

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 5687 of 2023****Between:**

Basanna

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 03.10.2023**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 5687 of 2023

% 03.10.2023

Between:

Basanna

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And

\$ The State of Telangana and others

... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner : Smt Shoba.N.

^ counsel for Respondents : G.P. for Mines and Geology

? Cases Referred:

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 5687 of 2023****ORDER:**

Heard Smt. N. Shobha, learned counsel appearing on behalf of the Petitioner and learned Government Pleader for Mines and Geology appearing on behalf of Respondents.

2. This Writ Petition is filed praying to issue a Writ of Mandamus declaring the action of the 1st Respondent in Memo.No.2305/M.I(2)/2016, dated 03.01.2023 and the consequential Demand Notice issued by the Assistant Director of Mines and Geology in Demand Notice No.3421/QL/2004, dated 25.01.2023 and the orders of the Assistant Director of Mines and Geology Demand Notice No.3421/QL/2004, dated 19.02.2015 as arbitrary, illegal, unjust and unconstitutional and in violation of Principles of Natural Justice, Mines & Minerals (Development & Regulation) Act, 1957 and T.S. Minor Mineral Concession Rules, 1966 and consequently call for records in Proc. No.3421/QL/2004, dated 19.02.2015 confirmed in Memo.No.2305/M.I (2)/2015-6, dated 03.01.2023, consequential Demand Notice No.3421/QL/2004, dated 25.01.2023.

3. The case of the Petitioner as per the averments made in the affidavit filed in support of the present writ petition is as under:

a) The petitioner is the owner and possessor of patta land over an extent of Ac.2.29 gts in Sy.No.65/H of Ogipur Village, Tandur Mandal, Vikarabad District. As the area was rocky and consisting of lime stone deposits useful for lime stone slabs, the petitioner submitted application for grant of quarry lease on 24.11.2004. After obtaining necessary NOC from the MRO, quarry lease was granted by the 3rd Respondent for an extent of Ac.2.00 in proceedings No.8885/Q-1(2)/2007, dated 11.07.2007 and Lease Deed was executed for (10) years and work orders are issued by the 4th Respondent in proceedings No.3421/Q/2004, dated 03.08.2007.

b) The petitioner has been conducting quarrying operations strictly in conformity with the conditions of grant, however, the neighbouring land owner who is also granted quarry lease, had been interfering with the quarrying operations, and had filed suit against him for injunction and injunction was granted. Likewise, Mr. Venkat Ram Reddy also

had filed suit. Having lost in the litigation, Venkat Ram Reddy had wrongly represented that illegal quarrying is done in petitioner quarry lease area, therefore, requested for demarcation of the quarry lease area falling in Sy.No.65.

c) While that being so, the petitioner received show cause notice dated 27.6.2012, calling upon the petitioner to submit petitioner's explanation as to why action cannot be initiated against the petitioner for collection of normal seigniorage fee along with (10) times penalty and petitioner submitted explanation dated 26.07.2012 to the said show cause notice dated 27.06.2012.

d) Without considering the explanation furnished in detail by the petitioner, the 4th Respondent has issued Demand Notice No.3421/Q/04, dated 05.09.2012 merely stating that the explanation submitted by the petitioner is not satisfactory. As against which, the petitioner has preferred Revision to the 1st Respondent and the same was heard on 04.04.2013, where it ordered for re-survey of the leased area by the 4th respondent for fixing boundaries and furnishing report for

taking further necessary action in Memo No. 15556/M.II(1)/2012-5, dated 31.05.2013.

e) Thereafter, the 2nd respondent called for report in terms of the Government Order in Memo No.47754/R7-1/2012, dated 14.06.2013. The 4th respondent requested the Assistant Director, Survey and Land Records for re-survey of the quarry lease area. Accordingly, it was recommended and a report was submitted on 09.10.2013 and survey number is demarcated wherein the area arrived after measuring is Ac.1.19 gts instead of 2 acres as granted in proceedings dated 03.08.2007.

f) Thus, there is a difference of 0-21 gts which is falling short. On receipt of the report, the 2nd Respondent called for a further report by its proceedings dated 07.11.2013 in terms of the report of Assistant Director, Survey and Land Records dated 09.10.2013. In the meanwhile, the Government seems to have passed orders in Memo No. 15556/M. II(1)/2012-6, dated 23.11.2013 that the sketch and report of the Assistant Director, Survey and Land Records and the combined sketch showing the granted, executed area and encroachment area recorded by the Supervisor on the dispute and that the

drawing branch opined that the revenue authorities are only competent to settle the boundary dispute between two pattadars.

g) Therefore, the 4th respondent was requested to apprise the Tahsildar along with Assistant Director, Survey and Land Records to identify the patta land of both the lease holders as per NOC given and compute the actual area available on the ground without over-lapping and to prepare a combined map to forward the same to Government.

