IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2019

PRESENT

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

AND

THE HON'BLE MR.JUSTICE PRADEEP SINGH YERUR

J.K. Cement Amited, Bagalkote –v/s State of Karnataka, Department of Commerce and Industry and Ors

WRIT PETITION NO.52904 OF 2016 (GM-MM-S)

ORDER

1. We have heard the submissions of the learned counsel appearing for the parties on the earlier date. With a view to appreciate the submissions, the factual matrix of the case will have to be considered.

2. A mining lease was granted by the first respondent to the Mysore Minerals Limited in the year 1978, which was renewed on 5th April 2002 for a period of twenty years from 21st November 1998. The lease granted to the Mysore Minerals Limited was in respect of the larger area of 687.97 acres. By virtue of the transfer deed dated 29th August 2002, a part of the lease area to the extent of 307 acres out of 687.97 acres was transferred to the petitioner.

3. On 3rd April 2008, the third respondent (formerly known as Sri Nandi Mining Company Private Limited) made an application to the State Government by pointing out that the area of 37.77 acres out of the lease area granted to the petitioner was an overlapping area. The application was made by the third respondent for grant of mining lease in respect of the said area by invoking Rule 22 of the Mineral Concession Rules, 1960 (for short 'the said Rules of 1960'). In the application, it is disclosed that the area of 37.77 acres was a patta land and consent of the Pattadars was enclosed. On the basis of the said application, the State Government passed an

order on 5th January 2010 directing that the said area of 37.77 acres be separated from the mining lease granted to Mysore Minerals Limited. A revision petition was filed by the present petitioner being aggrieved by the order of the State Government. The revision petition was allowed and the order dated 5th January 2010 was set aside. The order in revision petition was challenged by the third respondent by filing a writ petition before this Court. By order dated 5th June 2015, a Division Bench of this Court proceeded to set aside the orders of both the State Government and the revisional authority and directed the State Government to pass a fresh order. On the basis of the said order, the order dated 14th September 2016 (Annexure-A) has been passed by the State Government which is impugned in this writ petition.

4. By the impugned order, the mining lease of the petitioner to the extent of 37.77 acres was cancelled and the said area was ordered to be removed from the mining lease. The application made by the third respondent for grant of mining lease was held to be ineligible in the light of sub-section (1) of Section 10A of the Mines and Minerals (Development and Regulation) Act, 1957 (for short 'the said Act of 1957'). Further, a direction was issued to dispose the mining lease in respect of the said area of 37.77 acres by way of auction under Rule 10B of the Mineral (Auction) Rules, 2015. It was further

observed that once an auction takes place, the third respondent claiming to be pattadars will have to grant consent to the auction purchaser. It was also observed that on refusal to grant consent, the mining lease holder will have to apply for acquisition of the said area of 37.77 acres (for short 'the said area').

5. The learned Senior Counsel appearing for the petitioner has taken us through the provisions of the said Act of 1957 and the said Rules of 1960. He invited the attention of the Court to Section 24A of the said Act of 1957. The attention of the Court was also invited to various provisions of the said Rules of 1960 and in particular, clause (h) of sub-rule (3) of Rule 22 of the said Rules of 1960. He submitted that the second proviso to clause (h) clearly indicates that in case a mining lease is granted in respect of a private land or a patta land in respect of which minerals vest in the State Government, the consent of the owner or pattadar for actually starting mining operations can be furnished after execution of the lease deed. He, would therefore, submit that due to absence of consent of the third respondent, it was not necessary to delete the said area of 37.77 acres from the lease and in any event, to that extent, the impugned order is illegal. Inviting our attention to Section 24A of the said Act of 1957, he submitted that it is not dispute that the minerals in the said area vest in the State Government, and therefore, the compensation payable to the third respondent

will have to be determined in accordance with sub-section (2) of Section 24A read with Rule 72. He submitted that as the minerals in the said area vest in the State Government, against payment of compensation, the petitioner will be entitled to carry on mining activities in the said area. He submitted that as the minerals vest in the State, the petitioner, who has been granted lease by the State, cannot be deprived of an opportunity to carry on mining operations.

