

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 28993 of 2018

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus to declare the order, dated 04.08.2018, passed by the second respondent, rejecting the application made for transfer of mining lease for excavation of Laterite mineral over an extent of Ac.20.00 gts., in Sy.No.60/ 2 of Mallampally Village, Mulugu Mandal, Warangal District, for the un-expiry period of lease, as illegal and violative of principles of natural justice.

2) The facts in detail are as under:

The Government of united Andhra Pradesh vide G.O.Ms.No.100, Industries and Commerce (Mines-II) Department, dated 02.04.1998 issued a sanction order for mining lease in the land referred to above for excavating laterite for a period of twenty years, in favour of the fourth respondent, as per the Mineral Concession Rules, 1960. Accordingly, the third respondent issued an order dated 04.09.1998, granting mining lease for excavation of laterite in favour of the fourth respondent for a period of twenty years from 04.09.1998 to 03.09.2018. The third respondent also executed Form-K lease deed dated 04.09.1998, authorizing

the fourth respondent to commence mining operations by excavating laterite mineral from the lease land. About 14 years later ie., on 22.06.2012, the fourth respondent submitted a transfer application, before the Assistant Director of Mines and Geology, Warangal, for transfer of the mining lease in favour of the petitioner for the un-expired period, enclosing requisite amount to be paid by way of challan and the affidavit to that effect. On 27.06.2012, the third respondent requested the petitioner and fourth respondent to attend his office on 22.08.2012 for inspection of the applied area. It is said that on that day, the petitioner and the fourth respondent attended the office of the third respondent and the third respondent also inspected the applied area and assured the petitioner that he will pass orders as early as possible. It is said that in spite of several requests no orders came to be passed, which lead to filing of W.P.No.18903 of 2016 seeking a direction to the respondents herein to transfer the mining lease in favour of the petitioner herein. During the pendency of the writ petition, the fourth respondent submitted a representation to the third respondent seeking withdrawal of the transfer application. Accordingly, the third respondent sent the proposal to the second respondent for rejection of the joint transfer application submitted by the fourth respondent and the petitioner herein. The second

respondent is said to have passed an order rejecting the transfer application vide proceedings D.Dis.No.11402/ R1-1/ 2016, dated 02.08.2016.

It is also to be noted that the affidavit seeking withdrawal came to be made on 27.06.2016, and the second respondent passed an order on 02.08.2016. On 05.06.2017 W.P.No.18325 of 2017 came to be filed, assailing the order of the second respondent dated 02.08.2016 by the petitioner and the fourth respondent. Based on a letter filed by the fourth respondent herein regarding the un-authorised institution of the writ petition, the said writ petition was dismissed as withdrawn to the extent of first petitioner ie., fourth respondent herein.

It is also to be noted here that O.S.No.553 of 2004 came to be filed by respondents 5 and 6, who were impleaded vide order dated 23.10.2018 passed in I.A.No.2 of 2018, against the fourth respondent herein, when he tried to do mining basing on the impugned lease and an injunction was granted, which was confirmed by the appellate Court. It appears from the narration of facts that subsequently, the fourth respondent compromised with the plaintiffs in the said suit and obtained a compromise decree on 03.07.2017.

After withdrawal of W.P.No.18325 of 2017, the second respondent herein rejected the transfer application, in view of the letter of the fourth respondent, under Rule 12 (5) (d) of the Telangana State Minor Mineral Concession Rules, 1966 (for short “ the Rules”). The same came to be challenged before the first respondent, which was allowed holding that “the order came to be passed without giving any prior notice to the effected party, which would be in violation of principles of natural justice”. Accordingly, the order under challenge before the Revisional Authority was *set aside* and the Director of Mines and Geology, Hyderabad, was directed to take action on the transfer application by following the due procedure in vogue. This order came to be passed on 03.04.2018. On remand, the second respondent vide impugned order dated 04.08.2018, rejected the transfer application. Questioning the same, the present writ petition came to be filed.

