

(2009) 06 KAR CK 0035
In the Karnataka High Court
Case No : Writ Appeal No. 1292 of 2009

H.G. Sudhakara

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 24-06-2009

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 94 A, 94 B, 94 C

Citation : (2010) 1 KarLJ 180 : (2009) 5 KCCR 3839 : (2010) 7 RCR(Civil) 1054

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Kumar and Kumar, for the Appellant; Basavaraj Kareddy, G.A., for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal is filed by the petitioner in W.P. No. 17855/2007 being aggrieved by the order dated 12.2.2009 wherein the learned Single Judge of this Court has dismissed the writ petition holding that there is no merit in the writ petition.

2. The appellant herein filed W.P.No. 17855/2007 being aggrieved by the order passed by the third respondent as per Annexure-G to the writ petition dated 23.7.2007 wherein the application of the petitioner for renewal of mining lease No. 439 granted for extraction of building stone in the land measuring 1 acre in Sy. No. 73 of Bidaragudu village, Thirthahalli taluk, Shimoga District has been rejected. It is averred in the writ petition that petitioner was an unemployed graduate who in the year 1997 had applied for quarrying lease in respect of building stone in Sy. No. 73 of Bidaragudu village, Thirthahalli Taluk, to an extent of one acre and Government of Karnataka granted quarrying lease bearing No. 439 dated 17.11.1997 in favour of the petitioner for a period of five years. After obtaining quarrying lease, the petitioner obtained a provisional registration certificate as a small scale unit under the name and style of Sri. Ram Crusher and also produced registration certificate as a small scale unit under the name

and style "Sri Rama Hallo Bricks Unit" and the petitioner made an application for renewal of the above said quarrying lease as per the condition of the lease within the stipulated time and the above said lease has been renewed by the third respondent for a period of five years and petitioner applied for renewal of the licence to the third respondent on 23.7.2007. Respondent No. 3 without application of mind and without following the procedure under the Karnataka Minor Minerals Concession Rules mechanically issued endorsement on the very same day i.e. 23.7.2007 stating that the area wherein the petitioner is seeking for renewal of quarrying lease is coming under gomal land and as per the circular dated 5.1.2007; 10.4.2007, no grant can be made and as such, the quarrying lease No. 439 of the petitioner cannot be renewed for a further period. It is further averred that in W.A. Nos. 1353/2006 and 3813/2005 by order dated 18.11.2006, the Deputy Commissioners in the State were directed to identify all the gomal and other reserved lands to consider whether their extent have to be retrained or reduced or totally diverted to other purposes based upon the cattle population and the requirement which was the reservation made still exists in the concerned areas. If any gomal land or other reserved lands is not required in the charged circumstances on account of subsequent events, de-reserve the same for consideration of regularization u/s 94A, 94B and 94C of the Land Revenue Act keeping in view of the eligibility of unauthorised occupants or regularization of their occupation in the respective areas of the state. It is averred that leased area granted in favour of the petitioner is not a gomal land and the impugned order rejecting the renewal of application for renewal of lease on the ground that renewal of lease cannot be made on the gomal land is illegal and liable to be set aside.

3. Learned Single Judge after hearing the learned Counsel appearing for the parties by order dated 12.2.2009 held that renewal of lease cannot be granted in a gomal land and therefore, the impugned order is justified and that there was no merit in the writ petition and accordingly, dismissed the writ petition. Being aggrieved by the said order dismissing the writ petition dated 12.2.2009, writ petitioner has preferred this appeal. There is delay of 18 days in filing the appeal and having regard to the averments made in the affidavit filed in support of the application, delay has been condoned by separate order.

4. We have heard the learned Counsel appearing for the appellant and the learned Government Advocate appearing for the respondent No. 3.

5. Learned Counsel appearing for the appellant submitted that the learned Single Judge has proceeded on the basis that the leased area in respect of which quarrying lease has been granted in favour of the petitioner is not a gomal land and it is a revenue land and the respondent could not have come to the conclusion that the said land is a gomal land and even if it is a gomal land it is for the Deputy Commissioner to identify and diver the land for other purposes based on the cattle population in the said area and thereafter, consider the application for renewal, In accordance with law.

6. Learned Government Advocate submitted that mining lease was granted in gomal land and the same cannot be renewed.

7. We have considered the contentions of the learned Counsel appearing for the parties and scrutinised the material on record.

8. The material on record would clearly show that the petitioner was granted quarrying lease No. 439 dated 17.11.97 for a period of five years and petitioner has obtained provisional registration certificate from small scale unit before the expiry of the period of lease. Petitioner has applied for renewal of the said quarrying lease as per the conditions contained in the quarrying lease deed and the impugned order could not be passed without a finding in detail as to whether the area in respect of which quarrying lease is granted is a gomal land and the land is available for grant of quarrying lease. It is clear from the perusal of Annexure-G order impugned in the writ petition that the renewal application of the petitioner has been rejected only on the basis of the Government order which prohibits grant of quarrying lease in gomal land and the question as to whether the land which is leased to the petitioner for quarrying is a gomal land or not has not at all been considered while passing the impugned order, dated 23.7.2007 as per Annexure-G to the writ petition. The petitioner was granted mining quarrying lease in the year 2002 for a period of five years from 17.11.2002 thereafter renewal application has been filed by the petitioner. The impugned order would clearly show that the application for renewal of mining lease has been passed as per Annexure-G to the writ petition on 23.7.2007 and the very date on which representation was given by the petitioner for renewal of mining lease. The second respondent while issuing the impugned endorsement dated 23.7.2007 has not at all considered as to whether the leased area granted in favour of the petitioner is a gomal land or not and without considering the said question, the third respondent could not have rejected the application on the ground that the application for quarrying lease in a gomal land cannot be granted and therefore, the impugned endorsement passed by the third respondent is clearly illegal and the same is Visible to be set aside and remitted to the third respondent for passing fresh orders, in accordance with law. Accordingly, parties are at liberty to raise all contentions before the second respondent in application filed by the writ petitioner for renewal of quarrying lease. Accordingly, we hold that the impugned endorsement dated 23.7.2007 cannot be sustained and the same is liable to be set aside without liberty to the respondents to take appropriate action in accordance with law. Accordingly, we pass the following order.

The impugned endorsement dated 23.7.2007 rejecting renewal of quarrying lease of the petitioner is quashed and matter is remitted to the third respondent-Senior Geologist (Mining), Department of Mines and Geology, Shimoga for passing fresh orders on the application for renewal of quarrying lease No. 439. The third respondent shall pass orders on the application for renewal submitted by the writ petition by evaluating the application independently and strictly in accordance with law.

Accordingly, the writ petition is disposed of.