

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.41289 of 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

“.....it is prayed that this Hon'ble Court may be pleased to issue Writ, order or direction preferably Writ of Mandamus, declaring the Memo No.2865/M.1(2)/2015-5, dated 28.04.2017 issued by the 1st respondent is illegal, arbitrary, contrary to record and violation of principles of natural justice and consequently set aside the said Memo and further direct the Respondents 1 to 3 to grant mining lease in favour of the petitioner for the land to an extent of 3 hectares, in sy.no.1099 of Cheruvumadharam village, Nelakondapally Mandal, Khammam District and pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

(Reproduced verbatim)

2. I have heard the submissions of *Sri Kounturu Pavan Kumar*, learned counsel appearing for the petitioner; learned Government Pleader for Mines & Geology appearing for the respondents 1 to 3; learned Government Pleader for Revenue appearing for respondents 4 & 5. I have perused the material record.

3. The case of the writ petitioner, in brief, is this: - “The petitioner is a Society registered under the Societies Registration Act, 2001, *vide* registration No.163/2015. The deponent of the affidavit is the President of the petitioner society. The deponent and all the other members of the petitioner society belong to SC community. An extent of 3 hectares in survey no.1099 is in possession of the members of the petitioner society. While so, the 6th respondent herein, earlier, having obtained the signatures of the members of the society on the pretext of getting passbooks and title deeds, however,

applied for quarry lease in respect of the subject land on the basis of alleged relinquishment of rights by the members. Thereafter, the matter was referred to the District Level Committee (DLC) consisting of the 4th respondent and others for grant of mining lease. The DLC met on 16.04.2013 and rejected the application of the 6th respondent stating that the subject lands cannot be proposed for quarrying lease. However, in the minutes, dated 25.04.2013, it was specifically stated that 'in case if the assignees are coming forward by a group society, to take up quarry lease, they may be given preference'. In that view of the matter, the members of the petitioner society formed the petitioner society and applied for quarry lease for granite and marble, on 13.05.2015, however, duly complying the other necessary conditions under Rule 12(5) of A.P. Minor Mineral Rules, 1966. Thereafter, the 3rd respondent requested the 5th respondent to clarify about the status of the land as to either it is Government land or assigned land and to send a report. However, no action has been taken on the said request. Aggrieved of the inaction of the respondents in considering the application, dated 13.05.2015, the petitioners filed W.P.No.15281 of 2015; the said writ petition was disposed of, on 28.07.2015, directing the official respondents to take appropriate action on the said application. As no positive action was taken, a contempt case in C.C.No.1532 of 2016 was filed. In the said contempt case, 3rd respondent filed a counter stating that soon after disposal of the revision filed by the 6th respondent; pending quarry lease application of the petitioner is disposed of without delay and ambiguity. Thereafter, the 1st respondent issued the impugned memo, dated 28.04.2017, whereby the 1st respondent without considering the application of the petitioner society and without issuing any notice to the members of the petitioner society and even without referring to

their claim, disposed of the revision filed by the 6th respondent. In the said memo, it is *inter alia* stated that the assignees have submitted their Razinamas in form 'C' and under Rule 16 of relinquishment of land...'. The revisional authority without examining the facts that lead the petitioner society to apply for quarry lease, made adverse observations against the society, which affect the rights of the members of the society. The 1st respondent ought to have issued notices to all the assignees and ought to have conducted enquiry by providing an opportunity of being heard. Though, *vide* the impugned memo, the 2nd respondent was directed to take necessary further action, yet the observations in the said memo affect the rights of the members of the petitioner society. The 1st respondent ought to have appreciated the reasons recorded by the 4th respondent while rejecting the application of the 6th respondent. The No Objection Certificate issued for the subsequent applications cannot be made applicable to the 6th respondent. The members of the petitioner society are objecting for grant of NOC in favour of any 3rd party; they are seeking grant of mining lease in their favour. The observations of the 1st respondent with regard to status of the land are vague and without any basis, since the petitioners are claiming for grant of lease over the entire extent of 3 hectares of land. The impugned memo, which was issued, without issuing notice to the members of the petitioner society, is *ex facie* illegal and contrary to record and in violation of principles of natural justice. Hence, the writ petition is filed.'

4. Learned Government Pleader appearing for the respondents 1 to 3 and the learned Government Pleader for Revenue appearing for respondents 4 and 5, supported the impugned revisional order.