h) In pursuance to the orders of the Government, the 4th Respondent called for a joint survey and inspection to be conducted on 19.03.2014. Accordingly, joint inspection was conducted and found that the leased area measured is Ac.1.19 gts as per the sketch instead of 2 acres granted vide proceedings dated 03.08.2007 and that no survey was conducted for the adjacent lease holder, therefore, to conduct joint survey to rule out the share as per records the Sy.No.65 is Ac.12.29, the petitioner holds Ac.2.29 gts and Mr. Venkat Ram Reddy holds Ac.2.20 gts. The balance is held by the other pattadars.

i) Thereafter, the petitioner again received notice dated 06.05.2014 that they are intending to conduct survey and inspection as the earlier survey was postponed and the date is re-fixed as 30.06.2014. On 30.06.2014, survey was conducted. However, no report is furnished. Once again, the petitioner received notice from the 3rd Respondent addressing the 4th Respondent, requesting to be present on 09.09.2014 for a detailed survey of the leased area. However, the same did not take place.

j) The petitioner again received notice dated 17.09.2014, wherein the 3rd Respondent addressed the 4th Respondent, that the Assistant Director, Survey and Land Records failed to attend on the mentioned date, therefore, the 4th Respondent requested the petitioner once again to attend to the office on 23.09.2014 for survey and inspection. No survey was conducted on 23.09.2014.

h) Subsequently, the petitioner received a Show Cause Notice in Lr.No.3421/Q/2004, dated 20.01.2015 calling for explanation that the Respondents No. 2 & 3 have instructed to act against the petitioner and Mr.Venkat Ram Reddy for

dispatching excess quantity. The petitioner submitted his explanation that he has been conducting operations only on his patta land for which he was granted quarry lease for 2 acres. However, the petitioner requested for furnishing of the documents referred to in the show cause notice and to give an opportunity for further explanation.

i) The 4th Respondent received the same on 22.04.2015 and has furnished the requested copies. The 4th Respondent instead of submitting the report to Government on the Revision Application has raised demand dated 19.02.2015 for depositing the amount referred to in the notice. Whereas the demand notice reads as if it is show cause notice bearing No.3421/Q/2004, dated 19.02.2015 and refers to various proceedings and that Petitioner is in receipt of the show cause notice vide Acknowledgment dated 19.02.2015. But the demand notice is issued on the same day on 19.02.2015 without waiting for submission of explanation by the Petitioner.

j) Moreover, the petitioner has submitted explanation on 20.02.2015 and the office of the 4th respondent is in receipt

of the same. The said demand notice was questioned in Revision on various grounds in addition to violation of principles of natural justice. The said Revision was disposed off in Memo.No.2305/M. I (2)/2015-6 dated 30.05.2017 without issuing notice to the Petitioner. The same was questioned in W.P No.1138 of 2018 which was disposed off by this Court by its Order dated 27.03.2018. In pursuant to the order, the Revision was heard on 29.10.2022 and the Revisional Authority has passed order dated 03.01.2023 by following non-speaking order.

k) The entire proceedings of the Revisional Authority run contrary to the report furnished by the Assistant Director, Survey and Land Records in survey dated 09.10.2013. The Assistant Director, Survey and Land Records report dated 01.10.2013 is deprecated by the Deputy Director of Mines and Geology in proceedings dated 10.02.2014 and has referred it to the Director of Mines and Geology that the said survey report is not tallying with the Village map. This fact is not brought to the notice of the Revisional Authority nor the same is verified from records.

l) The Revisional Authority failed to consider that the adjacent pattadar Venkat Ram Reddy who was also issued a similar demand notice had preferred Appeal to the Director of Mines and Geology. The 2nd Respondent disposed of the Appeal by its order dated 24.06.2016 to conduct survey of the leased area and then to pass revised grant order as per the survey. The said order passed by the 2nd respondent is after considering all the reports as to the survey. Therefore, it is just and necessary that a survey is conducted as per the orders of the 2nd Respondent.

j) The Revisional Authority failed to consider the fact that the Petitioner had specifically contended that there is survey as ordered after the survey dated 01.10.2013 as the same is not accepted by any of the officers. The orders passed are in utter violation of principles of natural justice. The Petitioner also has submitted its renewal application on 29.05.2017. In view of the orders of the Revisional Authority, the petitioner is put to loss and hardship for no fault of him.

k) The 4th respondent failed to intimate the Revisional Authority as regards to the order in Appeal by Director of

Mines and Geology No. 11104/TDR/AH/2015, dated 24.06.2016. When the Appellate Authority has passed an order directing to issue fresh amended grant orders and there upon to execute the sketch accordingly and if as per the revised grant order if found excess, issue Demand Notice. No such revised grant orders are issued and admittedly when the Petitioner is granted Acs.2.00 it was found to be Acs.1.19 gts.

