

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition Nos.31599 of 2017

ORDER:

In this writ petition under Article 226 of the Constitution of India, the petitioners sought a writ of Mandamus declaring the action of the 4th respondent-Assistant Director of Mines & Geology, Palamaner, in issuing Dispatch permits to the 6th respondent for road metal and building stone in respect of quarry in land in Sy.No.8 of Sangasamudram village Accounts ignoring the demand notice issued by the 4th respondent and the objections raised by the petitioners, the Sarpanch and other neighbouring farmers & villagers as arbitrary, illegal and contrary to Andhra Pradesh Mines and Minerals Concession Rules, 1966 ['Rules, 1966', for short]. Further reliefs to cancel the quarry lease sanctioned to 6th respondent as well as lease for stone crushing operations and to recover the seigniorage fee from him as per the demand notice, dated 27.01.2015 are also sought in the writ petition.

2. I have heard the submissions of Sri V. Jagapathi, learned counsel appearing for the writ petitioners, the learned Government Pleader for Mines & Geology appearing for the respondents 1 to 4, the learned Government Pleader for Revenue appearing for the 5th respondent and of Sri Y.N. Vivekananda, learned counsel appearing for the 6th respondent. I have perused the material record.

3. The case of the petitioners and the submissions made on their behalf, in brief, are as follows:

The petitioners are owners of patta lands adjoining the land in Sy.No.8 of the afore-said village. One of the lands is a fruit bearing mango garden.

And, the other lands are agricultural lands. The petitioners and their families are eking out their livelihoods from the income from their respective lands and the garden land. The 6th respondent, a businessman, is financially sound and politically influential. He obtained quarry lease in the above said land of an extent of 1.000 Hectares for road metal and building stone for ten years from 28.03.2006 to 27.03.2016. He started stone crushing operations in the middle of agricultural lands by establishing a unit under the name and style of M/s. Mother Stone Crusher. The said activity is causing noise pollution. Villagers are getting scared of blasting taking place in the leased area. They made several complaints to the 4th respondent and the 5th respondent-District Collector. The Sarpanch of the Gram Panchayat requested the 4th respondent to cancel the quarry lease sanctioned to the 6th respondent and to get removed the stone crusher from the lands; but, no action is taken. Further, he is continuing illegal quarry operations outside quarry area. Noticing the same, a demand notice, dated 27.01.2015, was issued to pay an amount of Rs.17,85,300/- which includes seigniorage fee of Rs.1,62,300/- and penalty of Rs.16,23,000/-. Though the amounts demanded were not paid and the lease period has expired, the 4th respondent is continuing to give dispatch permits for extraneous considerations. The said acts of the said respondent are illegal and contrary to the Rules, 1966. The Tahasildar, who inspected the quarry lease and the lands around the leased area, is satisfied that the stone crushing operations of the 6th respondent are causing noise pollution and damaging the crops in the fields. And, hence, he directed the 6th respondent to stop the quarry and stone crushing operations. Yet, the 6th respondent is continuing the said operations, after a break for two days. The 4th respondent recommended for renewal of lease of the 6th respondent from 27.03.2016. The petitioners submitted

representation, dated 01.02.2016, to the 5th respondent and other revenue officials to direct the 6th respondent to shift the stone crushing machine from the midst of the lands. W.P.No.7511 of 2016 was filed to direct the respondents 1 to 4 not to consider the renewal application of the 6th respondent. In the said writ petition, the Tahasildar filed a counter affidavit stating that he enquired into the matter and that during the enquiry the petitioners as well as surrounding farmers stated that stone crushing unit is established in the middle of the fields and fruit gardens and that stone pieces and stone chips are falling in the agricultural fields and that the dust being released from the crusher is covering the crops standing in the fields and the fruit bearing trees and that there is lot of noise pollution. In that view of the matter, this Court by orders, dated 19.04.2016, ordered that the pendency of the said writ petition shall not preclude the mining authority from taking appropriate action, as warranted in accordance with law be it upon the findings of the Tahasildar concerned or in relation to renewal of lease in favour of the 6th respondent herein. The competent authority has not renewed the quarry lease. However, 6th respondent is continuing quarry operations illegally in the leased area and outside it, in collusion with the 4th respondent, who is issuing dispatch permits knowing fully well that the 6th respondent failed to pay the amounts demanded in the notice, dated 27.01.2015. The 4th respondent is not empowered to issue dispatch permits by legalising the illegal quarrying and stone crushing operations. The Sarpanch of the Gram Panchayat, villagers of Mamillavaripalli village and Yellamvaripalli village sent representations to the 4th respondent and revenue authorities stating all the facts. 4th respondent, by letter, dated 30.03.2017, intimated the Sarpanch that since renewal application submitted by the 6th respondent is pending, dispatch permits are being issued

