
(2002) 03 AP CK 0043
In the Andhra Pradesh High Court
Case No : Writ Petition No. 91 of 2002

K. Balakrishna Reddy

APPELLANT

Vs

Director, Mines and Geology, Hyd. and Others

RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 12(5)
Constitution of India, 1950 — Article 226
Mines and Minerals (Development and Regulation) Act, 1957 — Section 24A

Citation : (2002) 3 ALD 612

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : N. Shoba, for the Appellant; Government Pleader for Industries and P. Srinivas, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner claims to be the absolute owner of land admeasuring Ac.2.50 cents comprised in Sy.No. 80/1 of Chimakurthy village, Prakasam District. He filed the present writ petition seeking a declaration that the action of the respondents viz., the Director of Mines and Geology, Government of Andhra Pradesh and others in proceeding to grant prospecting licence to the 3rd respondent in respect of the land comprised in Sy.No. 584/1 is arbitrary and illegal and contrary to the provisions of Mines and Minerals Regulation and Development Act, 1957 ("the Act" for brevity) and the A.P. Minor Mineral Concession Rules ("the Rules" for brevity).

2. It is the contention of the petitioner that he purchased the property in question under a registered sale deed dated 12-1-1993 and that by an unregistered lease agreement dated 11-12-1993, he leased out the property to M/s. Viva Granites, a firm represented by its partner for being used as a dump yard/ground. Be it noted that M/s. Viva Granites hold mining lease in respect of the land adjoining Sy.No. 584/1. The 3rd respondent applied for a prospecting

licence in respect of Sy.No. 584/1 in Form "N". It is the contention of the petitioner that when any prospecting licence is sought for in relation to a private patta land, as per the form itself, the consent of the owner or occupier has to be obtained and enclosed to the application form. The 3rd respondent had not obtained any consent from him and therefore the petitioner approached the 1st respondent and filed a representation on 17-12-2001 objecting for grant of any lease thereto in vain and hence the writ petition.

3. This Court, while ordering Rule Nisi, granted an order of status quo on 3-1-2002, which was subsequently extended upto 11-2-2002. In the meanwhile, the 3rd respondent filed an application being WVMP No. 258 of 2002 seeking to vacate the interim order. At this stage, the matters were heard finally and are being disposed of at the interlocutory stage.

4. It is the case of the 3rd respondent that he made an application on 27-2-2001 seeking prospecting licence to the 1st respondent through the 2nd respondent. As per the procedure in the Mining Department, the 2nd respondent after inspection requested the Mandal Revenue Officer seeking particulars of the land as to inspection, category, availability of the land applied for. The Mandal Revenue Officer by letter dated 15-12-2001 informed that the lands in S.Nos.584/1 admeasuring Ac.2.50 cents, S.No. 584/2 admeasuring Ac. 1-55 cents and S.No. 584/3 admeasuring Ac.0-85 cents are Government lands and that there is no objection for granting prospecting licence to the 3rd respondent subject to the 3rd respondent removing the debris from the land. The 3rd respondent also stated that even if the land is a private land, there is no necessity to obtain the consent of the owner or the occupier of the land. Reliance was placed on Section 24-A of the Act as well as the decision of the Supreme Court in Pallava Granites Industries India (P) Ltd. Vs. Government of Andhra Pradesh and others, , and in State of Tamil Nadu Vs. M.P.P. Kavery Chetty, . It is also stated that the first respondent is a public authority who is required to discharge the duties in accordance with law and therefore no direction can be issued restraining the first respondent from discharging the duties under law.

5. In the counter filed on behalf of respondents 1 and 2, the Joint Director of Mines and Geology, Government of A.P. has substantially admitted case of the 3rd respondent in the counter-affidavit. It is also stated that the 2nd respondent has recommended to the first respondent on 5-1-2002 for grant of prospecting licence in favour of the 3rd respondent over an extent of 0-615 hectares in S.No. 584/1P of Chimakurthy Village, that in view of the status quo orders passed by this Court, the same could not be processed and that the petitioner's objection cannot be entertained as the land in question as certified by the Mandal Revenue Officer is a Government land.

