

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF MARCH, 2021

PRESENT

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

AND

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

WRIT PETITION NO.2838 / 2021 (GM-MM-S)

BETWEEN:

Sri C.H.Venkata Narayana Reddy,
Son of Sri Raghava Reddy,
53 Years, Srinivasa Nilaya,
Channapura Road,
Chikkamagalur-577 101.

...PETITIONER

(By Sri Giridhar S.V., Advocate)

AND:

1. The State of Karnataka,
Department of Forests,
By its Principal Chief
Conservator of Forests,
4th Floor, Aranya Bhavan,
18th Cross, Malleshwaram,
Bengaluru-560 003.
2. The Deputy Conservator Forests,
Chickamagalur Range,
Chickamagalur Division,
Karnataka-577 101.

3. The State of Karnataka,
Department of Mines and Geology,
Kaniya Bhavan, Race Course Road,
Seshadripuram,
Bangalore-560 001.
4. Senior Geologist,
Department of Mines and
Geology, Chikkamagaluru,
Karnataka-577 101.
5. The Deputy Commissioner
And District Magistrate,
Chickamagalur District,
Chickamagalur-577 101. ...RESPONDENTS

(By Sri Vikram Huilgol, AGA for R1 to R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI, SIMILAR WRIT OR ORDER OR DIRECTION AND QUASH THE PROCEEDINGS AS AT ANNEXURE-H DATED 13.01.2021, INSOFAR AS SAME RELATES TO OBSERVATION MADE IN PARAGRAPH No.4 REGARDING THE EXTENSION/RENEWAL OF THE QUARRYING LEASE OF THE PETITIONER IN RESPECT TO THE SCHEDULE PROPERTY, ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 8TH MARCH 2021, COMING ON FOR 'PRONOUNCEMENT OF ORDER' THIS DAY, **S.VISHWAJITH SHETTY J.**, MADE THE FOLLOWING:

ORDER

1. In this writ petition, the petitioner has prayed for the following reliefs:

- a. Call for the records on the file of the Respondents with regard to grant of Quarrying Lease and extension of the same in respect of the lands in Survey No.118(P1) of Malleshwara Village, Kadur Taluk, Chikkamagaluru District and culminating the proceedings impugned as at Annexure H;
- b. Issue a Writ of Certiorari, Similar Writ or Order or Direction and quash the proceedings as at Annexure H dated 13.01.2021, insofar as same relates to observation made in Paragraph No.4 regarding the extension/renewal of the quarrying lease of the Petitioner in respect to the Schedule Property;
- c. Issue a Writ of Mandamus, Similar Writ, Order or Direction and direct the Respondent No.2 to extend/renew the lease of the Schedule Property for the duration of 5 years as recommended in terms of Annexure G as per Section 3-B of the Karnataka Minor Mineral Concession Rules, 1994, forthwith and respect of the Schedule Property.

2. Brief facts of the case are, petitioner is a successful bidder for development of NH-173 under EPC mode from KM 24.600 to KM 70.063 of Mudigere-Kadur Section in the State of Karnataka under Job No.NH 173-KNT-2017-18-873. The appointed date for the tender is 18th January 2019 and the tentative completion date was fixed on 17th January 2021. It is the case of the petitioner that

because of Covid-19 pandemic, the work could not be completed, and therefore, he has been granted extension of time for completion of the work.

3. Petitioner was granted stone quarry lease in respect of the land in Sy. No.118/P1 of Malleshapura village, Kadur Taluk, for a period of two years and this quarry lease was granted for the purpose of his requirement of stone for the project awarded to the petitioner. In view of the extension of time granted to the petitioner for completion of the project, the petitioner had also sought for extension of quarry lease and considering the same, the Executive Engineer, NH Division, Hassan, had recommended the extension of quarrying lease in accordance with Rule 3-B of the Karnataka Minor Mineral Concession Rules, 1994 (for short, 'the said Rules of 1994'). The respondent No.4 had constituted a committee for the purpose of considering the said application filed by the petitioner for extension consisting of the Deputy Commissioner of the District and other authorities, and in the meeting of the said committee held on 13th January 2021, the Deputy Conservator of Forests, Chickmagalur, raised an objection for extension of the lease on the ground that since petitioner's stone quarry lease comes within the deemed forest area, a joint spot inspection is required to be held

prior to issuing any no objection certificate. The committee after considering the said objection, has taken a decision in the said proceedings to extend the quarry lease for a period of two years in favour of the petitioner for development of NH-173. Aggrieved by the same, the present writ petition is filed.

4. The learned Counsel for the petitioner submits that prior to executing the original quarry lease, no objection certificates were obtained from all the concerned authorities including the Forest Department, and therefore, for the purpose of extending the lease, fresh no objection certificate is not required. He also submitted that in view of the judgment of this Court in W.P.No.54476/2016 connected with W.P.No.51135/2016 disposed of on 12th June 2019 in the case of Dhananjay Vs State of Karnataka and others, the objection raised by the Deputy Conservator of Forests was required to be overruled. He submits that in view of sub-rule (2) of Rule 3-B of the said Rules of 1994, since the recommendation was made by the competent authority for extension of quarry lease for a further period of five years i.e., one year for construction and four years for maintenance of the said project, the committee was not justified in extending the lease only for two years.

5. The learned Additional Government Advocate does not dispute that the work of the project awarded to the petitioner is under progress and recommendation has been made for extension of the quarry lease for a period of five years.

6. This Court in Dhananjaya's case, has held that the concept of deemed forests appears to be a foreign to the law and the applications for quarry lease cannot be rejected only on the ground that the land subject matter are deemed forests. This Court has held that the concerned authorities are required to consider whether the lands which are the subject matter of the quarry lease are covered by the wide concept of 'forest' or 'forest land' as adopted by the Hon'ble Apex Court in its judgment dated 12th December 1996 in the case of **T.N.GODAVARMAN THIRUMULKPAD VS UNION OF INDIA & OTHERS – (1997)2 SCC 267**.

7. The competent authority vide communication dated 2nd January 2021 has recommended for grant of extension of quarry lease in question for a period of five years. Sub-rule (2) of Rule 3-B of the said Rules of 1994 provides that the quarry lease shall be issued for a period as recommended by an Engineer not below the rank of Executive Engineer or Tender Inviting Authority of the

Development Agency which has awarded the work, and may be further extended by the Deputy Director of Senior Geologist of the District as recommended by the Executive Engineer or the Tender Inviting Authority as may be required for completion of the work.

8. In the case on hand, such a recommendation has been made by the Executive Engineer, NH Division, Hassan, and therefore, the respondent No.4 ought to have renewed the quarry lease in favour of the petitioner for a further period of five years. Under the circumstances, we are of the considered opinion that the decision of the committee in its meeting held on 13th January 2021 in so far as it relates to extension of quarry lease in question for a period of two years is unjustified.

9. Accordingly, we dispose of the writ petition with an observation that notwithstanding the objection raised by the Deputy Conservator of Forests, Chickmagalur, that the subject matter of quarry lease in question is within the deemed forest area, respondent No.4 is required to consider the application made by the petitioner seeking extension of quarry lease in question as provided under Rule 3-B of the said Rules of 1994, taking into consideration the recommendation made by the competent authority vide

Annexure-G dated 2nd January 2021 in accordance with the law laid down by this Court in Dhananjaya's case stated supra.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

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