

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JUNE, 2018

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE

AND

HON'BLE MR.JUSTICE KRISHNA S. DIXIT

WRIT PETITION NO. 38539 OF 2017 (GM- MMS)

BETWEEN:

M/S MAA GRANITES
(REGISTERED PARTNERSHIP FIRM)
BY ITS MANAGING PARTNER,
SHRI. ASHOK S/O MAHANTAPPA BHOGAPUR
AGE: 52 YEARS,
OCCUPATION: BUSINESS,
RESIDENT OF SAPTAGIRI NEELAYA,
BASAVANAGAR,
ILKAL – 587125
HUNGUND TALUKA,
BAGALKOT DISTRICT.

... PETITIONER

(BY SRI.S.R. ANURADHA, ADVOCATE)

AND:

1. STATE OF KARANTAKA,
BY ITS SECRETARY
DEPARTMENT OF INDUSTRIES & COMMERCE,
VIKASA SOUDHA,
DR. AMBEDKAR ROAD,
BENGALURU – 560001

2. DIRECTOR,
DEPARTMENT OF MINES & GEOLOGY,
NO.49, KHANIJA BHAVAN,
5TH FLOOR, RACE COURSE ROAD,
BENGALURU – 560001.

3. DEPUTY DIRECTOR,
DEPARTMENT OF MINES & GEOLOGY,
#16/A, BRINDAVANA SECTOR,
NAVANAGAR, BAGALKOT.

... RESPONDENTS

(BY SRI. V.G. BHANU PRAKASH, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT RESPONDENTS TO ISSUE NECESSARY ORDERS TO DEEMED EXTENSION OF THE QUARRYING LICENSE NO. 790 OF THE PETITIONER FOR A PERIOD OF 30 YEARS FROM THE DATE OF EXECUTION OF THE LICENSE AS PER THE PROVISIONS OF KMMC RULES, 1994 R/W AMENDED NOTIFICATION DATED 12.08.2016 AT ANNEX – C.

THE INTERIM PRAYER IN THE WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, THIS DAY **KRISHNA S. DIXIT,J.**, PRONOUNCED THE FOLLOWING:

INTERIM ORDER

In this Writ Petition, petitioner has sought for a writ of mandamus to the respondents to issue necessary order for deemed extension of its Quarry License No.790 for a period of 30 years from the date of execution of the said license.

We have heard this matter for Preliminary Hearing and on the prayer for the interim relief, for a direction to the respondents to allow the petitioner to continue to work in the licensed area and to issue transport permits for the transportation of the minerals quarried in the land, on payment of royalty. The understanding is that the main matter would be taken up for Final Hearing after the disposal of land owners' writ petition, being W.P.No.105311/2017, filed in the Dharwad Bench of this Court wherein, challenge is laid to the orders for alleged vesting of the petition land in the State.

Brief facts of the case are:-

(a) The State Government vide Q.L.No.790 dated 23.07.2007 granted to Sri. Raju M. Bhora, a Quarrying

License comprising land measuring 11 Acres 09 Guntas in Sy.No.280 of Balkundi Village, Hunagund Taluk, for a period of 10 years. This grant was made under the provisions of Karnataka Minor Mineral Concession Rules, 1994 (hereafter called 'KMMC Rules')

(b) The said Quarrying License came to be transferred to the petitioner vide Government Notification dated 06.01.2012 on payment of requisite fees/levies. Petitioner has been carrying on the quarrying operations with effect from 08.06.2012. The Government of Karnataka, vide Notification dated 12.08.2016, has promulgated the Karnataka Minor Mineral Concession (Amendment) Rules, 2016 in exercise of powers conferred by Sections 15, 15A and 23C of the Mines and Minerals (Regulation and Development) Act, 1957. Petitioner filed an application dated 03.01.2017 before the 2nd respondent seeking deemed extension of its Quarrying License for a period of 30 years under Rule 8-A (2) of KMMC Rules as amended by 2016 Amendment Rules.

(c) The jurisdictional authorities, after carrying out joint spot inspection and survey demarcation, have prepared the reports, panchanama and mahazar on 04.04.2017 recommending the case of the petitioner for deemed extension of its Quarrying License for a period of 30 years under the 2016 Amendment Rules.

(d) When this was the position, the Assistant Commissioner, Bagalkot, made an order dated 25.05.2017 under the provisions of Karnataka Land Reforms Act, 1961, holding that the land comprised in the Quarrying License has vested in the State and therefore, the entries in the Revenue Records should be mutated in the name of the Government after deleting that of the Pattadar/land owner. Pursuant to order of the Assistant Commissioner, the 3rd respondent issued notice dated 03.06.2017 unilaterally seizing the granite blocks stacked in Sy.No.280 and further, the request of the petitioner for issuance of Mineral Dispatch Permits went in vain.

