

(2000) 02 KAR CK 0042
In the Karnataka High Court
Case No : Writ Petition No. 4080 of 1998

M/s. R.S. Exports Bangalore

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Karnataka Minor Mineral Concession Rules, 1994 — Rule 11, 34 (2), 8 (4)

Citation : AIR 2000 Kar 332 : (2000) 5 KarLJ 131 : (2000) 3 KCCR 2179

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sri L.M. Chidanandayya, for the Appellant; Sri A. Padmananbha, High Court Government Pleader, for the Respondent

Judgement

1. The petitioner is a partnership firm carrying on business of excavation, removing, transporting and exporting granite. It has filed this writ petition seeking to quash the notification at Annexure-A, dated 30-7-1997 revoking the quarry licence granted to it on 20-8-1996 for quarrying black granite in 4 acres of land in Sy. No. 80 of Veeranpura in Chamarajanagar Taluk of Mysore District.

2. The brief facts of the case are, the aforesaid land was granted to one Smt. Kanakarathnamma under the Karnataka Land Grant Rules (hereinafter referred to as "Land Grant Rules"). The petitioner states that it has obtained the consent of the grantee to exploit the mineral existing in the land in question as required under Rule 34(2) of Karnataka Minor Mineral Concession Rules, 1994 (hereinafter referred to as "the Rules"). It is stated that in view of the view taken by this Court in the case of State of Karnataka Vs. Dundamada Shetty, , that pattadars of granted lands are not entitled to excavate granite from the granted lands unless quarrying lease or licence from the Mines and Geology Department, the grantee and the petitioner filed W.P. No. 22813 of 1995 seeking permission to do the quarrying operations till the disposal of the application for quarrying licence on the ground that the granted land cannot be given to any other person. On 6-9-1995 the said writ petition was allowed directing the respondents therein not

to interfere with the rights of the petitioners to excavate, remove and transport granite from the land in question. A further direction was issued to issue mineral despatch permits. In the meanwhile, the petitioner asserts that it has filed application for grant of quarrying licence and submitted all the necessary documents on 1-7-1995. It is stated that since the said application was not disposed of within a period of 4 months and as there was delay in disposing of the application, the petitioner has approached this Court and obtained the order referred to above. Pursuant to the application filed by the petitioner a decision was taken by the committee constituted under Rule 11 of the Rules and the land in question was notified for grant of quarrying licence vide notification at Annexure-C, dated 20-8-1996. It was followed by letter at Annexure-D, dated 10-9-1996 informing the petitioner to deposit Rs. 2,000/- towards survey and demarcation charges Rs. 30,000/- and towards 50% of dead rent, which the petitioner did. The survey was conducted and the petitioner was handed over licence deed for execution for having granted the licence. It is stated that the licence deed has been executed and kept in the office of the Deputy Director (Mineral Administration) for being handed over to the petitioner to get it registered. At that juncture the impugned notification at Annexure-A was issued. It appears an objection had been raised that one Rajendrakumar, one of the partner of the petitioner-firm has contravened the provisions of the Rules and on that ground the licence deed was not furnished to the petitioner to get it registered. It was followed by the issuance of the impugned notification at Annexure-A revoking the quarry licence granted in favour of the petitioner. Aggrieved by the same the petitioner has filed this writ petition seeking the reliefs referred to in paragraph 1 of this order.

3. In the statement of objections filed on behalf of the respondents it is stated that the application filed by the petitioner on 17-7-1995 had already been disposed of under Annexure-C, dated 28-6-1996 granting quarrying lease in favour of the petitioner, which has been subsequently revoked under Annexure-A. Therefore, question of granting the relief sought for to issue mineral despatch permits does not arise. It is pointed out that the land in question is a granted land and the grantee has no right over the mineral available therein and in the case of Dundamada Shetty, supra, this Court has held that holder of patta lands granted under Land Grant Rules have no right over the granite found in the subsoil. It is stated that though the petitioner has completed all the formalities for the execution of the lease deeds, since one of the partner of the petitioner-firm had been charge-sheeted by the C.O.D. for having involved in illegal transportation of granite by using fake permits, the quarrying licence in favour of the petitioner has been rightly revoked and therefore the petitioner is not entitled for the reliefs sought for in the writ petition. Consequently respondents have prayed for dismissal of the writ petition.

