

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition Nos.36738 & 36959 of 2017

COMMON ORDER:

In W.P.No.36738 of 2017, filed seeking a writ of mandamus, the petitioners, who are villagers of Kallupalle Village, Yalakallu Panchayat of V. Kota Mandal, are assailing the action of the official respondents 1 to 9 in permitting the 10th respondent, that is, M/s. Sri Lakshmi Venkateswara Stone Crushers, from carrying on quarry lease operations in survey no.543 of the said village by issuing temporary permits as illegal and arbitrary and are seeking a direction to the said official respondents to stop the quarrying operations being conducted by the 10th respondent in the above said land.

1.1 In W.P.No.36959 of 2017, filed seeking a writ of mandamus, the petitioners, who are agriculturists and are residents of Mammiederlapalle Village and Kallupalli Village are seeking a declaration that the action of the official respondents 1 to 12 in permitting the 13th respondent, that is, the above said stone crushers concern, to carry on quarrying/mining operations in the above said land unauthorisedly and by infringing the Constitutional rights of the petitioners is illegal, arbitrary, contrary to environmental laws & A.P.M.M.C. Rules, 1966, and to direct the said official respondents to stop the quarrying operations being undertaken by the said 13th respondent.

2. I have heard the submissions of Sri V.R.N. Prashant & Sri V.B.Subrahmanyam, learned counsel appearing for the petitioners in the two writ petitions, and of learned Government Pleaders for Mines & Geology, Revenue and Forests, and of G. Ramachandra Rao, learned standing counsel

for Pollution Control Board and of Sri Sita Ram Chaparla, learned counsel appearing for the unofficial respondent, that is, the 10th & 13th respondent in the two writ petitions.

3. I have perused the material record. I have perused all the documents. I have gone through the relevant provisions of law.

4. In the first writ petition, the grievance of the writ petitioners is that the unofficial respondent is unauthorisedly and illegally carrying on quarrying/mining operations in the subject land by establishing a stone crusher and is thereby infringing the Constitutional rights of the petitioners and others in the village and that the official respondents are permitting the unofficial respondent to do so by issuing temporary permits and are not taking any action for stopping such illegal operations being undertaken by the said respondent. In the second writ petition also the grievance is more or less the same though it is not specifically stated that the unofficial respondent is carrying on operations by means of temporary permits.

5. The case of the petitioners broadly and cumulatively is this: - 'The unofficial respondent established a stone crusher in the above said land where he is carrying on quarrying/mining operations unauthorisedly and illegally on the basis of temporary permits being issued by the official respondents from time to time. Some of the petitioners are owning and possessing agricultural lands and some of them are owning orchards adjacent to the above said land where the quarrying/mining and stone crushing operations are being undertaken by the unofficial respondent. The unofficial respondent is indulging in blasting operations and the same are severe in nature; and, the petitioners are feeling the tremors in the village as well as in the fields/orchards.

Due to the intensity of the blastings, boulders are falling on agricultural crops, mango orchards, cattle sheds and are endangering the lives of the villagers and livestock. Further, the rock excavated is being crushed to form metal and stone dust. The surroundings are being polluted with dust emanating from the stone crusher. The subject land is a part of eco-sensitive zone. Mandatory clearances are required from Forest Department and Pollution Control Board. The Assistant Director of Mines & Geology, Palamaneru, one of the official respondents by letter, dated 05.07.2016, informed the petitioners that the unofficial respondent filed two quarry lease applications for road metal and building stone quarrying operations in Sy.No.543 of Yalakallu village, and that the District Level Screening Committee, in its meeting, on 10.03.2016, decided to grant No Objection Certificate for grant of quarrying lease over 6.000 Hectares in the said survey number subject to clarification from Chief Conservator of Forest, Anantapur. The officials of Andhra Pradesh Pollution Control Board, who are also the official respondents herein stated that stone quarry operators have to obtain environmental clearance from SEIAA and also consent for establishment and consent for operation of the Board. However, such clearances were not obtained by the unofficial respondent. The writ petitioners in the first writ petition learnt that one Dhanalakshmi filed W.P.No.13999 of 2017 challenging the action of the Deputy Director, Mines & Geology in deciding to give quarry lease and also temporary permits for quarrying to the unofficial respondent. An interim order was passed in the said writ petition directing the official respondents therein not to grant lease to the unofficial respondent. In the teeth of the orders of this Court, the official respondents are permitting the unofficial respondent to continue quarrying operations and are also granting temporary permits for such illegal quarrying