6. The learned AGA supported the impugned order. The learned Senior Counsel appearing for the third respondent also supported the impugned order. He pointed out that sub-section (2) of Section 24A deals with occupier of the land in respect of which permit or lease is granted and as far as the third respondent is concerned, the said land measuring 37.77 acres vested in the third respondent. His submission is that sub-section (2) of Section 24A of the said Act of 1957 and consequently Rule 72 of the said Rules of 1960 will not apply to the present case. He invited our attention to Rule 37 of the said Rules of 1960 and contended that the transfer of a part of the lease is not permissible under Rule 37 of the said Rules of 1960, and hence, the transfer made in favour of the petitioner is illegal.

7. We have given careful consideration to the submissions. We have perused the provisions of the said Act of 1957 and

the said Rules of 1960. A careful perusal of the said Rules of 1960 will show that the Rules deal with the grant of mining leases in respect of different categories of lands. For example, Chapter IV deals with grant of mining leases in respect of land in which the minerals vest in the Government. Chapter V deals with the procedure for obtaining a prospecting licence or mining lease in respect of land in which the minerals vest in a person other than the Government. The provisions of Chapter IV are applicable in case of a land which may be a patta land or a land of a private ownership, but the minerals therein vest in the State Government. The present case is governed by Chapter IV. Sub-rule (3) of Rule 22 states what should be the accompaniments of the application for grant or renewal of a mining lease. Clause (h) is one of the requirements, which reads thus:

> "(h) a statement in writing that the applicant has, where the land is not owned by him obtained surface rights over the area or has obtained consent of the owner for starting mining operations:
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> Provided that no such statement shall be necessary where the land is owned by the Government:
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> Provided further that such consent of the owner for starting mining operations in the area or part thereof may be furnished after execution of the lease deed but before entry into the said area:
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> Provided also that no further consent would be required in the case of renewal where consent has already been obtained during grant of the lease."
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> (underline supplied)

Hence, in a case where the land is of private ownership but the minerals vest in the State Government, in the application for grant of a mining lease, a statement is required to be made by the applicant that he has obtained consent of the owner for starting mining operations. The first proviso to clause (h) states that no such statement shall be necessary when the land is owned by the State Government. The second proviso is material in this case. It provides that consent of the owner can be furnished after execution of the lease deed but before entry into the lease area. Thus, in a given case, when an application under sub-rule (1) of Rule 22 is made for grant of mining lease in respect of the land of a private ownership in which the minerals vest in the Government, a lease can be granted even without the consent of the owner but as is clear from the second proviso to clause (h), before the holder of a mining lease enters into the area of private ownership covered by mining lease, the consent of the owner for starting mining operations has to be furnished. Therefore, in a given case, if an application for grant of a mining lease is made in respect of a land which is partly owned by the Government and partly owned by a private party the minerals in which are vested in the State Government, a mining lease can be granted even

when the applicant does not produce consent of the owners in respect of the land of private ownership. However, before entering into the area owned by a private party, the lessee will have to furnish consent of the owner for starting mining operations. Therefore, in the present case, merely because there is no consent of the owner, the lease could not have been cancelled in respect of the area of 37.77 acres.

8. Now, we deal with the second contention of the petitioner that on compensation being determined and paid to the third respondent, the petitioner has a right of entry in the land having an area of 37.77 acres. Before we advert to Section 24A of the said Act of 1957, it must be borne in mind that by virtue of the second proviso to clause (h) of sub-rule (3) of Rule 22, before entering the land of private ownership which is the subject matter of lease, the consent of the owner for starting mining operations has to be obtained. Such consent is required to be obtained either before grant of lease or even after grant of lease, but before entering into the concerned area. We must observe here that clause (h) of sub-rule (3) of Rule 22 uses the word ‘owner’ and not ‘occupier’.

9. Section 24A of the said Act of 1957 reads thus:

> "**24A. Rights and liabilities of a holder of prospecting licence or mining lease**.—(1) On the issue of a reconnaissance permit, prospecting licence or mining lease under this Act and the rules made thereunder, it shall be lawful for the holder of such permit, licence or lease, his agents or his servants or workmen to enter the lands over which such permit, lease or licence had been granted at all times during its currency and carry out all such reconnaissance, prospecting or mining operations as may be prescribed:
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> Provided that no person shall enter into any building or upon an enclosed court or garden attached to a dwelling house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.
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> (2) The holder of a reconnaissance permit, prospecting licence or mining lease referred to in sub-section (1) shall be liable to pay compensation in such manner as may be prescribed to the occupier of the surface of the land granted under such permit, licence or lease for any loss or damage which is likely to arise or has arisen from or in consequence of the reconnaissance, mining or prospecting operations.
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> (3) The amount of compensation payable under sub-section (2) shall be determined by the State Government in the manner prescribed."

