

(1967) 10 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1665 of 1966

K. Dasaradharami Reddy

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-10-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Mineral Concession Rules, 1961 — Rule 37, 54

Citation : AIR 1969 AP 39

Hon'ble Judges : Seshachalapati, J

Bench : Single Bench

Advocate : P. Krishna Reddy, for the Appellant; K. Ramachandra Rao, Central Govt. Standing Counsel; G.V.L. Narasimharao and M.V. Ramachandra Reddy for P. Babulreddy and M.N.Rao, for the Respondent

Judgement

1. This is a petition under Article 226 of the Constitution of India for the issue of a writ of mandamus directing the State Government not to give effect to the G. O. Ms. No. 1042 dated 23-9-1966 recognising the transfer of the mining lease and to direct the transfer of the lease in favour of the petitioner.

2. The facts relevant for the disposal of this petition may be stated briefly. The 4th respondent in this petition, Sri T. Chenchiah Naidu, was granted a mining lease for excavating mica in an extent of about 83-69 acres in S. No. 227 etc., of Turimula Village Rapur Taluk Nellore District for a period of 20 years by the State Government by an order dated 12-1-1962. On 16-4-1963, Chenchiah Naidu entered into an agreement with the petitioner for sub-leasing the lease for a period of 5 years on an annual rent of Rs. 5,000/-. It is alleged in the present petition that the 4th respondent, Chenchiah Naidu, was trying to resile from his agreement with the petitioner and took some more money from one Sri Venu Gopal Raju and transferred his lease in favour of the said Venugopala Raju. On 24-7-1965 the 4th respondent Chenchiah Naidu filed a petition before the State Government to permit him to transfer the mining lease in favour of Venugopala Raju. It is alleged in the petition before the State Government making allegations

against Venugopala Raju and adducing reasons why the transfer in his favour should not be recognised. That petition would appear to have been under enquiry by the State Government to his application for transfer dated 24-7-1965, the 4th respondent Chenchiah Naidu, filed a revision under Rule 54 of the Mineral Concession Rules, 1960. The Central Government called for comments from the State Government and by an order dated 13-9-1966 directed the State Government to consider the petition filed by the 4th respondent for the transfer of the lease and passed final orders thereon at an early date. In conformity with the directions of the Central Government, the State Government considered the application of the 4th respondent for the transfer of the mining lease and granted in and by G. O. Ms. No. 1042 dated 23-9-1966 permission to the 4th respondent to transfer of the lease in favour of Venugopala Raju for the unexpired portion of the lease period subject to the condition, that the transfer deed within a period of 90 days from the date of the issue of the order dated 23-9-1966.

3. In this writ petition the legality of the order of the Central Government remitting the case for disposal at an early date and the order of the Government of Andhra Pradesh granting permission of the transfer are challenged as being illegal and inoperative.

4. Mr. Krishna Reddy the learned Counsel for the petitioner the learned Counsel for the petitioner has contended that inasmuch as admittedly the State Government had not passed an order on the application of the 4th respondent dated 24-7-1965 seeking permission for the transfer, the 4th respondent should not have filed a revision petition under Rule 54 of the Mineral Concession Rules and that therefore the order passed by the Central Government on 13-9-1966 is illegal and without jurisdiction. It is further argued that G. O. Ms. No. 1042 dated 23-9-1966 passed by the State Government is also affixed with legal infirmity.

5. As to the first objection raised by the learned Counsel I am of the opinion that there is no substance in the contention. Rule 37 of the Mineral Concession Rules which is the relevant provision is as follows:-

"37, Transfer of lease: - (1) The lease shall not without the previous consent in writing of the State Government, which in the case of a mining lease in respect of any mineral as specified in the First Schedule to the Act shall not be given except after 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 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 operation or undertakings will or may be substantially controlled by, any person or body of persons other than the lessee.

