

(2002) 02 AP CK 0076

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 24899 and 25806 of 2001

Guda Anjaneyulu and Another

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 06-02-2002

Acts Referred:

Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 35A
Constitution of India, 1950 — Article 226

Citation : AIR 2002 AP 295 : (2002) 3 ALD 387 : (2002) 4 ALT 755

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : B. Narasimha Sharma and B. Nagi Reddy, for the Appellant;
Government Pleader for Industries, Government Pleader for Revenue and P.
Chandrasekhar, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—WP No. 25806 of 2001: In this writ petition, the petitioners seek for a direction in the nature of writ of mandamus to declare the impugned proceedings vide No. 17752/R3(2)/2001, dated 29-8-2001 granting prospecting licence and the quarry licence vide proceedings No. 34354/R3/2/2001, dated 12-11-2001, issued by the 2nd respondent in favour of the 7th respondent as arbitrary, illegal and vitiated by mala fide, mis-representation and fraud and contrary to the directions of this Court issued in WP No. 7303 of 1993, dated 16-2-2000.

2. When this writ petition is taken up for hearing, it is brought to my notice that having aggrieved by the impugned order, the petitioners preferred an appeal before the 1st respondent-Government but the same has been treated as revision and the same is pending.

3. At this juncture, it is contended by Mr. Sharma, the learned Counsel for the petitioners in WP No. 25806 of 2001 that the petitioners are claiming title over the property and filed OS 12 of 2000 on the file of the Additional District Judge,

Ongole seeking for declaration of title and all the official respondents are arrayed as defendants therein and that the respondents having received the notices and aware of the proceedings, ought not to have processed the application of the 7th respondent for the grant of prospecting licence and also the quarry lease and that the NOC issued on 18-3-2000 is contrary to the judgment of this Court in WP No. 7303 of 1993, dated 16-2-2001 by which Collector was directed to enquire into this matter and ascertain the facts from the revenue records and only thereafter issue no objection certificate in respect of S.Nos.55/1 to 55/6 of R.L. Puram village, Chimakurthy Mandal. As on the date of the enquiry, the petitioners' application is pending and that the Mandal Revenue Officer having knowledge about the judgment of this Court, ought to have referred the matter to the Collector. It is further contended that the petitioner filed an appeal, but the same was treated as a revision and the same is pending. Availing of alternate remedy is not a bar nor efficacious and the impugned order is contrary to the order passed by this Court, which cuts the very root of the case and the balance of convenience lies in favour of the petitioner.

4. In support of his contention that alternate remedy available to the petitioner, is not a bar to entertain this writ petition, he relied on a judgment of the Apex Court reported in Ram and Shyam Company Vs. State of Haryana and Others, , wherein it is held as follows:

"Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the writ petition. The learned single Judge as well as the Division Bench recalling the observations of this Court in Assistant Collector of Central Excise v. Jainson Hosiery Industries rejected the writ petition observing that "the petitioner who invokes the extraordinary jurisdiction of the Court under Article 226 of the Constitution must have exhausted the normal statutory remedies available to him". We remain unimpressed. Ordinarily it is true that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rules, which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in State of U.P. v. Mohammad Nooh it is observed "that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy". It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the rules to grant

contract, but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister? The ditch of appeal from Ceasar to Ceasar's wife can only be bettered by appeal from one's own order to oneself. Therefore, this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court."

5. As against this, it is contended by the learned Government Pleader that when the petitioners have already filed a revision before the Government under Rule 35-A of the A.P. Minor Minerals Concessions Rules, 1966 and the same is pending, the petitioners cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

6. In the facts and circumstances and in the light of the legal propositions relied on by the learned Government Pleader, without expressing any opinion on the merits of the case, I am of the considered view that when admittedly, the petitioners are availing the statutory remedy in the light of the provisions of Rule 35-A of the A.P. Minor Minerals Concession Rules, 1966, which is pending before the Government, the petitioners cannot move this Court invoking the jurisdiction under Article 226 of the Constitution. Accordingly, this writ petition is liable to be dismissed and consequently, the interim suspension granted on 20th December, 2001 in WPMP No. 32670 of 2001, stands vacated.