3) Sri P.Venugopal, the learned Senior Counsel appearing for the petitioner mainly submits that the order passed by the second respondent under Rule 12 (5) (d) of the Rules, is illegal since the said provision is not at all applicable to the case on hand. He took me through the said Rule to establish that the said provision has no application to the facts and without application of mind, the impugned order came to be passed.

He further submits that though the fourth respondent has made several submissions to the effect that the blank signed papers were misused, but the conduct of the fourth respondent requires to be considered having agreed to transfer of mining lease in favour of the petitioner for the unexpired period in the form of a notarized affidavit before the authorities, which is sought to be withdrawn by another affidavit, without giving any valid reasons. It is stated that basing on the affidavit filed by the fourth respondent, huge amount has been invested by the petitioner and the fourth respondent has received more than Rs.20.00 lakhs from the petitioner. Without implementing the order passed by the first respondent, the second respondent blindly rejected the joint transfer application. It is also pleaded that once joint application is made for transfer of lease, it is mandatory on the part of the authorities to accept the transfer of lease and the authorities cannot keep the issue pending for years together since the Rules prescribed a time limit of 90 days for disposal of the said application. In the absence of any provision for withdrawing a transfer application, the learned Senior Counsel would contend that the order requires reconsideration. In support of his plea, he relied on the judgment of this Court in *Lakshmi Metallica Private Limited, rep. by its Managing Director M.Vadivelan v. State of*

*Andhra Pradesh, rep. by its Principal Secretary, Mines and Geology Department, Guntur District and others*¹.

4) On the other hand, Sri Svaraju Srinivas, learned counsel appearing for the fourth respondent would submit that wrong mentioning of provisions of law does not by itself make the order illegal. According to him, the purport of the order is required to be seen. It is his plea that the relevant provision under which the order should have been passed was Rule 12 (5) (h) (viii) of the Rules. In support of the same, he relied on the decision of the Apex Court in *T. Nagappa vs Y.R. Muralidhar*² Insofar as the misuse of the document is concerned, the findings of the second respondent that the matter requires to be adjudicated before the appropriate civil and criminal Court had become final since the said findings are not challenged by the petitioner. Referring to Rule 12 (6) of the Rules, he pleads that the order under challenge requires no interference.

5) A detailed counter came to be filed by the fourth respondent explaining the factual aspects. According to him, the transfer application is pending before the authorities, due to filing of O.S.No.553 of 2004 by the respondents 5 and 6 seeking permanent injunction in respect of the leased area.

¹ (2017) 6 ALT 631

² (2008) 5 SCC 633

The fourth respondent was arrayed as defendant No.1, while the District Collector, Warangal as defendant No.2, the officers of Mines and Geology were shown as defendant Nos.3 and 4 and the Mandal Revenue Officer, Mulugu, was shown as defendant No.5. By an order, dated 26.03.2010, I.A.No.1182 of 2004 seeking interim injunction restraining the fourth respondent from excavating mineral was allowed. Aggrieved by the same, the fourth respondent preferred C.M.A.No.25 of 2010 before the IV Additional District Judge (FTC), Warangal, which was disposed of, directing the trial Court to expedite the hearing of the main suit itself. Aggrieved by the same, the fourth respondent preferred C.R.P.No.5538 of 2010 before this Court, which was dismissed on 16.12.2010, directing the trial Court to decide the suit within a period of three months from the date of receipt of a copy of the order. Subsequently, the said suit was decreed on 03.07.2010 in terms of the compromise. Therefore, it is his plea that the transfer application could not be processed because of pendency of the civil litigation. Insofar as filing of W.P.No.18903 of 2016 is concerned, it is his plea that he never authorized the writ petitioner to file any writ petition on his behalf and without his knowledge the said writ petition came to be filed. According to him, the reason given in the affidavit for withdrawing the transfer application namely that he

recovered from his ill health and financial problems and that he intends to continue the mining operations by developing it systematically. Based on the request made and being satisfied with the reasons given, his request came to be accepted. Insofar as the plea of violation of principles of natural justice is concerned, it is stated that personal hearing was given on 31.05.2018 and after hearing all the parties, the impugned order came to be passed. He further pleads that the fourth respondent has every right to withdraw his application since it was moved by him.

