

**THE HON'BLE SRI JUSTICE A.V. SESA SAI**

**WRIT PETITION No.14431 OF 2013**

**ORDER:**

In the present writ petition challenge is to the demand notice bearing No.6002/M5/2012, dated 21.02.2013 issued by the Deputy Director of Mines and Geology, Guntur – 3<sup>rd</sup> respondent herein.

2. The State Government vide G.O.Ms.No.114, Industries & Commerce (M.I) Department, dated 04.04.2005 granted mining lease in favour of the petitioner herein for Silica sand in respect of an extent of 10.00 acres in Sy.No.255 of Vallapalem village, Chillakur mandal, Nellore District for a period of twenty (20) years. The said lease is valid till 16.05.2025.

3. Earlier, the Deputy Director of Mines and Geology, Guntur issued a demand notice No.6002/M5/2012-13, dated 23.11.2012, asking the petitioner to pay a sum of Rs.19,47,132/- on the ground of alleged illegal excavation of Silica sand. The petitioner herein filed W.P.No.3596 of 2013 assailing the said demand notice issued by the Deputy Director of Mines and Geology. This Court by way of an order, dated 07.02.2013 disposed of the said writ petition and the operative portion of the said order reads as under:

“Hence, the writ petition is disposed of, directing that the demand notice dated 23.11.2012, issued by the 3<sup>rd</sup> respondent, shall be treated as a show cause notice, by itself, and the petitioner is granted (15) days time to submit the explanation. It shall be open to the 3<sup>rd</sup> respondent to pass appropriate orders, after considering the explanation. Till such time, it is directed that permit shall be issued for transporting silica, extracted by the petitioner, in case it is proved that it is extracted from the land leased to it.”

4. In pursuance of the said order the petitioner herein filed a reply, dated 08.04.2013 to the demand notice, dated 23.11.2012. The Deputy

Director of Mines and Geology by virtue of impugned notice bearing No.6002/M5/2012, dated 21.02.2013 directed the petitioner herein to pay a sum of Rs.19,47,132/- towards penalty.

5. Calling in question the validity and legal sustainability of the said demand notice, dated 23.11.2012, the present writ petition came to be filed.

6. Heard Sri Venkat Reddy Donthi Reddy, learned counsel for the petitioner and learned Government Pleader for Mines and Geology for respondents, apart from perusing the material available before this Court.

7. It is contended by the learned counsel for the petitioner that the demand notice under challenge in the present writ petition is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 19 (1) (g) of the Constitution of India. It is also submitted by the learned counsel that the Deputy Director of Mines and Geology issued demand notice without considering the contents of the reply filed by the petitioner herein pursuant to the orders of this Court in W.P.No.3596 of 2013. It is also submitted by the learned counsel that the impugned notice is also given without any authority. It is also argued by the learned counsel that without giving any opportunity of being heard to the petitioner herein the 3<sup>rd</sup> respondent issued the impugned demand notice and the same is in violation of principles of natural justice. It is also submitted that had the contents of reply been considered from proper perspective the impugned demand notice would not have emanated.

8. Per contra, reiterating the contents of the counter-affidavit it is vehemently argued by the learned Government Pleader that there is no illegality nor any procedural infirmity in the impugned action, as such, the present writ petition is not maintainable and the petitioner herein is not entitled for any relief under Article 226 of Constitution of India. It is also submitted by the learned Government Pleader that only after meticulous consideration of the explanation offered by the

petitioner herein the Deputy Director of Mines and Geology issued the impugned demand notice.

9. The material available before this Court manifestly reveal that pursuant to the orders in W.P.No.3596 of 2013, dated 07.02.2013, the petitioner herein submitted an elaborate explanation/reply raising a number of grounds for consideration of the Deputy Director of Mines and Geology. In the said reply the petitioner herein did set out the following reasons:

“We vociferously deny the contents of your Demand Notice which are far from Truth and totally depending on illusions without proper application of mind, presumably malign us in the society.

The Silica sand Mining activity is strictly confined within the permitted lease area and there is no an inch of deviation from the lease granted area. We have not been informed about the survey what so ever carried by you and your conclusions appears to have been arrived on the objections raised by the villagers of Vellapalam against Mining leases and the Press as stated in your subject. The complaints of the villagers and the Press are in general and not in particular. It is common that the Public would be commenting and the press also publishing certain things which are proved hundred percent irrelevant, irresponsible and intend to have some publicity.

The survey and Panchanama stated to have been conducted without our knowledge is a unilateral one and is not acceptable. We never nominated any individual as our representative and the survey and Panchanama stated to have been recorded in presence of representative of the lease holder is totally false.

At the time of filing the application for grant of Mining lease we have submitted the Mining Sketch which has been surveyed and certified by the Mandal Surveyor as well as the Surveyor of the office of the Mince & Geology. The place in between the Public road and the place for which the mining lease is applied are already left by us because of pits or ponds found before the submission of Mining Application. Incase if there are no pits or ponds which are present at the time of

application we would have applied the total area for grant of Mining lease from the place of the Public road and would have submitted this sketch etc, accordingly and submitted application for Mining lease for virgin area leaving the area with ponds and Pits. Further it is also submitted that while laying the road in between Kota and Chintavaram the sand was lifted nearby for formation of roads. The villagers who are constructing the houses and the contractor constructing public buildings and laying cement roads the sand is lifted for the use in construction activity through Bullock carts, Tractors, etc,. The formers who are raising Groundnut and other cultivation are also lifting the sand from various sources for leveling their field. Moreover the formers are utilizing the ponds as wells for supply of water for the crops raised by them to the adjacent area. As and when sufficient water required, the farmers are deepening the ponds to have

sufficient water for their agriculture purpose. The sand which was dug by them use to take away to their fields for leveling purpose than keeping it as heaps as the sand will automatically fills up the dugged ponds area even for the small wind. Thus the surveyors and others of your office and the officials of Assistant Director of Mines & Geology office and Mandal office appears might have been noticed such ponds and arrived at wrong conclusions as if the said pits are the result of lifting the sand.