I) Only, so the petitioner is entitled for difference of 0.21 gts. which is falling short and was found to be in excess in the lease holding by Mr. Venkatram Reddy. Therefore, to issue revised grant orders, reducing his extent, the authorities have never come forward to state as to the action taken against the Appellant Orders which has obtained the finality. The Petitioner is put to losses and hardship in view of the order passed by Assistant Director of Mines and Geology in Notice No.3421/QL/2004, dated 19.02.2015 and the consequential orders passed in Memo.No.2305/M.I(2)/2016,dated 03.01.2023 and the Demand Notice issued by 4th Respondent in Notice No.3421/QL/2004, dated 25.01.2023. Hence this Writ Petition.

4. Counter Affidavit filed by the Respondent No. 4 is as under:

a) During the subsistence of the lease granted to the petitioner, a dispute arose between adjacent lease holder with regard to the extents of the land occupied in Sy. No. 65/H and the petitioner has filed OS No. 78 of 2009 and obtained injunction for undertaking quarrying operations in his leased area. While being so, the adjacent lease holder M.Venkat Rami Reddy filed representation dated 25.05.2010 to 4th respondent office stating that the petitioner was conducting quarrying in the area other than his leased area.

b) Later, the 4th respondent, technical staff have inspected the quarry lease held by the petitioner on 07.02.2012 and detected an evasion of Seigniorage Fee on unauthorized quarrying of limestone slabs other than the leased area for a quantity of 1252.35 Mt. Accordingly 4th Respondent issued show cause notice dated 27.06.2012 followed by demand notice vide No. 3421/QL/2004, dated 05.09.2012 for having failed to submit proper reply to the show cause notice issued

and also for non-submission of required documentary evidence on the evaded quantities.

c) Aggrieved by the demand notice, the petitioner filed Revision before the Government and after conduct of hearing the authority through Memo No.15556/M. II(1)/2012-5, dated 31.05.2013 directed the ADSLR for fixing the boundaries of the subject area and to report the matter for taking further necessary action. Accordingly, the subject area has been surveyed by the joint technical team on 01.10.2013 comprising of Mines, Revenue and Survey & Land Records and in the presence of adjacent lease holder of the petitioner.

d) Later, the surveyors reported that the survey was conducted with the help of village map and Teepans and fixed the boundaries commencing with reference to boundary points Sy. No. 66, 129 & 65 based on the sketch of quarry leases and arrived at an extent of Acre 1.19 Gts instead of Acre 2.00 Gts in Sy. No.65/H as shown in the leased sketch.

e) Thereafter, the Government considered the report submitted by the ADSLR, consisting of a deficit 0.21 Gts of land out of a granted extent of 2.00 Acres and again passed

orders in Memo No. 15556/M.II(1)/2012-5, dated 23.11.2013 to re-conduct survey of the subject area by the Revenue Department as it is competent authority to settle the boundary dispute and also to compute the actual area available on the ground without overlapping and to prepare a combined map showing both the lease boundaries.

f) Accordingly, as per the instructions of the 3rd Respondent, a joint team comprising of the Mines and Revenue Departments have surveyed and demarcated the subject area on 23.09.2014 & 20.11.2014 in the presence of petitioner who refused to sign on the field attendance sheets on all earlier survey and inspection dates. As per the report, the petitioner excavated the limestone slabs of a quantity of 288502 Sq mts in excess to the permitted quantity from the leased area in addition to excavation of quantity of 105961 sq mt outside his leased area i.e., area under dispute in the lease held by the adjacent lease holder Sri. M. Venkat Rami Reddy as an encroachment.

g) The 4th Respondent issued show cause notice dated 19.02.2015 on the evaded seigniorage fee of Rs.27,61,241/-

and with a penalty of Rs.1,75,14,840/- . The petitioner though acknowledged the show cause notice, however failed to produce any documentary evidence on the quantities excavated both within and outside granted lease extent than the permitted quantity issued by this office. Thus, the demand notice issued vide No. 3421/Q/2004, dated 06.04.2015 is as per the provisions of 26(2) of TSMMC Rules, 1966.

h) Aggrieved by the Demand notice issued by the 4th Respondent, the petitioner filed a requisition to the Regional Deputy Director Survey and Land Records (RDDSLR) for conducting survey in the subject area. Accordingly, the RDDSLR, Hyderabad issued notice vide No. A5/251/2015, dated 26.02.2015 to all the stake holders to attend survey and inspection which was fixed on 08.07.2015, but survey was finally held on 31.07.2015.

i) As per the report of the RDDSLR, Hyderabad, out of total extent of Acre 3.29 gts in Sy. No. 65/H, under which the present leases are located, the petitioner was in excess in possession of 0.10 gts more than the granted extent of Acre