7. Now, let us deal with the merits of the case of the petitioner in Writ Petition No. 24899 of 2001, in which it is narrated that an extent of Ac.3.36 cents in S.No. 55/6 situate in R.L. Puram village, Chimakurthy Mandal belongs to the petitioner-firm and it contains granites. The petitioner-firm formed with the object of obtaining quarry lease for granites in the said land. A firm by name Raghavendra Granites and another firm by name Sai Enterprises obtained no objection certificate from the 3rd respondent, for which the petitioner firm filed an application before the 3rd respondent on 20-3-2000. While so, the firm Sai Enterprises having obtained the no objection certificate was dissolved and some of the parties of the said firm formed into a new firm known as Golden Granites i.e., the 5th respondent, which is pressurizing the 3rd respondent to issue no objection certificate. On that, the petitioner-firm got issued legal notices to respondents requesting not to issue no objection certificate. The petitioner filed WP No. 18624 of 2001 seeking for a direction to respondents 1 to 3 to complete the enquiry with reference to RGB 290/1996, dated 4-4-2000 of the 3rd respondent and also for a direction to the 4th respondent not to issue any quarry lease to 3rd parties including the 5th respondent to an extent of Ac.3.36 cents in S.No. 55/6 of R.L. Puram and the said writ petition was disposed of on 6-9-2001

with a direction to the 3rd respondent to complete the enquiry and dispose of the application of the petitioner for grant of NOC as expeditiously as possible preferably within a period of three weeks from the date of receipt of copy of the order, but so far, no order has been passed. Even during the year 1993, on the writ petition in WP No. 7303 of 1993 filed by one Guda Subramanyam and Guda Anjaneyulu who are the petitioners in WP No. 25806 of 2001, this Court had disposed of the same on 16-2-2000 directing the 1st respondent-Collector to conduct enquiry and thereafter, issue NOC in respect of S.Nos.55/1 to 55/6 of R.L. Puram village, Chimakurthy Mandal, Prakasam District. But, without considering the above directions, the 4th respondent issued a prospecting licence and quarry lease in favour of the 5th respondent under the impugned proceedings. The said proceedings are also liable to be vitiated, as one Sulochana, one of the parties to the firm is no other than the wife of the Deputy Director of Mines, Guntur. The petitioner also got issued legal notice, dated 22-9-2001 to respondents 1, 3 and 7 pointing out the fraud and misrepresentation, which vitiates the impugned proceedings. Hence the writ petition is filed seeking for a direction to declare the quarry lease issued by the 4th respondent in favour of the 5th respondent dated 12-11-2001 vide proceedings No. 34354/R3/2/2001 as illegal and the same is vitiated by mala fides and misrepresentation and fraud.

8. Respondents have filed the common counter wherein while denying the allegations, it is inter alia contended that this writ petition is misconceived and not maintainable inasmuch as the suit in OS 158 of 1992 on the file of Additional Senior Civil Judge, Ongole, filed by the petitioner seeking for declaration of ownership over an extent of Ac.1.99 cents in S.No. 55/6 situate of R.L. Puram village, Chimakurthy Mandal, was dismissed on 31-12-1999 and on the appeal by plaintiffs 1 and 2 against the judgment in OS No. 158 of 1992, this Court has dismissed the appeal suit in AS No. 1089 of 2000 on 3-8-2001 holding that they are not entitled to the declaration and the consequential reliefs. The petitioner has suppressed all these facts. Moreover, the representation of the petitioner was already disposed of by the Mandal Revenue Officer on 28-11-2001 duly communicating the same to the petitioner. The 5th respondent applied for grant of prospecting licence for black granite over an extent of Ac.6-78 cents in S.No. 55/6 of R.L. Puram and the same was received in the office on 25-5-2000 and on the same day, the Mandal Revenue Officer was requested to inform the classification and availability of the land for grant of prospecting licence. The Mandal Revenue Officer having responded to the earlier application of the 5th respondent, dated 25-2-1999 has furnished a report dated 18-3-2001 mentioning that the subject area of Ac.6.78 cents in the patta land of one Sulochana in an extent of Ac.3-00 and one M. Rambau in an extent of Ac.3.78 cents in S.No. 55/6 of R.L. Puram who are the partners of the 5th respondent and one Venkatarao who is the GPA holder of M. Rambabu, is having full rights and as such there is no objection to grant quarry lease for black granite for a period of 15 years. Basing on the said report, the application of the 5th

