand.

2. Heard the learned counsel for the petitioner and the learned Government Pleader for the respondents.

3. Petitioner herein is an agriculturist and owns an extent of Ac.1.01 gts of land in Sy.No.49 of Adavi Satyawar Village, Maganoor Mandal, Mahabubnagar District. Due to heavy deposits of sand, as the said agricultural land became non-cultivable, petitioner herein made an application for grant of permission to de-cast the said sand in terms of G.O.Ms.No.3, Industries and Commerce (Mines-I) Department dated 08.01.2015 so as to make the land cultivable. After obtaining the reports from the subordinate authorities, the first respondent State Government issued Memo dated 30.01.2015, granting permission in favour of the petitioner herein to de-cast the sand to an extent of 6,187.5 M3. In pursuance of the same, the District Collector/the third respondent herein issued proceedings dated 19.05.2015, directing the Assistant Director of Mines and Geology, the fourth respondent herein to take action for issuing permission for de-casting of sand. The District Collector also issued instructions for collection of seigniorage fee and refundable deposit equivalent to 25% of the seigniorage fee of the entire assessed quantity. According to the petitioner, she paid Rs.61,900/- towards seigniorage charges to the fourth respondent and also paid Rs.40,000/- in favour of the Assistant Director, Mines and Geology, Mahabubnagar/the fourth respondent herein for lifting of sand. After payment of the said amounts, the fourth respondent entered into agreement on 21.05.2015 for de-cast permitting quantity at 6,187.5 M3. It is the grievance of the

petitioner herein that despite the same, the fourth respondent refused to issue despatch permits.

4. Questioning the said action, petitioner herein earlier filed W.P.No.38220 of 2016 and this Court allowed the said writ petition vide order dated 11.04.2018. In the said writ petition, the learned Government Pleader brought to the notice of this Court that by the date of passing of order dated 19.05.2015 by the District Collector, G.O.Ms.No.3, Industries and Commerce (Mines-I) Department, dated 08.01.2015, had already come into force and that the said Governmental order designated the TSMDC/respondent No.5 to de-cast the sand and without noticing the same the third respondent District Collector passed the order dated 19.05.2015 under the pre-existing policy covered by G.O.Ms.No.38 Industries and Commerce (Mines-I) Department dated 12.12.2014, as such, the petitioner was not permitted. Taking note of the same sand the resultant loss sustained by the petitioner, in W.P.No.38220/2016 was allowed by his Court on 11.04.2018 and the operative portion of the said order at paragraph No.5, reads as under:

“Therefore, all these three Writ Petitions are allowed; the 1st respondent shall pay each of the petitioner compensation of Rs.1,00,000/- (Rupees one lakh only) to be recovered from the Members of the District Level Sand Committee, who passed order dated 19.05.2015, negligently by not applying G.O.Ms.No.30, dated 06.05.2015, within a period of four (04) weeks from the date of receipt of a copy of this order; petitioners’ applications for de-casting sand from their patta lands shall be forthwith forwarded by the 4th respondent to the 3rd respondent for a decision to be taken by the 3rd respondent, within two (02) weeks from today, in order to ensure that before the next crop season, the sand, which was accumulated in petitioners’ patta lands is got de-casted through TSMDC and the decision by the 3rd respondent in this regard shall be communicated to each of the petitioners, within four (04) weeks from today.”

5. Thereafter, the District Collector issued proceedings dated 25.04.2018, according permission for de-casting and also informed that the District Level Sand Committee decided to hand over the petitioner’s patta land to TSMDC to de-cast as per G.O.Ms.No.54, dated 21.08.2015. On 19.07.2018, in I.A.No.1 of 2018, this Court passed an order and the operative portion of the said order reads as under:

“Accordingly, there shall be a direction to the petitioners herein to approach the Head Officer, TSMDC, as suggested by the learned Government Pleader, within one week from today, accompanied by their counsel, and, if the petitioners herein

approach the respondents, the respondents shall take appropriate action and shall complete the process as expeditiously as possible.”

