

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 11633 of 2016

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of respondent No.2 in determining the lease for the black granite over an extent of 3.000 hectars in un-surveyed gap area of Ramakrishnapuram village, Palasamudram mandal, Chittoor District vide D.Dis.proceedings No.21628/R5-1/2015, dated 30.01.2016, inspite of paying advance dead rent on 06.06.2015, as illegal and arbitrary.

2) The facts in issue are as under:

The second respondent issued work order in favour of the petitioner for a period of 20 years with effect from 10.06.2010. Though the petitioner has not yet commenced mining operations, the Forest Range Officer, Chittoor East Range, inspected the mining operations being carried over the lands situated next to the land of the petitioner, and reported that the petitioner is also carrying out the mining operations illegally. Accordingly, a case in OR No.34/2010-11 came to be registered leading to seizure of a tipper, compressor and two jackies from the site. Basing on the crime registered, the Divisional Forest Officer, Chittoor East (WL) requested the third respondent to address to respondent No.2, to cancel mining grant issued to the petitioner, under the impression that the petitioner's

grant lease also comes under forest area. Hence, the petitioner filed W.P.No.16402 of 2010, before this Court challenging the action of the respondents in interfering with the mining operations and also to release the seized vehicles. By an order dated 29.09.2010 in W.P.M.P.No.20661 of 2010 in W.P.No.16402 of 2010, this Court ordered release of the vehicles in favour of the petitioner on certain terms and conditions. Thereafter, the vehicles were released vide proceedings dated 06.04.2012 and the enquiry was fixed to be conducted on 30.03.2012. In the said enquiry, the petitioner submitted a representation dated 01.04.2011, stating that he has not violated any grant order and further submitted that the quarry lease land granted to the petitioner falls in gap area of Ramakrishnapuram village and that it would not come under the purview of the forest lands. Hence requested to conduct joint survey. In pursuance to the request made, a joint survey came to be conducted with the revenue officials, in which it was found that the land which was leased out to the petitioner does not fall within the forest area. The joint inspection was conducted on 25.10.2013 and the joint report was also filed. As no permits are issued inspite of the fact that the land leased out to the petitioner do not fall within the forest area, W.P.No.20708 of 2014 came to be filed seeking interim direction, which was ordered on 24.07.2014. In spite of the said order, no transport permit was issued to the petitioner, but however, the impugned notice came to be issued stating that the petitioner has not paid dead rent for the years 2010 to 2014 and also for the years 2015-16, apart from not

submitting accounts for the year 2014-15. It is stated that when the petitioner approached respondent No.3 for issuance of challans, for payment of advance dead rent for 2016-17, the third respondent informed the petitioner that the lease was determined by the second respondent. It is the grievance of the petitioner that the second respondent without issuing and serving any notice to the petitioner, issued the impugned notice determining the lease under Rule 12(5)(h)(xii) of Andhra Pradesh Minor Mineral Concession Rules, 1966. Hence, the present writ petition came to be filed.

3) Learned counsel for the petitioner would contend that the order passed by the authority is patently illegal, since much prior from the date of issuance of notice, the petitioner paid Rs.1,65,000/- challan, which went unnoticed. Insofar as non-submission of accounts, the petitioner submits that there is no mining operation at all due to pendency of dispute between the petitioner and the first respondent and hence filing of accounts would not arise.

4) A counter came to be filed by the third respondent disputing the averments made in the affidavit filed in support of the writ petition. It is stated that since the petitioner failed to pay dead rent, show cause notice dated 19.10.2010 came to be issued to which the lessee did not submit any explanation. Thereafter, the impugned order came to be passed determining the quarry lease. The main ground urged by the learned Government Pleader is that since the quarry lease is already cancelled, the question of accepting dead rent

would not arise. She further contends that the present writ petition came to be filed only when the lease was cancelled. It is her plea that if the petitioner is willing to pay the dead rent as stated by him, it could have done the same at the earliest point of time. Hence the same needs to be doubted. Having regard to the above, it is pleaded that the action of the authorities in determining the quarry lease warrants no interference at this length of time.