2.00 Gts arriving to a total of Acre 2.10 Gts, hence concluded that there is no shortfall of land as reported earlier by the ADSLR, of the then Rangareddy District. Thus, it is established that the survey and inspection conducted by the Joint teams is correct as per the measurements in the subject area and as such the demand raised is in accordance with findings of the joint inspection team report that the petitioner carried out quarrying operations outside the leased extent.

j) Furthermore, the petitioner aggrieved by the findings of the Survey department and demand notice issued by the 4th respondent, filed a revision application before the Government on 16.03.2015. The Revisional authority after conduct of personal hearing on 01.04.2017 disposed the petition vide Memo No. 2305/M.I(2)/2015-6, dated 30.05.2017 with a direction to the petitioner for payment of Normal Seigniorage fee along with one time penalty for the mineral transported within the leased area and Normal Seigniorage fee along with (3) times penalty for mineral transported from outside the leased area.

k) Aggrieved by the above-mentioned orders, the petitioner filed W.P No. 1138 of 2018 before this High Court and the same was disposed off with a direction to the respondents to give an opportunity for fresh date of hearing to the petitioner after serving the notice sufficiently before the time. Accordingly, a Revision hearing was held on 07.07.2018 and issued instruction to the 2nd Respondent to furnish report on the latest survey conducted in the subject area to take further action in disposing the Revision petition filed by the petitioner.

l) In this regard, the office of the 4th Respondent has already conducted the DGPS survey based on the art of technology with the Empanelled Agency on 20.04.2018 & 21.04.2018 in the subject area and in the presence of both the petitioner and adjacent lease holder for fixing the lease boundaries and to initiate subsequent action, if required as directed in the appeal order vide No.11104/TDR/AH/2015, dated 24.06.2016 by the 2nd Respondent.

m) The petitioner in-fact was satisfied with the survey conducted and agreed with the contents of the DGPS map

showing clearly the boundaries and given his consent in the form of signatures in the final DGPS map prepared and copies of the survey report along with DGPS sketch were submitted to the 2nd respondent. Later, the petitioner also obtained the survey report along with sketch under RTI Act, 2005 through this office letter No.4041/RTI/2015, dated 27.10.2022.

n) After conducting the survey and demarcation, the quantities of mineral excavated from the pits falling within leased areas as well as outside the leased area have been assessed which was deferred from the earlier quantities mentioned in the demand notice dated 06.04.2015 and consequently, submitted the survey and inspection reports to the 2nd Respondent for further necessary action in disposing the pending revision petition filed by the petitioner.

o) Moreover, based on the report of re-survey and demarcation of the subject area submitted by the office of the 4th Respondent, the revisional authority conducted a personal hearing on 29.10.2022 vide Memo No. 2305/M.I(2)/2015-16, dated 03.01.2023, and set-aside the impugned demand notice dated 06.04.2015 and further instructed the 4th

Respondent, to issue a fresh demand notice on the latest quantities recorded 198353.21 Sq. meters within the leased area and 49452.96 Sq. meters outside the leased area arrived after DGPS survey of the leased area.

p) Accordingly, fresh demand notice vide No.3421/QL/2004, dated 25.01.2023 as per the orders of the authority which involves normal seigniorage Fee along with penalty amounts of Rs. 19,82,450/-and Rs.1,18,90,370/ respectively. Thus, the entire proceedings initiated by the 4th Respondent since the year 2012 onwards have been carried out as per the factual findings in the field and in accordance with provisions of Telangana Minor Mineral Concession Rules,1966. Hence, the Writ Petition is devoid of merits and is liable to be dismissed.

PERUSED THE RECORD :

5. The relevant portion of paras 5 and 6 of the order impugned vide Memo No.2305/M.I(2)/2016, dated 03.01.2023 of the 1st Respondent read as under:

"5. The Assistant Director of Mines & Geology, Tandur further informed that the survey of the leased area was

conducted in the year 2018 with state-of-art technology through differential global position system (DGPS), which is scientific and accurate method of survey. The survey revealed a lesser quantity of mineral extraction from all (06) recorded pits which yielded a quantity of 198353.21 Sq.mts against earlier detected quantity of 288502 Sq.mts within leased area and similarly a quantity of 49452.96 Sq.mts against earlier quantity of 105961 Sq.Mt outside the leased area and the report was submitted to the Director of Mines & Geology, Hyderabad vide Lr.No. 3421/Q/2014, dt. 15.10.2018 for necessary action as it attracted Rule 26 (2) of TSMMC Rules, 1966. Hence, requested to issue instructions for issuance of revised demand.