We once again deny the contents of your Demand notice which is totally arbitrary and created without proper and just conclusions, a general look along the sides of the roads laid in the villagers reveal that many pits are found even now where the sand is utilized for formation of the roads etc.

Thus such Material used for the formation of roads and leveling of formers fields and digging big ponds/pits like wells for utilization of water for irrigation purpose is required to be considered with right prospective but it is unfortunate that the conclusions are against the established principles of natural Justice and trying to penalize us, is not acceptable, reasonable, justifiable, both in principle and

doctrine. While the authorities carrying their inspections nothing prevented them to ascertain the fact from the public from whom the complaints stated to have been received by them duly giving an opportunity for us to present ourselves while such examinations are going on and recording their depositions and statements.

We are submitting following documents for clearing certain violation which against my Mining lease:

1. We are submitting copy of Mining Plan processing letter is here with enclosed and the copy of revision approved mining plan/scheme will be submitted within 30 days.
2. We are submitting copies of up to date Monthly returns.
3. We are submitting copies of up to date Annual returns.
4. Submitting the dispatch particulars of Silica sand as per the Performa from 01-04-2012 to till date.
5. Submitting the copy of Updated Surface plan of the Mine duly attested by the Mines surveyor under rule 28 of M.C.D.R rule 1988.
6. Submitting copy of the Reg. Certificate issued by the Indian bureau of Mines as per rule 45(1) of mineral Conversion and development rule 1988.
7. We are having Weighing machine in Ballavolu village which is 500 meters away from our lease area where and the other minor's use to weight their loads as it is costlier to maintain weighing machine by single mining lease holder please request your good self kindly exemption from rule 27(2) (F) of M.C rules 1960.
8. Copy of the environment clearance from Government of India will be submitted within 90 days.
9. Copy of CFE (Consent for establishment and consent for operation) from State pollution board will be submitted within 90 days.
10. Financial assurance as per approved Mining plan surface working plan under rule 23(F) of MCDR rule will be submit within 15 days.
11. We have appointed Mr. SK. Chinna Mastan as

mine mate duly approved by the Mines safety department, Govt. of India and the same was already submitted in your office.

Find the below information for explanation of notices which finds at the date of Inspection.

1. We are maintaining proper sign boards to showing name of Mining Operation and there is no vegetal growth on leased area (attached photos for your reference).
2. My mining operations are running since from opening of the Mine lease (attached photos for your reference to show worked area).
3. We are submitting Registers/log books>Returns.

The conclusions of the Assistant Director of Mines & Geology and officials of Deputy Director of Mines & Geology are not at all reasonable and justifiable and request you sir to withdraw your Demand notice in the interest of safe guarding justice and as we submit that our Mining operations are strictly confined within the permitted area only and request you sir to Instruct the Assistant Director of Mines & Geology, SPSR Nellore to issue dispatch permits lest we will be put in to irreparable loss as there is even possibility to levy damages by our Customers for non supplying of Silica Sand required by them.”

10. A perusal of the impugned demand notice, dated 21.02.2013 makes it abundantly clear that except indicating the reply, dated 08.04.2013 submitted by the petitioner herein as one of the references in the demand notice, the Deputy Director of Mines and Geology – 3<sup>rd</sup> respondent herein did not consider the contents of the explanation nor dealt with any one of the reasons assigned by the petitioner in the reply which are extracted above.

11. It is settled and well established proposition of law that when an action has civil consequences it is obligatory and incumbent on the part of the authorities to consider the issues thoroughly, meticulously and to assign the reasons for discarding or accepting the same. In the impugned order the said exercise is conspicuously absent.

12. Another significant aspect, which is brought to the notice of this Court by the learned counsel for the petitioner is that without giving any opportunity of being heard to the petitioner herein the Deputy Director of Mines and Geology passed the impugned order. This, in the considered opinion of this Court is also fatal to the entire exercise undertaken by the Deputy Director of Mines and Geology.

13. In these circumstances, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the impugned action which culminated in issuance of demand notice, dated 21.02.2013 cannot be sustained in the eye of law and this Court is also of the opinion that the matter requires reconsideration by the Deputy Director of Mines and Geology after considering the explanation offered by the petitioner herein and after giving opportunity of being heard to the petitioner.

14. For the aforesaid reasons, the writ petition is allowed, setting aside the demand notice, dated 21.02.2013 and the matter is remanded to the Deputy Director of Mines and Geology – 3<sup>rd</sup> respondent herein for fresh consideration and passing orders, in accordance with law, after giving opportunity of being heard to the petitioner herein within a period of two (2) months from the date of receipt of a copy of this order.

15. Miscellaneous Petitions, if any, pending shall stand closed. There shall be no order as to costs.

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**A.V.SESHA SAI,J**

02<sup>nd</sup> September, 2015

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