

IN THE HIGH COURT OF ANDHRA PRADESH

W.P.No.3433 of 2022

Between:

M/s. Mangalore Minerals Pvt. Ltd.,
Mineral House, Hampankatta, mangalore,
Karnataka, rep. by its Authorised Person.

... PETITIONER

AND

\$ 1. The State of Andhra Pradesh, Department of Mines & Geology,
Secretariat,
Velagapudi, rep. by its Principal Secretary.

2. The Director of Mines & Geology, Ibrahimpatnam, Vijayawada.

3. The Assistant Director of Mines & Geology, Nellore, Nellore District.

... RESPONDENTS

Date of Judgment pronounced on : 25.08.2022

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

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| 1. Whether Reporters of Local newspapers
May be allowed to see the judgments? | : Yes/No |
| 2. Whether the copies of judgment may be marked
to Law Reporters/Journals: | : Yes/No |
| 3. Whether The Lordship wishes to see the fair copy
Of the Judgment? | : Yes/No |

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HONOURABLE SRI JUSTICE R. RAGHUNANDAN RAO**

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... RESPONDENTS

! Counsel for Petitioner : Sri N. Vijay

^Counsel for Respondents : G.P. for Mines and Geology

<GIST:

>HEAD NOTE:

? Cases referred:

1. 1959 SCR 265 = AIR 1958 SC 532
2. AIR 1925 PC 97
3. AIR 1951 CALCUTTA 338
4. AIR 1966 SC 1361
5. 2001 Law Suit (Cal) 601
6. AIR 2004 SC 3625

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**W.P.No.3433 of 2022****ORDER:**

The petitioner herein had been granted a mining lease for Silica Sand over an extent of Ac.260.00 in Sy.No.20 & 38 of Siddawaram Village, Kota Mandal, Nellore District in the year 2003, for a period of 20 years, vide G.O.Ms.No.236, Ind. & Com. (Mines) Department, dated 06.08.2003. The petitioner commenced quarrying operations after obtaining the said lease. On 14.09.2006, an environment impact assessment notice was issued under the Environmental Protection Act, 1986 making it mandatory for lessees for excavating minor minerals also to obtain environment clearance before the commencement of mining operations. On account of this notification, the petitioner had to stop quarrying operations from 01.05.2013 and could recommence the quarrying operations only after obtaining the said environment clearance. It is the case of the petitioner that such clearance was not required, in the case of the petitioner, as the quarrying operations of the petitioner had commenced even prior to the date of the notification and such a clearance would have to be necessary only at the time of obtaining renewal of the lease. However, the petitioner does not appear to have taken any steps to obtain relief on this basis.

2. The petitioner despite not carrying on any quarrying operations had paid dead rent till 2017-18. The petitioner stopped paying dead rent for the years 2018-19 onwards. The petitioner has now approached this court by way of the present writ petition for a declaration that the action of the respondents in insisting for payment of dead rent for the period 2013-20, even though the quarry was not in operation, as

illegal and arbitrary and violative of Articles 14, 19 and 300A of the Constitution of India.

3. Sri N. Vijay, learned counsel appearing for the petitioner, would submit that the grant of a mining lease cannot be equated with a lease defined under the Transfer of Property Act. It must be understood to mean a grant of two rights, i.e., a right to enter the leased/licensed area and a right to extract minerals from the leased/licensed area. He would further submit that the transaction is a transaction in the nature of "*Profit a prendre*". He would further submit that once the petitioner's right to extract minerals had been suspended, on account of lack of environment clearance, there would be no liability on the petitioner to pay dead rent.

4. Sri N. Vijay, learned counsel for the petitioner, would also submit that the delay in obtaining the environment clearance was on account of the inaction of the authorities of the State in granting necessary No Objection Certificates for obtaining the environment clearance for taking up quarrying operations. He would submit that on this count also, the petitioner cannot be made liable for payment of dead rent during the said period. He relies upon the following judgments for this proposition.

- 1. Shrimati Shantabai vs. State of Bombay and Ors.,¹;**
- 2. Katyayani Debi vs. Uday Kumar Das²;**
- 3. India Nilakantha Pati vs. Kshitish Chandra Satpati and Ors.,³**
- 4. Surendra Nath Bibra vs. Stephen Court Ltd.,⁴;**

¹ 1959 SCR 265 = AIR 1958 SC 532

² AIR 1925 PC 97

³ AIR 1951 CALCUTTA 338

⁴ AIR 1966 SC 1361

5. Budge Budge Co. Ltd., vs. Jute Corporation of Ltd.,⁵;**6. Raichurmatham Prabhakar and anr., vs. Rawatmal Dugar⁶**

5. Sri N. Vijay, learned counsel for the petitioner, would also rely upon a circular issued by the Government of India bearing No.16(2-1) 2001-MVI, dated 09.10.2001 wherein it was directed that the Mining Department would not be entitled to recover any money including dead rent, over the leased area, for the period during which physical possession of the leased area is not with the lessee and where the lessee ceased to have legal right over the mining area.