5) From the narration of facts in the affidavit and the counter, it is clear that the petitioner was initially granted licence to the leased land for a period of twenty years. Immediately, an objection was raised by the Divisional Forest Officer on the ground that lease land falls within the forest area. Pursuant thereto, a joint survey was ordered by this Court, in which it was found that land which was leased out to the petitioner does not fall within the forest area. These facts are not disputed. Thereafter, notices came to be issued asking the petitioner to pay dead rent, though he has not conducted any mining operations. It is urged that once lease is granted, payment of dead rent is mandatory irrespective of any dispute that arises thereafter.

6) A perusal of the impugned order dated 30.01.2016 shows that the Assistant Director of Mines and Geology, Chittoor, submitted a proposal for determining the quarry lease held by the petitioner, on the ground that leaseholder has not paid advance dead rent for the year 2015-16 and violated rules under Granite Conservation and

Development Rules, 1999 and APMMC Rules, 1965, apart from other breaches in not submitting accounts, quarterly/annual returns for the year 2014-15. The impugned proceedings also referred to show cause notice being issued to the petitioner asking him to show cause as to why the action should not be initiated in determining the lease in the said area. As no reply is given, the impugned order dated 30.01.2016 came to be passed determining the lease under Rule 12(5)(h)(xii) of Andhra Pradesh Minor Mineral Concession Rules, 1966 and the security deposited is forfeited to the Government.

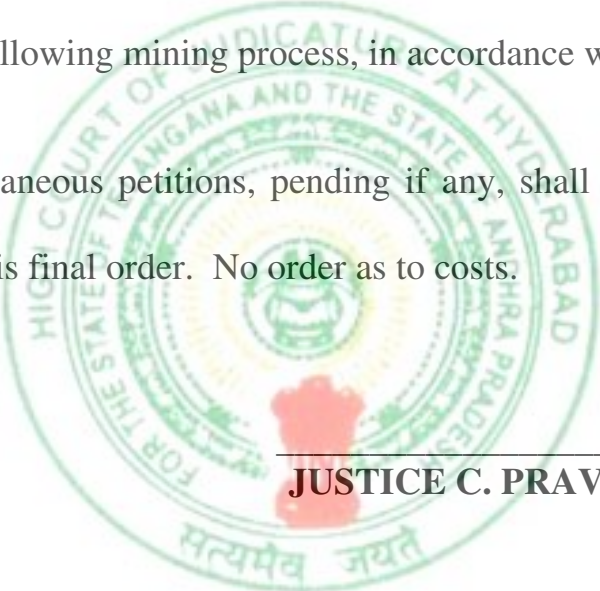
7) As seen from the impugned proceedings, the lease came to be terminated since the petitioner conducted default in payment of dead rent for the year 2016 and also for the non submission of accounts. It is to be noted here that treasury challans which are placed before the Court and more particularly treasury challan No.0000008730, dated 06.06.2015, show that an amount of Rs.1,65,000/- was paid towards dead rent for the year 2015-2016. On the very same day, an amount of Rs.18,000/- came to be paid through challan No.0000008732, Rs.1,000/- towards LA vide challan No.0000008731 and another sum of Rs.1,000/- towards cess on LA. The amount paid in the month of June was accepted by the department. It is also to be noted here that the said amount was paid in advance as required under law. Though the learned Standing Counsel tried to contend that no amount was paid, but he did not dispute the challans, which are filed along with the writ petitions.

Apart from that, it is also to be noted that though survey was conducted by the revenue and other officials, but till date no survey report was submitted showing land, which is in dispute, falls within the forest area. Further as the petitioner herein was not permitted to do mining operations, the question of filing accounts as demanded does not arise.

8) Having regard to the above, the writ petition is allowed setting aside the impugned order dated 30.01.2016 and the matter is remanded back to the concerned to consider the request of the petitioner in allowing mining process, in accordance with law.

9) Miscellaneous petitions, pending if any, shall stand closed in the light of this final order. No order as to costs.

30.10.2018
vhh



JUSTICE C. PRAVEEN KUMAR