

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 34135 of 2018

ORDER:

1) Grant of quarrying lease for colour granite in favour of the 7th respondent to an extent of Ac.4.50 hectares in Sy.No.288/2 & 3 of H.D.Halli village, Agali Mandal, Anantapuramu District vide proceedings No.190793/R4-1/2016 dated 27.02.2018 is subject matter of challenge in the present Writ Petition.

2) The petitioners, who claim to be residents of Vadderahatti village, hamlet of Hullekara Devarahalli Gram Panchayat of Agali Mandal of Anantapur District, who are Vaddera by caste, filed the present Writ Petition questioning the grant of lease in favour of 7th respondent. One G.V.P. Naidu, who is the Managing Partner of 7th respondent company made an application for grant of quarry lease for a period of 20 years in the area referred to above. The Government of Andhra Pradesh vide G.O.Ms.No.2, dated 02.01.2013 constituted a District Level Screening Committee under the Chairmanship of the District Collector to take collective decisions on the issuance of No Objection Certificate. Accordingly, the District Collector after enquiring into the issue and collecting necessary information from the Tahasildar, issued a No Objection Certificate dated 22.05.2015 thereafter the Assistant Director of

Mines and Geology recommended for grant of quarry lease for colour granite in favour of the 7th respondent. The Director of Mines and Geology, Ibrahimpatnam, Vijayawada, Krishna District, issued a notice to the 7th respondent for submission of proof of mining plan and consent for establishment from the pollution control board. After submission of the relevant documents, quarry lease was granted to the petitioner vide proceedings dated 27.02.2018, for a period of 20 years.

3) The main ground urged by Sri M.Surender Rao, learned Senior counsel for the petitioners is that the petitioners would be put to untold misery as their residential houses are abutting the place where the mining lease is granted. It is further stated that beyond the leased area, some of the writ petitioners also possess orchids, where fruit bearing trees are raised. He further submits that the very grant of No-Objection Certificate itself was behind the back of the petitioners as none of them were enquired nor their statements were recorded before issuing the No Objection certificate. He further submits that since the granite is not a minor mineral, procedure under Sections 5 and 11 of the Mines and Minerals Development and Regulation Act 1957 has to be followed. He further submits that since the lease for minor mineral was granted subsequent to the amendment, which came into force on 12.01.2015, the State Government is the competent

authority to grant lease. As the Director of Mines and Geology, Ibrahimpatnam has granted the quarry lease, the same is illegal and without jurisdiction. He further submits that in the absence of any delegation of power, the lease granted by the Assistant Director on the face of it is illegal. It is further urged that under the provisions of the Act, evidence relating to mineral content is mandatory before granting licence and since such evidence is not available, the lease could not have been granted. Referring to Section 52 of the Granite Conservation and Development Rules, 1999, he would contend that the provisions of Minor Mineral Concession Rules or any rules framed by the State Government under Section 15 of the Act shall be subject to the said rules. Referring to definition of word "Minor Mineral" and other provisions of the Act, he would contend that the mining lease granted to the respondent is improper and incorrect. Referring to the notice issued and the signatures of the person signing therein he would submit that "no objection" given by the villagers cannot be accepted, since the identical notice filed by the 7th respondent, vary with the contents of the notice filed by the petitioners and the Government Pleader. Apart from that, he would contend that the authorities erred in granting licence to 4.57 hectars of the land when the proceedings of the R.D.O., Penugonda would show

that the No Objection Certificate and the recommendation from Tahasildar was only in respect of Ac.4.59 out of 11.36 Acs.

4) On the other hand, Sri Challa Gunaranjan, learned counsel appearing for the 7th respondent would submit that the petitioners 4 to 12 are residents of Badigera Panchayat, which is about 3 Kms., from Vadderahatti village as such they have no locus to question the same. He referred to the contents of the affidavit to show that none of the landholdings of the petitioners are nearby the quarry lease. He would submit that while the mining lease granted to the 7th respondent is in Sy.No.288/1, 2, 3, 4, which is not the subject matter of challenge in the present Writ Petition. He took the Court through a sketch prepared, to show that the lands of the petitioners are far away from the place where the mining operation is being done. According to him, the petitioner No.10 was a co-applicant for this mining lease along with the petitioners and being unsuccessful in getting the quarry lease, he filed the present Writ Petition with the help of the other writ petitioners raising various issues, which he would not have urged had he been given the lease. It is further pleaded that the petitioners 8 to 11 are members of the Society, which also made an application dated 01.08.2018 for the very same area. From the above facts he would contend that the intention of the writ petitioners is very clear. According to him if really the petitioners were aggrieved by the order of

