

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 122 of 2024

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ASHWINBHAI HARILAL FALDU

Versus

THE STATE OF GUJARAT

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Appearance:

MR JAY N SHAH(10668) for the Petitioner(s) No. 1

for the Respondent(s) No. 4

MS. DHWANI TRIPATHI, AGP for the Respondent(s) No. 1, 2, 3

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 09/01/2024

ORAL ORDER

1. Issue **RULE**, returnable forthwith. Ms. Dhvani Tripathi, learned AGP waives service of notice of Rule for and on behalf of the respondent Nos.1, 2 and 3. Ms. Kruti Shah, learned advocate for Mr. Jay N. Shah, learned advocate seeks permission to delete the respondent no.4. Permission, as prayed for, is granted.

2. By way of present petition, the petitioner herein has prayed for the following reliefs:

“(a) This Hon’ble Court may be pleased to admit and allow this petition;

(b) This Hon’ble Court may be pleased to issue appropriate writ, order or direction for quashing and setting aside the communication/decision dated 13.12.2023, which is at Annexure – G passed by Geologist, Geology and Mining Department, Amreli;

(c) Pending admission, final hearing and disposal of this petition, stay the implementation and operation the communication/ decision dated 13.12.2023, which is at Annexure – G passed by Geologist, Geology and Mining Department, Amreli direct the respondents to immediately open the online account of the lease of black trap situated at Survey No.16 paiki 6 admeasuring H-3.51.07 sq. meters at Village : Bhakshi, Taluka : Rajula, District : Amreli;

(d) Pending admission, final hearing and disposal of this petition, direct the respondent authorities to permit the petitioner to manufacture and sell the closing stock at present available with the online royalty account of the lease of black trap situated at Survey No.16 paiki 6 admeasuring H-3.51.07 sq. meters at Village : Bhakshi, Taluka : Rajula, District : Amreli, which does not involve any mining activities/blasting activities.

(e) Pending admission, final hearing and disposal of this petition, direct the respondent authorities to permit the petitioner to manufacture and sell the closing stock at present available with the online royalty account of the lease, which does not involve any mining activities/blasting activities.

(f) Grant such other and further relief as thought fit in the interest of justice.”

3. Heard Ms. Kruti Shah, learned advocate with Mr. Jay N. Shah, learned advocate appearing for the petitioner and Ms. Dhvani Tripathi, learned AGP appearing for the respondent Nos.1, 2 and 3.

4. Briefly stated, the petitioner herein is in receipt of

valid quarry lease of black trap in Survey No.16 paiki 6 (private land) admeasuring H-3.51.07 sq. meters at Village : Bhakshi, Taluka : Rajula, District : Amreli, granted vide order dated 10.02.2016 for a period of 20 years. Upon issuance of Notice by the respondent authority, the petitioner herein submitted Strong Motion Investigation Report from Institute of Seismological Research, Raisan, Gandhinagar on 22.01.2020.

5. Ms. Kruti Shah, learned advocate appearing for the petitioner, submitted that the respondent authority issued fresh Notice on 07.11.2023 duly produced at page 55, Annexure – F, requiring the petitioner to submit fresh Strong Motion Investigation Report. Subsequent to the issuance of the said Notice, on 13.12.2023, the online ATR account of the petitioner came to be locked/closed and it was further instructed that no blasting or mining of any kind shall take place at all the leases. Upon producing the scientific report of the results of the latest Strong Motion Investigation Report survey, further action would be undertaken after considering the findings in the said report. In view of the same, the petitioner is constrained to approach this

Court being aggrieved by the impugned order/communication issued by the respondent No.3 on 13.12.2023.

5.1. Ms. Shah, learned advocate, submitted that the petitioner herein also approached the competent authority i.e. respondent No.3 – Geologist on 20.12.2023 and 21.12.2023 with the representations, however, the order impugned has been passed prior thereto and in view thereof, the action undertaken by the competent authority wherein, the online ATR account of the petitioner is locked and the blasting activities are directed to be stopped, is against the settled provisions of law wherein, the notice as contemplated under Rule 5(4) of the Rules, 2017 is not issued and without issuance of the notice, the online ATR account of the petitioner stand locked.

6. Ms. Dhvani Tripathi, learned AGP appearing for the respondent- authority, was not in a position to controvert the aforesaid submissions advanced by Ms. Shah, learned advocate appearing for the petitioner.

7. Considering the submissions advanced by the learned

advocates appearing for the respective parties, in the opinion of this Court, the petitioner herein is in receipt of valid quarry lease for a period of 20 years with respect to the subject land by order dated 18.02.2016 which is uncontroverted. The petitioner also submitted the Strong Motion Investigation Report from Institute of Seismological Research, Raisan, Gandhinagar on 22.01.2020. The online ATR account of the petitioner is closed without following the procedure under the provision of Rule 5(4) of the Rules, 2017.

8. In view of the aforesaid, in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India and considering the facts of the present case, the impugned order dated 13.12.2023 is required to be interfered with on the sole ground that the petitioner herein is in receipt of the valid lease, which is undisputed and the online ATR account stands locked without issuance of the notice under Rule 5(4) of the Rules, 2017.

9. Ms. Shah, learned advocate appearing for the petitioner, on instructions submitted that the petitioner would file

an Undertaking before the competent authority that the petitioner would apply for a fresh Strong Motion Investigation Report, in accordance with notice issued by respondent no.3 – Geologist, on 07.11.2023, which is duly produced at page 55.

10. For the foregoing reasons, the Petition stands allowed. The impugned order dated 13.12.2023 is quashed and set aside. The petitioner to comply with the statement made by Ms. Shah, learned advocate appearing for the petitioner. Once such Undertaking is filed, the respondent authority is directed to unlock/reopen online ATR account of the petitioner herein forthwith. Liberty is reserved in favour the respondent authority to initiate appropriate action in accordance with Rule 5(4) of the Rules, 2017.

11. Rule is made absolute. Direct service is permitted.

(VAIBHAVI D. NANAVATI,J)

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