5. I have given earnest consideration to the facts and submissions.

6. The case of the petitioner society is that the 6th respondent herein, earlier, having obtained the signatures of the members of the society on the pretext of getting passbooks and title deeds, in-fact applied for quarry lease in respect of the subject land on the basis of alleged relinquishment of rights by the members. Therefore, the case of the petitioners is that the relinquishment was given by the members of the society on a misrepresentation made by the 6th respondent. Learned counsel for the petitioner society, while reiterating the afore-stated pleaded case of the writ petitioner, mainly laid emphasis on the contents of the minutes of the District Level Committee for grant or otherwise of mining leases held on 16.04.2013 and the record thereof in Rc.No.E2/1087/12, dated 25.04.2013. He pointed out that the District Collector, Khammam, has reviewed the cases including that of the 6th respondent in respect of his application for quarry lease over an extent of 3 hectares in Sy.No.1099 of Cheruvumadharam village and that the Collector opined that the said lands were assigned to some beneficiaries and that from them relinquishment was obtained and that it was proposed for granting NOC for quarrying lease in favour of the 6th respondent/applicant. He also pointed out that the Collector has taken serious view of it by stating that such lands cannot be proposed for quarrying lease and that the Collector also stated that in case the assignees are coming forward by a group of society to take up quarry leases, they may be given preference and thus, the District Level Committee has accordingly rejected the application of the 6th respondent and, therefore, the revision order setting aside the rejection order that too without affording to the petitioner society an opportunity of hearing is liable to be set

aside. Learned Government Pleader, while supporting the impugned orders, relied upon the decision in **Maharani Grinite Pvt., Ltd., v. Government of Andhra Pradesh and others**¹ in support of the proposition that while disposing of the revision petition, the petitioner society through its members need not be heard as the petitioner society is having knowledge of the revision petition filed by the 6th respondent and failed to get itself impleaded as a respondent in the revision petition though nothing prevented it from seeking impleadment in the said revision. It is also submitted that as on the date of the 6th respondent filing application for grant of quarry lease there was no other application pending for consideration and the application of the 6th respondent is the prior application and that in respect of certain applicants the Tahasildar concerned issued NOC for the said subsequent applicants stating that the assignees have relinquished their assignments and that the land became a Government land and that, therefore, the revisional order does not suffer from any legal infirmities. He referred to the following relevant paragraphs in the above cited decision, which are as under:

11. It is required to notice that the writ petitioner herein was no where in the picture as on 27-8-1997 when the fourth respondent filed revision petition against the orders dated 9-4-1997 rejecting its application for grant of quarry lease. The petitioner came into picture only on 30-9-1997 when it had filed the application for grant of quarry lease. Obviously, the petitioner was in knowledge of the things and took advantage of rejection of the fourth respondent's application for grant of quarry lease. It is also clear from the record that the fourth respondent filed its application for grant of quarry lease almost about two years prior to the petitioner filing the application for grant of quarry lease. The blame, if any, in the matter, clearly rests on the second respondent herein. It is not explained in the counter affidavit as to why the second respondent failed to take into consideration the

¹ 2000 (1) ALD 663

pendency of the revision petition filed by the fourth respondent, before granting quarry lease in favour of the petitioner on 8-1-1999. The record would reveal that even in the month of November, 1997, the second respondent was aware of the pendency of the revision petition, as the first respondent called for remarks from the second respondent with reference to the fourth respondent's revision petition. The second respondent miserably failed to discharge his duties in a reasonable and fair manner. The Government through Memo dated 23-1-1999 required the attention of the second respondent and once again requested the second respondent to send his remarks in the matter. It is only thereafter the second respondent submitted his remarks in the matter on 29-1-1999. In the said remarks, the second respondent has not stated anything about the petitioner's application for grant of quarry lease and the decision of the second respondent granting lease by proceedings dated 8-1-1999. The second respondent obviously played a dubious game in the matter. It is obvious that the second respondent deliberately withheld the report until 29-1-1999 so as to enable him to grant quarry lease in favour of the petitioner by proceedings dated 8-1-1999. The second respondent, in my considered opinion, ought to have stated about the orders granting quarry lease in favour of the writ petitioner. The facts speak for themselves.