granting licence, remedy of revision under Section 35 would lie. Without availing the same, the petitioners could not have questioned the lease under Article 226 of the Constitution of India. Insofar as the legal aspect is concerned, he would contend that the argument of the learned counsel for the petitioners that the granite is not a minor mineral is incorrect since the provisions of law as well as the notifications issued from time to time establish that granite is a minor mineral. Once it is held to be a minor mineral, the operation of Sections 5 to 13 gets excluded in view of Section 14 of the Mines and Mineral Development Regulation Act, 1957. He further submits that the petitioners are entitled for mining only in Ac.4.59 of land is a mistake since the subsequent documents issued by the authorities clearly indicate that mining lease was granted in 4.59 hectares of land. He also clarifies the attestations made with regard to the word no objection given by the villagers.

5) The learned Government Pleader for Mines and Geology would contend that the State Government has delegated the power to the Director of Mines by virtue of the G.O.Ms.No.34 dated 14.03.2016. In view of the above, it is pleaded that the argument of the counsel that the Director of the Mines and Geology has no jurisdiction to grant licence, cannot be accepted. It is further urged that the proceedings of the R.D.O., referred to by the

petitioners' counsel with regard to the extent of land is a typographical error and the subsequent documents indicate that land was given in hectares. It is further pleaded by the Government Pleader that Granite is a Minor Mineral and that granite has been included as minor mineral as such the question of granting mining lease by way of auction is unwarranted.

6) In order to appreciate the same, it would be useful to divide the arguments into various headings as under:

7) i) The locus of the petitioners to challenge the lease:

The contents of the affidavit itself would indicate that the petitioner No.8 is the owner of land of Sy.No.234/4. Petitioner No.9 is the owner of land in Sy.No.240/2 and 240/3. Petitioner No.10 is the owner of the land in Sy.No.240/4. Petitioner No.11 is the owner of the land in Sy.No.261/1 and Petitioner No.12 is the owner of the land in Sy.No.243/3A. The lease has been granted to the petitioners in Sy.No.288/2 and 288/3. The sketch of the location, filed by the 7th respondent does not anywhere show that the lands of the petitioners are anywhere near the quarrying area. Even otherwise the averment in the counter, which is not denied, show that the petitioner No.10 was a co-applicant along with the 7th respondent, while petitioners 8 to 11, who are the members of the society, also filed an application on 01.08.2018 for the same lease. In fact, the application of the petitioner No.10 which was made on

13.04.2015 came to be rejected on 30.09.2016. From the above, it can be said that the petitioners have not come to the court with clean hands. Being unsuccessful in getting the lease for the same mine, the present Writ Petition came to be filed questioning the grant of lease.

8) ii) **Whether the Granite is a Major mineral or minor**

mineral:- The argument of the learned counsel for the petitioner proceeded on a footing that the Granite is not a minor mineral and as such the procedure contemplated under Sections 5 and 11 ought to have been followed. Referring to Section 3 AA, Section 3E and the meaning of the word "Minor Mineral", the counsel would contend the granite is not a minor mineral. He further submits that the Central Government did not issue any notification that effect. The issue as to whether the granite is a minor mineral or not, was never raised in the main writ petition. Only in the reply filed to the counter, many legal issues came to be raised and rightly the issues raised were not answered in the counter. G.O.Ms.No.56 dated 30.04.2016 which refers to the amendments brought to the A.P. Minor Mineral Concession Rules, 1966 clearly show that while inserting the meaning of the term "Mining Plan" and "Recognized Qualified Person", also states that wherever the "Granite or Marble" occurred, the words "Granite and Marble and

31 Minerals mentioned at Sl.Nos.18 to 48 in Schedule-I of Rule 10, shall be substituted.

After rule 5, the following shall be added namely,-

"5A (i) All the Mining Leases granted for the 31 Major Minerals that are declared as Minor Minerals and incorporated at Sl.Nos.from 18 to 48 in Schedule-I of rule 10 shall be regulated in accordance with the Andhra Pradesh Minor Mineral Concession Rules, 1966.

(ii) The provisions of rule 9(iii) and rule 12(5)(a)(ii) shall not be applicable in respect of 31 minerals mentioned at Sl.Nos. from 18 to 48 in Schedule-I of rule 10".