6. In order to dispose of the Revision Application, a personal hearing was conducted on 29.10.2022 and the relevant documents filed before the Revision Authority examined. After hearing the contentions of both the parties and taking the material made available, it is noticed that after conduct of DGPS Survey the quantities are varied from that of the Show Cause Notice/demand notice. Hence, it is decided to dispose the revision with a direction to the Asst. Director of Mines & Geology to issue fresh demand as per rules based on the DGPS Survey and the Show Cause Notice/demand notice under challenge is hereby set-a-side. Accordingly, the Revision Application is disposed

off under Rule 35-A of Telangana State Minor Mineral Concession Rules, 1966."

6. The conclusion arrived at in the impugned Demand Notice No.3421/QL/2004, dated 25.01.2023 of the 4th Respondent herein, reads as under:

"GOVERNMENT OF TELANGANA
DEPARTMENT OF MINES & GEOLOGY
Demand Notice No.3421/QL/2004, dated 25.01.2023

Sub: Mines & Qurries – Quarry lease of limestone slabs over an extent of 2.00 acres in Sy.No.65/H of Ogipur Village, Tandur Mandal, Vikarabad District held by Sri Basana – Evasion of S.Fee on excess dispatch of mineral against the permitted quantity – Demand notice issued – Revision petition filed by the lessee – Re-survey conducted – Revision disposed off with a direction to issue fresh demand notice – Revised demand raised – Notice issued – Regarding.

Ref: 1. This office demand notice No.4637/Q/2009, dt. 29.08.2017.
2. Govt.Memo No.2305/M.I(2)/2015-16, dt. 30.05.2017.
3. Orders of the Hon'ble High Court in WP No.1138/2018.
4. Govt.Memo No.2305/M.I(2)/2015-16, dt 03.01.2023.

* * * * *

Apropos to the subject and references cited. Through the reference 1 cited, this office issued demand notice to Sri Basana for excavation and transportation of excess quantity of 2,88,502 of limestone slabs within the leased area and a quantity 1,05,961 of limestone slabs from outside the leased area and directed to remit the amounts as per rules.

Aggrieved by the demand notice, Sri Basana filed Revision petition on 16.03.2015 with a request to set-aside the demand notice issued by this office and further prayed that the lessee was not satisfied with survey conducted earlier and requested for conduct of another survey in the subject area in his presence. Later, the Government conducted a personal hearing on 01.04.2017 and disposed the revision petition vide reference 2nd cited and directed to collect normal Seigniorage fee with one time penalty for the mineral transported within the leased area and normal Seigniorage fee with three times penalty from the mineral extracted from outside the leased area.

Aggrieved by the Revision orders issued by the Government, Sri Basana filed writ petition no. 1138/2018 before the Hon'ble High Court stating that the Government disposed the revision petition without giving an opportunity of hearing which is arbitrary, illegal, unjust and unconstitutional and prayed to set-aside the orders. The Hon'ble High Court vide reference 3rd cited, disposed off the writ petition by duly setting - aside the impugned orders and remanded the matter back to pass a fresh order on merits in the presence of petitioner.

Accordingly, a personal hearing was conducted on 07.07.2018 by the revisional authority and after hearing both the parties, the authority instructed the Director of Mines and Geology, Hyderabad to submit the survey report conducted in the month of January and April-2018 for further necessary action..

In this connection, it is informed that earlier the Director of Mines & Geology, Hyderabad in the appeal petition Memo No. 11104/TDR/AH/2015, dt: 24.06.2016 issued instructions for conduct of re-survey of the subject area in light of the implead petition filed by adjacent lease holder. Accordingly, the leased area was re-surveyed and demarcated by the then Surveyor of this office with the help of DGPS instrument 04.01.2018 & 21.04.2018 and arrived at a quantity of 198353.21

Sq. Meters within the leased area and a quantity of 49452.96 Sq. Meters outside the leased against the earlier quantities mentioned in the demand notice.

Later, based on the report of re-survey and demarcation of the subject area submitted by this office, the revisional authority conducted a personal hearing on 29.10.2022. After hearing the contentions of the both the parties, the authority vide reference 4th cited, set-aside the impugned demand notice and further instructed this office to issue a fresh demand notice on the latest quantities arrived after DGPS survey of the leased area.

As per the orders of the Authority, the penalty amounts along with normal Seigniorage Fee on the quantities detected at the time of re-survey is calculated and the details are given below:

Description	Total Quantity excavated and transported (in M2)	Rate of Seig. Fee Rs. Per CBM	Normal Seig. Fee (in Rs.)	Penalty (in Rs.)	Total
Within the leased area	198353.21	Rs.8/-	15,86,826/-	79,34,130/-	95,20,956/-
Outside the leased area	49452.96	Rs.8/-	3,95,624/-	39,56,240/-	43,51,864/-

In view of the above circumstances, Sri Basana is hereby directed to remit an amount of Rs. 19,82,450/- towards normal Seigniorage Fee and Rs. 1,18,90,370/- towards penalty totaling to an amount of Rs. 1,38,72,820/- within (15) days from the date of receipt of this notice, failing which necessary action will be initiated for realization of the mineral revenue dues as per rules without any further notice.

