
(1992) 03 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5079 of 1990

M/s. Krishna and Company

APPELLANT

Vs

The Govt. of A.P. and Others

RESPONDENT

Date of Decision : 17-03-1992

Acts Referred:

Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 9
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 56

Citation : AIR 1993 AP 1 : (1992) 1 ALT 603 : (1992) 1 AnWR 671

Hon'ble Judges : Subhashan Reddy, J; M.N. Rao, J

Bench : Division Bench

Advocate : Mrs. Sobha N, for the Appellant; G.P. for Industries, for the Respondent

Judgement

B. Subhashan Reddy, J.

1. This Writ Petition raises an important question of law as to whether the theory of frustration of contract and the consequences arising thereto can be invoked and whether the High Court can entertain such a plea and grant the relief in exercise of its extraordinary power under Article 226 of the Constitution of India.

2. The facts briefly stated, thus, are :

The petitioner is a Company established in the year 1981 and deals in sand quarrying operations. Pursuant to the auction held at Nalgonda on 11-5-1988, pertaining to leasehold rights of sand quarry at Jedcherla, Midgil and Timmajipet Mandals of Mahabubnagar District, the petitioner-Company made a bid and was successful tenderer for the amounts of Rs.27,000/-, Rs.6,300/- and Rs.6,300/- respectively. The said bids were accepted and the amounts whatever due and payable were paid by the petitioner. The same was crystallised into an agreement, inter se, the petitioner and the 3rd respondent on 9-8-1988, the tenure of the lease being one year and thus, expiring on 9-8-1989.

3. It is the case of the petitioner that even though no approach roads were there to reach the spots for sand quarrying, acting upon the leases granted to it, with much expenditure and labour, the roads were laid so as loanable it to carry the transport vehicles for the purpose of quarrying and loading the sand into them.

4. The complaint of the petitioner-Company is that even though its bid which was the highest was accepted and the contract was entered into and that it was entitled to exercise its sand quarry operations in those areas covered by the leases, it was not permitted to exercise its rights by the local people headed by the people's representatives, be it Sarpanch, President of Mandai Praja Parishad or the M.L.A. Admittedly, the petitioner-Company "had exercised its quarrying operations barely for 10 days for the period from 15-2-1989 to 25-2-1989, that too with much difficulty in view of the protests and resistance of the persons mentioned supra. So much so, even the petitioner had to resort to police help, but that also did not help the petitioner and it was forced to stop the quarrying operations from 25-2-1989 onwards.

5. The petitioner had complained to the Deputy Director of Mines and Geology, as also to the Sarpanch Badepally village with regard to undue prevention of exercise of its legal rights to carry on the sand quarry operations. The Deputy Director, Mines and Geology, Hyderabad Region, by his Lr. No.2325/Q/S8, dated 1-3-1989 addressed a letter to the Sarpanch, Badepally village that the petitioner is the valid lessee for exercising us sand quarry operations under valid lease executed on 9-8-1988 for a period of one year and that it is entitled to exercise the said fights and preventing the petitioner to exercise the said rights adversely affects the policy of the Government resulting in loss of revenue am thus, advising the said Sarpanch to allow the petitioner-company to exercise its rights of sand quarry operations. Even the Sarpanch was warned that for any damage caused in the event of further interference, he will be mulped (mulcted) with liability for damages, as may be claimed by the petitioner herein. But the said advice and warning had no effect on the said public authority and it did not deter him and, on the other hand, the revenue authorities including the Collector and the Mandal Revenue Officer, supported the case of the people and the people's representatives and the Mandal Revenue Officer by report dated 24-2-1989 in Re. No. E/352/ 89, stated Emphatically that the lease was granted in favour of the petitioner without inviting the opinion of the revenue authorities and that Meenabaram vague was the only source of drinking water for the Badepally village which is a heavy populated area with a population of 18624 and also being the headquarter and the sand quarrying was resulting in depletion of water for drinking purposes, the said lease ought not have been granted. The said Mandal Revenue officer had requested the Collector to take appropriate action to cancel the lease by issuing necessary instructions to the Assistant Director of Mines and Geology, Nalgonda who had granted the lease. The Collector also had favourably responded by his proceedings No. DI/ 2342/89, dated 17-4-1989 to cancel the existing lease of the petitioner and not to conduct auctions further and in the references cited, we find the earlier proceedings of

