
(2023) 03 KL CK 0022
In the High Court Of Kerala
Case No : Writ Appeal No. 444 Of 2023

Hameeda Basheer

APPELLANT

Vs

Sajeev T S

RESPONDENT

Date of Decision : 01-03-2023

Acts Referred:

Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015
— Rule 20, 27

Citation : (2023) 03 KL CK 0022

Hon'ble Judges : A. Muhamed Mustaque, J; Shoba Annamma Eapen, J

Bench : Division Bench

Advocate : R. Rajasekharan Pillai, Vinoy Varghese Kallumoottil, B Unnikrishna Kaimal

Final Decision : Disposed Of

Judgement

A. Muhamed Mustaque, J

1. The dispute between the parties falls on a narrow compass. The appellant is the owner of the land comprised in Re.Sy.No.168/3 of Pallickal Village, Adoor Taluk, Pathananthitta. The registration and dealer's licence were issued to the first respondent herein namely, Sajeev T.s. under the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015 (for short "Rules"). There appears to have an agreement between the appellant and the first respondent initially, and based on that, the registration and dealer's licence were issued. The dealer's licence issued has been renewed annually. The appellant has a case that when the first respondent obtained dealer's licence on 11.04.2022, no consent letter has been issued to the first respondent by her and the consent letter produced before the authority was a forged one.

2. The learned senior counsel for the first respondent submits that consent was obtained in the year 2020 and acting upon the consent letter, renewal of dealer's licence was granted from time to time.

3. Acting upon the complaint of the appellant, the District Geologist, Pathanamthitta initiated proceedings and passed an order on 8.06.2022 cancelling the registration and dealer's licence. This was challenged before the learned Single Judge.

4. The learned Single Judge heard the matter and allowed the writ petition quashing the impugned order cancelling the registration as well as the dealer's licence. The land owner has come up with this appeal.

5. Heard the learned senior counsel Sri.R Rajasekharan Pillai appearing for the appellant and the learned senior counsel Sri.S Sreekumar appearing for the first respondent.

6. According to the learned counsel for the appellant, as provided under Rule 27 of the Rules, the first respondent had an appellate remedy and without invoking the appellate remedy, he straight away approached this Court. It is further submitted that factual appreciation is required in this matter. Therefore, this Court ought not have entertained this writ petition.

7. The learned senior counsel appearing for the first respondent submits that no such contention has been raised by the appellant before the learned Single Judge in regard to the alternative remedy and also submits that the cancellation itself is illegal on the face of the order inasmuch as that the power of cancellation is only referable under Rule 20 of the Rules. It is further submitted that power of cancellation can be invoked by the Geologist only when he satisfied that conditions in the dealer's licence have been violated.

8. Apparently, the Geologist canceled the registration and dealer's licence noting that the appellant was not willing to extend the validity of the consent. If there exists a ground not to grant any licence on same reason, the Geologist can also invoke his power to cancel a licence. It is true that as rightly pointed out by the learned senior counsel for the first respondent, Rule 20 of the Rules refers to cancellation only when there are violation of conditions in the dealer's licence. But it does not mean that for any reason the original grant of licence is vitiated, the Geologist has no power to cancel it.

9. As pointed out by the learned senior counsel for the appellant, this matter requires appreciation of facts by adverting to the documents and materials. In such circumstances, we are of the view that the proper remedy of the first respondent is to approach the Appellate Authority, Deputy Secretary to Government, Industries Department. If that be so, the first respondent shall move the Appellate Authority within a period of ten days from today. The Appellate Authority shall dispose of this matter within a further period of one month thereon, after hearing both sides.

10. Till the Appellate Authority takes a decision in this matter, no coercive steps shall be taken on the basis of Ext.P5 as against the first respondent. The impugned judgment is, accordingly, modified. The Appellate Authority shall also

communicate the order to the parties without any delay.

This writ appeal is disposed of as above.