
(2000) 12 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No. 36360 of 1998

M. Srinivas and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 06-12-2000

Acts Referred:

Karnataka Minor Mineral Concession Rules, 1994 — Rule 21 (2), 59 (1)

Citation : (2001) 1 KCCR 165

Hon'ble Judges : Ashok Bhan, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : P.R. Ramesh, for the Appellant; N.K. Ramesh, A.G.A. for Respondents 1 to 3 and 5 and ACC Associates for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhan, J.—This petition has been filed as Public Interest Litigation challenging the Notification No. SGB/M/122/AQL/97-98 NTN 17 of 1997-98 dated 28.4.1997, Annexure-F, granting renewal of quarrying lease in favour of Respondent-4 in 9 acres 28 guntas of land in Old Gramatana Sy. No. 9 of Koira village, Devanahalli Taluk and the order passed by the Revisional Authority in Revision No. 295-97-3210, dated 30.5.1998, Annexure-J, maintaining the order passed by the competent authority at Annexure-F to the extent of 4 acres 16 guntas.

2. It would be necessary to narrate certain facts which lead to the passing of the two orders impugned before us:

3. Late Sri K.M. Munishamappa, secured quarrying lease for building stones in respect of the area of land measuring 9 acres 28 guntas in Old gramatana Sy. No. 9 of Koira village in the year 1958. After the death of K.M. Munishamappa, his son K.M. Madhusudhan-Respondent 4 secured the lease in his favour in the year 1983 for a period of 5 years. The lease was renewed for a further period of

5 years. Another renewal of 5 years kept the lease current upto the year 1993. Respondent-4 then applied for one more renewal on 5th April, 1993. The competent authority did not however grant the said request with the result that the 4th Respondent treated the renewal to have been refused. Against the deemed refusal of the renewal, the 4th Respondent preferred a Revision Petition before the Director of Mines and Geology-Respondent-2 which was allowed by an order dated 28th October, 1993 and the case was remitted to the competent authority with a direction to reconsider the renewal application in accordance with law. Competent Authority did not take up the matter for fresh consideration. No orders were passed in pursuance to the directions given by the Revisional Authority. Fourth Respondent preferred writ petition No. 35849 of 1993 with the grievance that despite the directions given by the Revisional Authority, the competent authority did not consider the request of the 4th Respondent for renewal. A mandamus was sought directing the Respondents to renew the quarrying lease in his favour.

4. Respondents 1-3 in the said writ petition filed their objections. The case projected by them in the said writ petition was that on receipt of the application by 4th Respondent, the Deputy Commissioner, Bangalore Rural District, was requested to furnish No Objection Certificate. The villagers residing in the area in the meanwhile filed a representation on 30th August, 1993 seeking cancellation of the lease and refusal of the request made by the 4th Respondent for grant of renewal. Koira Mandal Panchayat also passed a Resolution on 4th October, 1993 asking the authorities not to grant any further renewal on account of the fact that the land measuring 14 acres 10 guntas belonged to the Mandal Panchayat. Another objection taken by the Panchayat was that a historical temple and a Government primary school were situate in the neighbourhood of the quarrying area. It was also claimed by the Panchayat that the area was reserved for "Ashraya Yojana". The Tahsildar, Devanahalli Taluk, also objected to the grant of renewal in favour of the 4th Respondent.

5. Villagers of Koira filed impleading applications which were allowed. They were impleaded as Respondents 4 to 11 in the said writ petition.

6. Learned Single Judge noticed the fact that the Karnataka Minor Mineral Concession Rules, 1969 were repealed and were replaced by the Karnataka Minor Mineral Concession Rules, 1994. It was found that the renewal application of the 4th Respondent had not been dealt with in accordance with Rule 59 of the 1994 Rules. Accordingly, the writ petition was allowed by observing thus:

All that can therefore be done is to direct the competent authority to consider the Petitioner's request for renewal of the lease in accordance with the provisions of the Rules and subject to his fulfilling the requirements, if any, prescribed thereby. The competent authority shall accordingly pass an appropriate order on the Petitioner's request, if any, made in terms of Rule 59(1) read with Rule 21(2) within a period of three months from the date a copy of this order is produced before it by the Petitioner. Respondents 4 to 11, who were opposing the grant of

renewal, shall also be entitled to project their grievance before the competent authority before passing any orders on the Petitioner's request. In the meantime, however, the excavation carried on by the Petitioner for the past over 3 years or so on the basis of the interim orders of this Court in the present writ petition shall be stopped forthwith and no such excavation permitted till such time the competent authority considers and disposes of the Petitioner's request for the grant of a renewal. The writ petition is accordingly disposed of with the above directions leaving the parties to bear their own costs.