invoking the deemed clause. It is falsely being stated that against the demand notice, the 6th respondent filed a revision before the Government; copies of the same are not furnished despite seeking the same under the provisions of Right to Information Act. In-fact an appeal against the demand notice lies before the Director of Mines & Geology as per Rule 35 of the Rules, 1966. And, no revision lies to the Government against the demand notice. Since no appeal is filed by the 6th respondent, the revision is not maintainable. The 4th respondent suppressed the demand notice while making the recommendation on the renewal application of the 6th respondent. Taking advantage of the inaction of the competent authority, the 4th respondent is encouraging illegal quarrying and stone crushing operations of the 6th respondent. Hence, the writ petition is filed.

4. The case of the 6th respondent and the submissions made on his behalf, in brief, are as follows:

The petitioners have no cause of action or *locus standi*. Some of the lands of some of the petitioners are left fallow and not even a blade of grass grows in the said lands. Lands of some of the petitioners are situate at a distance of 400 yards from the metal crusher and quarry. Some of the lands of the petitioners are being cultivated by their tenants. The lands are never damaged and the crops in the lands are never affected by the quarrying operations. Some of the petitioners are employed. 5th petitioner is lecturer in a private college at Chennai and is residing at Chennai since nearly two decades. His mango garden is at a distance of one kilometre from the crusher of this respondent. The writ petition is motivated and is vengefully filed to harass this respondent and ruin his industry. Within 90 days before the expiry of term of

quarry lease, this respondent applied for renewal for a further period of ten years. If such application is not disposed of before the expiry of lease period, the period of lease shall be deemed to have been extended till the renewal application is disposed of by the Deputy Director or any other competent authority. This respondent's application has not been disposed of accordingly. Hence, as per the provision of Rule 13(2) of Rules 1966, the lease period stands extended until the renewal application stands disposed of. Therefore, the contentions of the petitioners do not hold water. No illegal quarrying and stone crushing operations were carried on or being carried on by this respondent. The illegal quarrying was resorted to by a former MLA of Thamballapalle Constituency of Chittoor District. The demand notice was issued in an illegal manner to this respondent instead of issuing the same to that former MLA. Hence, revision application is filed before the State Government. No enquiry was conducted so far. This respondent, being a law abiding citizen, requested for an open and impartial enquiry. This respondent borrowed monies from banks and established metal crusher unit and is discharging his liabilities to the State Bank of India, Vayalpad town, which is 26 KMs away from the crusher site. This respondent is self employed and is providing succour to the poor landless workers and this respondent's industry is providing livelihood to this respondent and others. There was no opposition for the industry during past 12 years. Objections are being raised only at the time of renewal only to block the renewal. There are no legal infirmities or violations in the grant of mining lease and in the installation of crushing machine, which stands on the land bearing S.No.7-1B-2A, which is the patta land of this respondent. Sanction orders were issued by the authorities concerned for stone crusher. The writ petition was filed on account of local

rivalries and rejection of the illegal demands for money made by the petitioners. The operations of this respondent are legal. No notice was given to this respondent before the inspection of the Tahasildar. The Tahasildar is not made a party to the present writ petition. No copy of such report, if any, prepared is served upon this respondent. The said report of the Tahasildar is brought into existence at the instance of the petitioners and for extraneous considerations. The Tahasildar, who is the 6th respondent in the earlier writ petition later visited the quarry, on 23.05.2016, and has prepared a detailed report with recommendations and forwarded the same to the 5th respondent. This respondent will place the same on record of this writ petition. The 3rd respondent-Deputy Director of Mines & Geology is yet to pass orders on the renewal application of this respondent. The officials inspected the mines and authorised this respondent to carry on the crushing operations till 31.12.2026. In view of the Rule 13 of the Rules of 1966, this respondent is entitled to continue quarrying operations till the renewal application is disposed of. Therefore, there is nothing irregular or illegal in issuing or obtaining mineral dispatch permits. The mining authorities have not flouted any Rule. It is false to say that this respondent has not submitted his explanation to the show cause notice, dated 21.04.2014, issued by the 4th respondent. This respondent submitted his explanation, on 06.05.2014, to the 4th respondent. As the 4th respondent did not conduct any enquiry and demanded this respondent to pay a sum of Rs.17,85,300/-, this respondent filed a revision application before the Government. The law allows this respondent to file an appeal to the Director of Mines & Geology under Rule 35 of the Rules or a revision application before the Government under Rule 35A of the Rules. There is no provision in the Rules to refuse to grant dispatch permits to a lessee on the mere fact that