6. Subsequently, the petitioner herein filed I.A.No.2 of 2018, making a number of allegations against the officers of the TSLDC, and refuting the same, a counter affidavit, deposed by the Vice-Chairman and Managing Director TSLDC has been filed.

7. In the said counter affidavit, it is stated eventually that the TSMDC is ready to enter into agreement with the petitioner in terms of G.O.Ms.No.54 I & C Department, dated 21.08.2015 and the Government Letter No.1950/M.1(1)/2017-2, dated 20.03.2018 . Along with the counter affidavit a draft copy of the agreement is filed. Condition No.6 of the same reads as under:

“6. The TSMDC shall pay to “the pattadar, he may get share amount from the sale of sand with a maximum ceiling of Rs.200/- per Cu.Mt earned by the Telangana State Mineral Development Corporation Limited due to sale of sand de-casting of sand in his/her Pattalands, which also includes excavation and raising cost to pattadars for preparation of Roads, Ramps & Loading in their pattalands while de-casting of sand.”

8. While reiterating the contents of the said counter affidavit and the above condition No.6, it is contended by the learned Government Pleader that Rs.200/- per Cu.Mt payable to the pattadar also includes excavation and raising cost to pattadars for preparation of Roads, Ramps and Loading in their patta lands while de-casting of sand and the same is in accordance with the Government Letter No.1950/M.1(1)/2017-2, dated 20.03.2018 and amendment made to Rule 2 (i) (iv) notified vide G.O.Ms.No.84, Industries and Commerce (Mines.I) Department, dated 09.11.2017 and the said Rule reads as follows:

“2 (i) (iv) – “The pattadar may get share amount from the sale of sand with a maximum ceiling of Rs.100/- per Cu.Mt earned by the Telangana State Mineral Development Corporation Limited due to sale of sand de-casting cost to pattadars for preparation of Roads, Ramps & Loading in their pattalands while de-casting of sand.”

9. In the considered opinion of this Court, the insertion of condition No.6, extracted above, in the agreement filed along with the counter in I.A.No.2 of 2018 to the effect that the amount payable to the pattadar is inclusive of excavation and raising cost to pattadars for preparation of Roads, Ramps & Loading in their pattalands, is contrary to not only to G.O.Ms.No.54, I & C

(Mines.I) Department dated 26.09.2016, but also to the instructions of the State Government issued vide Lr.No. No.1950/M.1(1)/2017-2, dated 20.03.2018, which clearly state that the Government permitted the TSMDC to enter into agreements with the pattadars, who got the DLSC proceedings prior to issue of G.O.Ms.No.84 dated 09.11.2017, in terms of G.O.Ms.No.54, Industries & Commerce (M.1) Department, dated 21.08.2015 and also permitted to pay the beneficiary amounts @ RS.200/- per Cu.Mt.

10. In the instant case, the Government granted permission on 30.01.2015 and thereafter the District Collector/Convenor to DLSC also granted permission on 19.05.2015. This clearly shows that the said events were prior to the advent of the Rules notified under G.O.Ms.No.84, Industries and Commerce (Mines.I), Department, dated 09.11.2017. Therefore, there is no justification on the part of the TSMDC to incorporate Condition No.6 in the agreement to the effect that Rs.200/- includes excavation and raising cost to pattadars for preparation of Roads, Ramps & Loading in their pattalands. Therefore, to the said extent the impugned action of the TSMDC is liable to be declared as illegal and arbitrary.

11. For the aforesaid reasons, the writ petition is allowed, directing the TSMDC to delete Condition No.6 to the effect of stipulating that Rs.200/- per Cu.Mt payable to the pattadar is inclusive of excavation and raising cost to pattadars for preparation of Roads, Ramps and Loading in their patta lands while de-casting of sand and to enter into agreement with the petitioners herein. It is further declared that the petitioner herein is entitled for Rs.200/- per Cu.Mt excluding the above mentioned charges. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:26.09.2018
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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