

Writ Petition No. 4169 of 2008

Sakku Granites v. Govt. of A.P.

2014 SCC OnLine Hyd 890 : AIR 2015 (NOC 268) 107 : (2015) 3 ALD 707

Sakku Granites v. Govt. of A.P.
(BEFORE A. RAMALINGESWARA RAO, J.)

Sakku Granites Petitioner

v.

Govt. of A.P., Rep. by its Secretary, Industry & Commerce (Mines)

Dept., Hyderabad, A.P., And others Respondents

Counsel for petitioners: Sri. D. Venkat Reddy Donthi Reddy

Counsel for the Respondents: G.P for Mines and Geology, Smt. N. Shoba, Sri. Srinivasa Rao Velivela

Writ Petition No. 4169 of 2008

Decided on October 29, 2014

ORDER:

Heard the learned Counsel for the petitioner, learned Government Pleader for respondent Nos. 1 to 3, and the learned Counsel for the fourth respondent.

2. The fourth respondent applied for grant of quarry lease on 28.12.1998 over an extent of 1 hectare for black granite in S. No. Unsurveyed Area of Gudipala Village and Mandal, Chittoor District. The application of the fourth respondent was referred to the Mandal Revenue Officer for his report. The Mandal Revenue Officer, through his letter Ref. No. ROC-HDT/10/99, dated 20.01.1999, stated that the applied area in the survey number of unreserved forest of Gudipala Village and Mandal, is classified as Chithapara Forest Reserve as per the revenue records. Based on the said report, the application of the fourth respondent was recommended to the second respondent for rejection by the third respondent. In pursuance of the recommendation of the third respondent, the second respondent issued a show cause notice on 08.06.1999. The fourth respondent submitted an explanation stating that they would submit no objection certificate from the Forest Department as the said matter was with the District Forest Officer (West), Chittoor. However, the second respondent, vide his proceedings No. 1009/R4-2B/99, dated 05.07.2000, rejected the application of the fourth respondent. Against the said order, the fourth respondent preferred a revision to the first respondent on 12.03.2007. The said revision was allowed by the first respondent by proceedings in Memo No. 4376/M.II(1)/2007 dated 09.01.2008.

3. It appears that M/s. Hanuman Granites and M/s. Bharath Granites also filed an application in the same survey number in respect of the area applied for by the fourth respondent. The Mandal Revenue Officer, Gudipala, vide his letter No. A/69/2003, dated 22.01.2004, addressed a letter to the Forest Range Officer, Chittoor (West) stating that the applied area was originally in Chithapara Reserved Forest at the time of survey and settlement operations and subsequently a portion of Chithapara A block reserve was disafforested as per BPF 195 Misc. dated 22.03.1919. He also stated that the portion applied for was an unsurveyed gap area adjoining land of Gudipala Village and hence under the control of Revenue Department. After verification of the forest and revenue records, the District Forest Officer, Chittoor West Division, Chittoor had

stated that the Forest Range Officer had submitted that he had verified the records and reported that as per BPF 195 Misc., dated 22.03.1919, the area applied by M/s. Bharath Granites is unreserved area falling outside the reserve forest boundary. Based on the same, the second respondent granted two quarry leases in the unreserved areas in favour of M/s. Bharath Granites and M/s. Hanuman Granites. In respect of M/s. Alex Granites also, the Mandal Revenue Officer, Gudipala, had issued no objection certificate for grant of quarry lease. When the fourth respondent submitted those papers, the revision of the fourth respondent was allowed.

4. The petitioner applied for grant of quarry lease for black granite over an extent of 1 hectare in the same survey number on 11.12.2006, but it was withdrawn by the petitioner later on. Subsequently, the petitioner filed another application on 16.06.2007 in the name of M/s. Sakku Granites. The Mandal Revenue Officer, vide letter No. Roc.A/141/2007 dated 22.01.2007 issued no objection certificate for grant of quarry lease in favour of M/s. Sakku Granites, in pursuance of the application of the petitioner dated 11.12.2006. The third respondent had inspected the area and recommended for grant of quarry lease for black granite in favour of the petitioner. Though M/s. Alex Granites submitted a similar application on 04.09.2003, the no objection certificate was rejected by the Mandal Revenue Officer and the applicant also did not pursue his application.

5. Learned Counsel for the petitioner submits that the revision application filed by the fourth respondent is hopelessly barred by time and contrary to Rule 35-A of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short, the Rules), and the same should not have been entertained by the first respondent. If the application of the fourth respondent is rejected on the ground of limitation, the application of the petitioner could be entitled for consideration and they would be eligible to get the quarry lease. Learned Counsel for the fourth respondent, on the other hand, contends that the fourth respondent came to know about the mischief committed by the Mandal Revenue Officer in rejecting the no objection certificate earlier in respect of the fourth respondent whereas granting no objection certificate in respect of M/s. Hanuman Granites and M/s. Bharath Granites. The said fact came to be known only when the Mandal Revenue Officer addressed a letter on 22.01.2004, and when the fourth respondent came to know that the application of the M/s. Alex Granites is being processed for grant, the revision was filed.