4. The learned Counsel for the petitioner vehemently contended that the impugned revocation notification at Annexure-A is bad in law as it is violative of principles of natural justice, since the petitioner was not issued with any notice

before issuing the same. He further asserts that the petitioner-company has not contravened any of the provisions of the rules and therefore the impugned notification is illegal. According to him, even if any contravention is committed by the partner of the petitioner-firm the same is compoundable. His further submission is that there was no scope for the petitioner to use fake permits for transporting the granite. He, therefore, prays for allowing the petition and to grant the prayers made therein.

5. Having heard the learned Counsel for the parties, perused the petition averments, the statement of objections and the documents produced. In the light of the admitted facts, it has to be tested as to whether the petitioner is entitled for the reliefs claimed in the writ petition.

6. In paragraph 4 of the writ petition the petitioner itself has averred thus.-

"It is humbly submitted that the land owner and the petitioner has filed a W.P. No. 22813 of 1995 pointing out that though the land is a granted land the same cannot be given to any other person.".

(emphasis supplied)

Petitioner has admitted that the land in question was not granted to it but it was granted to Smt. Kanakarathnamma. Therefore, as per the above averment in the petition, the grantee should not have given the land to the petitioner-firm. The petitioner cannot assert or claim any right over the land granted to a third party. On this ground alone the petition is liable to be dismissed.

6-A. In paragraph 4 of the counter, it is pointed out that under the Grant Certificate the grantee has no right over the mineral in the subsoil of the granted land. That being the position, when the grantee herself had no right over the mineral available in the granted land, she has no right or power to give consent to the petitioner for exploiting the granite from the land in question. Thus, petitioner has no valid title or right to seek the reliefs for excavation, removal and transportation of the mineral.

7. The petitioner is asserting right also on the basis of the order dated 6-9-1995 passed by this Court in W.P. No. 22813 of 1995. That order was passed following the order passed in some other petition. This Court did not consider the merits of the case independently. If the aforesaid factors had been taken into consideration while disposing of W.P. No. 22813 of 1995, definitely this Court would not have granted the reliefs in that petition in favour of the petitioners therein. It is also to be noted that in that writ petition, the first petitioner was the grantee of the land in question and the petitioner herein was the 2nd petitioner. In this petition the petitioner has not at all brought the grantee of the land to picture only with a view to deprive of her valuable rights in the land on the basis of the consent alleged to have been given by the grantee. In the first place, the grantee herself had no right over the mineral available in the granted land. Even if at all she has any right over the mineral, she alone has the right to exploit it. Merely on the

basis of alleged consent letter of the grantee the petitioner has no right and it cannot seek the reliefs for exploiting the mineral from the land granted to the grantee.

8. One of the contentions put forth is that the impugned notification was not preceded by notice and hence the impugned action is violative of principles of natural justice. This contention is not available to the petitioner. As observed above, neither the grantee nor the petitioner have any right over the mineral. Even if notice had been issued before the issuance of impugned notification, the petitioner would have pleaded what has been averred in this writ petition. There was no scope for any improvement in his version or position.

9. Learned Government Advocate rightly placed reliance on Rule 8(4) of the Rules to contend that one of the partners of petitioner-firm has contravened the provisions of the rules and hence the petitioner-firm is not entitled to hold any quarrying lease. The petitioner is admittedly a partnership firm. Contravention of any law by any of the partner of the firm reflects the image of the firm, The petitioner has not denied contravention of the provisions of rules by its partner Rajendrakumar. It's assertion is, petitioner-firm has not contravened any provisions of the rules. The firm being a legal entity, it is being managed by its partners. The firm itself cannot transact its business. Contravention of any law by any one of the partner of the firm would be a contravention by the firm itself. Therefore, the petitioner-firm cannot take shelter on the ground that it has not committed any contravention.

10. Yet another ground raised by the petitioner is that it has complied with all the formalities and all the requirements have been fulfilled and therefore it is entitled for the reliefs sought for in the petition. Basically, the petitioner has no right at all for claiming the reliefs. Thus, viewed from any angle, the petition is devoid of merits and the same is liable to be dismissed.

11. The writ petition is accordingly dismissed.