the Collector, report in Udayam newspaper as also the representation of Sri Chittaranjan DAS, M.L.A. (as he then was). Added to that, we also find correspondence from the President, Mandal Praja Parbhad, Jedeherla on 4-7-1989 addressed to the Assistant Director of Mines and Geology, Nalgonda, the 3rd respondent herein, admitting that when the petitioner tried to lift the sand during the month of February, 1989, the same was resisted by one and all of the said Mandal and that they have stopped the lorries forcibly and as such, the petitioner had to stop its business and that there ensued law and order problem in that process of petitioner trying to lift the sand and the people resisting the same and finally, he requested to cancel the lease granted in favour of the petitioner and to save him from public wrath.

6. Thus, in this process of departmental correspondence and in considering the same, the lease period granted in favour of the petitioner was expiring and the petitioner had filed a representation to the 1st respondent on 19-6-1989 to extend the lease permitting the petitioner to exercise their sand quarry operations by making good the period for which it was stopped from quarrying sand. When there was inaction, the petitioner filed W.P. No. 9716/89 before this Court and by order dated 17-7-1989, our learned brother, P. Venkata Rama Reddi, J., directed the 1st respondent to dispose of the said representation within a week from the date of the receipt of the said order and pending disposal of the same, auction of lease-hold rights for the future period was stayed.

7. The petitioner sought for issuance of a Writ of Mandamus declaring the action of the respondents in conducting future auction of sand quarry leases of Jedcherla, Midgil and Thimmajipet Mandals, as illegal and contrary to law and consequently direct the respondents to continue the petitioner for quarrying operation of the sand for one more year without insisting on payment of lease/auction amount in respect of the above-areas.

8. The 3rd respondent has filed a counter on behalf of all the respondents and admitted every averment made by the petitioner in the Writ Petition regarding the holding of auctions, the petitioner being the successful bidder, petitioner's remittance of requisite amounts, the interferences caused by the Sarpanch and other public authorities including the encouragement thereof by the governmental officers in the exercise of right of sand quarrying by the petitioner, but took a stand in paragraph 6 thereof that the representation of the petitioner for extension of time for the lease held by him for one more year could not be considered as there is no provision to extend the lease as per the amended provisions of Andhra Pradesh Mines and Mineral Concession Rules, 1966 (hereinafter referred to as "the rules"). May be, because of this, the petitioner has chosen to file a W.P.M.P. No. 11123/90 seeking to amend the prayer with relief for refunding of Rs.39,600/- which was deposited by the petitioner towards the leases mentioned supra. This petition was ordered to be posted along with this Writ Petition and we accordingly order the same and then proceed to consider the said plea of refund.

9. The Government has a right to grant lease-hold rights for quarrying sand by public auction as contemplated under Rule 9-B of the Rules, which was inserted by an amendment with effect from 12-8-1986 under G.O. Ms. No. 457, Industries & Commerce Department. The said rule has been framed Under rule making power under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act No. 67 of 1957). The said Rule enjoins upon the concerned authorities to notify the areas for auction. Rule 9-C contemplates of issuing notice of auction. Under Rule 9-E, the authority concerned has power to accept the highest bid. Rule 9-F speaks of confirmation of the bid. After the bid is confirmed, Rule 9-G obligates the successful bidder to deposit the amounts, firstly a sum equal to 25% of the total amount together with security deposit and the balance payable within a month from the date of the confirmation of the sale. After the entire bid amount is deposited within the stipulated time as mentioned supra, sub-rule (2) of Rule 9-G warrants execution of sale- deed on stamped paper in Form-G within the time stipulated therein.

