SUPREME COURT OF INDIA

Ashok Kumar Lingala

Vs.

State of Karnataka & Ors.

C.A.No.8819 of 2011

(Cyriac Joseph and T.S.Thakur,JJ.,)

18.10.2011

JUDGMENT

T.S.Thakur,J.,

SLP (Civil)No.35213 of 2010

1. Leave granted.

2. These appeals arise out of an order dated 1st September, 2010 passed by the High Court of Karnataka - whereby Writ Petition No.17281 of 2010 filed by the appellant has been disposed of with the direction that the question of identity of the area forming the subject matter of the mining leases granted to the appellant on the one hand and respondent M/s Sandur Manganese & Iron Ore Company Ltd. (`SIMORE' for short) on the other, shall be determined by the Civil Court in the suit pending before it on the basis of the evidence that the parties may choose to lead. The High Court has further held that in case the Civil Court comes to the conclusion that the area over which the mining leases have been granted to the rival parties does not overlap then both of them would be entitled to carry out their mining activities under their respective lease agreements. In case, however, the Civil Court is of the opinion that there is an overlapping of the area covered by the two leases, the lessee who claims under the lease granted earlier in point of time would have a superior right to carry out the mining activities in preference to the one granted later. The facts in brief are as under:

3. Land measuring 4.42 hectares situated at village Devagiri, Sandur Taluk, Bellary District falling under Surveys No. 56/P, 57/P, 58/P and 91/P was according to the appellant dedicated to Kumaraswamy Devaru Temple. The entire extent of land which now falls in new Survey No.27 was given to one-Pennaiah S/o Dodda Pennaiah for cultivation in lieu of the services which he was rendering to the temple. With the enactment of the Karnataka (Sandur Area) Inam Abolition Act, 1976 abolishing all rights in inam lands and permitting the cultivators and tenants of the land to make applications under Section 10 of the Act for re- grant and registration, the cultivator-Pennaiah also made an application to the Land Tribunal, Sandur Taluk, Bellary District seeking a re-grant. The said application eventually culminated in the

Tribunal passing an order dated 22nd October, 1981 granting occupancy rights in favour of the tenant, pursuant whereto the Tehsildar issued a registration certificate registering his occupancy rights and entering his name in the record of rights.

4. The appellant's further case is that Pennaiah continued to cultivate the land personally especially when neither the order of re-grant was challenged before the Land Tribunal nor his cultivation objected to by anyone including the 3rd respondent who held a lease in respect of Government and forest land situate in Sandur Area. The appellant asserts that the land aforementioned is a piece of private patta land that was held by Pennaiah during his life time and by his widow Yellamma after his death. Neither Pennaiah nor Yellamma had in their capacity as Pattadars in cultivating possession of the land ever offered the property to SIMORE or granted any right or any other interest in its favour. On the contrary Yellamma in her capacity as Pattadar had permitted the appellant to obtain a mining lease under the provisions of Minor Mineral (Development and Regulation) Act, read with Mineral Concessions Rules, 1960 which application was sent to the Deputy Commissioner, Bellary District, to verify the status of the land and also to the Deputy Director of Mining and Geology for conducting an actual spot inspection. Both the authorities had, according to the appellant, submitted their respective reports in which the said property was found to be private Patta land. They had, therefore, offered no objection to the grant of a mining lease qua the same.

5. It was on the basis of the reports aforementioned that the State Government had sought the approval of the Central Government for the grant of a mining lease in favour of the appellant which approval was upon due and proper consideration granted by the Central Government. The State Government had pursuant thereto issued a Notification dated 15.1.2010 sanctioning a mining lease over an area of 4.42 hectares situate in Devagiri Village Sandur Taluk Bellary Distt., as per the sketch furnished by the Director Department of Mines and Geology. Boundaries of the area in question were fixed for an extent of 3.36 hectares in terms of letter dated 2.2.2010 issued by the Deputy Director Mines and Geology, Hospet and a lease deed executed and registered with the Sub-Registrar under ML No.2622.

6. The appellant's case is that when he started the mining activities in exercise of his right under the lease - aforementioned, the Director of Mines and Geology, Government of Karnataka issued a communication dated 5th March, 2010 by which the appellant was restrained from conducting any such activities on the ground that the area covered by the lease granted to the appellant overlapped the area stated to have been granted to the SIMORE respondent no.3 herein. On receipt of the said letter the appellant filed an application to the Director of Mines and Geology objecting to the order and pointing out that the same had been passed without issuing to the appellant any notice or granting to him any opportunity of being heard in the matter. The appellant also represented to the State Government against the direction issued by the Director of Mines and Geology and asserted that even when 3rd respondent SIMORE had filed a Civil Suit in the Court of Civil Judge (Senior Division) Kudligi and prayed for an injunction no such injunction had been issued by the said Court. The Director of Mines was not, therefore, justified in issuing an injunction which the Civil Court had not issued; on the very same factual matrix. The restraint order issued by the

Director of Mines and Geology continued to remain in force despite the objections raised by the appellant. As a matter of fact, the Director of Mines wrote a letter dated 25.5.2010 to the appellant saying that order dated 5.3.2010 stopping mining operations could not be vacated or modified. The appellant was in that backdrop forced to approach the High Court of Karnataka at Bangalore in Writ Petition No.17281 of 2010 challenging the said order/communication on several grounds and praying for a direction to the respondent to refrain from interfering with the mining activities of the appellant which the lease deed authorised him to carry out. Respondent no.3, SIMORE filed Writ Petition No.18043 of 2010 challenging the very grant of the mining lease in favour of the appellant. The said two writ petitions were finally disposed of by the High Court in terms of a common order dated 1st September, 2010 impugned in the present appeals.

