

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY, 2021

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.9158 OF 2021 (GM-MMS)

BETWEEN:

ABHISHEK STONE CRUSHER
OFFICE AT "ARUNA NILAYA"
6TH CROSS, MUNICIPAL COLONY
KELAGOTE
CHITRADURGA - 577502
REP. BY ITS PROPRIETOR
SRI A.R ABHISHEK

... PETITIONER

(BY SHRI GANAPATI BHAT VAJRALLI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REP. BY ITS CHIEF SECRETARY
VIDHANA SOUDHA
DR. B.R. AMBEDKAR VIDHI
BENGALURU - 560 001
2. THE PRINCIPAL SECRETARY
DEPARTMENT OF MINES AND GEOLOGY
VIDHANA SOUDHA
DR. B.R. AMBEDKAR VIDHI
BENGALURU - 56 0001
3. THE PRINCIPAL SECRETARY
DEPARTMENT OF FOREST
VIDHANA SOUDHA
DR. B.R. AMBEDKAR VIDHI
BENGALURU - 560 001

4. THE LICENSING AUTHORITY/PRESIDENT
AND DEPUTY COMMISSIONER
DISTRICT STONE CRUSHER LICENSING AND
CONTROLLING AUTHORITY
REP. BY DEPUTY COMMISSIONER
CHITRADURGA - 577501
5. THE DIRECTOR
DEPARTMENT OF MINES AND GEOLOGY
KANIJA BHAVAN
BENGALURU - 560 001
6. THE DEPUTY DIRECTOR
DEPARTMENT OF MINES AND GEOLOGY
CHITRADURGA TALUK
CHITRADURGA DISTRICT - 577501
7. THE DEPUTY CONSERVATOR OF FOREST
CHITRADURGA TALUK
CHITRADURGA DISTRICT - 577501
8. THE RANGE OFFICER
WILDLIFE RANGE
CHITRADURGA - 577501

... RESPONDENTS

(BY SHRI S.S.MAHENDRA, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED 30TH JULY 2019 ISSUED BY THE 6TH RESPONDENT AS PER ANNEXURE-L IN RESPECT OF SCHEDULE QUARRY LEASE AND CRUSHER UNIT AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THROUGH VIDEO CONFERENCING THIS DAY, **CHIEF JUSTICE** MADE THE FOLLOWING:

ORDER

Issue notice. The learned Additional Government Advocate takes notice for the respondents. Considering the

limited controversy involved, this petition is taken up for final disposal.

2. The petitioner has been granted a quarrying lease (Annexure-E) under the Karnataka Minor Mineral Concession Rules, 1994 (for short 'the said Rules of 1994') for a period of twenty years with effect from 31st October 2009. The petitioner has been also granted a licence under Section 3 of the Karnataka Regulation of Stone Crushers Act, 2011 (for short 'the said Act of 2011') for carrying out crushing activities which is valid up to 20th February 2035.

3. By the impugned order at Annexure-L dated 30th July 2019, the petitioner has been called upon to stop the quarrying activities on the basis of the aforesaid quarrying lease and the crushing activities on the basis of the licence granted under Section 3 of the said Act of 2011. It is stated that the area covered by the quarrying lease is within 10 kilometers of eco-sensitive zone surrounding Jogimatti forest and therefore, the consent of the National Wildlife Board is required for carrying out the quarrying and crushing operations.

4. The submission of the learned counsel appearing for the petitioner is that neither under the said Rules of 1994

nor under Section 19 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short 'the said Act of 1957'), there is a provision to suspend the operation of a quarrying lease. He further submitted that in the facts of the case, there is no power vesting in the Authorities under said Act of 2011 to suspend the licence granted under Section 3 of the said Act of 2011. Reliance is placed on a decision of this Court dated 12th April 2021 in W.P.No.3296/2021 and other connected matters and in particular, what is held in paragraphs 4 and 5. A reliance is also placed on the judgment of this Court dated 13th January 2021 in W.P.No.15654/2020.

5. The learned Additional Government Advocate, placing reliance on the order of the Apex Court dated 11th December 2018 in W.P. (Civil) No.202/1995 (***T.N.Godavarman Thirumulpad vs Union of India and others***), submitted that Jogimatti Sanctuary is covered by the said order and the judgment rendered in W.P.No.15645/2020 is in respect of a National Park/Sanctuary which is not included in the list of 21 National Parks/Sanctuaries incorporated in the order dated 11th December 2018 of the Apex Court.

6. After having considered the submissions of the learned counsel appearing for the parties, we find that it is not necessary for us to go into the question whether the decision in W.P.No.15645/2020 will apply in this case. As far as the lease granted under the said Rules of 1994 is concerned, in paragraphs 4 and 5 of the judgment and order dated 12th April 2021 in W.P.No.3296/2021, it is held thus:

"4. After having perused the order impugned in W.P.No.3296/2021, it must be mentioned here that the same does not refer to any statutory provisions or statutory Rules which empower the District Task Force Committee or the State Government to close all the activities of mining in a particular area. So long as the leases granted to the petitioners under the said Rules of 1994 are valid and subsisting, the mining activities on the basis of the leases cannot be prevented or stopped.

5. In case the petitioners commit breach of the provisions of the said Rules of 1994 or the conditions in the leases, action can be initiated under Rule 6(3) of the said Rules of 1994. Moreover, Section 19 of Mines and Minerals Development and Regulation Act, 1957 provides that if any prospecting licence or mining lease is granted, renewed or acquired in contravention of the provisions of the said Act or any Rules or orders made thereunder, the same shall be void and of no effect. However, recourse to the aforesaid provisions has not been taken in the cases in hand."

7. Under clause (vi) of sub-section (2) of Section 9 of the said Act of 2011, there is a power vesting in the Authority, as defined, to suspend/cancel the crusher licence for non-

compliance of the conditions of the licence. Therefore, the power to suspend the licence conferred by the said Act of 2011 and in particular, Section 9 is limited to the cases where there is a non-compliance or breach of the conditions incorporated in the licence. In the present case, there is no such allegation. However, there is a power under Section 10 of the said Act of 2011 to cancel the licence on the grounds mentioned therein after giving an opportunity of being heard to the petitioner. There is a power conferred under Rule 6(3) and Rule 45 of the said Rules of 1994 to cancel a quarrying lease.

8. It is not necessary for us to go into the reasons recorded in the impugned order/notice at Annexure-L. Suffice it to say that in the facts of the case, the Deputy Director of Mines and Geology had no power to suspend the quarrying operations under a valid and subsisting quarrying lease and crushing activity under a subsisting licence under Section 3 of the said Act of 2011. Therefore, only on the aforesaid ground, we quash and set aside the impugned order/notice by granting a liberty to the respondents to adopt appropriate proceedings.

9. Accordingly, we pass the following order:

- (a) The impugned order/notice at Annexure-L dated 30th July 2019 is hereby quashed and set aside only on the ground that in the facts and circumstances of the case, the Deputy Director of the Mines and Geology Department had no power to suspend the operations under a subsisting quarrying lease and the crushing activities under a subsisting licence under Section 3 of the said Act of 2011;
- (b) However, this judgment and order will not preclude the concerned respondents from initiating proceedings for cancellation of the lease or licence, as the case may be, in accordance with law;
- (c) We make it clear that we have made no adjudication on the factual assertions made in the impugned

order/notice. All the issues are kept open to be decided in the appropriate proceedings;

(d) Accordingly, the petition is disposed of on the above terms.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

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