

(2003) 05 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 2563 of 2002

Shilpi Granites Exporters

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 28-05-2003

Acts Referred:

Karnataka Minor Mineral Concession Rules, 1994 — Rule 11, 3 (2), 8A (3), 8B
Mines and Mineral (Development and Regulation) Act, 1957 — Section 15

Citation : AIR 2003 Kar 322 : (2003) ILR (Kar) 2162 : (2003) 4 KarLJ 385 :
(2003) 3 KCCR 2199

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : Ashok Haranahalli, for the Appellant; B. Manohar, AGA for R1-2, S.
Vijayashankar, for D.L. Jagadeesh, for R3, for the Respondent

Final Decision : Allowed

Judgement

Rangavittalachar, J.—Petitioner has sought for quashing of the quarrying lease granted in respect of 10 acres of land in Sy. No. 60 of Handanahalli Village, Mallavalli Taluk, Mandya District to the 3rd respondent and the rejection of his application for grant of quarrying lease in an extent of 13 acres in the same survey number, and other reliefs.

2. Briefly stated, the facts relevant for the disposal of this writ petition are as under :

Petitioner contends that he made an application on 14.7.1994 for grant of quarrying lease in respect of 13 acres of government land in Sy. No. 60 of Handanahalli Village, Malavalli Taluk. The said application came to be rejected in the first instance by an order dated 17.9.1998 on the ground that the said land forms part of gomal. This order was challenged by the petitioner by filing WP 34901/ 2000 which came to be allowed and remanded for reconsideration by an order dated 7.11.2000. After remand, the application was processed and the revenue authorities after investigating and conducting necessary spot inspection,

had recommended for the grant of the lease.

3. Meanwhile, the Director of Mines & Geology had notified for grant of quarrying lease in respect of 15 acres of land in Sy. No. 40 of Gugalmari village by a notification published in Kannada Prabha dated 8.3.1997. One Durgappa Bandi was granted the lease in respect of this land being the highest bidder in a sum of Rs. 29,05,000/-. While conducting the mining operations, the lessee found that the land did not contain any pink granite as notified. He made a request to the authorities for grant of alternative land. When this request was not complied with, he filed a writ petition before this Court in WP 17802/1997. This Court by its order dated 27.11.1997, on the submissions made by the parties to the Writ Petition, directed the respondents to grant an alternative land in Sy. No. 40 after conducting a joint inspection. The respondents on the ground that this Court had directed them to grant an alternative land to the said Durgappa Bandi, by a notification dated 25.4.2001 - annexure A, has granted quarrying lease, in an extent of 10 acres in Sy. No. 60 of Handanahalli Village over lapping the area sought for by the petitioner without authority of law and even notifying the petitioner. The act of granting of lease is illegal and liable to be quashed.

4. After the lease was granted to the 3rd respondent vide annexure A, the application of the petitioner for grant of quarrying lease came to be rejected by respondents 1 and 2 by order dated 4.6.2001 on the ground that the area sought for is surrounded by private cultivable lands and the general public have objected for grant of the said lease. He has challenged this order by means of an amendment application dated 15.7.2002 which came to be allowed on 13.3.2003.

5. Petitioner has also questioned the entering of the partnership of the said Durgappa Bandi with 3rd respondent and the consequent act of the authorities in granting the mining lease in favour of the firm on the ground that there is no such provision in law.

6. Detailed statement of objections has been filed both by the 2nd and 3rd respondent. The 3rd respondent has stated in its counter that the grant of quarrying lease in the alternative land is in pursuance of the directions of this Court in the writ petition referred to by the petitioner and therefore, the 2nd respondent has not committed any illegality. 3rd respondent has also contended that he had to seek for alternative land because of the misrepresentation made by the 2nd respondent that the notified area in Sy. No. 40 of Gugalamari Village contained pink granite where it did not possess any such granite. 3rd respondent therefore, only sought for alternative land.