7. Relying upon the orders passed by the Director, Department of Mines and Geology dated 5th March, 2010 and 25th May, 2010, the High Court concluded that there was overlapping of areas held by the appellant and SIMORE under their respective lease deeds. The High Court held that the appellant had not been in a position to produce any evidence to show that the conclusion drawn by the Director of Mines regarding overlapping of the areas was erroneous. The High Court observed:

> "We permitted learned counsel for Ashok Kumar Lingala to examine the same. Even therefrom, learned counsel representing Ashok Kumar Lingala could not repudiate the finding of fact recorded in the two impugned orders.
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> 15. From the two orders issued by the Director, Department of Mines & Geology dated 05.03.2010 and 25.05.2010, we have no other alternative or hesitation but to conclude, that `M/s Simore' had been granted a mining lease, in respect of the same land, well before Ashok Kumar Lingala was awarded the mining lease. That being so, the claim of Ashok Kumar Lingala could not have been considered for grant of a mining lease over the area which comprised of part of the mining lease already granted to `M/s Simore', as the application of Ashok Kumar Lingala was bound to be treated as a premature application. This inference is inevitable from a collective reading of rules 59 and 60 of the Mineral Rules, and Section 24A of the Mines and Minerals Act."

(underlined)

8. Having held that there was an overlapping of the areas covered by the two leases, the High Court interpreted the rules to record a finding that even when the area leased to SIMORE may include private land owned by Smt. Yallamma and even when Yallamma has not granted any surface rights to it, SIMORE could undertake mining activity in the private area

by paying compensation to Yallamma before undertaking such activities. The High Court observed:

> "On the issue whether `M/s Simore' could carry out mining activities over the land owned by the private owner Smt. Yallamma, the provisions relied upon by the learned counsel representing `M/s Simore' leave no room for any doubt, that in case mining activity is carried out by `M/s Simore' over private land, compensation will have to be paid by `M/s Simore' to the private land owner under rule 72 of the Mineral Rules. But the submission of this learned counsel representing Ashok Kumar Lingala, also leave no room for any doubt, that `M/s Simore', in spite of the grant of a mining lease covering private owned land, would not be in a position to unilaterally and arbitrarily conduct mining activities thereon without the consent/permission of the land owner Smt. Yallamma. The instant conclusion is based on the second proviso under rule 22(3) (i) (h) of the Mining Rules which mandates, that unless permission/authorization is granted by the land owner, mining activity cannot be carried out. Even if it is assumed, that prior consent of the land owner was not obtained by `M/s Simore' before obtaining the lease deed from the State Government, still the second proviso under rule 22(3) (i)(h) of the Mining Rules extracted above, mandates that, prior to entering into private owned land for mining activities, permission from the land owner is a necessary pre- requisite."

9. What followed the above two findings, one touching the question of overlapping of the lease areas and the other dealing with the effect of the overlapping qua privately owned land, is interesting. The High Court took a - somersault and held that the question of overlapping could not be decided by it authoritatively and left the same must be decided by the Civil Court on the basis of evidence adduced before it. It observed:

> "Thus viewed, it is not possible for us to record any concrete finding on the factual aspect of the matter. We have noticed hereinabove, that a civil suit is pending between the parties. It will be open to the rival parties to lead evidence therein, if they are so advised, to determine the specific identity of the property over which mining leases have been granted to them. In case such evidence leads to the conclusion, that the land over which mining leases have been granted to the rival parties, do not overlap, then both of them would be entitled to carry out mining activities, under the lease agreements executed by the State Government in their favour. In case the factual finding is to the contrary, then on account of the conclusions drawn hereinabove, the earlier licensee will have to be granted the superior right to exclusively carry out mining activities. As such, `M/s Simore' shall have a preferential right over Ashok Kumar Lingala. In such an eventuality, no interference will be called for with the impugned orders dated 05.03.2010 and 25.05.2010."