7. The Show Cause Notice No.3421/Q/2004, dated 19.02.2015 of the 4th Respondent, and the relevant

portion relating to the conclusion arrived at is extracted hereunder :

"In view of the above, circumstances Sri Basanna is hereby directed to remit an amount of Rs.27,61,241/- towards Normal Seigniorage fee along with penalty of Rs.1,75,14,840/- totaling an amount of Rs.2,02,76,081/- within (15) days from the date of receipt of the demand notice in the following Head of Account. The Original challans shall be submitted in this office within (15) days from the date of receipt of this notice, failing which necessary action will be initiated as per the A.P.M.M.C Rules 1966 and thereon."

8. The order dated 27.03.2018 passed in W.P.No.1138 of 2018, reads as under;

"Petitioner has filed this Writ Petition assailing the order dt.30.05.2017 passed by the 1st respondent under Section 35(A) of the A.P. Minor Minerals Concession Rules, 1966 (for short 'the Act') imposing normal seigniorage fee and one time penalty for the mineral transported within the leased area, and normal seigniorage fee along with three times penalty for the mineral extracted outside the leased area.

2. Counsel for petitioner contends that the petitioner had engaged a counsel and filed the revision before the 1st respondent through the said counsel on 15.03.2015, that no notice of hearing of the Revision was served on the counsel, but the petitioner received a call on 31.03.2017 that the matter would be heard on 01.04.2017 at 11.00 a.m., that the petitioner could not contact his counsel and he approached the 1st respondent on 01.04.2017 and sought for time, that he was informed that he would be given a notice intimating

the next date of hearing, but without issuing any further notice, the impugned order was passed on 30.05.2017 disposing of the Revision without hearing the petitioner.

3. It is contended that the said procedure adopted by the 1st respondent is in violation of proviso to Section 35(A) of the Act, which mandates that no adverse order would be passed without giving the petitioner an opportunity of making submissions in the Revision.

4. In the counter affidavit filed by the respondents it is merely stated that the petitioner participated in the hearing in-person and argued the case on merits. It is also denied that petitioner sought any time. The allegations leveled by the counsel for petitioner are denied.

5. It is not in dispute that proviso to Section 35(A) requires hearing to be provided to the revision petitioner before the Revision is decided.

6. Admittedly, the revision was filed by the petitioner through a counsel. Notice of hearing of the revision on 01.04.2017 ought to have been served by the 1st respondent on the counsel for petitioner, so as to, reach him before 01.04.2017. No material is filed by the Government Pleader for Industries to show that the notice of hearing of the revision on 01.04.2017 was served on the counsel for petitioner before that date.

7. Having engaged a counsel in the revision, it is difficult to believe that the petitioner would appear in-person and argue the revision on merits on 01.04.2017. This is against all normal course of human conduct.

8. Therefore, this probablises the contention of the petitioner that without serving any notice of hearing, the petitioner was informed on telephone about the hearing on 01.04.2017 on 31.03.2017, and because he could not contact his counsel, he was forced to appear in-person and plead time. In this view of the matter, the impugned order cannot be sustained since there is violation of the proviso to Section 35(A) referred to above.

9. Therefore, the impugned order is set aside; the matter is remitted back to the 1st respondent to pass a fresh order after hearing the petitioner/his counsel after serving a notice of hearing on the petitioner's counsel

sufficiently before time, so that petitioner's counsel can appear and argue the matter before the 1st respondent. Any violation of this procedure will be viewed seriously by this Court. If after service of such notice, petitioner's counsel does not appear, it is open to the 1st respondent to pass an order on merits, *ex parte*. This exercise shall be completed within a period of six (06) weeks from the date of receipt of a copy of this order.

10. The Writ Petition is disposed of accordingly. No order as to costs

DISCUSSION AND CONCLUSION:

DISCUSSION :

9. It is the specific case of the Petitioner that the Petitioner is the owner and possessor of the patta land over an extent of Ac.2.29 gts., in Sy.No.65/H of Ogipur Village, Tandur Mandal, Vikarabad District, and in pursuance to an application submitted by Petitioner for grant of quarry lease on 24.11.2004 after obtaining necessary NOC from the MRO, quarry lease was granted by the 3rd Respondent herein to the Petitioner for an extent of Ac.2.00 in Proceedings No.8885/Q-1(2)/2007, dated 11.07.2007 and lease deed was executed for 10 years and work orders also issued by the 4th Respondent herein vide Proc. No.3421/Q/2004, dated 03.08.2007 and that the Petitioner had been conducting operations only in Petitioner's patta land for which