7. The 2nd respondent also has reiterated the stand of the 3rd respondent.

8. On the basis of the said pleadings, Sri Ashok Haranhalli, petitioner's Counsel submitted firstly that the reason furnished for rejecting the application of the petitioner vide annexure T is only an invented one in as much as, while the same was granted in favour of the 3rd respondent, the 1st and 2nd respondent found that no such objection existed but, surprisingly, they come out with the said

objection for rejecting the application of the petitioner.

9. Learned Counsel nextly submitted that under the scheme of the Karnataka Minor Mineral Concession rules, there is no power for the authorities to grant an alternative land as has been done in the present case. The known procedure is either to grant leasehold rights by public auction or consider the applications filed voluntarily as per the detailed procedure; the reliance made by the respondents on the decision of this Court in WP 17802/1997 is wholly misplaced. This Court had only given its consent for the proposal made by the parties before it for grant of an alternative land in Sy. No. 40 of Gugalamari Village. It had not permitted or consented for grant of an alternative land in an area applied for the petitioner.

10. In reply, Sri Vijayashankar, learned Sr. Counsel submitted firstly that the petitioners have no legal right to question grant of a mining lease in respect of a government land in favour of the 3rd parties. The only right petitioners can claim is for consideration of their application which has been already done by the authorities. Secondly, it was submitted that the writ petitioners are guilty of delay and laches and lastly, it was submitted by producing the gazette notification during the hearing of the petition that the lands in Sy. No. 60 of Handanahalli village is already notified for granting of leasehold rights by tender-cum-public auction. Petitioners have not made any applicant pursuance of the same. Therefore, they are not entitled to prosecute the writ petition. He defended the order of granting alternative land on the ground that the 3rd respondent based on the representation made in the notification that the area notified contained deposits of pink granite, had quoted the highest price and at a huge investment started the mining operations; but, the representation turned out to be false. It is under these circumstances, alternative land was granted.

11. The Government of Karnataka has passed "The Karnataka Minor Mineral Concession Rules, 1994" (hereinafter referred to as the Rules for brevity) in exercise of its powers u/s 15 of the Mines and Minerals (Regulation and Development) Act, 1957 regulating the grant of quarrying license/lease and other connected matters.

12. The subject matter of this writ petition is a minor mineral, within the meaning of the Rules. Rule 3(2) of the rules prohibits grant of lease or licence of a minor mineral, except in accordance with the provision of the rules. It reads :

"No quarrying lease or (licence or quarrying permit), licence shall be granted otherwise than in accordance with these rules."

Under the scheme of the Mineral Concession Rules, quarrying leases or licenses of State owned lands may be granted by the State either by tender-cum-auction or by inviting application under Chapter II, III, IV and IV A of the Rules.

13. In either of the cases, the State Government has to first determine the area available for grant under Rule 8A and then publish in the Gazette.

After determining the available land, the State Government if it so decides may choose to grant the licence or lease by "tender-cum-auction" in respect of both specified and non specified minor mineral under Rule 8B.

14. In the absence of a notification under Rule 8B, any person intending to obtain licence or lease in respect of a "specified minor mineral" has to make an application under Rule 9 occurring in Chapter III in pursuance of the notification issued under Rule 8B. It is only after the notification is published, the intending applicants get a right to file the application, subject to its terms and conditions, sub rule (3) of Rule 8A specifically declares that any application filed by a private person, before the lands is notified as available for grant or applications filed after the prescribed date in the notification expires, should not be entertained. Rule 8A(3) is extracted herein for ready reference :

"Rule 8-A: Availability of land belonging to the State Government to be notified for grant :

(1) No area belonging to the State Government :

(a) Which was previously held or is being held under quarrying lease; or

(b) the quarrying lease granted in respect of which has lapsed under Rule 6;

(c) in respect of which a notification has been issued under Sub-rule (3) of Rule 8;

(2).....

(3) Any application for grant of quarrying lease in respect of areas whose availability for grant is required to be notified under Sub-rule (1) shall, if :

(a) no notification has been issued under that rule; or

(b) whether any such notification has been issued, the period specified in the notification has not expired; be deemed to be premature and shall not be entertained and the application fee thereon, if any paid, shall be refunded."