12. The fourth respondent has not committed any irregularity whatsoever in not making the petitioner as a party to the revision petition. No lease has been granted in favour of the petitioner as on the date of filing of the revision petition by the fourth respondent. The petitioner has not even filed his application for granting quarry lease as on the date of filing of revision petition by the fourth respondent. The question to provide reasonable opportunity to the petitioner before disposal of the revision petition does not arise. The first respondent-Government was not even aware of grant of lease to the writ petitioner. Obviously, the petitioner was pursuing the matter and took advantage of there being no interlocutory order in the revision petition filed by the fourth respondent. But, it is difficult to believe that the writ petitioner has no knowledge about the fourth respondent filing the revision petition. Nothing prevented the petitioner from getting itself impleaded as a respondent in the revision petition filed by the fourth respondent. It is also "required to notice that, as on the date of fourth respondent filing application for grant of quarry lease there was no other application. The reasons for rejection of the fourth respondent's

application are totally untenable and unsustainable and in those circumstances the first respondent-Government rightly interfered in the matter and set aside the order passed by the second respondent rejecting the application of the fourth respondent for grant of quarry lease. The revisional order passed by the first respondent, in my considered opinion, does not suffer from any legal infirmities.

He finally submitted that when the application of the 6th respondent is a prior application and when only an authority is conferred upon the District Level Committee to decide on the issuance of no objection certificate in the matter of granting leases, it cannot make observations at one breathe that lands cannot be proposed for quarrying lease and suggest at another that if the assignees come forward by a group of society to take quarry lease, they may be given preference. He, while supporting the impugned order, stated that the revisional authority having considered the matter in detail and having taken into consideration the Tahasildar's report given in cases of subsequent applicants that the land is a Government land, had rightly set aside the rejection orders.

7. A plain perusal of the revisional order makes it manifest that it is a reasoned order. From the facts and submissions, the following facts and aspects are discernable: "The subject land was admittedly assigned in the year 1975. The land, which was covered by big stones, was never under cultivation till the date of passing of the revisional orders, which are impugned. The assignees submitted their relinquishments in Form C. The relinquishment was accepted. The land became a Government land. The application of the unofficial 6th respondent was the prior application received from the same area. The District Collector rejected his application for issuance of no objection certificate stating that the applied area was assigned to landless poor persons and is not in possession of the Government. Based on such report, the

application of the said 6th respondent was rejected. However, while dealing with subsequent applications, NOC was issued stating that the land is a Government land. Hence, 6th respondent in his revision sought to set aside the rejection orders. The Tahasildar also informed that the subject land was assigned in the year 1975. The said fact was also referred to in the letter, dated 24.03.2016, of the Director, Mines and Geology. The land is covered with stones and is not under cultivation at any time till the orders impugned were passed is one of the findings of the revisional authority which is undisputed. The assignees submitted their relinquishments/razinamaas in form C under Rule 16 dealing with relinquishment of land. The said relinquishment was accepted as there are no arrears due on said land. On such relinquishment the land became a Government land. Therefore, on mere allegations that by misrepresentation or by other means the relinquishment was obtained from the members of the petitioner society cannot be countenanced. However, the Assistant Director, Mines and Geology informed that based on the report of the District Collector, the application of the 6th respondent was rejected. The revision was disposed of after opportunity of being heard was given to the 6th respondent/revision petitioner. As it is noticed that the Tahasildar concerned issued NOC for subsequent applicants stating that the assignees have relinquished their assignments and it became Government land, the revision of the 6th respondent was allowed by setting aside the rejection orders. The application of the 6th respondent is a prior application is not in dispute. When the District Level Committee is also of the view that the land in question can be granted on lease for quarrying, it follows that there is no objection in that regard. However, the view that in case the assignees come forward by a group

of society to take up quarry leases they should be given preference cannot be countenanced as the application of the 6th respondent is the prior application.

8. On careful examination of the facts and submissions, this Court finds that the revisional order impugned in this writ petition brooks no interference in view of the analysis of the facts supra and as it is undisputed that the Tahasildar concerned issued NOC for the subsequent applications stating that the assignees have relinquished their assignments and the land became a Government land and as the application of the 6th respondent is prior application.

9. Viewed thus, this court finds that the writ petition is devoid of merit and that the impugned order, which is sustainable, brooks no interference.

10. In the result, the Writ Petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

03.01.2018

VJL