respondent was recommended for grant of prospecting licence and accordingly, the 4th respondent-Director of Mines by his proceedings dated 29-8-2001 granted prospecting licence for a period of two years and in pursuance of the same, the deed of prospecting licence was executed and work orders were issued for a period of two years with effect from 31-8-2001 to 30-8-2003. Subsequently, on the application of the 5th respondent for grant of quarry lease for black granite for a period of 20 years, the 4th respondent granted a quarry lease by his proceedings dated 12-11-2001, for a period of 20 years and in pursuance of the same, the deed of quarry lease was executed and work orders were issued by proceedings dated 16-11-2001, for a period of 20 years with effect from 16-11-2001 to 15-11-2021. The suit in OS No. 158 of 1992 was dismissed holding that the plaintiffs including the petitioner-3rd plaintiff therein are not entitled to the declaration of ownership and permanent injunction and the 3rd defendant has no title to or possession of the property covered by S.No. 55, from whom the plaintiff alleged to have purchased. G.O.Ms. No. 181, I&C Department, dated 28-5-1998 contemplates the procedure as to the processing of the application for prospecting licence and that if no report is received from the Collector within 30 days from the date of receipt of the report of the Mandal Revenue Officer, it will be assumed that the Collector has no objection. In the instant case, there is a clear gap of 5 months between the report of the Mandal Revenue Officer and the order of the Director and as such, it is assumed that the Collector has no objection. The contention that the impugned is liable to be vitiated by mala fides, fraud and misrepresentation, is baseless. Regarding WP 7303 of 1993, the petitioner is not a party to the said petition land there were no directions to the Department of Mines and Geology. The impugned orders have been passed only after disposal of appeal suit in AS 1089 of 2000, dated 3-8-2001 and after following the due process of law. As a matter of fact, the petitioner has not filed any application for grant of prospecting licence or quarry lease in S.No. 55/6. Hence, there is no fraud, misrepresentation and mistake of fact in the grant of prospecting licence in favour of the 5th respondent.

9. On the rival contentions, the point that arises for consideration is, whether in the fact and circumstances of the case, the alternative remedy is neither efficacious nor a bar to file this writ petition and whether the impugned order suffers from any legal infirmity?

10. Heard Mr. Ayyapureddy, the learned senior Counsel for the petitioner, Mr. E. Manohar, the learned senior Counsel for the respondents-5 and the learned Government Pleader for the official respondents.

11. It is contended by Mr. Ayyapureddy, the learned Counsel for the petitioner that the petitioner is claiming Ac.3.36 cents as the owner and the remaining is being claimed by the other petitioners in WP No. 25806 of 2001. Originally, the land is situate in Soutam village. The source of title of the land in question, derived from their ancestors. Earlier, it was a rocky area and now because of this demand for black granite, it has become a quarry land. The wife and daughter of

the official respondents are partners in R5 firm. Rules have not been followed and the 3rd respondent who has no jurisdiction, has given no objection certificate and in support of his contention, he relied on an unreported judgment of this Court in WP No. 7303 of 1993, dated 16-3-2000, which was disposed of directing the Collector to conduct enquiry and thereafter, take appropriate action. The Mandal Revenue Officer ought not to have issued the NOC on 18-3-2000, which is contrary to the directions issued by this Court. The petitioner filed an application for grant of ryotwari patta on 20-3-2000 under the provisions of the Act and without any enquiry and notice, the same was dismissed and an appeal is pending before the RDO and the 5th respondent firm came into operation only on 25-5-2000. The Assistant Director being a party to the writ petition and having fully been aware that the Collector has to deal with the matter as per the Act, referred the matter to the Mandal Revenue Officer contrary to the directions issued by this Court. The Collector alone, is competent to issue the NOC. The officials acted fast and precisely in granting the licence and the application for prospecting licence was filed on 25-5-2001 and the same was granted within 3 months. The 5th respondent made an application for the grant of lease on 12-10-2001 and the lease was granted on 12-11-2001. It is further contended that with regard to the granting of lease for the granites, the Conservation Development Rules 1999 are applicable, which is a later rule, under which the competent authority for granting of lease is the State Government, but not the Director and that the State Government has to take a decision. The mining plan is to be drawn and prepared by the authorized officer, for which, a detailed procedure is contemplated under Rules 12, 13, 14 and 15 of the Granite Conservation and Development Rules 1999 and that the Director has no jurisdiction and that the A.P. Mining Concession Rules, are not applicable in the instant case. The authority was aware that the application of the Reliance Company, dated 2-5-1997 was pending. The NOC granted is contrary to the judgment of this Court in WP No. 7303 of 1993. Though the petitioner got issued the legal notice, the authorities have not taken into consideration the said aspect. It is further contended that the wife and daughter of the Deputy Director are one of the partners in the respondent 5 firm and as such, the action of the Director in granting prospecting licence, is with a mala fide intention, which vitiates the impugned proceedings.