operations in violation of the orders of this Court and despite the protests of the petitioners and the villagers and in the absence of required permissions and clearances from the authorities concerned. The Assistant Director of Mines & Geology, Palamaneru, is not the competent authority to issue permission for installation of stone crushing unit. The writ petitioners in the second writ petition along with other affected persons made representations to the State Government and marked copies to all official respondents except the authority under the Pollution Control Board. In the said representation, while seeking to protect the petitioners, it was stated that the unofficial respondent is digging holes to a depth of 40 feet at various places in the area of operation and filling it with Ammonium Nitrate and undertaking blasting operations with Gelatin Sticks and that the blasting operations are causing heavy and deep cracks in the underlying rock layers and that as a result about hundred agricultural bore wells giving water have stopped working and the same affected the livelihood of the petitioners and other villagers of the village and that due to blasting, the air is getting polluted and is becoming not fit for breathing and that the dust, being released from the quarrying operations, is spreading to a distance of two to three kilometres and is affecting crops and orchards and that the blasting operations are causing cracks in the walls of the houses, sericulture sheds & poultry farms and that agricultural lands are becoming barren lands. The location of the stone crusher and its illegal operation amidst agricultural lands is affecting agriculture and the fruit bearing trees in the orchards in the area and the dust pollution is causing disturbance to the lives of the villagers and is affecting eco system and environment leading to undesirable adverse effects on the climate.'

6. The case of the unofficial respondent is that the petitioners in both the writ petitions developed and improved their stand from time to time and that initially they stated that their agricultural lands and mango orchard are getting affected and that later they developed their case stating that the villagers and their properties including lands, cattle sheds, poultry farms and houses are getting affected and that there is no truth in any of the contentions of the petitioners in both the writ petitions and that they have no cause of action or *locus standi*.. The specific case of the unofficial respondent is this: - 'The present quarrying operations are being carried out under lease/s granted by the official respondent authorities under temporary permits and hence, such operations cannot be termed as illegal. This respondent has no political or other support. If there were to be any support, the payment of penalty imposed upon does not arise. Mere payment of penalty imposed is not an admission of indulgence in illegal quarrying by this respondent. The subject land is not in the midst of agricultural lands and it is remotely located. No adverse affects as being claimed by the petitioners had occurred or occurring on account of the quarrying/mining and stone crushing operations being carried out by this respondent. The allegations in both the writ petitions are imaginary and motivated. Since this respondent's application for establishment of stone crusher unit is under consideration, temporary permit/s is/are granted while awaiting environmental clearance. Since this respondent was granted temporary permit/s for the operations, the petitioners cannot maintain the writ petitions. Issues of pollution and ecological balance raised by the petitioners shall be agitated before the Tribunal constituted for that purpose. Temporary permit/s is/are being granted for technical reasons as environmental clearance is awaited to grant permanent lease. The term of the

body of the environmental committee has expired and appointment of new body is under process. Environmental clearances across the State are pending consideration and the same would be cleared after the new Committee is constituted. Hence the writ petitions may be dismissed.'

7. The case of the official respondents as per the submissions made and as stated in the counter affidavits of the Assistant Director of Mines & Geology and the Tahasildar of V. Kota Mandal, is as follows: - 'As per records, the unofficial respondent filed two quarry lease applications for grant of road metal and building stone quarry leases in different extents of Sy.No.543 of Yalakallu village, through mee-seva. The same were received by the Assistant Director of Mines & Geology, on 22.07.2015 and 01.09.2015 and were forwarded to the Sub-Collector, Madanapalle, on 22.07.2015, seeking classification and availability of land and for issuance of no objection certificate. The Tahasildar informed that the land is classified as 'Gayalu'. The District Collector conducted DLSC meeting on 10.03.2016 and decided to grant NOC for grant of lease over 2.000 hectares in the above said survey number subject to pending clarification from Chief Conservator of Forest, Anantapur, on the application filed by C. Giri Babu Naidu, that is, the Managing Partner representing the unofficial respondent. On the representation of the unofficial respondent the District Collector enhanced the NOC extent to 6.000 hectares in the said survey number subject to pending clarification from the Chief Conservator of Forest, Anantapur. The officials of the Mines & Geology Department inspected the applied area and the stone crushing unit. So far as blasting being carried on by the unofficial respondent, it should take necessary permissions from the competent authority and conduct