6) From the narration of events, the issue that arises for consideration is whether the request of the fourth respondent seeking withdrawal of his application made to transfer the mining lease, issued to him in favour of the petitioner, is proper and valid. It is to be noted here that laterite mineral which was treated as a major mineral earlier was declared as a minor mineral by the Central Government on 12.01.2015. Keeping this circumstance in the background, the issue requires to be considered.

7) As stated earlier, the mining lease was granted in favour of the fourth respondent in the year 1998 for a period of 20 years. About 14 years later, the fourth respondent made an application for transfer of mining lease in favour of the petitioner, which was in the year 2012. At that time the

mineral was a major mineral. Subsequently, the laterite was classified as a minor mineral.

8) Before proceeding further, it would be appropriate to answer the argument of Sri P.Venugopal, learned Senior Counsel, with regard to the ratio laid down by the learned Single Judge of this Court in *Lakshmi Metallica Private Limited (1 supra)*. It was a case where the petitioner and fourth respondent therein jointly filed an application for transfer of lease under Rule 12 of the A.P.Minor Mineral Concession Rules, 1966, by complying with all the statutory requirements. The said application was acknowledged by the official respondents therein and a time limit of about 180 days is fixed for disposal of the same. The Director of Mines and Geology, vide his proceedings dated 18.06.2016 submitted proposals to the second respondent for grant of transfer of quarry lease in favour of the petitioner. No explanation was forthcoming as to why the said application, which was made on 13.07.2015, was kept pending till 18.06.2016. By virtue of the impugned order dated 04.04.2017 the second respondent therein rejected the application in the light of Rule 12 (5) (h) (viii) of the Andhra Pradesh Minor Mineral Concession Rules, 1966, which was inserted vide G.O.Ms.No.29, Industries and Commerce (Mines-II) Department, dated 15.02.2017. This action of keeping the application pending for long time

without giving any reasons and thereafter rejecting the same vide impugned proceedings, was found fault with by the learned Single Judge of this Court and consequent, impugned proceedings came to be *set aside*, directing the authorities to consider the application dated 13.07.2015 in accordance with the Rules in vogue as on the date of making of the application without reference to the amended Rules.

9) Situation on hand is some what different. As observed by me earlier, though a joint transfer application came to be filed in the year 2012, but a notarized affidavit came to be presented seeking withdrawal of the transfer application on 27.06.2016. Reason for the delay appears to be because of the injunction order passed in I.A.No.1182 of 2004 in O.S.No.553 of 2004, which ultimately ended in a compromise on 03.07.2017. Apart from that it is also to be noted that the joint application made by the petitioner and fourth respondent seeking transfer of lease never reached its finality. Though the joint application came to be filed on 22.06.2012, the first order came to be passed on 02.08.2016, which was challenged by way of revision before the first respondent. By an order, dated 03.04.2018, the first respondent *set aside* the same on the ground that the order dated 02.08.2016, came to be passed without giving an opportunity of hearing to the affected party and thereafter on

remand, the impugned order came to be passed on 04.08.2018. Since there is no order of any transfer of lease in favour of the petitioner and only an order rejecting joint application, was subject matter of dispute in various forums, the judgment relied upon by the learned counsel for the petitioner may not apply to the case on hand.

10) Coming to the issue as to “whether the authority was right in upholding the action of the fourth respondent in withdrawing the joint transfer application on payment of Rs.5.00 lakhs”, it is to be noted that the application of the petitioner and fourth respondent was made prior to the amendment of the Rules.