6. Respondents 1 to 3 have filed a counter affidavit. In this counter affidavit, the contention of the petitioner, that the grant of environment clearance got delayed on account of inaction of the authorities of the State, is disputed. It is the further contention of the respondents that the respondents had never asked the petitioner to stop the mining activity on the leased area and the 3rd respondent vide Circular Notice No.2188/M2/98, dated 05.01.2013 had only requested the petitioner to submit required documents as per the EIA notification and this lessee itself gave a letter dated 19.12.2013 informing the respondents that the petitioner had applied for the environment clearance and was temporarily discontinuing mining activities from 01.05.2013. The respondents contend that the closure of mining by the petitioner was a voluntary decision of the petitioner and there was no demand for such closure by the respondents.

7. The respondents would further contend that the requirement to pay dead rent is not only on the basis of the terms of the grant of

⁵ 2001 Law Suit (Cal) 601

⁶ AIR 2004 SC 3625

mining lease but also on account of the provisions of Section 9(A)(1) of the Mines and Minerals (Development and Regulation) Act, 1957.

8. Before going into the questions raised in the present writ petition a review of the judgments cited by Sri N. Vijay is required.

9. In **Katyayani Debi vs. Uday Kumar Das**, the question before the Privy Council was whether rent could be collected from a lessee even for the period during which the lessee was out of the possession of the said property. The Privy Council, on the facts of the case before it, had held that the doctrine of suspension of payment of rent would be applicable where a tenant has not been put in possession of part of the subject's lease where the rent was a lump sum rent for the whole land and the said principle would have no application where the stipulated rent is so much per acre or bigha.

10. In **India Nilakantha Pati vs. Kshitish Chandra Satpati and Ors.**, the Hon'ble High Court at Calcutta was considering a case where the rent was a lump sum amount for the whole land. However, in the said case, the landlord had forcibly evicted the tenant from a part of the land. On account of the tortuous act of the landlord, the Hon'ble High Court applying the principles of justice, equity and good conscience had held that the tenant was not required to pay any rent until the landlord puts the tenant back in possession of the portion from which the tenant had been dispossessed.

11. However, this principle was rejected by the Hon'ble Supreme Court in **Surendra Nath Bibra vs. Stephen Court Ltd.** In similar circumstances, the Hon'ble Supreme Court had held that the tenant, on the ground of being dispossessed from a part of the land, cannot refuse payment of the entire rent and would be required to pay proportionate

rent to the extent of the land which continues to be in occupation of the tenant.

12. In **Budge Budge Co. Ltd., vs. Jute Corporation of Ltd.**, a similar case was considered and the principle of suspension of payment of rent was also considered. In this case, the Hon'ble High Court at Calcutta had also observed that the doctrine of suspension of rent is not restricted to cases where the tenant is dispossessed and it can be applied to other cases on the principles of equity, justice and good conscience.

13. In **Raichurmatham Prabhakar and anr., vs. Rawatmal Dugar.**, the Hon'ble Supreme Court was considering a case where the landlord is given possession of the leased premises for the purpose of reconstructing the premises. In such a situation, the Hon'ble Supreme Court had held that the tenancy of the tenant does not get terminated and the tenant would have right to enter into the possession on the rent granted earlier. This is a judgment, which arose under the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960.

14. The principle of suspension of rent, enunciated by the above judgements is to the effect that the liability of payment of rent should be waived where the lessee does not get the benefit of the lease.

15. In **Shrimati Shantabai vs. State of Bombay and Ors.**, The Hon'ble Supreme Court was considering the grant of right to take and appropriate, all kinds of wood from certain forests, under a lease given by the owner of the said forests. The Hon'ble Supreme Court after a review of the law in this regard, had held that the said lease can be considered as a grant of a right to enter the land and the right to take away the wood and trees in the said land and that the same would amount to a transaction of *Profit a prendre*".

16. The terms of the mining lease granted to the petitioner as well as the model form would show that a mining lease of an area of land is given for the purposes of enabling the lessee to extract the mineral(s) specified in the deed of lease. This would mean that the Lessee is being given the right to enter and occupy the land as well as the right to extract the mineral(s) specified in the deed of lease. The Hon'ble Supreme Court, in similar circumstances, in the above judgement, had held that a grant of lease of this nature would be a transaction of "Profit a Pendre" wherein two separate rights of entering the land and extracting mineral(s) is granted. The same principle would apply to a mining lease also. Applying the two principles of Suspension of rent and Profit a Pendre, the contention of the petitioner that it would be entitled to waiver of rent on the ground of suspension of the right to extract mineral(s), for reasons beyond its control, merits consideration.

17. However, there is another aspect to this issue. There was no legal impediment stopping the petitioner from excavating the minor minerals for which it had been granted a lease. The Petitioner mis understood the scope of the notification requiring environment clearances and had voluntarily suspended mining activity in the lease area. In such circumstances, there was no hindrance for the petitioner exercising both the rights of entering into the land as well as excavating the minor minerals. Even otherwise, it would be an implied condition of the lease that the responsibility of obtaining necessary clearances for carrying on mining activity would be on the lessee. In such a situation, it would not be permissible for a lessee to avoid payment of dead rent on the ground of lack of clearances for carrying on mining activity.

19. In these circumstances, the liability of the petitioner to pay dead rent even if the petitioner was unable to extract mineral, on account of non availability of clearances, would not cease.

20. Accordingly, this writ petition is dismissed. There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

25th August, 2022
Js.

R. RAGHUNANDAN RAO, J.

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

W.P.No.3433 of 2022

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Js.