10. Under the said statutory contract, there are rights and obligations to be performed both by the lessor-Government as also the lessee-auction purchaser. Other conditions apart, the essential condition is, in consideration of the payment of the requisite amounts by the lessee, the latter has an unfettered right of quarrying the sand without any-obstruction or interference either by the lessor-Government or by any person claiming through or on its behalf. Here, there is no complaint that the petitioner has committed a breach of any condition of lease, which conditions are part of the statutory rules being in the form prescribed under the rules and any breach of the conditions of the lease will be deemed to be a violation of the statutory rules. There being no fault on the part of the petitioner, it is needless to mention, that the petitioner was having every right to excavate the sand and for that purpose, he made all preparations of laying the roads, engaging transport vehicles and spent considerable amount of money. It is not, as if, he is claiming this money which has been expended by him. The petitioner is only claiming the refund of Rs.39,600/- which was deposited pursuant to the acceptance of bid and having regard to the fact that the petitioner was prevented from the public and governmental authorities from quarrying sand thereby making the performance of contract impossible. If the lease was not to be extended by one more year, to make up the deficiency because of loss of one year granted under the auction, the petitioner is quite reasonable in seeking for refund of the amount at least, if not the profits and other expenditure by way of damages.

11. It is a decrease of the contract being frustrated and the respondents cannot be allowed to say that their duty is only to hold an auction and that they were in no way responsible to see that no obstacles are caused in the exercise of the right of the auction purchaser. Every lessor has got a duty to see that the lessee is not interrupted to reap the benefit of the lease and inasmuch as the petitioner was prevented by the persons and authority claiming through and on behalf of the Government, the Government is bound to refund the amount atleast.

12. Then the question arises as to the forum, before which it can be agitated. The respondent-Government argues that the question of frustration of contract cannot be gone into in this Writ Petition and that the amount claimed cannot be refunded and that if at all there is any right for the petitioner, the same has to be ventilated through the process of institution of a suit in a civil Court under the common law and this Court cannot entertain such a plea in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. We are afraid, that we cannot accede to this contention, having regard to the facts and circumstances of this case. It is true, as contended by the learned Government Pleader, that ordinarily when a plea of frustration of contract is raised and consequent refund of amounts is sought for, it is the civil Court which has to entertain the lis having regard to the nature of dispute where the fact finding enquiry is necessary. But, in the instant case, no such fact finding is necessary. The petitioner is also not claiming any relief for breach of contract so as to say the relief with regard to the breach of contract is purely contractual and that the remedy lies in a civil Court. Here is a case where the auction is held under the statutory rules, a statutory contract has been entered into and the facts leading to the stoppage of work relating to quarrying of sand by the petitioner at the instance of the persons and authority claiming through and on behalf of the Government are admitted and the petitioner is not claiming any damages so as to drive him to Civil Court for determination of the quantum after full-fledged trial. The petitioner is just seeking for refund of the amounts deposited by him after his bid was accepted and having regard to the fact that he was prevented from exercising his rights under the leases and the inaction of the respondent in setting right the matters has frustrated the contract and the respondents had absolutely no right or authority to hold up the said lease amounts aggregating to Rs. 39,600/-. The petitioner is also not claiming any interest. As the contract is a statutory one, as the legal right of the petitioner to quarry was invaded by the public and governmental authorities leading to frustration of contract, as the acts leading to frustration of contract are admitted by the respondents, as there is no disputed question arises for determination of the amount claimed inasmuch as the amount claimed is neither by way of damages nor for any breach of contract, we hold that it is not justifiable for this Court to drive the petitioner to seek the common law remedy.

13. In the circumstances, we hold that the respondents are liable to refund the amount of Rs. 39,600/- to the petitioner and the said amount be paid within a period of one month from the date of the receipt of this order.

14. The Writ Petition is allowed to the extent indicated above. The petitioner shall have his costs. Advocate's fee Rs. 350/-.

15. Order accordingly.