Petitioner was granted quarry lease for Ac.2.00. The Petitioner received show cause notice in Letter No.3421/Q/2004, dated 20.01.2015 calling for explanation for dispatching excess quantity and the Petitioner submitted explanation that Petitioner's operation are within the Petitioner's patta land within the 2 acres and to the shock of the Petitioner, Petitioner received impugned proceedings dated 19.02.2015 which is described as Show Cause Notice No.3421/Q/2004 directing the Petitioner to remit an amount of Rs.27,61,241/- towards normal seigniorage fee along with penalty of Rs.1,75,14,840/- totaling an amount of Rs.2,02,76,081/- within 15 days from the date of receipt of Demand Notice failing which necessary action will be initiated against the Petitioner as per the A.P.M.N.C. Rules, 1966. Petitioner preferred Revision on 15.03.2015 against the said Demand Notice dated 19.02.2015 and the 1st Respondent herein vide Memo No.2305/M.I(2)/2015-6, dated 30.05.2017 disposed of the said Revision observing at para 5 of the said order as under :

"In order to dispose of the Revision Application, a personal hearing was conducted on 01.04.2017 and examined the relevant documents filed before the Revision Authority. After hearing the contentions of both the parties and taking into consideration of the material made available, it is noticed that there are two complaints against the Petitioner namely: operations without permits and encroachment in neighboring leased area. Both complaints are confirmed as per the subsequent joint survey conducted by the ADSLR in the presence of Revision Petitioner and Implead Petitioner. Hence, a lenient view is taken and decided to collect Normal Seigniorage fee along with one time penalty for the mineral transported from within the leased area and Normal Seigniorage fee along with three (3) times penalty for the mineral extracted from outside the leased area against the demand notice, as there was no previous complaint against the Petitioner. Further, the lease will be cancelled, if the revision petitioner repeats the same violations in future. Accordingly, the Revision Application is disposed off under Rule 35-A of Telangana State Minor Mineral Concession Rules, 1966."

10. It is further the case of the Petitioner that the Petitioner aggrieved by the said order dated 30.05.2017 filed W.P.No.1138 of 2018 and the Hon'ble Court passed order dated 27.03.2018, setting aside the impugned

order and disposed of the writ petition remitting the matter to the 1st Respondent to pass fresh order after hearing the Petitioner/ his counsel after serving a notice of hearing on the Petitioner's counsel sufficiently before time so that the Petitioner's counsel can appear and argue the matter before the 1st Respondent within a period of 6 weeks from the date of receipt of the order and to the shock of the Petitioner the impugned Memo No.2305/M.I(2)/2016, dated 03.01.2023 was issued by the 1st Respondent herein observing at para 6 of the said order as under :

"6. In order to dispose of the Revision Application, a personal hearing was conducted on 29.10.2022 and examined the relevant documents filed before the Revision Authority. After hearing the contentions of both the parties and taking the material made available, it is notice that after conduct of DGPS Survey the quantities are varied from that of the Show Cause Notice/demand notice. Hence, it is decided to dispose the revision with a direction to the Asst. Director of Mines & Geology to issue fresh demand as per rules based on the DGPS Survey and the Show Cause Notice/demand notice under challenge is hereby set-a-side. Accordingly, the Revision Application is disposed off under Rule 35-A of Telangana State Minor Mineral Concession Rules, 1966."

And further the Petitioner received the impugned Demand Notice No.3421/QL/2004, dated 25.01.2023 calling upon the Petitioner to remit an amount of Rs.19,82,450/- towards normal seigniorage fee and Rs.1,18,90,370/- towards penalty totaling to an amount of Rs.1,38,72,820/- within 15 days from the date of receipt of the said notice failing which necessary action will be initiated for realization of the mineral revenue dues as per Rules without any further notice.

11. The learned counsel for the Petitioner contends that the writ petition should be allowed as prayed for in view of the simple fact that the survey conducted in the year 2018 with State-of-Art Technology through Differential Global Position System (DGPS) and the said subject report submitted to the Director of Mines & Geology, Hyderabad vide Letter No.3421/Q/2014, dated 15.10.2018 had been the basis for passing the order impugned in the year 2023 i.e., on 03.01.2023 and the 1st Respondent herein failed to consider and in fact totally ignored the Memo No.11104/TDR/AH/2015, dated 24.06.2016 of the 2nd Respondent herein in an

Appeal preferred by one Sri M. Venkat Ram Reddy i.e., the adjacent lease holder adjacent to the leased out area of the Petitioner herein, wherein it is clearly observed and the 2nd Respondent had infact directed the DDM & G, Hyderabad and ADM & G, Tandur to demarcate the leased area of Sri M.Venkat Ram Reddy the Appellant there under after conducting survey and inspection of the subject land and after demarcation of the said survey number by the ADSLR concerned in presence of Sri M.Venkat Ram Reddy and the Petitioner herein and reduce the leased area proportionately in the grant orders of both the Appellant thereunder and duly amending the said grant orders further directed the DDM & G, Hyderabad and ADM & G, Tandur to demarcate the leased area of the Appellant there under as per the revised grant orders and fix the boundary pillars around the leased areas of both Sri M.Venkat Ram Reddy and Sri Basanna and issue fresh demand as per the Survey & Inspection if necessary in view of the fact that order impugned vide Memo No.2305/M.I(2)/2016, dated 03.01.2023 had been passed by the

1st Respondent mechanically without assigning any reasons.