1 (A) An application for transfer of mining lease shall be disposed of by the State Government within nine months from the date of its receipt, and if it is not

disposed of within that period, it shall be deemed to have been refused;"

The other portion of Rule 37 of the above Rules are not relevant for the purpose. The explanation 1 (A) has been introduced by an amendment, which came into effect on 6-5-1963. The question is whether the present case falls within the scope and ambit of that explanation. It may be remembered that the application for the transfer of the mining lease filed by the 4th respondent Chenchaiyah Naidu, was made on 24-7-1965. The period of nine months referred to in Explanation 1 (A) to Rule 37 of the Rules would expire on 23-4-1966. It is common ground that no order was passed by the State Government on the application of the 4th respondent dated 24-7-1965. But by reason of the provision contained in explanation 1 (A) to Rule 37 of the Mineral Concession Rules, I am of the opinion that the application must be deemed to have been refused on the expiry of nine months from the date of the application, that is on 23-4-1966. That being so, the 4th respondent was at liberty to file a revision before the Central Government under Rule 54 of the Mineral Concession Rules.

6. Mr. Krishna Reddy next contended that in explanation 1 (A) to Rule 27 there is no reference to any "order" as in Explanation to Rule 54 of the Mineral Concession Rules. In my view there is no substance in this contention. The deeming provision contained in Rule 54 means and can only mean that after the expiry of the nine months from the date of the application and if no orders are passed before them, the application should be deemed to have been refused. In other words, it should be understood that there is an order refusing the application. That being so, I hold that the revision filed under Rule 54 of the Mineral Concession Rules is competent and accordingly the directions given by Central Government in and by their order dated 23-9-1966 are also in order and well within the jurisdiction of the Central Government. It therefore follows that the disposal given by the State Government to the application of the 4th respondent Chenchaiyah Naidu in and by their order in G. O. Ms. No. 1042 dated 23-9-1966 is also well within the authority and jurisdiction of the State Government.

7. In the affidavit filed in support of the present petition it is alleged that no notice was given to the petitioner either by the State Government or the Central Government before passing orders. In the counter affidavit, filed on behalf of the Central Government it is stated that the petitioner's name was not mentioned in the application filed by the 4th respondent and that therefore there was no question of the Central Government calling for comments from him or otherwise giving him an opportunity. Similarly in the case of the State Government it was not necessary at the stage for them to hear the petitioner for the reason that they could dispose of the petition for transfer on the material available to them.

8. In the writ petition some allegations are made as to how Sri Venugopala Raju was disqualified to get the transfer. In the counter affidavit filed by the State Government, those allegations are denied. It is not necessary for me to go into that question in this writ petition, as the main objection is as to the legality of

the order that of the State Government in pursuance thereto.

9. Mr. Krishna Reddy has drawn my attention to the allegation expressly made in the writ petition that the petitioner was not informed of the result of the petition filed by him on 19-10-1965. In the counter affidavit filed by the State Government it had been stated expressly that there was an enquiry by the Special Deputy Collector, Gudur and that he had also submitted a report dated 28-1-1966. It is also stated that the Special Deputy Collector, Gudur had given several notices to the writ petitioner to appear before him for the enquiry and that at no time he turned up even though the witnesses cited by him were examined by the Special Deputy Collector. In these circumstances I think the grievance that he was not communicated with the orders of the enquiry is imaginary.

10. Lastly Mt. Krishna Reddy contended that he may file a suit for the vindication of his legal rights and that in order to aid him, this Court might interdict the implementation of G. O. Ms. No. 1042 dated 23-9-1966. There is a decisive authority against this Court making any such order. I The State of Orissa Vs. Madan Gopal Rungta, it has been held that when Court declines to decide a writ petition filed under Article 226 of the Constitution of India, it cannot for the purpose of facilitating the institution of a suit, issue directions in the nature of a temporary injunction.

11. There are no merits in this petition. It is accordingly dismissed with costs. Advocate's fee Rs. 100/- one set.

12. Petition dismissed.