blasting operations as per conditions imposed in the permission. Since it is noticed at the time of inspection that certain quantity of road metal was extracted unauthorisedly by the unofficial respondent, necessary action was initiated after issuance of show cause notice and a demand was raised for an amount of Rs.15,21,880/-. By common orders, dated 23.11.2016, in writ petitions in W.P.No.23788 & 35639 of 2016, the demand notice was set aside and the matter is remitted to Assistant Director of Mines & Geology, Palamaneru. Subsequently, unofficial respondent requested to permit to pay normal seigniorage fee for the quantity found at the crusher site (earth + metal). Finally demand notice was issued for Rs.15,21,800/- and the same was paid vide challan dated 20.12.2016. The villagers of Yalakallu made a representation to the District Collector to close the stone crusher of the unofficial respondent and requested to cancel the permissions given to the unofficial respondent. Deputy Director, Mines & Geology, Kadapa, called for compliance report. Presently, no blasting was being done and no quarrying operations are also being done. No objection certificate was issued after joint inspection by the committee members with condition to be imposed for controlled blasting. Statutory clearances like environmental clearance and CFE are required for regular leases. The unofficial respondent requested for issuance of temporary permit for 50,000 cbm road metal vide letter, dated 22.03.2017, as the same is required for execution of public works, that is, road works and the same was forwarded by the Asst., Director of Mines & Geology, Palamaneru, to the Deputy Director of Mines & Geology, Kadapa, and based on the letter of the first mentioned authority, the latter mentioned authority accorded permission for issuance of temporary permit for execution of Government work, that is, improvements to 7th Mile NH-219 Cross to AC 219

(via) Kadiriobanapalli, Beerakuppam, BM Gollapalli, Syamarajupram, Adduvanka, Karlagatta NH 219 from KM 0/0 to 3/0 in Kuppam Constituency subject to satisfaction of terms and conditions laid down in APMMC Rules, 1966, and all other Government and executive instructions issued from time to time. Again permission was accorded for issuance of temporary permit to the unofficial respondent for 50,000 cbm of road metal and building stone. Four temporary permits for quantities of 300 cbm, 13,000 cbm, 4650 cbm and 12,000 cbm were issued to the unofficial respondent on 06.05.2017, 19.08.2017, 28.08.2017 and 23.10.2017, through e-permit system duly collecting seigniorage charges and other necessary taxes for the quantities as the same are required for execution of public works as the Tahasildar communicated NOC stating that there is no objection from public. Rule 9 (iii) of APMMC Rules, 1966, state that to meet the immediate or timely requirements, the Assistant Director may permit to carry on quarrying operations on payment of seigniorage fee in advance. Temporary permits should be issued as far as possible only to contractors who have undertaken works of Government or Government undertakings and to that effect an agreement copy entered with particulars should be obtained before issuance of temporary permits. In other cases, Assistant Director may examine the necessity and genuineness of taking such permits and ensure that there will not be misuse of temporary permit. Basing on the instructions and guidelines and the rule position, the Assistant Director issued temporary permits to the unofficial respondent. So far as the stone crusher, it is for the industries department to state about the same but the officials of the said department are not impleaded. The Mines & Geology Department has nothing to do with the maintenance of the crusher. Hence, the writ petitions may be dismissed.'

8. Though the pleadings and contentions advanced are lengthy, the point involved, in the considered view of this Court, is short but important. The short question is – ‘whether the official respondents, in the facts and circumstances of the case, are justified in giving temporary permits to the unofficial respondent for quarrying and mining operations in the subject land and in allowing it to carry on stone crushing operations by establishing stone crusher unit in the subject land?’

9. Before proceeding further, it is necessary to refer to Rule 9 of APMMLC Rules, 1966, which reads as under, as the respondents also relied upon sub-rule (iii) of the said Rule.