Sub-section (1) confers a right on the holder of a mining lease, his agents or his servants or workmen to enter the lands over which lease had been granted at all times during the currency of the lease for mining operations. The proviso to sub-section (1) makes it clear that if there is any building or dwelling house on the land subject matter of lease, the holder of the mining lease is not entitled to enter into such building or upon any court yard or garden attached to a dwelling house except with the consent of the occupier. Sub-section (2) provides that the holder of a mining lease is liable to pay compensation in the prescribed manner to the occupier of the surface of the land granted under the lease for any loss or damage, which is likely

to arise or has arisen from or in consequence of the mining operations. This provision is applicable to the occupier as distinguished from the owner. This provision is made as the proviso to sub-section (1) permits entry of a person holding a mining lease in the area. Rule 72 of the said Rules of 1960 again talks about payment of compensation to the occupier. As pointed out earlier, clause (h) of sub-rule (3) of Rule 22 refers to the word 'owner' at various places. However in Rule 72, the legislature has referred to 'occupier' as distinguished from 'owner'.

10. The term 'occupier' is not defined under the said Act of 1957 or the said Rules of 1960. We may, however, note that even under the Karnataka Land Revenue Act, 1964, the term 'occupier' is not defined but 'occupant' is defined to mean the holder in actual possession of the land. Moreover, the said Rules of 1960 make a distinction between 'occupier' and 'owner'. Therefore, in view of the second proviso to clause (h) of sub-rule (3) of Rule 22, the holder of a mining lease in respect of a private land in which minerals vest in the State Government will not be entitled to enter the area of private ownership without furnishing consent of the owner for starting mining operations.

11. If the provisions of sub-section (2) of Section 24A read with Rule 72 of the said Rules of 1960 are given the meaning,

which the petitioner wants us to give, it will amount to violation of the constitutional right of the owner under Article 300A of the Constitution of India especially when the provisions regarding computation of compensation do not provide for giving an opportunity to the owner to participate in the process of determination of compensation.

12. Now coming to the argument canvassed by the learned Senior Counsel for the third respondent based on Rule 37 of the said rules of 1960, it is too late in the day now to make a grievance about transfer of lease permitted by the State Government in favour of the petitioner. Even the transfer deed was executed on 29th August 2002. There is nothing placed on record to show that during the span of 14 years, any attempt was made by the third respondent to challenge the transfer deed on the ground of violation of Rule 37. Therefore, the said argument cannot be accepted.

13. Though reliance was placed by the third respondent on the order passed in W.P.No.60531 of 2016 filed by the third respondent, we find from the order that a permission was granted to the third respondent to ventilate all its pleas in the writ petition filed by the present petitioner. A perusal of the order would show that the challenge by the third respondent was to the order dated 14th September 2016 only insofar as the said order holds that the application for grant of mining lease

filed by the third respondent is held to be ineligible in terms of Section 10A of the said Act of 1957. Thus, even in the said petition, there was no substantive challenge by the third respondent to the transfer of lease effected way back on 29th August 2002.

14. Hence, for the reasons recorded above, we are of the view that the order of deletion of the said area of 37.77 acres is bad in law.

15. The learned Senior Counsel appearing for the petitioner placed reliance on the decision of the Apex Court in the case of State of T.N. v. M.P.P. Kavery Chetty[1]. Reliance was placed on what is held in paragraph 14 of the said decision. He also

[1] (1995)2 SCC 402

invited our attention to the subsequent decision of the Apex Court in the case of Pallava Granites Industrial India (P) Ltd. vs. Government of A.P. and Others[2]. He submitted that the decision in the case of M.P.P. Kavery Chetty is by a Bench of three Hon'ble Judges and the subsequent decision in the case of Pallava Granites is by a Bench of two Hon'ble Judges. Moreover, the decision in the case of M.P.P. Kavery Chetty was not considered in the subsequent decision and therefore, what will apply and what will bind this Court is the decision in the case of M.P.P. Kavery Chetty supra.

