

(2014) 07 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18906 of 2009

B. Janga Reddy

APPELLANT

Vs

Govt. of A.P.

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

General Clauses Act, 1897 — Section 21
Partnership Act, 1932 — Section 59, 63
Penal Code, 1860 (IPC) — Section 109, 34, 420, 468, 471

Citation : (2014) 6 ALD 475 : (2014) 6 ALD(Cri) 475 : (2014) 5 ALT 431

Hon'ble Judges : A. Ramalingeswara Rao, J

Bench : Single Bench

Advocate : A. Venkateswarlu, Advocate for the Appellant; Hari Sreedhar and M. Damodar Reddy, Advocate for the Respondent

Final Decision : Allowed

Judgement

A. Ramalingeswara Rao, J.—Heard the learned counsel for petitioner, the learned Government Pleader for Mines and Geology for respondents 1 to 4, the learned counsel for respondent No. 5 and 6.

2. The petitioner is engaged in the business of quarrying of mines and is the Proprietor of M/s. Sri Ganesh Mines and Minerals. The sixth respondent firm originally obtained a mining lease in respect of the land admeasuring Acs. 12-10 guntas in survey Nos. 226, 227, 255, 256 and 257 of Remaddula Village, Panagal Mandal, Mahabubnagar District for extraction of Quartz and Feldspar for a period of 20 years vide G.O.Ms. No. 228, Industries and Commerce (MI) Department, dated 09.08.2005.

3. It is the case of the petitioner that the sixth respondent firm approached him and enquired about his willingness to take the lease, as they were unable to continue the mining operations. The petitioner accepted the said offer and applied for transfer of mining lease in favour of M/s. Sri Ganesh Mines and Minerals. After following due procedure, the Government issued G.O.Ms. No. 31,

Industries and Commerce (MI) Department, dated 04.02.2008, transferring the leasehold rights in favour of M/s. Sri Ganesh Mines and Minerals of which the petitioner is a sole proprietor.

4. While so, the first respondent issued the impugned memo No. 3879/M.I. (I)/2009, dated 28.08.2009, keeping the G.O.Ms. No. 228 dated 09.08.2005 granting mining lease in favour of the sixth respondent and G.O.Ms. No. 31 dated 04.02.2008 transferring the said lease in favour of the petitioner in abeyance until further orders. The second respondent was directed to conduct an enquiry into the entire matter by appointing the third respondent as enquiry officer. On a reading of the impugned memo it would indicate that it was issued on the representation of the fifth respondent dated 13.07.2009. Challenging the said memo dated 28.08.2009, the present writ petition was filed.

5. One B. Ram Reddy, the Managing Director of the sixth respondent firm, filed a counter-affidavit stating that the sixth respondent was a registered firm consisting of six partners. Under clause 11 of the Deed of Partnership, the sole authority was vested with him to represent the sixth respondent firm before any authority and it includes the transfer of the leasehold rights of the firm. While so, the fifth respondent and his sister relinquished their rights in the firm under a notarised affidavit on 27.06.2003 and since then, they are not partners in the firm. The remaining four partners continued the affairs of the firm. Since the sixth respondent was unable to continue the mining operations, it offered to transfer the same in favour of the petitioner and accordingly the petitioner applied for transfer of mining lease. Thus G.O.Ms. No. 31 dated 04.02.2008 was issued. While so, the fifth respondent gave a complaint to the official respondents stating that the signatures of the fifth respondent and his sister were forged and the leasehold rights were transferred without valid authority. The matter was entrusted to the fourth respondent to conduct an enquiry and during the course of enquiry the fourth respondent asked the fifth respondent and his sister to give their specimen signatures, since they are disputing the correctness of the signatures on the notarized affidavit. But, they refused to give their specimen signatures and failed to attend further enquiry. Therefore, the fourth respondent submitted his report to the third respondent vide his letter dated 28.05.2009. The fourth respondent in turn submitted further report to the second respondent stating that B. Ram Reddy is the sole representative of the sixth respondent firm and he got power to affect the transfer of mining lease. However, the first respondent issued impugned memo dated 28.08.2009 keeping the orders of transfer in abeyance. It is further stated that the fifth respondent filed a private complaint and the matter was referred to the II Town Police Station, Mahaboobnagar and a case was registered in F.I.R. No. 118/2009 dated 09.07.2009 under Sections 420, 468, 471 and 109 read with Section 34 of IPC. But, in Criminal Petition Nos. 7436 and 7178 of 2009, this Court granted stay of arrest of the petitioner.