(e) In W.P.No.105311/2017 filed by the land owner, the Dharwad Bench of this Hon'ble Court has granted an interim order of stay on 05.07.2017 staying the Assistant Commissioner's order dated 25.05.2017 which held that the petition land had vested in the State. The said stay order has been continued from time to time. Despite all this, the petitioner's application for deemed extension of Quarry License has not been considered. Aggrieved thereby, the petitioner has approached this Court.

After service of notice, the respondents have entered appearance through the Additional Government Advocate and have filed a Statement of Objections, *inter alia*, contending that the entire area including the petition land came to be vested in the State by virtue of the provisions of the Bombay Personal Inam Abolition Act, 1952. The challenge to the vesting by various Mining Companies before this Court and the Apex Court was rejected leaving liberty to agitate the matter in civil suits. The decrees passed in some of the civil suits are in challenge before this Court in Regular First Appeals.

The Statement of Objections also states that in terms of the Apex Court's judgment, several Mining Companies/inamdars have filed civil suits for declaration and injunction. The civil courts have granted ad interim orders permitting the quarrying operations subject to outcome of the suits. That being the position, the permission granted by the Pattadar namely Vijaya Mahantesh Vidya Vardhaka Sangha itself is null and void and therefore, the Quarry License in favour of Shri Raju M. Bhora and subsequent transfer of the said License in favour of the petitioner are all null and void.

Learned counsel for the petitioner Smt. Anuradha submits that the Quarry License in Q.L.No.790 for the land measuring 11A - 09G was granted to Shri Raju M. Bhora on 23.07.2007; the same was transferred to the petitioner vide Notification dated 06.01.2012; the 2nd respondent has executed the transfer of Quarry License on 07.06.2012 and the petitioner has been carrying on quarrying activity after obtaining the approval of Quarrying Plan and Environmental Clearance. It has been paying the royalty in crores of rupees.

Learned counsel for the petitioner also submits that the petitioner has filed the application on 03.01.2017 before the 2nd respondent seeking deemed extension of Quarry License for a period of 30 years as per Rule 8-A (2) of KMMC Rules as amended in 2016. All the required documents under Rule 8 (1) have already been furnished on 04.04.2017 and that the authorities have recommended the case of the petitioner for renewal.

Learned counsel for the petitioner takes us through the provisions of Rule 8A of KMMC Rules.

The relevant provisions of Rule 8A are extracted hereunder:

“ 8A . Periods for which Quarrying Lease, Licence or Prospecting Licence may be granted.-(1) On and from the date of commencement of the Karnataka Minor Mineral Concession (Amendment) Rules, 2016, all the Quarrying leases, licenses and Prospecting cum quarrying lease shall be granted for a period of Thirty years for Specified minor minerals and for a period of twenty years for the non-specified minor minerals:

xxx xxx

(2) All the quarrying leases or licenses granted before the commencement of the Karnataka Minor Mineral Concession (Amendment) Rules, 2016, shall be deemed to have been granted for a period of thirty years in respect of specified minor minerals and for a period of twenty years in respect of non-specified minor minerals [from the date of its original grant]:

Provided that the mining leases of the minerals which are now classified as minor minerals by the Central Government vide Notification No.S.O.423(E), dated 10-2-2015 shall be deemed to have been granted for thirty years, for an area already granted under such lease and be considered as Quarrying lease or license as the case may be:

xxx xxx”

Interpreting these Rules as amended by 2016 amendment, the counsel submits that there is a deemed extension of lease by operation of law and therefore, the petitioner who is contributing to the Exchequer in huge sums of money by way of license fee, royalty, etc., is entitled to the benefit of said deemed extension and that being so, the respondent authorities are not justified in directing seizure and sale/shift of the granite blocks quarried in the land in question.

The learned Counsel for the petitioner in support of her submission has relied upon the following two decisions of the Division Bench of this Court i.e., (i) Judgment and order dated 03.02.2017 in W.P.No.4503/2017 (GM-MM-S) and (ii) Judgment and Order dated 13.12.2017 in W.P.No.52915/2017 (GM-MM-S). The former decision although does not have much discussion, relates to the effect of KMMC (Amendment) Rules, 2016. Paragraph 3 of the said judgment reads as under:

“3. There has been amendment to the Karnataka Minor Mineral Concession Rules by the Karnataka Minor Mineral Concession (Amendment) Rules 2016. By virtue of such amendment, it has been provided that all quarry leases or licenses granted before the commencement of the Karnataka Minor Mineral Concession (Amendment) Rules, 2016, shall be deemed to have been granted for a period of 30 (thirty) years in respect of specified minor minerals and for a period of 20 (twenty) years in respect of non-specified minor minerals.”