11) In the judgment of the learned Single Judge of this Court referred to above, it has been categorically held that the Rules applicable as on the date of making of the application should be taken into consideration. It is also to be noted that through G.O.Ms.No.15, Industries and Commerce (Mines-II) Department, dated 16.03.2016, the Government delegated powers to the Director of Mines and Geology for regulation of 31 minerals including laterite on par with granite useful for cutting and polishing and marble as per Rule 12 (5) of the Rules.

12) Rule 12 of the Rules deal with grant of lease. Rule 12 (5) (h) deals with the conditions of licence or lease. Rule 12 (5) (h) (viii) states that the licensee or lessee shall not assign, sub-let, transfer or otherwise dispose of the under licence or lease without obtaining the previous sanction in writing of the Director. The transfer application shall be made to the Assistant Director of the District concerned in Form R along with non-refundable application fee of Rs. 5,000 (Rupees Five Thousand only). The licence or lease deed shall be executed as per the provision under clause (e), provided that such sanction shall be accorded when no speculation is involved in the transfer of licence or lease. Provided further that the transferor and the transferee shall not be in arrears of mineral revenue to the Government.

13) Section 12-A of the **Mines and Minerals (Development and Regulation) Act, 1957** deals with transfer of mineral concessions. Amendment to **Mines and Minerals (Development and Regulation) Act, 1958** made in 2016 allows transfer of mining leases, which have been granted through auction process. The holder of the mining lease, may transfer the lease to any eligible person, with the approval of the state government, and as specified by the central government.

14) As seen from the material on record, a joint application made by the petitioner and the fourth respondent has not

reached its finality. The issue is still at the stage whether the fourth respondent can make an application for withdrawal of the joint transfer application made for transfer of lease in favour of the petitioner. This application as stated above was made in the year 2012, when the laterite mineral to which the quarry lease has been granted was declared as a major mineral. But by the time, the matter came up for consideration after disposal of the civil cases, classification of the laterite has been changed from major mineral to minor mineral. There is no provision in the Act which indicates withdrawal of any application made. But in the absence of any such provision, it cannot be said that the fourth respondent cannot withdraw his request. If it is to be held that such a request cannot be permitted, it may at times lead to drastic consequences, where gangs operating in mining operations may force others to sign application for transfer of mining lease in favour of others, thereby putting the person, who has no muscle and financial power, to untold misery. Situations of this nature cannot be ruled out having regard to the quantum of money involved in this business. Therefore, merely because there is no provision of law for withdrawal, it cannot be said that such a request cannot be made. Things would have been different had the joint application made by the petitioner and the fourth respondent been accepted and

reached its finality. But as stated earlier, the joint transfer application made in the year 2012 was sought to be withdrawn in the year 2016 and thereafter, various proceedings came to be initiated as to whether the fourth respondent was justified in withdrawing such an application.

15) Having regard to the above and since the application is not yet accepted by any authority ordering transfer of lease and as the proceedings have not reached finality, it cannot be said that the fourth respondent is debarred from making such request. If the petitioner has sustained substantial loss due to the joint application made earlier, the petitioner is always at liberty to recover the same before the appropriate forum. In fact, the impugned order itself shows that the petitioner claimed to have disclosed that she has spent a sum of Rs.5.00 lakhs, which was directed to be returned as a pre-condition for accepting withdrawal application. Apart from that it is to be noted here that though the impugned order refers to Rule 12 (5) (d) of the Rules while accepting the request of the fourth respondent, but in my view, the said provision may not apply to the instant case, which is not disputed by the learned counsel for the fourth respondent. But that by itself cannot make the order illegal in view of the judgment of the Apex Court in *T. Nagappa vs Y.R. Muralidhar (2 supra)*.

16) Having regard to the above, the writ petition is dismissed. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

27.11.2018
gkv