7. After passing of the order by the Single Judge, the competent authority instead of proceeding with and deciding the controversy between the parties in accordance with the directions issued by the Single Judge, proceeded to issue the Notification Annexure-F renewing the lease in favour of the 4th Respondent. Opportunity of hearing to the objectors who had filed their objections against the renewal of the lease was not afforded. Their objections were also not considered.

8. Aggrieved against the order of the competent authority Annexure-F, one of the villagers filed a Revision Petition. One of the objections taken before the Revisional Authority was that the competent authority had passed the order renewing the lease in contravention of the directions issued by the Single Judge. That no opportunity was afforded to the residents of the village who had raised objections to the renewal of lease. They were not afforded any opportunity of hearing. Their objections were also not considered.

9. Revisional authority has noticed this contention, but sidetracked the same and reduced the extent of leased area from 9.28 acres to 4.16 acres of land. Based on the local inspection carried by the Revisional Authority, a finding was recorded that 4 acres 16 guntas of land was slightly away from the Anjaneya Temple and Maramma Temple. That no objections had been raised in the past regarding the danger to the temple as a result of the quarrying.

10. Aggrieved by the orders Annexures-F and J, present petition has been filed by some of the villagers inter alia on the ground that the competent authority had passed the orders in contravention of the directions issued by the Single Judge in Writ Petition No. 35849 of 1993 decided on 9.12.1996. That the competent authority neither afforded opportunity to the villagers to file their objections nor did he give a personal hearing. No speaking order has been passed. Only a notification was issued renewing the quarry lease. That the revisional authority failed to consider the objections raised by the Petitioners in this regard, though this point was specifically raised and noticed by the revisional authority in its order Annexure-J.

11. Separate written statement of objections have been filed by Respondents-1, 3 and 4. The fact that the competent authority did not afford an opportunity of filing objections to the villagers and denied the opportunity of hearing to them has not been specifically denied. It has also not been denied that the competent authority did not pass a speaking order and that it had simply issued the

Notification renewing the lease.

12. We have perused the notification Annexure-F as well as the order Annexure-J passed by the Revisional Authority. We find substance in the contention raised in the petitions. The Competent Authority was required to pass the order in accordance with the directions issued by the Single Judge in Writ Petition No. 35849 of 1993. An order inconsistent with the directions issued by the Single Judge would not be right in law and therefore cannot be sustained. Competent Authority did not pass the order after considering the objection raised by the villagers and the Panchayat. But, final notification renewing the lease in favour of the 4th Respondent was issued. As per order of the Single Judge, the competent authority was required to take objections filed by the villagers and then pass an order in accordance with law. Without taking into consideration the objections filed by the villagers, the competent authority proceeded to issue the Notification granting renewal of the lease in favour of Respondent-4. Lower Courts and other authorities within the State are required to act in conformity with the law declared and the directions issued by the High Court of that State. As the competent authority had passed the order inconsistent with the direction issued by this Court, the same cannot be sustained.

13. In the revision petition filed before Respondent-2 inter alia it was contended that the competent authority had passed the order granting the lease without considering the objections. That the competent authority had passed the order in utter disregard of the direction issued by the Single Judge. Revisional Authority has noticed the submissions made, but did not deal with the same. The order of the Revisional Authority is silent on this point. The order passed by the Revisional Authority is cryptic to that extent.

14. For the reasons stated above, Petition is allowed. Notification Annexure-F and the order Annexure-J are quashed. Case is remitted back to the competent authority to pass the order afresh strictly in accordance with the directions issued by this Court in Writ petition No. 35849 of 1993 dated 9.12.1996. As the matter is being remanded for the second time to the competent authority, the competent authority is directed to pass the final order within a period of six months from the date of receipt/production of a certified copy of this order.

15. Rule is made absolute, No costs.