

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

WRIT APPEAL No.1014 of 2018

Date: 02-08-2018

Between:

1. Chappa Satish S/o. Venkata Rao, R/o. Revallapalem Village, Srungavarapukota Mandal, Vizianagaram District, Andhra Pradesh.
2. Alluri Hari Varma S/o. Suryanarayana Raju, R/o. Gopalapalli Village, Srungavarapukota Mandal, Vizianagaram District, Andhra Pradesh.

... Appellants

Vs.

1. The State of Andhra Pradesh, rep. by its Principal Secretary, Mines & Geology Department, Velagapudi, Amaravathi, Andhra Pradesh.
2. The Tahsildar, Srungavarapukota Mandal, Vizianagaram District.
3. The Assistant Director of Mines and Geology, Vizianagaram, Vizianagaram District.
4. The Station House Officer, Srungavarapukota Mandal, Vizianagaram District.

.. Respondents.

Counsel for the Appellants : Mr. K. Naveen Kumar

Counsel for Respondents 1 & 3 : G.P. for Mines & Geology

Counsel for Respondent No.2 : G.P. for Revenue (A.P)

Counsel for Respondent No.4 : G.P. for Home (A.P)

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JUDGMENT: (Per VRSJ.)

Aggrieved by the condition imposed by the learned single Judge while passing an interim order for the release of 2 tractors cum trailers owned by the appellants, directing them to pay a sum of Rs.75,000/- per vehicle, the writ petitioners have come up with the above writ appeal.

2. Heard Mr. K. Naveen Kumar, the learned counsel for the appellants. The learned Government Pleader for Mines & Geology (A.P), takes notice for respondents 1 & 3, the learned Government Pleader for Revenue (A.P) takes notice for respondent No.2 and the learned Government Pleader for Home, takes notice for respondent No.4.

3. The appellants are the owners of two tractors cum trailers. On 17.06.2018, the 2nd respondent seized their vehicles on the ground that they were used for transportation of sand illegally, from a prohibitory area, as per G.O.Ms.No.42, dated 29.03.2016. Contending that they were not transporting sand illegally and that when the tractors were seized they were empty and parked in a non-prohibitory area, the petitioners came up with a writ petition seeking the release of the vehicles. Along with the writ petition, the petitioners also filed a miscellaneous petition seeking interim direction to release the vehicles. The learned Judge granted an interim direction subject to the condition that the petitioners deposited Rs.75,000/- each in favour of the 3rd respondent. Contending that the

condition imposed by the learned Judge is onerous, the appellants are before us.

4. Rule 9-B of the A.P. Minor Mineral Concession Rules, 1966, as amended by G.O.Ms.No.42, Industries and Commerce, dated 29.03.2016, reads as follows:

“9-B (1) In the case of the vehicles engaged in illegal/ un-authorized excavation in the prohibited areas (i.e. within 500 mts from the Ground water structures, Bridges, Dams, Railway lines and cross drainage structures etc.), transportation of sand outside the State, shall be penalized as follows:

Vehicle Type	Punishment for the offence
Tractor	Penalty of Rs.1,00,000/- and Confiscation of the vehicle and imprisonment of vehicle operator as well as owner up to two years.
Lorry/Tipper/Truck or any such vehicle upto or above 10 Tons capacity	

(2) Whenever any person extracts sand or has extracted sand in the areas other than those notified for lawful excavation ,or uses sand for filling purpose or any purpose other than in Mortar for construction, the officer authorized in this behalf under sub rule (7) shall assess such quantity of sand and levy and collect@ Rs.2,000/-per cubic metre of sand or Rs.2.00 lakhs whichever is higher, as penalty.

(3) If any stocks of sand beyond a person's a reasonable requirement is stocked / hoarded / black marketed, it shall be seized by the officer authorized in this behalf under sub rule (7). The person in whose possession such stocks of sand is found shall be punishable with imprisonment up to 2 years and a fine of Rupees Two Lakhs. Such seized sand stocks shall be allotted for any Government works, after obtaining an order from the competent court.

(4) If a person or group/s or any entity attempts to monopolize or monopolizes sand reaches, prevents others from accessing the sand reach or pathways to sand reaches, or prevents others from using their choice of transport or insists that a particular mode of transport shall be used or collects charges more than reasonable cost of excavation or transport charges in respect of any sand reach, the person/s responsible for such act or acts shall be punishable with imprisonment of up to two years and a fine of Rupees Two Lakh.

(5) If a person or groups or entity utilizes sand for sale and profiteering thereby, person/s responsible for such act or acts shall be punishable with imprisonment up to two years and a fine of Rupees Two Lakh.

(6) Confiscation of vehicles/machinery/equipment:-

(i) No order of confiscation of any vehicle/ machinery / equipment shall be made unless the person from whom the vehicle / machinery / equipment is seized is given:

a) A notice in writing at the address provided in the records of the Transport Department.

b) An opportunity of making a representation in writing and in person within (15) days from the date of service of notice.

(ii) An officer who confiscates any vehicle/machinery/equipment shall submit a report of such confiscation to the competent Court.

(iii) The vehicle/machinery/equipment along with the sand confiscated shall be kept in the custody of Station House Officer/Motor Vehicle Inspector/ADMG concerned/ Tahsildar until an order of the Competent Court directing its disposal is received.

(7) Officers not below the rank of Sub-Inspector of Police or Deputy Tahsildar or the Royalty Inspector of Mines & Geology Department shall be competent to exercise powers as stated under sub-rules (1) to (6) above.

(8) The Director of Mines & Geology, Andhra Pradesh, Hyderabad shall maintain a website and call centre for the purposes of receiving complaints from the public of any violations of rules committed by any person.

5. From a perusal of sub-rule (1) of Rule 9-B, it is clear that if the appellants are found guilty of the offence, they are liable to pay a penalty of Rs.1,00,000/- apart from the confiscation of the vehicle and the imprisonment of the owner. In such circumstances, a via media has to be stuck, especially while considering an application for an interim order. The learned Judge thought that directing payment of Rs.75,000/- per vehicle may be a good interim solution

6. But the contention of the appellants is that ultimately if they are proved not guilty, the amount paid by them will remain with the respondents without bearing any interest. The vehicles cannot also to be allowed to remain with the respondents, as they may get damaged due to non-use.

7. We think the objections of the appellants are fairly well founded. While the interests of the revenue are to be protected, the vehicles of the appellants cannot also be allowed to get damaged due to non-use. Therefore, we are of the view that directing the appellants to furnish bank

guarantee or security for the above amount, may serve the ends of justice.

8. Accordingly, the writ appeal is ordered modifying the order of the learned Judge, directing the respondents to release the tractors cum trailers of the appellants, upon the appellants furnishing bank guarantee or security to the tune of Rs.75,000/- per vehicle, in favour of the 3rd respondent, viz., the Assistant Director of Mines and Geology. There shall be no order as to costs.

9. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ.

V. RAMASUBRAMANIAN, J.

2nd August, 2018
Js.



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