6. The fifth respondent filed a separate counter-affidavit stating that he is one of

the six partners of sixth respondent firm and his sister is also one of the partners. The four other partners, other than him and his sister, colluded together and submitted fabricated documents stating that they relinquished their rights in the partnership firm in favour of B. Ram Reddy by forging their signatures and got the mining lease transferred in favour of the petitioner. He stated that he and his sister never executed any document much less an affidavit before the notary relinquishing their rights in the partnership firm and the mining lease was transferred in favour of the petitioner without their knowledge and consent. Till today, their names are being shown as partners in the Registrar of Firms. The fifth respondent further stated that on coming to know the transfer of the lease, he submitted a representation to the second respondent on 04.10.2008 to stop mining activities by the petitioner. On receipt of the said representation, the fourth respondent addressed a letter on 25.11.2008 to all the parties including the petitioner asking them to present before him on 17.12.2008 and submit documents of original partnership deed, original affidavits of him and his sister relinquishing their rights in the firm and original partnership deed of four partners after relinquishment. In pursuance of the said letter, he and his sister appeared before the fourth respondent on 17.12.2008. The petitioner and B. Ram Reddy also appeared. When no action was taken thereafter, he got issued a legal notice on 11.03.2009 and 13.07.2009 requesting the Government to stop the mining activities of the petitioner, as the transfer took place by playing fraud.

7. The fifth respondent further stated that he also filed a criminal complaint before the Judicial First Class Magistrate, Mahabubnagar. Thereafter, taking into consideration the seriousness of the issue, the Government issued the impugned memo dated 28.08.2009 and ordered an enquiry in the matter by appointing the third respondent as an enquiry officer and kept the transfer of the lease in abeyance. He further stated that Section 63 of the Indian Partnership Act, 1932 (for short, Partnership Act) stipulates that whenever a change occurs in the constitution of a registered firm, any continuing partner may intimate about the same to the Registrar of Firms and the Registrar of Firms, on receipt of such information, enquire into the matter and shall file the notice along with the statement relating to the firm u/s 59 of the Partnership Act. Though it was alleged that the he and his sister have relinquished their rights in the firm in the year 2003, no such intimation with regard to change in the constitution of the firm was intimated to the Registrar of Firms. With regard to the non-submission of signatures to the fourth respondent, he stated that fourth respondent never asked for submission of their signatures and admitted signatures are available in the original partnership deed dated 16.02.2000 submitted by B. Ram Reddy on 17.12.2008.

8. The second respondent filed a counter-affidavit on behalf of the official respondents admitting the grant of mining lease for Quartz and Feldspar over an extent of Acs. 12-10 guntas for a period of 20 years. The fourth respondent issued proceedings on 13.12.2005 giving work order in favour of M/s. Anjaneya Minerals. The lease period is from 13.12.2005 to 12.12.2025. The sixth

respondent submitted an application for transfer of mining lease on 06.11.2006. In the affidavit, the sixth respondent submitted that he was unable to continue mining operations effectively due to diversification to other businesses and requested the Government to accord permission under Rule 37 of the Mineral Concession Rules, 1960 (for short, the Rules) to transfer the mining lease in favour of M/s. Sri Ganesh Mines and Minerals. The transferee also filed an affidavit stating that he is willing to get the lease transferred in the name of M/s. Sri Ganesh Mines and Minerals. Based on the affidavits submitted by the transferor and transferee, the fourth respondent processed the transfer application duly inspecting the area. It was recommended for transfer on 27.11.2006 for the unexpired portion of the lease. Accordingly, the Government issued G.O.Ms. No. 31 dated 04.02.2008 according permission to the sixth respondent to transfer lease in favour of M/s. Sri Ganesh Mines and Minerals and a transfer deed was executed by the fourth respondent on 15.02.2008.

