

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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

AND

THE HON'BLE MR.JUSTICE H.T. NARENDRA PRASAD

WRIT PETITION NO. 14671 OF 2007 (GM-MMS) DATED:04-11-2019

M/ S. Sunvik Steels Pvt Ltd.,Vs. The State of Karnataka, Mines, SSI & Textiles, Department of Industries and Commerce, M.S. Building, Bengaluru-560001 and Others

ORDER

Chief Justice

By this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for setting aside the order dated 23rd July 2004 passed by a learned Single Judge of this Court in W.P.No.3557/2003.The second prayer is for quashing the communication dated 23rd/26th July 2007 issued by the State Government and the third prayer is for issuing a writ of mandamus, directing the State Government to consider the application made by the petitioner for grant of mining lease.

2. A mining lease (No.468) was granted on 13th December 1958 in favour of the third respondent's father in respect of an area of 90 acres in survey No.130 of village Honnebagi and survey No.28 in village Yerekatte. The lease was for a period of 20 years. The mining lease was in respect of Lime Stone, Dolomite, China clay and Fire clay, Iron Ore and Manganese. A mining lease (No.1700) was granted in the year 1978 in favour of the 3rd respondent's mother for a period of 5 years from 30th December 1978.After the said mining lease bearing No.M.L.1700 expired, an application for renewal was made which was rejected on 24th July 1984 on the ground that mining may lead to serious soil erosion and affect edaphic condition. A writ petition was filed by the 3rd respondent's mother being W.P.No.11818/1987 which was dismissed. A special leave petition was filed against the said order which was withdrawn by the 3rd respondent. Thereafter one more application was filed by the 3rd respondent for renewal of mining lease on 29th July 1999, which was rejected on 3rd January 2000.Even the said order of rejection was confirmed in writ petition No.22230 of 2000 filed by the 3rd respondent.

3. On 8th October 2002, the State Government notified the areas for re-grant in accordance with Rule 59 of the Mineral Concession Rules, 1960 (for short " the said Rules ").As per the said notification, the 3rd respondent's mother applied for re-grant of mining lease on 27th January, 2003. As the application was not considered, she filed W.P.No.3557/2003. The learned Single Judge of this Court, by an order dated 23rd July 2004, directed the respondents therein (first and second respondent in this writ petition) to consider the application dated 27th January 2003 for grant of mining lease as per Annexure- D, to consider the request of the third respondent's mother to treat the said application as the one for renewal of lease and to pass order thereon in accordance with law. In writ petition No.11122 of 2006, by the order dated 8th June 2008, this

Court directed the State Government to comply with the order dated 23rd July, 2004 within four months. On 03rd of February 2007, the petitioner filed an application under the same notification dated 8th October 2002 for grant of mining lease in respect of the same area of 90 acres. By the order dated 11th of July 2007 passed in W.P.No.9707/2007, this Court directed the respondents to consider the application made by the petitioner for grant of mining lease along with other applications. By a communication dated 23rd/26th July 2007 which is a D.O. letter issued by the Under Secretary to the Government (Mines, SSI & Textiles) to the Commissioner for Mines and Geology and the Director of Mines and Geology, the Director of Mines and Geology was called upon to comply with order of this Court as stated in the letter dated 10th May 2007. The Director of Mines and Geology was called upon to make the compliance and report the compliance.

4. By a letter dated 08th May 2007 the Commissioner had sought opinion of the State Government in which it was expressed that if application for renewal filed on 27th of January 2003 was to be considered, the notification dated 08th October 2002 will have to be withdrawn.

5. According to the case of the petitioner, when a representation was made by the petitioner on 01st August 2007 for implementation of order passed on 11th July 2007, the petitioner came to know about the communication dated 23rd July 2007.

6. The 3rd respondent filed statement of objections. The 3rd respondent pointed out that in W.P.No.11818/1987 filed by the 3rd respondent's mother, an order was made on 20th August 1987. The said writ petition was filed for challenging the rejection of the applications for renewal made by the 3rd respondent's mother by the order dated 24th of July 1984. This Court observed in the said order that if a mining lease is granted in favour of any other person, the 3rd respondent's mother shall be at liberty to approach this Court for challenging the grant of lease to such person. It is pointed out that the 3rd respondent's mother filed a petition being W.P.No.22230/2000 praying for quashing the order dated 03rd January 2000 by which the application for renewal of lease made on 29th July 1999 was rejected. It is pointed out in the objections filed by the 3rd respondent that working permissions were sought as renewal application was pending consideration and accordingly on 27th October 2004, 08th May 2006 and 26th of October 2007 working permissions were granted to the 3rd respondent. Reliance was placed on order dated 03rd February 2006 passed in writ petition No.11122/2005 filed by the 3rd respondent by which an order was made directing compliance with order dated 23rd July 2004 passed in writ petition No.3557/2003 within a period of four months. The 3rd respondent's mother expired on 08th September 2004. Thereafter the 3rd respondent submitted a representation on 01st October 2004 calling upon the first and second respondents to implead him as legal heir of his mother. As the said application was not considered, W.P.No.18631/2006 was filed by the 3rd respondent in which by order dated 8th January 2007 a direction was issued to consider the application dated 01st October 2004 within the time specified therein.