Authority to grant quarry lease or permit:-

(i) Every application for grant or renewal of quarry lease for any minor mineral except sand, granite and marble in respect of a land shall be made in Form B to the Assistant Director Mines and Geology in whose Jurisdiction the land lies.

(ii) No quarry lease shall be granted in respect of areas covering any tank or river bed, irrigation or drainage channel and of lands under the control of the Public Works Department, a municipality, or a local authority except after consultation with the Executive Engineer of the Division or the River Conservator, or the Commissioner of the Municipality or the Block Development Officer of the Panchayat Samithi or the concerned Executive Officer appointed under Section 30 of the Andhra Pradesh Gram Panchayats Act, 1964, as the case may be.

(iii) In respect of minor minerals except those mentioned in sub-rule (5) of Rule 12 which are worked to meet the immediate or timely requirements, the Assistant Director may

**permit to carry on quarrying operations on payment of
seigniorage fee in advance.**

**(iv) Permit granted under sub-rule (iii) shall in no case be for
more than sixty days.**

**Provided that the applications for grant of a lease or a
permit in respect of a reserve forest land shall be disposed of
after consultation with the Divisional or the District Forest
officer concerned.**

**Provided further that on an application or by way of
auction for grant of any minor mineral in the scheduled areas
referred to it by the Assistant Director of Mines and Geology
or the Officer nominated by the State Government, the Gram
Sabha or the Gram Panchayat shall communicate its
recommendation, whereupon the application or by way of
auction for grant of quarry lease for any minor mineral in
such Scheduled Areas shall be processed in accordance with
the provisions of Law.**

10. The factual matrix insofar as the fact that there is no regular permit granted to the unofficial respondent for quarrying and mining operations and that the official respondents of Mines & Geology department are granting temporary permits to the unofficial respondent for carrying on such operations on its request to issue temporary permit for 50,000 cbm of road metal vide its letter dated 22.03.2017 on the ground that the same is required for execution of public works (road works) is not in dispute. The unofficial respondent also pleaded in its counter that since its application for establishing stone crusher unit is under consideration, temporary permits are being granted while awaiting environmental clearance. It is also not in dispute that so far four temporary permits for quantities of 300 cbm, 13,000 cbm, 4650 cbm and 12,000 cbm

were issued to the unofficial respondent on 06.05.2017, 19.08.2017, 28.08.2017 and 23.10.2017, by the officers concerned of the Mines & Geology Department through e-permit system duly collecting seigniorage charges and other necessary taxes for the quantities as the same are required for execution of public works as the Tahasildar communicated NOC stating that there is no objection from public. However, there is written protest raised before the District Collector by the petitioners & villagers is not in dispute. It is also not in dispute that even during the pendency of this writ petition, such temporary permit/s were issued to the unofficial respondent and that even one more such temporary permit was issued very recently, on 19.12.2017, for a period of thirty days on the expiry of earlier temporary permit. Thus, despite the complaints of serious nature of the petitioners on their behalf and on behalf of their villagers, the official respondents concerned are issuing temporary permits one after the other and so far a huge quantity of 50,000 cbm of road metal was quarried and excavated purely on temporary permits though there was no possibility of granting quarrying & stone crushing operation for absence of the necessary clearances from all concerned. Admittedly, the matter was not clarified by the Chief Conservator of Forest, Anantapur. One of the contentions of the petitioners in the first writ petition is that the subject mine location falls at 2.70 KMs from Peddanaick drug RF (Reserve Forest), notified as Koundinya Wild Life Sanctuary *vide* a Government Order, dated 27.06.1988, and that proposal for declaring eco-sensitive zone over a distance of one kilometre from the notified boundary of the said sanctuary was submitted and the same is under consideration. On this aspect, the only contention of the unofficial respondent is that it is not aware of any notification of the Sanctuary. Further, regular permission for operations was not granted though two

