

(1997) 09 AP CK 0091

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27512 of 1996

Oriental Select Granites (P) Ltd.

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 13-09-1997

Acts Referred:

Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 31

Citation : (1998) 1 ALD 528

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : Mr. Ponnala Srinivas, for the Appellant; Government Pleader, for Industries and Commerce, for the Respondent

Judgement

1. In this writ petition, a writ of mandamus is sought declaring the action of the fourth respondent in seeking payment of Rs.5,38,729/- through proceedings Lr.No.2678/Q1/92 dated 23-9-1996 as illegal and arbitrary and consequently a direction is also sought to the fourth respondent to execute the lease deed and issue work order in favour of the petitioner-company.

2. To appreciate the issues raised in this writ petition, it is necessary to trace out few facts which led to filing of this writ petition.

3. Petitioner-company was granted lease originally in the year 1982 for a period of five years for extraction of multi-colour granite in Survey No.406(P) of Veparla village, Rayadurg Mandal of Anantapur District. On expiry of the lease period by 12-12-1987, it was renewed for a further period of five years upto 12-12-1992. On 26-4-1990, the petitioner-company had surrendered the lease-hold area of Ac.36.45 out of Ac.48.45 and retained an extent of Ac.12,00 as lease-hold area.

4. While so, the respondents were insisting for establishment of culling and polishing unit within the State of Andhra Pradesh as required and were not inclined to grant renewal of lease in favour of the petitioner. At that stage, petitioner filed W.P. No. 16493 of 1992 and this Court by an interim order dated

21-1-1993 directed the respondents to consider renewal of the mining lease in favour of the petitioner without insisting for the establishment of cutting and polishing unit within the State of Andhra Pradesh. Pursuant to the said direction, the third respondent granted 15 years of lease on 23-2-1993 with effect from 13-12-1992. The fourth respondent issued demand proceedings on 27-2-1993 as it is a formality for executing the lease deed on 19-3-1993, the petitioner-company approached the fourth respondent to execute the lease-deed and issue work order. However, the fourth respondent failed to execute the lease-deed and therefore, the petitioner filed W.P.No.9709 of 1993 in this Court. The said writ petition was disposed of on 18-11-1993 with a direction to the respondents to pass appropriate order in the revision filed by the petitioner. As against the said order, the petitioner-company carried the matter in Writ Appeal No. 1457 of 1993 which was also disposed of on 18-9-1996 with a direction to the respondents to execute the lease deed.

5. Notwithstanding the direction in the Writ Appeal, the respondents are insisting for payment of dead rent for the period from 13-12-1992 to 31-3-1997 amounting to Rs.5,38,728/- before executing the lease deed and issued the impugned proceedings. Assailing the same, the present writ petition is filed.

6. I have heard Sri Pannala Srinivas, learned Counsel for the petitioner and the learned Government Pleader for Industries and Commerce, at length.

7. The short question that falls for consideration is whether the respondents are entitled to demand the dead rent for the period from 13-12-1992 to 31-3-1997 from the petitioner?

8. It is seen that initially the petitioner was granted lease for a period of five years in the year 1982 and it was extended from time to time upto the year 1992. Thereafter, lease for a period of 15 years was granted to the petitioner according to the rules in force. The difficulty arose when the respondents failed to execute the lease deed in accordance with the rules paving way for the petitioner to carry out the mining operations. However, petitioner approached this Court by way of filing W.P.No.3709 of 1993 which culminated in filing Writ Appeal No. 1457 of 1993 which was disposed of by directing the respondents to execute the lease deed. However, the respondents issued the impugned proceedings seeking an amount of Rs.5,38,729/- towards dead rent for the period from 13-12-1992 to 31-3-1997.

9. Rule 31 of the A.P. Minor Mineral Concession Rules, 1966 postulates as under

"31. Conditions of permit or lease :--Every quarry lease shall, in addition to such conditions as may be specifically stipulated in each case, be subject to the following conditions, viz.,

(i) xxx

(ii) xxx

(iii) xxx

(iv) The lessee shall pay the advance dead rent at the time of execution of the lease deed and the annual dead rent for the subsequent years one month in advance every year and all other sums payable to the Government in any Government treasury and file the challans to the Assistant Director concerned.

10. A reading of the above rule does indicate that the lessee shall pay the advance dead rent at the time of the execution of the lease deed. In this case, no doubt, the petitioner had obtained renewal of the lease for a period of 15 years from 13-12-1992 but he would be obliged to pay the dead rent for the 15 years period provided if the lease deed is executed in his/its favour. The requirement contemplated in the above rule, to my mind, is that as long as the lease deed is not executed in favour of the petitioner, the respondents cannot insist seeking deposit of the dead rent. Though licence of the petitioner is renewed for a period of 15 years, unless lease deed is executed, petitioner is not entitled to carry out the mining operations.

11. It is not the case of the respondents that the petitioner is permitted to carry out the mining/quarrying operations without there being execution of lease deed. Therefore, I am of the view, the respondents are not entitled to demand the dead rent from the petitioner for the period from 13-12-1992 to 31-3-1997 amounting to Rs.5,38,729/-. Accordingly, the impugned proceedings are set aside. The respondents are directed to execute forthwith the lease deed in favour of the petitioner and issue work order and hand over the land to the petitioner-company for carrying the quarrying operations. The respondents are entitled to claim dead rent in advance from the petitioner after executing the lease deed as per rules. The entire-exercise of executing the lease deed in favour of the petitioner-company and issuing the work order shall be completed by the respondents within a period of one month from the date of receipt of a copy, of this order.

12. The Writ Petition is allowed in the above terms. No costs.