

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

W.P. No. 9623 of 2015

ORDER:-

This writ petition is filed seeking to quash the Notice dated 02.02.2015 issued by the 2nd respondent demanding the petitioner-firm to pay penalty of Rs.3,42,69,302/-, by declaring it as arbitrary and unconstitutional.

The case of the petitioner-firm is that it is a partnership firm having mining lease for Silica Sand in an extent of Ac.26.90 cents in Sy.Nos.87/ 1&2, 88/ 1&2 and 170/ P of East Kanpur village, Chillakur Mandal, S.P.S.R. Nellore District for a period of 20 years; the petitioner has been doing mining operations in accordance with the terms of the lease; while so, the 3rd respondent issued a notice dated 22.04.2013 stating that the petitioner has been transporting material from the place other than the leased area; the petitioner submitted its explanation on 12.08.2013, but no action has been taken; thereafter, demand notice dated 02.02.2015 has been received by the petitioner from the office of the 2nd respondent stating that the 3rd respondent inspected the leased area on 07.04.2014 and reported several irregularities committed by the petitioner which have caused a loss of Rs.2.34 crores to the Government; the demand notice also reveals that a show cause notice was issued to the petitioner

on 24.12.2014 and the same was acknowledged by the petitioner on 17.01.2015 and no objections were filed, therefore, penalty of Rs.3,42,69,302/- has been imposed on the petitioner; the petitioner was not served with the Show Cause Notice dated 24.12.2014 nor anybody from the office of the petitioner acknowledged receipt of the said notice on 17.01.2015.

The main grievance of the petitioner is that without any Show Cause Notice and without affording any opportunity to the petitioner, the 2nd respondent issued the impugned demand notice.

The 2nd respondent has filed counter affidavit stating *inter alia* that he issued notice to the petitioner on 24.12.2014 under Section 21(5) of Mines & Minerals (Development & Regulation) Act, 1957 (for brevity "the Act") to show cause as to why action should not be initiated for excavation of excess quantity of mineral; the said show cause notice was served and postal acknowledgement was received in the office of the 2nd respondent on 17.01.2015 in token of having delivered the show cause notice to the petitioner; no reply was given by the petitioner within the time stipulated therein.

Heard the learned counsel for the petitioner and the learned Government Pleader for Mines and Geology appearing

on behalf of the respondents and perused the material placed on record.

The learned counsel for the petitioner contends that no show cause notice dated 24.12.2014 has been issued in the name of the partnership firm – M/s. Sri Vignesh Minerals and hence the demand notice is bad. He has further contended that there is discrepancy with regard to the date of inspection and that the inspection report also does not contain the signature of the authorized representative of the petitioner.

The learned Government Pleader contends that show cause notice is addressed to the managing partner, K. Gnanasekhar and that the same has been served in the office of the petitioner and the managing partner is the deponent of the writ petition and as the said notice has been served to him at the given address, the same can be treated as sufficient notice. He has relied upon the judgment of this Court in W.A.No. 1607 of 2014 and submitted that the Division Bench of this Court has directed the petitioner therein to deposit the entire amount as quantified in the demand notice. He further submits that the writ petitioner without availing the alternative remedy filed the present writ petition.

The learned counsel for the petitioner submits that in the above referred judgment the Division Bench of this Court in the facts and circumstances of that case directed the

petitioner therein to deposit the entire amount, however the petitioner herein is ready to deposit a sum of Rs.25.00 lakhs as part of the penalty imposed by the 2nd respondent.

Without expressing any opinion on merits, as the impugned demand notice is an appealable order under Rule 35 of the AP Minor Mineral Concession Rules, 1966, the petitioner is directed to file an appeal along with an application seeking stay of demand notice, before the Director, Department of Mines and Geology, State of AP, within a period of two weeks from the date of receipt of a copy of this order. The petitioner is also directed to deposit an amount of Rs.25.00 lakhs (Rupees Twenty Five Lakhs Only) in terms of the demand notice at the time of filing such appeal; on such appeal being filed, the Director of Mines and Geology shall initially consider and dispose of the application seeking stay on its own merits and in accordance with law; however, as this Court, by order dated 23.04.2015, granted interim suspension of the demand notice dated 02.02.2015, the interim suspension shall continue till disposal of the application seeking stay by the appellate authority concerned. The petitioner is at liberty to raise all the contentions before the appellate authority.

With the above observations, the writ petition is disposed of. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending,
shall stand disposed of as infructuous.

KONGARA VIJAYA LAKSHMI, J

12.12.2018

Note:- Furnish copy in two days

b/o

bcj