arrears are outstanding and are payable by the lessee. Copies of the show cause notice, dated 21.04.2014, reply, dated 06.05.2014, demand notice, dated 27.01.2015, and reply to the demand notice, dated 08.02.2015, are filed. No damage has been done to the fields of the petitioners and no loss of income has been suffered by them. This writ petition is an off-shoot of the petitioners' hatred & prejudice and evil intentions to collect money from this respondent. There are no merits in the writ petition and is, therefore, liable to be dismissed.

5. The case of official respondents, as stated in the counter affidavit filed by the 4th respondent and as per submissions made, in brief, is as follows:

During the subsistence of the lease period, the then Royalty Inspector, Palamaner, inspected the quarry lease area, on 28.02.2014 & 11.03.2014, in presence of the representative of the 6th respondent and reported extraction of mineral outside the leased area for 3246 cbm. Based on the said report, the 4th respondent issued a show cause notice, dated 21.04.2014, as to why action should not be taken against the quarry lease for encroachment outside the leased area. Subsequently, the 4th respondent issued demand notice, dated 27.01.2015, demanding to pay Rs.17,85,300/- towards normal seigniorage fee and ten times penalty for the said extraction of mineral outside the leased area. Having not submitted an explanation to the demand notice, the 6th respondent filed a revision before the Government, on 20.02.2015. A personal hearing was held on 06.03.2015. After considering the detailed remarks submitted by the respondents 2 & 4, the Government directed the 2nd respondent to submit specific report on the representations, dated 09.05.2014 & 21.05.2014, given by the Vaddera community people stating that they worked in Sy.no.8 for supply of Mineral to Ex-MLA for execution of road works at Thamballapalle,

Veligallu, Siddavaram, Turakapally and Kotakonda villages in the year 2003 and that there is no crusher in the year 2003. The 4th respondent furnished specific report to the Government stating that it is noticed that 6th respondent's application was filed, on 15.04.2004, after the works were executed by the road contractor and that it was also noticed that the then Assistant Geologist has not mentioned about any workings at the area adjacent to applied area. Government have conducted further personal hearing, on 17.10.2017, and orders in the revision of the 6th respondent are awaited. In the earlier writ petition, in WP.No.7511 of 2016, this Court passed orders is correct. The 6th respondent filed application for renewal of quarry lease for a further period of ten years before the expiry of the existing lease period is true. The Tahasildar, after personal visit of the area on 23.05.2016, informed that the crusher is in Sy.No.7 and it is surrounded by dry lands on three sides and a Mango garden on one side and that the land owners on three sides have no objection for the existence of the crusher but the owners of the Mango garden, who are the sons of one Sree Rama Reddy, do not want the crusher to be there and that the enquiries with the villagers revealed that the crusher is operating since last ten years and that no villagers faced health hazards due to its operation and that the crusher has licence from the pollution department and that the vibrator and conveyor have been covered with metal sheets and that the crusher operations are taking place in wet conditions with water sprinklers at the jaw crusher. The Tahasildar finally recommended for renewal of quarry lease in favour of the 6th respondent. The contention that when a renewal application is filed within the stipulated time before expiry of the existing quarry lease term and is not disposed of before the expiry of the said term, the quarry lease period shall be deemed to have been extended till the renewal application is disposed of is

correct in view of the provision of Rule 13(2) of Rules, 1966. Further, technical staff of Mines & Geology Department inspected the applied area of the 6th respondent and submitted their reports and even the Tahasildar after his personal inspection, on 23.05.2016, submitted his report recommending for renewal of quarry lease. A show cause notice was issued to the 6th respondent to offer explanation as to why the application for renewal shall not be rejected. In that show cause notice, it is stated that the 6th respondent has not submitted valid MRCC and not paid the amount demanded in the notice, dated 27.01.2015, and is causing danger to the adjacent lands of the land owners leading to the filing of the writ petition by them to cancel the lease. The 6th respondent submitted explanation through letter, dated 20.10.2017. In view of the recommendations of the officers and the Tahasildar the contentions of the petitioners are untenable. In the stated circumstances, 4th respondent is issuing dispatch permits as per Rules, 1966. The charges levelled against the 4th respondent are baseless. Hence, the writ petition may be dismissed.