7. The 3rd respondent pointed out that on 06th September 2007, the Director of Mines and Geology had recommended to the Secretary, Government of India to grant renewal of mining lease in favour of the 3rd

respondent. In the objections, reliance is placed on various permission granted to the 3rd respondent. It is pointed out that by a notification dated 25th September 2007 mining lease was renewed for 20 years with effect from 30th December 1983 and by another notification dated 25th September 2007 the mining lease was renewed for a further period of 20 years with effect from 30th December 2003. It is submitted by the 3rd respondent that in view of the renewal of lease, the notification dated 8th October 2002 was no longer valid. It is submitted that the present writ petition filed by the petitioner for challenging order dated 23rd July 2004 passed by this Court is not maintainable. It is, therefore, submitted that no relief can be granted to the petitioner.

8. The State Government (1st and 2nd respondent) also filed objections, in which it is contended that pursuant to the orders passed by this Court, a fresh lease deed was executed over an area of 26 acres out of the land in Survey No.130 of village Honnebagi for a period of 20 years with effect from 30th December 1983 and the subsequent renewal was made with effect from 30.12.2003 for another period of 20 years. It is submitted that 3rd respondent has not submitted mandatory and statutory Forest Clearances from the Government of India as required under Section 2 of the Forest (Conservation) Act, 1980 (for short ' Forest Act ').

9. The learned counsel appearing for the petitioner has submitted that the application filed by the 3rd respondent's mother for renewal of the lease was rejected on two occasions and the rejection was confirmed on two occasions by this Court. It was pointed out that the area in question is available for re grant under Rule 59 of Mineral Concession Rules 1960. In fact 3rd respondent had applied for a fresh lease as per the said notification and therefore, this Court could not have directed the authorities to consider the application for renewal. It is pointed out by the learned counsel the fact that third application was made by the 3rd respondent for renewal was rejected by the State Government on 03rd January 2000 and the fact of dismissal of the earlier writ petition filed by the 3rd respondent for challenging the orders of rejection has been suppressed by the 3rd respondent. The submission is that the order dated 23rd July 2007 in writ petition No.3557 of 2003 is vitiated by suppression of the earlier order. The submission is that the action of renewal of lease by the 3rd respondent is without jurisdiction. Reliance was placed by the learned counsel on the decision of the Apex Court in the case of Common Cause V/ s Union of India and Others<sup>1</sup>.

10. The learned senior counsel appearing for the 3rd respondent submitted that the order dated 23rd July 2004 passed in the writ petition No. 3557/2003 filed by the respondent's mother has attained finality. He submitted that after renewal of lease in favour of the 3rd respondent, the petitioner has no locus standi to question the same, inasmuch as the notification dated 8th October 2002 cannot be implemented. It was submitted that now the mining lease is in subsistence for a period of 20 years and when the said mining lease is in subsistence, it cannot be disturbed. The learned High Court Government Pleader supported the action of renewal of lease. Our attention was also invited to the amended Rules and it was submitted that no interference is called for.

11. We have carefully considered the submissions. Firstly, it is necessary to advert to the factual aspects of the case which are borne out from the record. Even according to the case of the 3rd respondent, in the year 1958, a mining lease in respect of an area of 90 acres was granted for a period of 20 years to 3rd respondent's father. The said lease expired on 30th December 1978 which was again renewed on 5th November 1980 for a further period of five years from the date of expiry. The mining lease expired on 30th December 1983. The 3rd respondent applied for renewal of lease on 27th December 1982 for a further period of 20 years. The said application was rejected on 24th July, 1984 by the State Government. The said order of rejection was confirmed in the revision petition on 24th April, 1987. Therefore, writ petition No.11818/1987 was filed by the 3rd respondent's mother for specifically challenging the order of rejection of her application for renewal of lease. By an order dated 20th August, 1987, the learned Single Judge did not interfere with the order of rejection of the application for renewal of lease filed by the 3rd respondent's mother. However, it was held that if mining lease is granted in favour of any other person, the 3rd respondent's mother will be at liberty to approach this Court for questioning the legality of the order granting mining lease in favour of the other person. As noted earlier, the reason given for rejection of application for renewal of lease in the order dated 24th July, 1984, was that renewal of mining lease may lead to serious soil erosion and may deteriorate the edaphic conditions. A Special Leave Petition was filed by the 3rd respondent's mother before the Apex Court against the aforesaid order and the same was withdrawn.