9. The second respondent further stated that the third respondent was appointed as an enquiry officer. In pursuance of the letter of the fourth respondent, all the partners except one partner Anand Kumar Reddy attended the enquiry on 17.12.2008. The fifth respondent and his sister refused to give their specimen signatures for tallying the same with the signatures on the original affidavits. They informed that they would give their original specimen signatures only through their advocate. The fourth respondent accordingly submitted a report to the second respondent on 24.12.2008. The second respondent further stated that the fifth respondent in his representation dated 13.07.2009 stated that one of the partners of the firm, Sri B. Ram Reddy, with the collusion of Janga Reddy created false records and transferred the lease in favour of M/s. Sri Ganesh Mines and Minerals. In view of the same, the orders issued earlier in G.O.Ms. No. 228 dated 09.08.2005 and G.O.Ms. No. 31 dated 04.02.2008 are kept in abeyance in the impugned memo dated 28.08.2009.

10. The learned counsel for petitioner confined her arguments to the impugned memo and submitted that the Government has no power to keep the lease granted under G.O.Ms. No. 228 dated 09.08.2005 and the transfer effected under G.O.Ms. No. 31 dated 04.02.2008 in abeyance in exercise of its powers under Rule 37 of the Rules. Even assuming that such a power is available, the said power has to be exercised only after issuing a notice to the affected parties. Hence, the impugned memo dated 28.08.2009 is bad. She relied on a single Judge decision of this Court in C.M. Ramanath Reddy Vs. State of Andhra Pradesh and Others, and a Full Bench decision of this Court in Government of Andhra Pradesh and another Vs. Y.S. Vivekananda Reddy and others, .

11. The learned counsel for sixth respondent submitted that the lease was validly transferred in favour of the petitioner and the impugned memo is bad.

12. The learned Government Pleader for Mines and Geology appearing for respondents 1 to 4 submits that the Government, while issuing the impugned memo, exercised its power under sub-rule (3) of Rule 37 of the Rules and when

it is exercising such a power as per proviso to the said sub-rule, the orders should not have been passed without giving the reasonable opportunity to the lessee to present his case.

13. On the other hand, the learned counsel for fifth respondent submits that the Government did not exercise its power under sub-rule (3) of Rule 37 while issuing the impugned memo and it has no application to the instant case. The impugned memo is in the nature of an interim order which can be vacated at the instance of the aggrieved party. The petitioner, instead of approaching this Court, should have approached the Government for vacating the stay order. The Government which is the competent authority to effect transfer of lease can cancel such transfer and such power is inherent in the Government u/s 21 of the General Clauses Act which is applicable to the instant case. He relied on a decision the Hon"ble Supreme Court in Liberty Oil Mills and Others Vs. Union of India (UOI) and Others, .

14. In view of the averments and contentions of the respective parties, this Court feels it not proper to go into the merits of the case, except examining the scope of the power of the Government under Rule 37 of the Rules and validity of the impugned memo Relevant portion of Rule 37 reads as follows:

"37. Transfer of lease.-(1) The lessee shall not, without the previous consent in writing of the State Government and in the case of mining lease in respect of any mineral specified in [Part "A" and Part 13" of] the First Schedule to the Act, without the previous approval of the Central Government:-

(a) assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, or

(b) enter into or make any [bona fide] arrangement, contract, or understanding whereby the lessee will or may be directly or indirectly financed to a substantial extent by, or under which the lessee's operations or undertakings will or may be substantially controlled by, any person or body of persons other than the lessee:

Provided that where the mortgagee is an institution or a Bank or a Corporation specified in Schedule V, it shall not be necessary for the lessee to obtain any such consent of the State Government.

(1-A) The State Government shall not give its consent to transfer of mining lease unless the transferee has accepted all the conditions and liabilities which the transferor was having in respect of such mining lease.

(2)

(3) The State Government may, by order in writing determine any lease at any time if the lessee has, in the opinion of the State Government, committed a breach of any of the provisions of sub-rule (1) or sub-rule (1A) or has transferred any lease or any right, title or interest therein otherwise than in accordance with sub-rule (2);

Provided that no such order shall be made without giving the lessee a reasonable opportunity of stating his case."