The later proceeds on the concession made by the learned Additional Government Advocate as to the deeming provision in sub-section (6) of Section 8A of the Mines and Minerals (Development and Regulation) Act, 1957 as

amended by Act No.10 of 2015. Paragraphs 2 and 3 of the said judgment read as under:

“2. Learned Counsel for the petitioner submits that in view of sub-section (6) of Section 8A of the Mines & Minerals (Development and Regulation) Act, 1957, the mining lease bearing No.2453 at Annexure-A shall be deemed to have been extended upto the period ending on 31.03.2020.

3. Learned Additional Government Advocate appearing for the respondents fairly submits that the aforesaid provision of law applies to the aforesaid registered mining lease bearing No.2453 (Annexure-A), and therefore, the said lease shall be deemed to have been extended for the period provided therein i.e. upto 31.03.2020.”

On the basis of the aforesaid rulings, the learned Counsel submits that though the said rulings relate to quarry leases, the principle equally applies to the case of licenses as well since the very same Rule covers the licenses also.

The learned Additional Government Advocate, per contra, submits that the respondent authorities are legally justified in resisting the claim of the petitioner for deemed renewal/extension of Quarry License inasmuch as the land in question has been ordered to be vested in the State by the

Assistant Commissioner and this vesting is by operation of law. Elaborating this, he submits that the Quarry License was given to Shri Raju M. Bhora way back in July 2017 on a wrong assumption that the land was a Patta land when it vested in the State by operation of law.

The learned Additional Government Advocate further submits that had the fact of vesting been in the knowledge of the respondent – authorities, the Quarry License would not have been granted in 2007 and the transfer of the said license made in January 2012 would not have been approved by them. In any circumstance, because of the vesting of the land in the State, the learned Additional Government Advocate submits, it is open to the petitioner to seek grant of Quarry License/Lease afresh and not the benefit of deemed extension of license.

The learned Additional Government Advocate further argues that the provisions for deemed extension of lease/license period were introduced under the 2016 amended Rules which came into force on 12.08.2016; till

12.08.2016, unamended KMMC Rules, were in force; hence, the application seeking renewal of licence should have been filed on or before 21.07.2015; the concept of extension was not there on the date on which this petitioner had filed the renewal application. As per Rule 8 of KMMC Rules, petitioner was not entitled for extension unless he had filed application seeking renewal.

We have carefully considered the rival contentions advanced at the Bar. The original Quarry License granted in July 2007, the transfer of this license made in January 2012 in favour of the petitioner, the quarrying operations being carried on since then by the petitioner on payment of huge sums of money by way of royalty are all not in dispute. Similarly, the vesting order made by the Assistant Commissioner, Bagalkot, on 25.05.2017 having been challenged and having been stayed by the Dharwad Bench of this Court in Pattadars' writ petition in W.P.No.105311/2017 is also not in dispute.

Petitioner has placed on record a copy of its application dated 03.01.2017 pending consideration at the hands of 2nd respondent for grant of deemed extension. All other authorities have recommended the case of the petitioner for such extension. Despite all this, the 3rd respondent has issued notice dated 03.06.2017 for the seizure and sale of granite blocks quarried by the petitioner. Further, the request of the petitioner for issuance of Mineral Dispatch Permit has also not been considered. In these circumstances, the petitioner has made out a prima facie case for issuing Rule.

Petitioner having obtained the transfer of license and all sanctions and permits, has been uninterruptedly running the Mining Industry since years; petitioner has made huge investment and has also employed large amount of work force. It has come on record that the petitioner has been contributing to the Exchequer considerably in the form of royalty, levies, fees, etc. There is no complaint whatsoever about the violation of Rules or procedure. If the petitioner's mining operations are halted during the pendency of this petition, a great prejudice and irreparable loss would be

caused to it. Conversely, if the same is permitted to be continued, no prejudice will be caused to the State. Thus, the balance of convenience also lies in favour of the petitioner.

Hence, pending disposal of the main matter, the respondents are directed to allow the petitioner to continue to operate the Quarry License No.790 and to carry on the quarrying operations in the licensed area and further, to issue Mineral Dispatch Permit/Transport Permit to enable the petitioner to transport the quarried minerals on payment of royalty.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

Snb/