12. It is lastly contended that alternate remedy is neither efficacious nor a bar to entertain the writ petition and in support of his contention, he relied on a judgment of this Court reported in *A. Suribabu v. Registrar of Co-operative Societies* 1999 (1) ALT 239, wherein it is held thus:

"Ordinarily the High Court shall not exercise its jurisdiction when there is an effective alternative remedy. As has been held repeatedly this rule of prudence has three exceptions, one such exception being that availability of alternative remedy is not a bar for approaching this Court when the order is passed contrary to the provisions of the Act. In the present case, admittedly before passing an order on 3-7-1999, the 3rd respondent has not consulted the financing bank as

required u/s 34 (6) of the Act."

13. He further relied on a Division Bench judgment of this Court reported in *M. Raja Rao Vs. Govt. of A.P. and Others*, , wherein it is held thus:

"The exercise of alternative remedy is not a rule of law, but is a matter of convenience. Where an order prima facie is illegal or contrary to a statute or suffers from non-compliance of principles of natural justice or violation of any of the fundamental rights the Court can exercise its powers under Article 226 of the Constitution of India. The facts narrated reveal that the demand made by the Assessing Authority is quite arbitrary and illegal. The amount determined by him is not preceded by any enquiry or hearing. Further the said demand runs contrary to Section 4 of the Act. The plea of alternative remedy also was not urged by the State when the matter was pending before the learned single Judge. The learned Government Pleader made a reference to Rule 33 of the Rules but on facts its application has no effect. Accordingly non-exhausting the alternative remedy has not vitiated the proceedings."

14. In support of his contention that since the impugned proceedings are issued with a mala fide intention, the same is liable to be vitiated, he relied on a judgment of this Court reported in *Ch. Seetharamaiah Vs. Andhra Pradesh Paper Mills Limited, Secunderabad*, , wherein it is held thus:

"Constitution of India, Article 226 mala fides petitioner made serious personal allegation against the 2nd respondent-Executive Director of the Company alleging forced resignation and attributing mala fides in accepting resignation even before expiry of notice period and also in terminating his services. No counter-affidavit filed by 2nd respondent traversing those allegations-Allegations have therefore to be taken to have been admitted."

15. As again this, it is contended by Mr. E. Manohar, the learned senior Counsel appearing on behalf of respondents 5 that the petitioner is not an applicant for grant of quarry lease and he never applied for prospecting licence and that the Director granted prospecting licence under Rule 12(5) of A.P. Minor Mineral Concession Rules, 1966, which contemplates the procedure as to the forwarding of the Mandal Revenue Officer who in turn on receipt of the application from the Assistant Director of Mines, enquire into the availability of the area and classification of the plan. The petitioners bypassing the statutory remedy provided under Rule 35(a) of the Rules, filed this writ petition. Insofar as the title of the petitioner, is concerned, the suit in OS No. 158 of 1992 on the file of the Additional Senior Civil Judge, Ongole, filed by the petitioner and others seeking for declaration of title and for permanent injunction restraining the Collector from grant of NOC, was dismissed, but no appeal has been preferred by the 3rd plaintiff petitioner and thereby it has become final against him and apart from that, on appeal by the other plaintiffs therein, this Court in AS 1089 of 2000 dismissed the same on 3-8-2001 confirming the judgment of the trial Court. Item 1 of the schedule is Ac 5.07 cents and item 2 of the schedule is Ac.1,99