12. Counter affidavit has been filed on behalf of the Respondents and a bare perusal of the same indicates that the latest DGPS joint survey conducted on 20th / 21st April, 2018 in the subject area was the basis for passing the order impugned after conducting personal hearing on 29.10.2022 and accordingly the order impugned dated 03.01.2023 had been passed by the 1st Respondent and a fresh demand notice dated 25.01.2023 had been issued by the 4th Respondent to the Petitioner, in compliance of the directions given in the order dated 03.01.2023 of the 1st Respondent herein and therefore, appropriate orders need to be passed by the Hon'ble Court.

CONCLUSION :

13. A bare perusal of the order impugned Memo No.2305/M.I(2)/2016, dated 03.01.2023 passed by the 1st Respondent clearly indicates that a report pertaining to the year 2018, is the main basis for passing the order

impugned and further the order impugned clearly indicates that the 1st Respondent did not even refer to the Memo No.11104/TDR/ AH/2015, dated 24.06.2016 issued by the 2nd Respondent in an Appeal preferred by Sri M.Venkat Ram Reddy which gave certain specific directions for conduct of Survey, Inspection and Demarcation of the subject land and fixation of the boundary pillars around the leased areas of Sri M.Venkat Ram Reddy and the Petitioner herein and for issuance of fresh demand as per the said survey and inspection if necessary.

14. A bare perusal of the order impugned vide Memo No.2305/M.I(2)/2016, dated 03.01.2023 by the 1st Respondent clearly indicates that it is an order passed without assigning any reasons and without considering the grounds specifically pleaded by the Petitioner before the 1st Respondent authority that the Petitioner conducted the quarrying operations within the leased area and had not encroached the adjacent lands and further the Petitioner's request for conduct of another survey in the leased area in Petitioner's presence in the

interest of justice had not been considered by the 1st Respondent herein and instead survey conducted in the year 2018 through DGPS had been relied upon by the 1st Respondent herein and the order impugned passed on 03.01.2023.

15. The Court opines that the statutory revision preferred by the Petitioner under Rule 35A of the Telangana State Minor Mineral Concession Rules, 1966, aggrieved against the show cause notice/demand notice No.3421/Q/2004 dated 19.02.2015 of the 4th Respondent herein wherein the Petitioner was directed to pay an amount of Rs.27,61,241/- towards normal seigniorage fee and Rs.1,75,14,840/- towards (5/10) times penalty totally of Rs.2,02,76,081/- for excess quantity of lime stone slabs for a quantity of 2,88,502 sq. mtrs., dispatched from Petitioner's leased area and 1,05,961 sq. mtrs., of lime stone slabs were excavated and transported from the adjacent quarry area of Sri M.Venkat Rami Reddy, has been whimsically disposed by the Revisionary Authority without visible application of mind and without recording reasons. This Court

opines a very serious issue i.e., a decision pertaining to the quantum of penalty to be levied cannot be done in a routine casual manner, erroneously, without discharging the responsibility to disclose reasons therefor. Admittedly as borne on record the specific directions issued by the 2nd Respondent herein in Memo No.11104/TDR/AH/2015, dated 24.06.2016 had not be considered by the 1st Respondent herein at all.

16. Taking into consideration the above said facts and circumstances, the impugned Memo of the 1st Respondent in Memo No. 2305/M.I(2)/2016, dated 03.01.2023 and the consequential demand notice issued by the 4th Respondent in demand notice No.3421/QL/2004, dated 25.01.2023 and the orders of the Asst. Director of Mines and Geology, Demand Notice No.3421/QL/2004, dated 19.02.2015 of the 4th Respondent herein are set aside and the 1st Respondent herein is directed to consider the whole issue afresh again by giving reasonable opportunity to the Petitioner herein and others concerned in accordance to law, duly considering the Memo No.11104/TDR/AH/2015, dated

24.06.2016 of the 2nd Respondent herein and duly following the specific directions issued there under in respect of both the Appellant there under i.e., Sri M.Venkat Rami Reddy and also the Petitioner herein i.e., Sri Basanna pertaining to Survey, Inspection and Demarcation of the subject land in presence of both the Petitioner herein and Sri M.Venkat Rami Reddy and pass appropriate orders, within a period of (3) months from the date of receipt of the copy of the order.

17. Accordingly, the writ petition is allowed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 03.10.2023

Note: L.R.Copy to be marked.
b/o kvrm