15. A reading of Rule 37(1) and 37(1-A) shows that no lessee shall assign, sub-let, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein, except with the previous consent in writing or the State Government and the State Government shall not give its consent for such transfer unless the transferee has accepted all the conditions and liabilities which the transferor was having in respect of such mining lease. There is no guidance with regard to exercise of such power by the State Government or Central Government in appropriate cases to effect the transfer of lease. Rule 37(2) only says that the transfer can be made to a person who has filed an affidavit stating that he has filed up-to-date income tax returns, paid the income tax assessed on him and paid the income tax on the basis of self-assessment as provided in the Income Tax Act, 1961 on payment of a fee of Rs. 500/- to the State Government.

16. Instances have come to the notice of this Court of disputes of this nature where the transferors, after having effected transfer in favour of the transferees, re-negating from such transfer. This Court noticed in one case that the order of transfer was challenged even though the lessee filed a notarized affidavit accepting transfer of lease and later on alleging that the signature on such affidavit as forged. In the instance case, the transfer of lease in favour of sixth respondent firm is challenged by two of the partners on the ground that they have never consented and raising various other disputes touching upon the provisions of the Partnership Act. Neither the State Government nor the authorities, while exercising powers under the Rules, are incompetent to decide the disputes of this nature. These disputes have to be settled elsewhere and the decision of the authorities would be dependent on the decision of a judicial forum which is competent to decide such disputes. The Government should think of making an appropriate amendment to Rule 37 of the Rules by imposing the condition of publication of proposal to transfer the lease in two leading newspapers in the area where the mining operations are conducted and secure the personal presence of the transferor and the transferee before effecting the transfer. In the absence of such safeguards, the disputes of the present type are bound to come.

17. The learned single Judge of this Court in C.M. Ramanath Reddy Vs. State of Andhra Pradesh and Others, , examined a case where the Government issued a letter informing that the orders earlier issued permitting sub-lease was kept in abeyance, pending further examination. Similar contentions as were raised in this case were raised before the learned single Judge, submitting on behalf of the petitioner that the Government has no power either under the Mine and Minerals (Development and Regulation) Act, 1957 (for short, the Act) or the Rules to keep the permission under abeyance. The order of abeyance was sought to be sustained by the respondents on the ground that the authority which has the power to grant permission has also the power to suspend or withdraw the same.

Rule 37 of the Rules was considered by the learned single Judge and was held that in view of the power to terminate the lease under sub-rule (3) of Rule 37, no power to suspend the permission granted under Rule 37, can be inferred. The learned Advocate General also advanced the argument that the impugned order in that case was only an interim order to maintain the status-quo till a decision is taken whether to proceed with the enquiry or not and in the case of such interim order, the principles of natural justice need not be followed. The learned single Judge also considered the contentions of the learned counsel for the petitioner that before passing the impugned order suspending the Government Order, no opportunity was given to the petitioner of being heard, therefore, the principles of natural justice are violated and the impugned order was void. The learned single Judge came to the conclusion that by passing an order in the nature of impugned order therein, the rights of the sub-lessee would be adversely affected and no immediate harm would have ensued to the public or to the Government if a notice is given before passing the impugned order and accordingly, the order impugned was declared as violative of principles of natural justice.

18. Similar issue came up for consideration before the Full Bench of this Court in Government of Andhra Pradesh and another Vs. Y.S. Vivekananda Reddy and others, , while considering the validity of cancellation of sub-lease by the lessee. Before the Full Bench, it was contended that after the lessee transferring the mining lease by way of sub-lease, the consent given by the State Government will work out itself and nothing will survive for being withdrawn by the State Government and reliance was placed on the judgment of this Court in C.M. Ramanath Reddy Vs. State of Andhra Pradesh and Others, . The said argument was countered by the learned Advocate General relying on Section 21 of the General Clauses Act as was done by the learned counsel appearing for the fifth respondent in the instant case. The Full Bench held as follows:;