6. The learned Counsel for the petitioner submits that even according to Form "N" prescribed under Rule 12(5) of the Rules, the consent of the owner or occupier of the land in respect of which an application for prospecting licence is sought is mandatory and in the absence of the same, the first respondent cannot

entertain any application. The learned Counsel for the 3rd respondent however placed reliance on Section 24-A of the Act and submits that there is no such mandatory requirement to obtain the consent of the owner or the occupier of the land in respect of which a mining lease or a prospecting licence is sought for.

7. Sri K. Rajamna, the learned Government Pleader for Industries submits that there is no necessity for obtaining the consent of the owner or occupier as per the provisions of the Act and the rules.

8. Section 24-A reads as under:

"Rights and liabilities of a holder of prospecting licence or mining lease :--(1) On the issue of a prospecting licence or mining lease under this Act and the rules made thereunder it shall be lawful for the holder of such licence or lease, his agents or his servants or workmen to enter the lands over which such lease or licence had been granted at all times during its currency and carry out all such prospecting or mining operations as may be prescribed :

Provided that no person shall enter into any building or upon an enclosed Court or garden attached to a dwelling house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so.

(2) The holder of a prospecting licence or mining lease referred to in Sub-section (1)" shall be liable to pay compensation in such manner as may be prescribed to the occupier of the surface of the land granted under such licence or lease for any loss or damage which is likely to arise or has arisen from or in consequence of the mining or prospecting operations.

(3) The amount of compensation payable under Sub-section (2) shall be determined by the State Government in the manner prescribed."

9. A plain reading of Sub-section (1) of Section 24-A shows that the said provision deals with the rights and liabilities of a holder of a prospecting licence or a mining lease and the same is applicable only on the issue of a prospecting licence or mining lease and the same has no application at the stage of making an application under Form "N" for a prospecting licence in accordance with Rule 12(5) of the Rules. Form "N" has as many as 17 columns to be filled in by the person applying for a prospecting licence or a quarry lease. Column 10-A and B reads as under:

(x.a) Does the applicant have surface rights over the area for which price?

If so, with relevant certified documents

(x.b) If not, has be obtained the consent of the owner and the occupier of the land for undertaking prospecting operations.

10. Column 10(a) requires the applicant to state whether he has surface rights over the land for which a prospecting licence is sought. If the applicant has

surface rights over the land and answers the column in affirmative, he is required to enclose the relevant certified documents. The same in this case has no application. Column 10(b) requires the applicant to state whether the applicant has obtained the consent of the owner and occupier of the land for undertaking prospecting operations. This shows that when the land without any dispute or controversy belongs to a private person, the consent of the owner or occupier has necessarily to be obtained and enclosed to the application made in Form "N". Reading column 10(a) and (b) together, it is reasonable to infer that the intention is to avoid any controversy at the stage of 24-A. As noticed, Sub-sections (2) and (3) of Section 24-A requires the holder of a prospecting licence to pay compensation as prescribed to the occupier of the surface land for any loss or damage which is likely to arise as a consequence of a prospecting licence. The rules are silent in this aspect but while prescribing the form the delegated legislation has sufficiently incorporated rules of fairness with reference to the occupier or owner and keeping in view the scope and extent of Rule 24-A. Therefore, when the land absolutely vests and belongs to private person, any person applying either for prospecting licence or a mining lease or a quarry lease has to necessarily obtain and enclose the consent of the owner or occupier. Again, it depends on each case whether or not the first respondent competent authority to issue prospecting licence or direct licence should issue notice to the occupier or owner before granting such licence, which is of course mandatory after the grant of licence u/s 24-A of prospecting licence of the Act.

11. In this case, there is a dispute as to whether the land in survey No. 584/1 at Chimakurthy village is a Government land or the land belongs to the petitioner. Therefore, in this writ petition, the discretion of the Court cannot be exercised in favour of the petitioner for two reasons. Firstly, the petitioner appears to have already filed civil suit being OS No. 33 of 2002 on the file of the Court of the Senior Civil Judge, Ongole against the 3rd respondent and obtained ad interim ex parte injunction not to interfere with the alleged possession of his property in S.No. 584/1. Secondly, the petitioner cannot be permitted to pursue two parallel remedies though a part of his remedy lies in the arena of public law, which in this case can also be effectively redressed in a private law remedy by way of a suit, which he had already filed.

12. In the result, the writ petition fails and the same is accordingly dismissed without any order as to costs.