12. A second application for renewal of mining lease was filed by the 3rd respondent's mother on 29th July, 1999 and by an order dated 3rd January, 2000, the said application was rejected on the ground that the earlier application was rejected on 24th July, 1984. Being aggrieved by the said order dated 3rd January, 2000, the 3rd respondent's mother filed a writ petition No.22230/2000 which was dismissed by an order dated 13th November, 2000. Paragraph 3 of the said order reads thus:

" 3. One do not know whether fresh mining lease has been given at all, with respect to the same land. The averments in this behalf are not clear. Besides even if the mining lease is given the person to whom such lease is given has not been made a party. This is also a fatal defect.

In these circumstances it is not possible to exercise the power of this Court under Article-226 of the Constitution and examine the correctness of Annexure- F order. The statement in Annexure- F order discloses that there is an order of 1984 which has become final and it is not challenged. There is no dispute in this behalf as well. In such circumstances the present order is not vitiated in any manner. The only course open to this Court is to dismiss the writ petition. I do so. "(underline supplied)

The above order was confirmed in writ appeal No.354/2001. Thus, the order of rejection of the second renewal application made by the third respondent's mother was confirmed on the ground that the earlier order of rejection of renewal application has become final.

13. On 8th October, 2002, a notification was issued by the State Government, notifying the schedule property as available for re-grant under Rule 59 of the Mineral Concession Rules, 1960. After publication of the said notification, the 3rd respondent applied for grant of lease on 27th January, 2003. A writ petition 3557/2003 was filed by the 3rd respondent's mother seeking a direction against the 1st and 2nd respondents, enjoining them to consider her application for renewal of mining lease and to pass appropriate orders thereon.

The writ petition was disposed of by an order dated 23rd July, 2004. In paragraph- 1 of the said order, there is a reference to rejection of renewal application on 24th July, 1984 and the fact that there was a challenge to the said order by filing writ petition No.11818/1987. However, there is no reference to the fact that another application for renewal of lease was made by the 3rd respondent on 29th July, 1999 which was rejected by an order dated 3rd January, 2000. It was also not mentioned that the said order was challenged by the 3rd respondent's mother by filing writ petition No.22230/2000 and the said writ petition was dismissed by an order dated 13th November, 2000. In paragraph 6 of the judgment and order dated 23rd July, 2004 passed in W.P. 3557/2003, it was observed that there is a changed circumstance, in view of the notification dated 8th October, 2002. The prayer made in the writ petition was for issuance of a writ of mandamus directing the 1st and 2nd respondents to consider the application dated 27th January, 2003 made by the 3rd respondent's mother for renewal of mining lease. Thus, it was a 3rd application for renewal of lease after the earlier two applications were rejected. As stated earlier, the lease granted in favour of the father of the 3rd respondent expired as long back on 30th December 1983. Ultimately, by the Judgment and Order dated 23rd July, 2004, following direction was issued:

" 9. In this view of the matter, the writ petition is allowed. The respondents are directed to consider the application dated 27.1.2003 for grant of Mining Lease as at Annexure- ' D ' as also the request of the petitioner, to consider the application as one for renewal of lease in respect of Sy.No.130 of Honnebagi and Sy.No.28 (part) of Yerekatte village as at Annexure- ' E ', and pass orders thereon, in accordance with law, forthwith, in any event before granting the land to any other applicant on the basis of other applications received pursuant to the Notification ".(underline supplied)

Thus, the direction issued was to treat the application dated 27th January, 2003 as the application made for grant of renewal of lease. The said application was ordered to be disposed of in accordance with law.

14. By the said order, the earlier two orders of rejection passed on two applications for renewal of lease were not upset/disturbed by this Court and merely a direction was issued to consider the application made by the 3rd respondent on 27th January, 2003 in accordance with law by treating the same as an application for renewal of lease. Thus, the order of rejection of two earlier applications made for renewal of lease made by the third respondent's mother has become final.

15. At this juncture, it is necessary to refer the provisions of Rule 24- A of the said Rules, which govern renewal of mining lease. Rule 24- A is in existence on the rule book from 10th February, 1987. As per sub-rule ( 1 ) of

Rule 24- A, an application for renewal of a mining lease must be made to the State Government at least twelve months before the date on which the lease is due to expire. In the present case, when the said application dated 27th January, 2003 was made, several years had expired after the expiry of the lease. Therefore, the said application was not made within the time stipulated in sub-rule ( 1) of Rule 24- A of the said Rules. Therefore, there was no question of entertaining the application for renewal of lease made by the 3rd respondent's mother on 27th January, 2003. Firstly because, it was not made within the time specified under Sub-Rule ( 1) of Rule 24A and secondly, the earlier applications made by the 3rd respondent on two occasions were rejected and the orders of rejection have become final.