16. We have carefully considered both the decisions. In the case of MPP Kaveri Chetty, the challenge before the Apex Court was to a judgment of Madras High Court by which Rules 8-D and 19-B and a part of Rule 19-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 made under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 were struck down as unconstitutional. The first proviso to Rule 19-A provided that from 10th June 1992, the State Government while granting quarrying lease for quarrying the minor minerals in ryotwari lands, shall give

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[2] (1997)4 SCC 559

preference to a State Government company or a corporation or company owned or controlled by the State Government. It is in the context of the first proviso to Rule 19-A, in paragraph 14, the Apex court held thus:

> "14. Learned counsel for the respondents submitted that under the first proviso of Rule 19-A the consent of the owner of the land was not made a condition and it was bad in law on that account. The submission does not take note of Section 24-A of the said Act. Thereunder the holder of a mining lease under the said Act or rules made under it is empowered to enter the land on which the lease has been granted and carry out mining operations. He is obliged to compensate the landowner for any loss or damage that his operations may cause. Consent of the occupier is required only when the holder of the lease desires entry into any building or enclosed court or garden."

17. The Apex Court has only adverted to Section 24A of the said Act of 1957 and has not dealt with the case to which clause (h) of sub-rule (1) of Rule 22 of the said Rules of 1960 has application. The issue, which arises in this petition, never arose for consideration of the Apex Court.

18. In the case of Pallava Granites, what is held by the Apex Court in paragraphs 2 and 3 is relevant which read thus:

> "2. The primary contention raised before us by Shri Soli J. Sorabjee, learned Senior Counsel, is that there was an earlier judgment of the High Court wherein it was held that there was no need to obtain the consent of the landlords before grant of mining lease and, therefore, the direction issued by the Division Bench on the ground of the prevailing practice is not correct in law.
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> 3. We find no force in the contention. The right to excavate the mines from the land of private owner is based

> on the agreement; unless the lessor gives his consent, no lessee has a right to enter upon his land and carry on mining operations. The right to grant mining lease to excavate the mines beneath the surface is subject to the agreement of the landowners. Therefore, with a view to ensure that there will not be any obstruction in the working of the mining lease and also for the peaceful operation of the excavation of the mines, insistence on the consent of the landlord is necessary. Therefore, we do not find any illegality in the view taken by the High Court warranting interference."
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> (underline supplied)

In the said decision, the petitioner before the Apex Court had applied for grant of a mining lease of land of private ownership thereof. On application by the petitioner, the Director granted the mining lease for a period of six months. Being aggrieved by the grant of mining lease for six months, the owners filed a writ petition before a Division Bench of Andhra Pradesh High Court on the ground that the lease was granted without their consent. The writ petition was disposed of with a direction that the lease can be granted only with the consent of the respondent owners. The observations made by the Apex Court are in this context.

19. Coming back to the present case, the ownership rights of the third respondent are not disputed by the petitioner. There is no provision either under the said Act of 1957 or under the said Rules of 1960 which enables the holder of a mining lease granted by the State Government to enter a private land

forming part of the lease for excavation of minerals without the consent of the owner of the land though the minerals in the land may belong to the Government. For excavating the minerals, the lessee has to enter the private property which cannot be done unless there is a consent or unless proper proceedings are initiated to allow him entry for limited purpose of carrying over the excavation of mines and minerals.

20. Therefore, the petition must succeed in part and we pass the following order:

(i) that part of the impugned order dated 14th September 2016 by which the mining lease in respect of the area of 37.77 acres was cancelled and the said area was directed to be removed from the mining lease is hereby set aside. Consequently, the direction contained in paragraph 33 of conducting auction of the mining rights in the area of 37.77 acres is hereby set aside;

(ii) Hence, that part of the order by which an application made by the third respondent for grant of mining lease was not granted is not disturbed;

(iii) We make it clear that though the area of 37.77 acres will continue to be a part of the mining lease granted to the petitioner, no mining

operations can be carried out in the said area without the consent of the third respondent;

(iv) Moreover, it will be always open for the petitioner to initiate an appropriate proceeding by itself or through the State Government for obtaining possession of the area of 37.77 acres only for the purpose of carrying out mining operations in terms of the mining lease;

(v) The writ petition is partly allowed in the above terms with no order as to costs.