cents situate in S.No. 55/6 of Raipulem village, Chimakurthi Mandal, Ongole District and insofar as the Government officials are concerned, they are arrayed as defendants 10 to 14. Defendants 3 and 4, who are the petitioners in WP 25806 of 2001 remained ex parte in trial Court as well as the appellate Court. It is further contended that the quarry lease application of 5th respondent was submitted to the Assistant Director on 25-5-2000 and on the same day, the Mandal Revenue Officer was requested to inform the classification and availability of the land and on the report of the Mandal Revenue Officer, dated 18-3-2001, the application was submitted on 12-10-2000 to the Director and the quarry lease was granted on 10-11-2001 and the lease was executed on 16-11-2001 after fulfilling the statutory requirements and paying the necessary fees. It is further contended that the petitioner is not the applicant, so that it is not open for the petitioner to challenge the validity of the lease, in as much the title of the petitioner was already decided and it was negatived.

16. It is further contended that on receipt of the application, the Assistant Director referred the matter to the Mandal Revenue Officer to enquire about the availability and classification of the land under G.O. Ms. No. 181, I&C Department, dated 28-5-1998. The 5th respondent sent the application on 25-5-2000 to the Assistant Director who in turn referred the same to the Mandal Revenue Officer and on 18-3-2001, the Mandal Revenue Officer, Chimakurthy has sent a report and pursuant to G.O.Ms.No. 227, I&C (M-1) dated 23-3-2000, Sub-rule 5(a)(i) of Rule 12 of the A.P. Minor Mineral Concession Rules, 1966 was substituted under which a prospecting licence or quarry lease for granite useful for cutting and polishing shall be granted by the Director on an application made to the Assistant Director. It is further contended that the petitioner suppressed all the material facts and came to the Court with unclean hands bypassing the statutory remedy and as such, no indulgence is warranted to exercise the equitable jurisdiction.

17. He has drawn by attention to the Division Bench judgment of this Court reported in *Allauddin Charities and Zakath Wakf Vs. Hameed Ali and Others*, , in which it is held thus:

"Under Sub-section (5) of Section 83, the Tribunal constituted under Sub-section (1) of Section 83 shall be deemed to be a civil Court and shall have the same powers as may be exercised by a civil Court under the CPC while trying a suit or executing decree or order. Hie jurisdiction of the civil Court is specifically barred u/s 85 of the Act. Therefore, when the Tribunal has been conferred with the power to determine any dispute, question or other matter relating to a Wakf or Wakf property under the Act and acts as a civil Court for all purposes, this Court, in exercise of the jurisdiction under Article 226 of the Constitution, cannot permit a party to bypass such statutory remedy and assign itself the role of statutory authority or Tribunal by dealing with the disputed questions of fact or title. It is only after the issue or dispute is determined by the Tribunal at the first instance, the High Court, in exercise of the power under the proviso to Sub-section (9) of

Section 83 of the Act gets jurisdiction and can go into the correctness and can go into the correctness, legality or propriety of such determination and may confirm reverse or modify such determination or pass such other order it may think fit. We are, therefore, of the view that unless the party aggrieved of the orders of the CEO has availed of the alternative remedy available to him under the statute and the Tribunal has determined the issue or dispute or the nature of the property as provided under the provisions of the Act, this Court, cannot go into question of validity of the orders passed by the Chief Executive Officer."

18. It is further contended by the learned senior Counsel that when there is an effective and adequate alternative remedy available to the petitioner by way of revision to the Government u/s 35-A of the A.P. Minor Minerals and Concession Rules, 1966, which is a Code by itself, the petitioners having not exhausted that statutory remedy, cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. In support of this contention, he relied on a decision of the Apex Court reported in *State of Goa and Others Vs. A.H. Jaffar and Sons*, wherein it is held as under:

"Mines and Minerals-Mineral Concession Rules, 1960-R30-Application of respondent for mining lease-Rejected u/s 10(3) of the 1957 Act by Commissioner and Secretary as delegate of State Government by virtue of notification issued u/s 26 of the Act-Order of Commissioner set aside by the Minister for Mines and direction issued to grant the lease-Order of Minister set aside by State Government-Order of State Government quashed and that of the Minister restored by High Court under Article 226- Held, proper course for the respondent was to invoke remedy of revision by the Central Government under R 30 Mines and Minerals Regulation and Development Act, 1957, Section 10(3) and 26"

19. He further relied on a decision of the Apex Court reported in *Sheela Devi v. Jaspal Singh* 1999 (1) SCC 207, wherein while disposing of the petition, it is held thus;

"No reason has been given by the respondent for not availing of the remedy of revision u/s 18 of the UP Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The respondent straightaway filed a writ petition before the High Court where the High Court had re-examined the facts. The impugned order of the High Court is set aside. The respondent will be at liberty to avail of the alternate remedy of revision, if he so desires."

20. The learned Government Pleader has produced the record and filed the counter-affidavit. While drawing my attention to the record showing the site plan prepared and drawn by the recognised person authorized by the competent authority as per the rules, it is contended that the said plan has been prepared by the recognized person as per the rules contemplated under Granite Conservation and Development Rules, 1999, and, as such there is no infirmity. It is contended that with regard to the grant of mining lease, the granite being the minor minerals, the provisions of A.P. Minor Mineral Concessions Rules, 1966 are

attracted. Rule 12(5)(a)(i) contemplates the procedure as to the grant of prospecting licence or quarry lease and that after adhering to the procedure, the Director on an application made by the 5th respondent to the Assistant Director, granted, the prospecting licence. It is further contended that against the said order granting prospecting licence by the Director, a revision lies to the Government under Rule 35-A of the A.P. Minor Mineral Concession Rules, 1966 whereunder the Government may either suo motu at any time or on an application made within 90 days, call for and examine the record relating to any order, so as to decide as to the legality or propriety of such order or as to the regularity of such proceedings. Without exhausting that alternate remedy, the petitioner has approached this Court invoking the jurisdiction of this Court under Article 226 of the Constitution of India and as such, the writ petition is not maintainable. In support of his contention, he relied on a decision of the Apex Court reported in *State of Goa and Others Vs. A.H. Jaffar and Sons*, , wherein it is held thus:

"The appeal has been argued at length. Shri Siraj Sait has attempted to support the judgment with industry and precision. But it does not appear necessary to decide whether the finding recorded by the High Court that the order of Commissioner being administrative in nature it could be reviewed by the State Government nor it is necessary to decide whether the Minister could exercise any power where the grant of lease is regulated by the statute as in our opinion the remedy of revision having been provided by Section 30 of the Act, the proper course for the respondent was to approach the Central Government and not the High Court. Learned Counsel for the respondent expressed apprehension that the period for limitation provided in Rule 54 of the Minerals Concession Rules, 1960 having expired, the revision might not be entertained. The proviso to the rule, however, empowers the revising authority to condone delay if it is satisfied that the revision could not be presented for sufficient cause within time. Since the respondent was pursuing its remedy in High Court bona fide, it would be sufficient cause to condone the delay and we trust that the revision if preferred within four weeks from today shall not be dismissed as being barred by time.

21. Further, he has drawn my attention to the judgment of this Court reported in *Hampi Enterprises, Santhavelur, Varasapalem Mandal, Chittoor Dist. Vs. Director of Mines and Geology, Hyd. and others*, , wherein, it is held thus:

"Having regard to the pre-eminent occupation of the field of regulation of mines and minerals development by the provisions of the Act and the pro tanto eclipse of the State legislative field, in the light of the subjection clause in Entry 23 of the State List, the field enumerated in Entry 54 of the Union List coupled with the declaration of expediency of Union control in Section 2 of the Act, the inevitable constitutional position is that the rules made by the State Government in respect of minor mineral insofar as they relate to the mineral granite, in exercise of the rule making power delegated to the State u/s 15 of the Act, will operate subservient to the 1999 Rules made by the State Government in exercise of

powers u/s 18 of the Act. The provisions of Section 14 of the Act also warrant the interpretive analysis that the rules made by the Central Government within the sphere permitted by Section 18 prevail over the rules made by the State Government u/s 15, insofar as these rules relate to the field of the subordinate legislation enabled by Section 18 of the Act."