6. I have given earnest consideration to the facts and submissions. The undisputed facts and the facts borne out by the record are as follows: - 'Before the 6th respondent's quarry lease term is to expire, on 27.03.2016, the 6th respondent filed an application for renewal well within the stipulated time. However, the said application was not disposed of by the authority concerned before the expiry of the period of quarry lease of the 6th respondent. Hence, as per the legal position obtaining, the period of quarry lease of the 6th respondent shall be deemed to have been extended till the disposal of the renewal application pending with the Deputy Director. So far as the demand notice, apart from the contentions of the 6th respondent in that regard, which

are stated supra, the matter is sub judice before the Government as a revision petition of the 6th respondent is pending before the Government. The necessary reports and remarks are submitted by the authorities concerned of the Department for consideration by the Government in the revision petition. When a show cause notice was issued, the petitioner offered an explanation. Further, though the petitioners raised objections for operating the quarry lease and the crusher, and though their contentions are mainly based upon the Tahasildar's report earlier given, there are certain subsequent events is undisputed. This Court by orders, dated 19.04.2016, passed in WP.No.7511 of 2016 ordered that the pendency of the said writ petition shall not preclude the mining authority from taking appropriate action, as warranted in accordance with law be it upon the findings of the Tahasildar concerned or in relation to renewal of lease in favour of the 6th respondent herein. Reports are submitted by the technical staff of the Department of Mines & Geology after inspecting the applied area. Even the Tahasildar made a personal inspection subsequently, that is, on 23.05.2016, and submitted a report recommending for renewal of the quarry lease. The Tahasildar in his said report stated that the crusher is in Sy.No.7 of Mamillavaripalli village; that the quarry is 20 to 30 feet deep and that small holes are being dug for blasting; and that stone of 60 mm to 70 mm is being extracted for crushing purpose; that the quarry is surrounded by Government DKT patta lands, which are dry; that no agriculture is taking place in the said lands; that the persons enjoying the Government lands have no objection for the operation of the quarry as it is providing means and livelihood for many people nearby; that enquires in the nearby villages revealed that the quarry is operating since last ten years; that no villager faced health hazard due to its operation; that the crusher has pollution licence; that the

vibrator and conveyor have been covered with metal sheets; that the crushing operation is taking place in wet conditions with water sprinklers at the jaw crusher; that the crusher is surrounded by dry lands on three sides and mango garden on one side; and, that the owners of the lands on three sides have no objection, but, the owners of the Mango garden on one side are having objection for the crusher operation. Having so reported, the Tahasildar finally recommended for renewal of quarry lease in favour of the 6th respondent. Now, the Government are required to take a decision on the revision petition of the 6th respondent related to the demand notice and the authority concerned has to take a decision on the renewal application of the 6th respondent after considering the reports of the officers and the Tahasildar concerned. In that view of the matter and on the above analysis, there is no need to grant any order to the writ petitioners as any order granted either way in this writ petition is likely come in the way of the exercise of the independent discretion by the Government before which the revision petition is pending and by the authority concerned before which the renewal application of the 6th respondent is pending.

7. On the above analysis, this Court is of the considered view that the writ petition can be dismissed leaving it open to the Government and the authority concerned to take independent considered decisions respectively in the revision petition and on the application for renewal filed by the 6th respondent.

8. Accordingly, the Writ Petition is dismissed. No costs. It is made clear that this Court did not make any observations on the merits of the above said pending matters and that, therefore, the Government and the competent

authority are at liberty to take appropriate considered decisions in the respective matters as per the procedure established by law.

Miscellaneous petitions, pending if any, shall stand closed.

M. SEETHARAMA MURTI, J

18.01.2018

Vjl