6. The learned Counsel for the Petitioner relied on an unreported judgment of the Gujarat High Court in *Shriram Cement Limited v. Government of India* (LPA No. 489 of 2013 dated 16.01.2013) and *P. Venkateshwara Rao v. Union of India* (W.P. No. 21319 of 2009 dated 25.08.2012) of the High Court of Karnataka. They relate to the cases where the applications for condonation of delay were dismissed. Learned Counsel for the fourth respondent on the other hand relied on Collector, *Land Acquisition, Anantnag v. Mst. Katiji, G. Ramegowda, Major v. The Special Land Acquisition Officer, State of Jharkhand v. Shivam Coke Industries, Dhanbad and Bipromasz Bipron Trading SA v. Bharat Electronics Limited (BEL)* and submits that sufficient cause should be liberally construed. But in the present case, there is no application for condonation of delay and hence the consideration of sufficient cause has no application at all.

7. Rule 35-A of the Rules reads as follows:

35-A. Revision:- The Government may either suo motu at any time or on an application made within ninety days, call for and examine the record relating to any order passed or proceeding taken by the Director, Joint Director, Deputy Director or Assistant Director under these rules for the purpose of satisfying themselves as to the

legality or propriety of such order or as the regularity of such proceedings and pass such order in reference thereto as they think fit:

Provided that no order adversely affecting any person shall be passed under this rule unless such person has been given an opportunity of making his representation.

8. Proviso to Rule 35-C of the Rules enables the filing of an application if the applicant satisfies the Director/State Government that he had sufficient cause for not making the application within the specified time, and it reads as follows:

Provided that any such application may be entertained after the said period of two months/ninety days specified in Rule 35-A, if the applicant satisfies the Director/State Government that he had sufficient cause for not making the application within the specified time.

9. In *Noharlal Verma v. District Cooperative Central Bank Limited* the Supreme Court held as follows:

32. Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.

33. Sub-section (1) of Section 3 of the Limitation Act, 1963 reads as under:

(3) Bar of limitation.--(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. (emphasis supplied)

Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up. In other words, even in absence of such plea by the defendant, respondent or opponent, the court or authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation.

34. As stated earlier, Section 55 allows an aggrieved party to approach the Registrar within a period of thirty days. There is no provision analogous to Section 5 of the Limitation act, 1963 allowing the Registrar to condone delay if "sufficient cause" is shown. In view of this fact, in our opinion, the contention of the learned counsel for the Bank is well founded that the application submitted by the appellant was barred by time.

10. In the said case there was no provision for condoning the delay. But even though a provision is available for condoning the delay, such delay can be condoned only on an application showing sufficient cause.

11. The Supreme Court in *Prakash H. Jain v. Marie Fernandes* held that there is no such thing as any inherent power of Court to condone delay in filing a proceedings before Court/Authority concerned, unless the law warrants and permits it. It was held that a competent authority under the provisions of the Maharashtra Rent Control Act, 1999, is merely a statutory authority created for a definite purpose and to exercise, no doubt, powers in a quasi judicial manner but its powers are strictly circumscribed by the very statutory provisions which conferred upon it those powers and the same could be exercised in the manner provided therefor and subject to such conditions and

limitations stipulated by the very provision of law under which the competent authority itself has been created.

12. The fourth respondent did not state anything against column No. 7 of proforma of revision filed in Form-J. The revision petition of the fourth respondent was considered on the ground that the Mandal Revenue Officer did not consider the facts properly at the time of consideration of the fourth respondents application and the later application of M/s. Alex Granites is being considered. There is no whisper with regard to the delay or the grounds on which such delay could have been condoned. In fact, the fourth respondent submitted a letter to the second respondent on 12.07.1999 seeking 10 days time for submitting the clarification from the D.F.O., but the application of the fourth respondent was rejected on 05.07.2000 by the Joint Director of Mines and Geology. Even then the fourth respondent did not take immediate steps. The fourth respondent waited till 12.03.2007. The alleged ground of knowledge of later events at a later point of time put forward by the learned counsel for the fourth respondent is not found anywhere in record. Hence, in view of the ratio held by the Supreme Court in the above decisions, the consideration of the revision application filed by the fourth respondent in the year 2007 against the order of the Joint Director of Mines and Geology passed in the year 2000 without an application seeking condonation of delay by showing sufficient cause is clearly not maintainable. A learned single judge of this Court in *Karusala Nageswara Rao v. Government of Andhra Pradesh* also took the same view.

13. In the circumstances, the impugned Memo No. 4376/M.II(1)/2007 dated 09.01.2008 is liable to be set aside, and the same is accordingly set aside.

14. The Writ Petition is, accordingly, allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

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