22. While drawing my attention to Rules 52 and 53 of the Granite Conservation and Development Rules, 1999, which read as under:

Rule 52. Applicability of the Provisions of Minor Mineral Concession Rules framed by the State Government:--The provisions of the Minor Mineral Concession Rules or any other rules framed by the State Government u/s 15 of the Act shall be applicable to granite quarry leases to the extent they are repugnant to or inconsistent with these rules.

Rule 53. Delegation of powers :--The State Government may, by notification in the official gazette, direct that any power exercisable by it under these rules may, in relation to such matters and subject to such conditions, if any, be exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification.

It is contended by the learned G.P. that the A.P. Minor Mineral Concessions Rules, 1966 are applicable in the instant case. Further while drawing my attention to the notification in G.O. Ms. No. 42, Industrial and Commerce (Mines 1) Department, dated 13-1-2000, wherein it reads as under:

"In exercise of the powers conferred under Rule 53 of the Granite Conservation and Development Rules, 1999, the Government of Andhra Pradesh hereby authorizes that the powers exercisable by the State Government under the Granite Conservation and Development Rules, 1999 except the revisional powers under Rule 46 of the said rules, shall be exercised by the Director of Mines and Geology"

It is further contended that the Director is the competent authority in the instant case, to grant the prospecting licence or quarry lease for granite.

23. It is further contended that when once the petitioner is not an applicant, he has no locus standi to file the writ petition and cannot question the validity or otherwise of the impugned proceedings. In support of his contention, he relied on a decision of the Apex Court reported in Basant Kumar Vs. State of Rajasthan and Others, , wherein it is held as follows:

"On the facts of the present case, the Supreme Court is not called upon to decide the scope of the relevant rules and particularly at the instance of the appellant who had not been given any lease for the time being. It is only when he gets the lease in respect of land, the question of fixing dead rent would arise."

24. I have perused the entire material available on record. The 3rd plaintiff-petitioner herein having lost the suit for declaration of title in OS No. 158 of 1992

before the Senior Civil Judge, Ongole in respect of the land in question, has not preferred any appeal, and, thereby it has become final against him, whereas the appeal preferred by the other plaintiffs therein, was dismissed by this Court in AS No. 1098 of 2000. The petitioner is also not an applicant seeking for grant of prospecting licence and the quarry lease. It is the case of the 5th respondent that its partners obtained pattas in respect of the land in question and as such, the question of obtaining consent from the land owner/lessor and execution of the lease deed, does not arise. In this context, the principles laid down by the Apex Court in the above decision (supra) will give rise to support the contention that the petitioner has no locus standi to file the writ petition.

25. At this juncture, it is not out of place to refer to G.O. Ms. No. 181, Industries and Commerce (Mines-1) Department, dated 28-5-1998 which reads at paras 2, 3 and 4 as under:

"Immediately after receipt of application, the Assistant Director of Mines and Geology shall acknowledge receipt to the applicant, fix a date for inspection and send one set of applications to the Mandal Revenue Officer concerned to report on the category of the land and availability of the land for grant of prospecting licence/mining lease or quarry lease.

The Mandal Revenue Officer will send his report to the Assistant Director of Mines and Geology within a period of 30 days duly marking a copy of his report to the District Collector. The reports of the Mandal Revenue Officer need not be routed through the intermediate level of Revenue Divisional Officer/Sub-Collector.

If the District Collector is in agreement with the report of the Mandal Revenue Officer, he need not make any further report to Director, of Mines and Geology, However, if the District Collector disagrees with the recommendations of the Mandal Revenue Officer, he will send his recommendations to the Director of Mines and Geology within 30 days from the date of receipt of report from Mandal Revenue Officer. In case, no report is received from District Collector within 30 days, it will be assumed that the Collector has no objection in granting of prospecting licence/mining lease or quarry lease.