"38. In our view the power to withdraw the consent earlier given by the State Government under Rule 37 of the Rules to the Lessee to enter into sub-leases, can be exercised so long as it is capable of being rescinded or withdrawn as this exercise should be subject to the like conditions. When on the strength of the consent to enter into sub-leases for mining, the lessee has executed sub-lease deed and thus the consent culminated into contract and the sub-lessee has already commenced the mining operations, the consent has worked out itself and cannot be withdrawn at that stage as the conditions existing at the time of giving consent have changed. A close reading of the Rule 37 of the Rules, shows that having regard to the scheme of the Rule, the concept of withdrawal of the consent given to the Lessee for entering into sub-leases is inconsistent with the power conferred thereunder; so by invoking Section 21 of the General Clauses Act, the State Government cannot purport to withdraw the consent."

19. The Full Bench also held that even assuming that the State Government is competent to order premature termination of lease as well as withdraw the consent given under Rule 37 of the Rules, the impugned orders cannot be

sustained as they were passed without giving an opportunity of being heard to the affected parties and in violation of the principles of natural justice as admittedly the sub-lessees have been carrying on the mining operations after they entered into sub-leases which were pursuant to consent, granted under Rule 37 of the Rules.

20. Thus, the Full Bench authoritatively held that Section 21 of the General Clauses Act is not available to a case of this nature and the orders of abeyance cannot be passed without issuing any notice to the affected parties. In spite of this authority, the learned counsel for fifth respondent vehemently contended raising similar contentions as were raised by the learned Advocate General in those cases. He also relied on *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, and contended that ad interim orders may always be made ex parte and such orders themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make a provision for such an opportunity, an aggrieved party has nevertheless always have the right to make an appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would have satisfied, if the aggrieved party is given an opportunity at his request. The said decision relied on by the learned counsel for fifth respondent itself states that there can be no tape-measure of the extent of natural justice. It may and indeed must vary from statute to statute, situation to situation and case to case. The said statement was made subject to a caution that if the statute itself provides for a hearing before the order is made, the principles of natural justice have to be followed.

21. In the instant case, the Legislature thought it fit to provide sufficient safeguard in Proviso to sub-rule (3) of Rule 37. The said safeguard has to be followed in letter and spirit. In any event, the Government is incompetent to decide the title of the parties or inter se dispute of the parties. It is stated by the learned counsel for fifth respondent that the writ petitioner filed O.S. No. 96 of 2014 on the file of the VII Senior Civil Judge, City Civil Court, Hyderabad, seeking specific performance of the agreement dated 08.07.2005 and Memorandum of Understanding dated 13.10.2004 covering several leases including the lease under dispute. The fifth respondent also filed a criminal complaint against B. Ram Reddy alleging forgery of signatures and the said complaint was registered as Crime No. 118 of 2009 by the II Town Police, Mahaboobnagar. The entire issue would have obviated if sufficient safeguard is taken while exercising the power under sub-rule (1) of Rule 37. In any event, the State Government consented for the transfer of lease held by the sixth respondent in favour of the petitioner and a transfer lease deed in Form-O was also executed as contemplated under Rule 37-A. In pursuance of the said transfer, the petitioner was doing mining operations and the same was stalled by the impugned order. The Government thought of conducting an enquiry confining to the prima facie validity of transfer without going into the serious dispute relating to forgery and other allegations. The Government should have conducted

a summary enquiry to satisfy itself of the validity of order of consent without affecting the rights of the writ petitioner. The allegation of forgery and other rights of the parties under the Indian Partnership Act have to be decided by a competent judicial forum, but not by the Government. In case of such summary enquiry, the power is available only under sub-rule (3) of Rule 37. The procedural safeguard contained in Proviso to the said sub-rule has to be followed by the Government which was not done in the instant case. Hence, principles of natural justice have been clearly violated while passing the impugned order.

22. In view of violation of principles of natural justice and in view of lack of power of the Government to pass any order of keeping the order of consent in abeyance under the Rules as held by the decisions of the this court, the impugned memo dated 28.08.2009 is invalid and is liable to be set aside. Accordingly the same is set aside.

23. The writ petition is allowed. No costs. Miscellaneous

Petitions pending, if any in this writ petition, shall stand closed.

That Rule Nisi has been made absolute as above.