

(2012) 01 KAR CK 0130
In the Karnataka High Court
Case No : CCC/Civil/No. 2324 of 2011

M/s. Sudarshan Stone Enterprises (P) Ltd.

APPELLANT

Vs

Sri K. Jothirlingam Principal Secretary to Government of
Karnataka Department of Mines and Geology Vikasa Soudha
Bangalore - 560001, Sri H.R. Srinivas Director Department of
Mines and Geology Khanija Bhavan, Race Course Road
Bangalore and Sri Rayappa Senior Geologist Department of
Mines and Geology Mandya District, Mandya

RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Karnataka Minor Mineral Concession Rules, 1994 — Rule 11, 16

Citation : (2012) 01 KAR CK 0130

Hon'ble Judges : H.S. Kempanna, J; D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : H. Srinivas Rao, for M/s. Srinivas and Badri A/s, for the Appellant;
V.S. Hegde A/s for A1 to A3, for the Respondent

Judgement

Shylendra Kumar, J.—Complainant was writ petitioner in WP No. 41082 of 2010 seeking for a direction to the State and the Director of Department of Mines & Geology to rectify the lease deed in writ jurisdiction dated 30.12.2000 in Q.L. No. 403 where under the predecessor of the writ petitioner had been granted a mining lease to quarry minor minerals in respect of an extent of 6 acres of non forest land in Sy. No. 73 of Erubanhalli Village, Nagamangala Taluk, Mandya District. It appears the petitioner got it transferred to its name from the original lessee in terms of an endorsement dated 20.4.2001, but had not taken any steps either for seeking the lease period changed from ten to twenty years or for any other purpose, but was happy with the lease for the period of ten years.

2. Writ petitioner approached this court on the premise that a decision had been taken by the respondent - State and the Director of Mining on 19.4.2008 to extend the period of quarrying leases granted by the state government from ten to twenty years etc.

3. Writ petitioner approached this court on the premise that a decision had been taken by the respondent - State and the Director of Mining on 19.4.2008 to extend the period of acquiring lease granted by the respondents from ten to twenty years etc.

4. Submission of Sri. Srinivas Rao, learned counsel for the complainant is that this decision perhaps was in respect of some other lessee and keeping in view the provisions of Rule-16 of the Karnataka Minor Mineral Concession Rules, 1994 as amended on 8.7.1999.

5. Learned counsel for the complainant had submitted before the court that the writ petitioner had made two representations one dated 30.1.2009 seeking for implementation of the Government Order dated 19.4.2008 and had also moved an application on 2.12.2009 seeking for renewal of the lease period which was due to expire by 30.12.2010.

6. Submission was made at the Bar during the course of hearing of the writ petition by learned counsel for the complainant - writ petitioner that if the respondents should consider the representation, they will be satisfied.

7. The response of the respondents as per submission of learned Principal Government Advocate for them was that the Government Advocate had no objection for disposal of the writ petition in terms of the submission made by learned counsel for the petitioner.

8. It is based on such submissions at the Bar, the following order came to be passed by the division Bench of this court in WP No. 41082 of 2010.

In view of the above, without going into the merits of the claim raised by the petitioner, we consider it just and appropriate to dispose of the instant writ petition, with a direction to the respondents take a decision on the applications filed by the petitioner on 30.01.2009 and 02.12.2009 by passing a well reasoned speaking order, within one month from the date of receipt of certified copy of this order.

9. It is thereafter the present contempt petition complaining that though this court had issued a direction to dispose of representation/application for renewal within a period of one month, it has not been complied or adhered to.

10. Notice had been issued by this court to the accused persons on 16.12.2011. Sri. V S Hegde, learned Additional Government Advocate appears for Accused Nos. 1 to 3 and a counter affidavit sworn to by Accused No. 2 - Director of Department of Mines & Geology is placed before the court.

11. While Accused No. 2 has expressed regret and apologizes for the delay which according to Accused No. 2 is bonafide and due to inadvertence etc, submission of Sri. V S Hegde, learned Additional Government Advocate is that the matter had been examined and a communication had been sent to the complainant on 5.1.2012 as per Annexure-R1 to the affidavit indicating that the matter is

processed and placed before the Committee functioning under Rule-11 of the Rules for further action and further submission of Sri. V S Hegde, learned Additional Government Advocate is that the rule committee also has taken a decision on 13.1.2012 and the order will be communicated to the complainant shortly and it should reach the complainant within a week's time or so.

12. We find the whole proceedings before this court whether in writ jurisdiction or in contempt jurisdiction appears to be more of misuse and abuse of the process of this court rather than ventilating any genuine or bona fide grievance on the part of the complainant - writ petitioner. The complainant in the first instance was not the original lessee. It was transferred to the complainant - writ petitioner and though submission of Sri. Srinivas Rao, learned counsel for the complainant is that the lease was transferred by the original lessee to the writ petitioner/complainant as per the rules, the fact remains that it is to a different legal entity the present complainant. Whether it was in terms of an enabling rule or otherwise is not so very germane for this court, but this is a revelation as to how State largess is administered by the Government in a rather whimsical and arbitrary manner.

13. The subject land without dispute is a Government land and the Mines & Minerals Development Regulation Act and the Karnataka Minor Mineral Rules, 1994 if at all are statutory provisions regulating grant of mining leases whether in respect of major mineral or minor mineral and insofar as minor minerals are concerned, the State Government has framed the Rules. It is not one regulating the lease of the Government land, whether forest land or revenue land. In such matters, until and unless the State Government decides to grant lease of its land which is the primary requirement, the question of granting a licence for mining a mineral does not arise. The relevant Act and the Rules only seek to regulate the award of mining leases, in the sense, right to extract mineral and are not provisions for regulating lease of Government land and for the purpose of extracting mineral, major or minor, then the relevant Act and rules apply. If the Government does not choose to grant lease of its land, no one can compel the Government to do so and the Act and the Rules are not even attracted. The State Government has not exhibited any commensurate awareness as all government lands are public properties and for the proper maintenance or protection of it and has been in an arbitrary and discriminatory manner granting mining leases in the Government land whether forest land or non-forest land and more often than not, conniving Government officials, showing favours to enterprising people, particularly, in the mining industry.

14. Litigation is rampant in this field and courts are flooded with writ petitions even in respect of grant of leases, particularly, in respect of immovable properties such as Government land also. While such matters are seldom fit matters for examination in writ jurisdiction, not merely writ jurisdiction is used rather abused, but contempt jurisdiction is also being invoked freely, for settling private disputes, essentially disputes arising amongst competing aspirants for

mining leases.

15. We find in the present case that the whole thing proceed on the basis of the concession made by the State Government and its advocate not necessarily being aware of the implications and consequences.

16. While an undertaking given by the respondent in the writ petition before this court, even the Government will be a solemn undertaking and should be obeyed and adhered to, it appears such undertakings are placed before the court without much seriousness or being aware of the implications and even in a casual manner.

17. We strongly deprecate such stand and attitude on the part of the officials of the State Government who show rather lukewarm interest in the matter of protecting the State properties and it can only point a finger towards the manner of the loose administration of governance and may be to favour some. Be that as it may, we do not find this contempt petition to be a fit matter at all to exercise contempt jurisdiction and more so when it is stated on the solemn statement of the Accused No. 2 that they have taken action and the learned Additional Government Advocate submits that a decision has been taken and it will be communicated to the complainant shortly.

18. While it is true that the accused persons may not have acted within the period of one month from the date of the order, time stipulations are more in the nature of an order in terrorem and not limitations per se in law and therefore we overlook the same and drop the contempt proceedings. Accordingly, contempt petition is dropped.