26. On a perusal of the record produced by the learned Government Pleader, the plan in prepared by the CC GEO Engineering Consultants Private Limited. Though there is not even a spell in the pleadings as to the reference about the applicability of the provisions of the Granite Conservation and Development Rules, 1999, which of course is not a question of fact, but incidentally, the said question is being decided as to the applicability of the provisions in the instant case so as to give a quietus to the controversy. In exercise of the powers conferred by Section 18 of the Mines and Minerals (Regulation and Developments Act, 1957, the Central Government made the rules known as "Granite Conversation and Development Rules, 1999" and the object of the same, is for conservation and systematic development of land scientific mining to conserve, the granite resources and to prescribe a uniform frame work with regard to

systematic and scientific exploitation of granite throughout the country. In exercise of the powers conferred u/s 15(1) of the Mines and Minerals (Regulation and Development) Act, 1957, the Government of Andhra Pradesh made the rules, known as "Andhra Pradesh Minor Mineral Concession Rules, 1966" and the object of the said rules, is to regulate the grant of mining leases in respect of the minor minerals in the State of Andhra Pradesh and for the purposes connected therewith.

27. Section 15 of the Act empowers the State Government to make rules for regulating the grant of quarry lease, mining lease or other mineral concessions in respect of minor mineral. Rule 12(5)(a)(i) substituted by G.O. Ms. No. 227, I&C (M-I) Department, dated 23-3-2000, authorizes the Director to grant a prospecting licence or quarry lease for granite useful for cutting and polishing, on an application made to the Assistant Director of Mines and Geology. Rules 12(5) (b) of the Rules enunciates that the application for grant of prospecting licence or quarry lease for granite shall be disposed off by the Director in the order of their receipt and whenever, more than one application is received on the same, the Director shall grant licence or lease to the deserving application on merits to be recorded in writing. Rule 12(c) of the Rules requires that on receipt of an application for the grant of quarry lease, the Director shall take a decision to grant a precise area and communicate such decision to the applicant along with a copy of the surveyed sketch showing the area on which the mining plan has to be prepared and that on receipt of the communication from the Director of the precise area to be granted, the applicant shall prepare and submit a mining plan within six months or such other period as may be allowed by the Director and then the applicant shall submit the mining plan duly approved by the Director or by any officer duly authorized in this behalf.

28. In the light of the above regulations, in my considered opinion, the provision of rules pertaining to the A.P. Minor Minerals Concession Rules, 1966 are applicable to the facts of the case on hand and the powers exercised by the Director, are in conformity with the above rules, which do not warrant any interference by this Court. In this regard, the legal proposition relied on by the learned senior Counsel for the petitioner, have no application to the circumstances of the case on hand.

29. Rule 35-A of the A.P. Minor Mineral Concession Rules, 1966 contemplates that the Government may either suo motu at any time or on an application made within 90 days, call for and examine the record relating to any order passed or proceedings taken by the Director (Joint Collector, which was instituted by G.O. Ms.No. 50, I&C (M-I), Department, dated 17-3-1997), Deputy Director or Assistant Director under these rules for the purpose of satisfying themselves as to the legality or propriety of such order or as to the regularity of such proceedings and pass such order in reference thereto as they think fit. When there is an effective alternative statutory remedy that is available under Rule 35-A of the A.P. Minor Minerals Concession Rules, 1966, this Court in exercise of the

jurisdiction under Article 226 of the Constitution, cannot permit a party to bypass such statutory remedy, and assign itself the role of statutory authority. In this context, the legal propositions relied on by the learned senior Counsel appearing on behalf of the 5th respondent the learned Government Pleader, fully lend support to their contention that the petitioner without exhausting the statutory remedy under Rule 35-A of the Rules, cannot maintain the writ petition.

30. The question whether the impugned action is tainted by mala fide has to be dissected in the fact situation and preponderance probabilities and there can hardly be direct evidence to prove the mala fide. In the instant case, in the light of the above regulations and facts and circumstances, it does not warrant any merits to infer as to the attribution of any mala fides on the part of the authorities.

31. For the reasons in the foregoing paragraphs, I am of the considered view that the statutory remedy available under Rule 35-A of the Rules, bars the petitioner to entertain this writ petition and that the impugned order does not suffer from any legal infirmity and accordingly, this writ petition is liable to be dismissed and the interim direction granted in WPMP No. 31181 of 2001, is liable to be vacated.

32. In the result, the above writ petitions, are dismissed and interim orders granted in the both the writ petitions, are hereby vacated. There will be no order as to costs.