Sub-rule(3) of Rule 12 postulates that quarry lease applications for minor minerals under [items at Sl.No.1 to 3(a)] of Schedule-I to rule 10 shall be disposed off by the Deputy Director in order specified below:

- (i) Application filed by Manufactured Sand Units (Existing units without quarry and green field units).
- (ii) Crusher owners who do not have quarries.
- (iii) Applications of Societies of professional/(local) Traditional stone cutters (waddaras)
- (iv) Others

Provided that the above priorities shall prevail if the subsequent applications are received within 30 days of the receipt of the first application, otherwise the applications shall be disposed off in the order of their receipt.

Provided further that the Deputy Director may with the prior approval of the Government grant a quarry lease overlooking the above priorities for any special reasons to be recorded in writing.

Provided also that whenever more than one application falling under category (1) above are received for grant of quarry lease and have to be considered, the Deputy Director shall refer the matter to the Government with his recommendations for a direction".

9) Apart from that, the counsel also placed on record the material extracts from the Indian Minerals year book, 2017 which clearly shows that Granite was declared as Minor Mineral under MMTR Act, 1957 and as such the same falls under the purview of the State Government. Once it is found that the Granite is a minor mineral, by virtue of Section 14 of Mines and Minerals D & R Act, 1957 the provisions of Sections 5 to 13 shall not apply. That being so, the argument of the learned counsel for the petitioners that granting of lease can only by way of an auction falls to ground.

10) iii) Delegation of powers:- Sri M.Surender Rao, learned Senior Counsel appearing for the petitioners further contended that even if it is declared as minor mineral, it is only the State Government which has got power to grant mining lease. Since the licence came to be granted by the Director of Mines and Geology, the same is bad in law. A perusal of G.O.Ms.No.34 Industries and Commerce (M.II) Department dated 14.03.2016 **would** show that orders were issued delegating the powers to Director of Mines and Geology, Andhra Pradesh for grant of mining leases, in respect of annually declared 31 minor minerals. That being the position, the

argument of the learned counsel for the petitioner that only the State Government has got power to grant mining lease, cannot be accepted.

11) **iv) Discrepancies in the extent of land in the proceedings**

issued by the Authorities:- It is no-doubt true that there is some error in mentioning the extent of land in the letter issued by the R.D.O., to Assistant Director, Mines and Geology Ananthapuramu. The said proceedings would show that the Tahasildar, Gorantla (Agali) has recommended for grant of quarry lease for colour granite to the applicant, subject to the condition of not giving any trouble to the Ryots or people, while digging the stone as per the Government conditions, in Sy.No.288-2 and 28803 admeasuring 4.59 acres out of 11.36 acres in HD Halli village. The document filed by the Government Pleader along with counter also reflects the same. But, in my view the same appears to be a mistake since the subsequent proceedings dated 27.02.2018 issued by the Director of Mines and Geology, Ibrahimpatnam show that the application for colour granite was over an extent of 4.570 Hectares and the recommendation by the Assistant Director for Mines and Geology for grant of quarry lease was also to the extent of 4.500 Hectares. Similarly, the grant of licence was also for the same extent. Hence, the usage of the word "Acres" in the letter appears

to be a clerical mistake, moreso, when the mining leases are normally granted in "Hectares" but not in "Acres".

12) v) **Grant of No Objection Certificate:-** Though the learned counsel for the petitioners tried to contend that no proper enquiry was conducted and the endorsements taken on the notices from the villagers, throw any amount of suspicion, but, the record establish that the 5th respondent herein having conducted an enquiry and survey submitted a report dated 22.05.2015 recommending issuance of NOC in favour of 7th respondent. The record shows that the 5th respondent inspected the site along with Surveyor and conducted an enquiry wherein the villagers made endorsement stating that they have no objection for the same. A perusal of the said document, more particularly the notice issued by the office of the 5th respondent clearly show that no objections were raised by any of the villagers in the area of H.D. Halli village even after issuance of 15 days notice. The 5th respondent has duly endorsed on 15.05.2015 that no objections have been received. Therefore, the argument of the learned counsel for the petitioners that no enquiry was conducted and that the lease was granted behind the back of the villagers, cannot be accepted.

13) Therefore, viewed from any angle, this Court is of the opinion that there are no merits in the Writ Petition and the same is liable to be dismissed.

14) Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:28.12.2018

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