16. The direction to the 1st and 2nd respondent was to consider the application dated 27th January, 2003 in accordance with law. It appears that the State of Karnataka has erroneously treated the said direction as a mandatory direction to renew the lease. In the objections filed by the State Government, in paragraph 8, it is contended that in obedience to the order passed by this Court, a fresh lease was executed over an area of 26 acres in Sy.No.130 of Honnebagi village in Chikkanayakanahalli taluk, Tumkur district for a period of 20 years. The area of the land in respect of which the lease was originally granted was about 90 acres. The renewal was made on 25th September 2007 for a period of 20 years with effect from 30th December, 1983 and for a further period of 20 years with effect from 30th December 2003.

17. As per the amended writ petition, the first prayer in the writ petition is for setting aside the order dated 23rd July, 2004 passed in writ petition No. 3557/2003. The said prayer need not be gone into, inasmuch as, the said order merely directs the consideration of renewal application made by the 3rd respondent. Moreover, the consideration was to be made in accordance with law. The further prayer in the writ petition is for quashing the notification dated 25th September, 2007 under which, the lease was renewed in favour of 3rd respondent's mother. By the said notification, the lease was ordered to be extended/renewed for a period of 20 years. In fact, by another notification of the same date, the lease was ordered to be renewed on second occasion.

18. As noted earlier, two earlier applications for renewal of lease were rejected by the 1st and 2nd respondents and the said two orders were not interfered with by this Court and have attained finality. The third application dated 27th January, 2003 was not made within the stipulated time as provided in Sub-Rule ( 1) of Rule 24- A of the said Rules of 1960. Therefore, the 3rd application for renewal of lease made on 27th January 2003 was not at all maintainable and the same ought not to have been entertained and considered by the 1st and 2nd respondents. The same ought to have been rejected by them, as required by law. There was no direction issued by this Court to allow the application dated 27th January, 2003. The application was to be decided in accordance with law. The only course open in accordance with law was to reject the said application. Therefore, the notifications dated 25th September, 2007 will have to be set aside. Even as per Sub-Section ( 3) of Section 8A of the said Act of 1957 (as amended from 12th January 2015), the deeming

provision will not apply to a lease which was renewed on three occasions. The deeming provision is not applicable when lease is already renewed prior to 12th August 2015.

19. The impugned communication dated 23rd/26th July, 2007 indicates that the State Government had issued a notification of renewal solely on the ground that it will have to face contempt proceedings. It is pertinent to note that both the petitioner and the 3rd respondent have made applications seeking a fresh grant of mining lease. The 3rd respondent made an application on 27th January, 2003 as per the notification dated 8th October 2002 and the petitioner made an application for grant of lease on 3rd February 2007. As a result of the renewal of lease, the petitioner is directly affected as his application cannot be considered on the basis of the notification dated 8th October 2002. Now both the applications will have to be decided in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (for short, 'the said Act of 1957'). The said applications will have to be decided as per sub-section (2) of Section 10A of the said Act of 1957, as the said applications were pending on 12th January, 2015. Thus, the applications will have to be decided in accordance with the provisions of Section 10A, which came into force with effect from 12th January, 2015. Sub-Section (1) of Section 10A lays down that all the applications pending on the said date shall become ineligible. Sub-Section (2) of Section 10A is an exception to sub-section (1) of Section 10A and notwithstanding the fact that the applications were pending on 12th January, 2015, the same can be processed provided that the same satisfy the tests laid down in clause (b) of sub-section (2) of Section 10A.

Accordingly, we dispose of the writ petition by passing the following order.

- i) We hold and declare that as per the order dated 23rd July, 2004 passed in writ petition No.3557/2003, the 1st and 2nd respondents were under an obligation to treat the application made by the mother of the 3rd respondent as an application for renewal of lease which had expired in the year 1983 and to decide the same in accordance with law. Further, we hold that there is no mandatory direction issued in W.P.No.3557/2003 to renew the lease on the basis of the application dated 27th January, 2003;
- ii) We hold that the application dated 27th January, 2003 for renewal of lease filed by the mother of the third respondent was not maintainable in law, inasmuch as, the same was not made within the time stipulated under sub-rule (1) of Rule 24- A of the Minerals Concession Rules, 1960. Moreover, the orders rejecting two earlier applications for renewal had become final;
- iii) We, therefore, set aside the two notifications dated 25th September 2007 and the renewal effected on the basis of the same;
- iv) We direct the State Government to consider the application dated 27th January, 2003 made by the third respondent and the application dated 3rd February, 2007 made by the petitioner in accordance with law and in the light of the provisions of sub-section (2) of Section 10A of the said Act of 1957;
- v) Appropriate decision shall be taken within a period of two months from 3rd December 2019;

vi) The directions issued will operate after expiry of one month from today;

vi) The writ petition is accordingly partly allowed on the above terms, with no order as to the costs.