applications of the unofficial respondent are pending for the reason that Consent for Establishment (CFE) and Consent for Operation (CFO) from Pollution Control Board and Environmental Clearance from the Government of India; Yet, on temporary permits, huge quantity of road metal was already quarried out from the subject land clearly indicates that the issuance of temporary permits one after the other is clearly unwarranted and illegal more particularly as the present case is not a case where regular lease term has expired and that temporary permits were being issued pending consideration of the request for renewal. In the considered view of the Court, the issuance of temporary permits is not intended to defeat the intendment and object of legislation and displace regular permits with temporary permits for good. Further, issuance of temporary permits one after the other for huge quantities of minerals even in cases where there is no possibility for grant of regular leases within a reasonable time would clearly amount to violation of law and the statutory rules. In this regard, it is necessary to refer to the decision of the Supreme Court in Petitions for Special Leave to Appeal (C).No(s).34811/2013 between **Naveen Sharma {petitioners} And The State of Rajasthan and others {Respondents}** wherein the facts show that 82 mining lease/quarry holders were restrained from carrying out mining of sand and bajri till a scientific replenishment study is completed and the matter is fully and dispassionately considered by the Ministry of Environment, Forest & Climate Change and an Environmental Clearance is granted or rejected. Obviously, as there are no permissions from the authorities concerned for establishing stone crusher and carrying on stone crushing operations, it is stated in the pleadings of the unofficial respondent that the application in that regard is under consideration. Even in the counter of the official respondents it is evasively

stated that so far as blasting being carried on by the official respondents, the unofficial respondents should take necessary permissions from the competent authority in conducting blasting operations as per conditions imposed in the permission. It is not explained as to why and how temporary permit/s were and are issued when no permission in that regard was obtained by the unofficial respondent. Despite knowledge of the said facts and the further fact that there is admittedly no environmental clearance and clearance/clarification is awaited from the Chief Conservator of Forests, Anantapur, temporary permits were granted and are being granted by the official respondents to the unofficial respondent and quarrying and stone crushing operations were and are being allowed to continue unabated on the basis of such temporary permit/s unmindful of the damage to the ecological system and the environment. Above all, it appears that all such acts are being done by the respondents despite strong protest from the petitioners and the villagers. In the circumstances, the provisions of the Rules under which the respondents intend to take shelter do not come to the aid of the respondents and are of no avail to the respondents. Hence, the contentions of the respondents based on the provision of Rule 9 of APMMC Rules, 1966, are devoid of merit and hence, liable for rejection. In the facts and circumstances of the instant case, this Court is of the considered view that the official respondents of the Mines & Geology Department ought not to have granted temporary permits one after the other to cover eventually a huge quantity of 50,000 cbm and more of mineral despite absence of clarification from Chief Conservator of Forest in the light of the fact that eco-sensitive zone notification proposals for Koundinya Wild Life Sanctuary were submitted duly proposing eco-sensitive zone comprising of all forest and non forest areas up to one kilometre distance

from the existing boundary of Sanctuary but the approval is awaited and also in the light of the further fact that CFE & CFO from the Pollution Control Board and Environmental Clearance from the Government of India are not granted.

11. On the above analysis, this Court finds that the complaint in the first writ petition that the issuance of temporary permits is illegal and arbitrary merits consideration. In that view of the matter, this Court finds that both the writ petitions deserve to be allowed.

12. In the result, the Writ Petitions are allowed as prayed for with costs. As a sequel, the temporary permit said to have been granted on 19.12.2017 and which is in force, is set aside directing official respondents not to allow the unofficial respondent to carry out any operations on the basis of the said permit.

13. As a sequel, the officers concerned of the A.P. Pollution Control Board are hereby directed to forthwith cause inspection of the subject area, where the complained operations were carried on by the unofficial respondent and also the surrounding areas to find out whether any damage is done to the ecological system, the environment and the properties on account of the operations thus far done by the unofficial respondent and have the same assessed. It is needless to state that in the event it is noticed on such inspection that any damage is done, the A.P. Pollution Control Board and the concerned shall initiate action against all concerned who are responsible as per law and take further steps for restoration at the cost of the concerned on the basis of the principle 'polluters pay'.

The costs in each writ petition are quantified @ Rs.3,000/- [Rupees Three Thousands].

Miscellaneous petitions, pending if any, shall stand closed.

M. SEETHARAMA MURTI, J

18.01.2018

Note: Issue CC by 22.01.2018

[B/o]

Vjl