If there are more applicants than one, all of them have to be considered together by the State Government on the recommendations of a committee constituted under Rule 11 consisting of the Secretaries of various Departments of the Government and the Director of Mines and Geology. Keeping in view the rule of priorities as per Rule 12, the State Government may grant a quarrying lease/ license to any one of the applicants by executing a lease deed. The lease deed should contain the identifiable area for mining with reference to boundaries, survey numbers, etc.

15. Similar is the procedure to be followed in respect of quarrying licences or leases granted by tender cum auction under Rule 8B. A lease deed executed should also contain the identifiable area with reference to the boundaries and survey numbers.

Thus, by a reading of the extracted portion of Rule 3(2) and Rule 8A, it is clear that no mining rights in respect of the lands belonging to the State Government can be granted in any other manner other than what is stated in the Rules. The Mineral Concession Rules do not provide for granting alternative land on any grounds even where leases are executed by misrepresentation or for any other reason.

16. If the licensee or the lessee after the grant of the lease under Rule 8B finds that the representations made in the notifications by the State Government while inviting tenders was false or incorrect, the knowledge of which could not be ascertained even with due diligence and care, the remedy of such a person will be one that is available to an aggrieved party to a contract entered into under misrepresentation or mistake. This position of law has also been clearly recognized by this Court in the case of *Tam Tam Pedda Guruva Reddy Vs. State of Karnataka and Another*, and the rules do not provide for grant of an alternative land to a victim of contract entered by misrepresentation. The concept of granting any alternative land in substitution of the land granted under lease or licence is also alien to the Rules and to the Law of Contracts. In the absence of specific provision for such a grant under the rules, the grant of alternative lands is impermissible and would amount to conferring a power on the authorities where no such power exists. The grant of the mining lease to the 3rd respondent vide annexure A is not supported by the Rules.

17. However, the reason stated by the defending respondents that annexure A i.e., the lease deed granting alternative land was executed as per the orders of this Court in WP 17802/1997 cannot be appreciated. A reading of the order of this Court in the said writ petition only indicates that in Sy. No. 40 of Gugalamari village on account of the concession shown by the State, the State was permitted after inspection and being satisfied about other conditions to grant any alternative land in Sy. No. 40 of Gugalamari village. That does not mean that the respondents were conferred power to grant lease on any alternative land other than Sy. No. 40. The argument therefore, has no merit.

18. In so far as the contention that the writ petitions have no locus standi to question the grant of the lease of the Government land in favour of the 3rd respondent is concerned, there is no merit. Every person has a right to make an application for the grant of a quarrying lease of a minor mineral whenever the State notifies any area as available for grant under Rule 8 and when once an application is filed, he has a right to have his application considered in accordance with the provisions of chapter III i.e., Rule 8, 11 etc., and equally he has a right to question any decision on his application if he is aggrieved by the same. In the facts of the present case as stated, the authorities first rejected the application on the ground that the land is gomal land. When the rejection was held improper and the authorities were asked to reconsider the application in accordance with the rules and even before the reconsideration of the application the authorities have granted the lease in respect of the very land on the ground

of granting alternative land to 3rd respondent. In such a situation can it be said that the petitioner has no interest to question the grant of lease to 3rd respondent, the answer is, it cannot be. In other words petitioner has the locus standi to question grant of the lease in favour of the 3rd respondent before consideration of his application which was pending consideration, when the said decision is likely to affect the consideration of his application on merits; Sri Vijayshankar made a subsidiary argument during the hearing by producing a gazette notification, notifying the land under Rule 8 of the Rule and contended that the petitioner having not made any application in pursuance of the said notification, petitioner should be non-suited.

19. It is to be stated that the rejection of the petitioner's application is not on the said ground, but, on different grounds already stated above. It is also necessary to state that it is not the case of the 3rd respondent that he had made any application in pursuance of the said notification and the grant of lease under annexure A is a consequence of such an application.

20. In the light of the discussion made above, the impugned grant of lease under annexure A is quashed. So also the order at Annexure E rejecting the application of petitioner. The matter is remitted to the file of 1st and 2nd respondents to re hear and dispose of the application of the petitioner according to law.