10. Appearing for the appellant Mr. Dushyant A. Dave, learned senior counsel strenuously argued that the High Court had totally misdirected itself both on facts and in law. He submitted that the High Court had failed to notice that the lease granted in favour of respondent no.3 SIMORE was in respect of government and forest land alone. No part of any

private land covered the lease in its favour nor was any claim to that effect ever made by respondent no.3 SIMORE. In support of that submission learned counsel drew our attention to the application filed before the Government of Karnataka by respondent no.3 SIMORE seeking renewal of the lease in the year, 1992. In particular, he relied upon the answers given by SIMORE to the queries made in paras viii (a), x-A(a) and (b) of the renewal application to argue that respondent No.3 SIMORE had unequivocally stated that the lease sought to be renewed in its favour comprised government land and no part of it was owned or occupied by any private party. Paras viii (a), x-A(a) and (b) of the renewal application are as under:
viii Particular of the mining lease of ML No. 1179 which renewal is desired

> a) Area: 16.74 sq. miles In Sandur Taluk of Bellary District Karnataka x-A Does the applicant continue to Yes (Government land). have surface rights over the
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> a) area of the land for which he requires renewal of the mining lease.
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> b)If not, has he obtained the Not applicable consent of the owner and occupier for undertaking mining operations. If so, the consent of the owner and occupier of the land obtained in writing, be filed. “

11. He also drew our attention to the report of inspection dated 22nd February, 1993 submitted by Government of Karnataka, a copy whereof has been placed on record which too clearly mentioned that the area covered by the lease sought to be renewed was forest and government land. He particularly drew our attention to the following passage in the said report:

> "The present application for renewal is for third renewal. The whole area of 16.74 sq. miles is bounded on the North by Sandur State Forest on the South by Hospet Taluk on the East by Nauluti forest and on the West by Kudligi Taluk. Area is Government and it is forest land also."

12. Mr. Dave next drew our attention to the plaint filed by respondent no.3 SIMORE in OS No.9/2010 to buttress his submission that respondent no.3 SIMORE had not claimed any private land to be a part of its mining lease area. Reference in this regard was particularly made to para 11 of the plaint which is to the following effect:

> "11. Further, the Plaintiff hereby submits that the Plaintiff is in physical possession and enjoyment of the Schedule land for more than five decades. The Schedule land is an un- surveyed land and accordingly the NOC issued by the Deputy Commissioner, Bellary on 31.03.1998 refers to the same as blocks and c onfirms that the same is a Revenue - Land (Government Land). The claim of the Defendant that he has obtained Mining Lease over an area of 3.36 ha under survey No.27 appears to be dubious or it may be pertaining to some other land. In addition to this, the Plaintiff has paid Rs.104 crore towards Net Present Value Compensatory Afforestation charges on the 1615.64

> of forest land and Rs.2,07,79,920/- towards Environmental Protection Fee on the 247.38 ha of Revenue land held by it under Mining Lease Nos. 2580 (Old No.1179)."

13. Mr. Dave vehemently argued that inasmuch as the High Court had overlooked the material on record it had fallen in a palpable error in assuming that the land leased to the appellant could possibly overlap the area leased to respondent no.3 M/s SIMORE. So long as the two lessees were claiming surface rights over their respective lease areas under different owners the question of overlapping did not arise argued the learned counsel. At any rate the area leased to the appellant was not only verified as to its nature and ownership but was spot inspected and demarcated, which fact was evidenced from the reports placed on record. It was, therefore, wholly futile for any one to suggest that the areas granted to the two lessees were overlapping, contended Mr. Dave.

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14. On behalf of respondent no.3 SIMORE it was on the other hand contended by Mr. T.R. Andhyarujina, senior counsel that the respondent no.3 SIMORE did not claim any private land to be a part of its lease area. He submitted that even when that was so the overlapping which the Director, Mines and Geology had referred to was possible as according to SIMORE the area leased to appellant ought to be treated as a part of government land. Alternatively, it was contended that while the appellant may claim to have obtained a lease in respect of privately owned land the fact of the matter was that the area in which the appellant intended to conduct his mining activities was a part of the area leased to respondent no.3.

15. Ms. Anitha Shenoy, counsel appearing for the State Government and its functionaries argued that the orders passed by the Director (Mines) suspending mining operations were on the basis of the conclusion drawn by the drawing section of the mining department according to which the two areas forming the subject matter of the two leases were overlapping. She contended that even when - the report of the drawing section and the basis on which this overlapping had been prima facie established had not been placed on record, the site plans/maps placed on record supported the conclusion that there was some overlapping. Learned counsel further submitted that the orders passed by the Director (Mines) were interim in nature and the question whether or not there was any overlapping had yet to be determined by the competent authority. She fairly conceded that in the process of any such determination the rival claimants shall have to be heard by the competent authority.

16. We have given our careful consideration to the submissions made at the Bar and perused the record. The facts emerging from the record place the controversy within a narrow compass. While the appellant claims that the lease granted to it is in respect of a privately owned area, respondent no.3 SIMORE claims that the area leased in its favour comprises government and forest land only. If that be so, as indeed are the positions taken by the parties there is no question of any overlapping of the two areas for what is government or forest land cannot be privately owned and vice-versa. Mr. Andhyarujina all the same made a valiant attempt to persuade us to hold that the area falling in Survey No.27 qua which the appellant has obtained a lease is, in fact, government land and that no part of it is or was at any stage

privately owned. What he argued in support of that contention was that the grant of occupancy rights in favour of Pennaiah was not warranted in the facts and circumstances of the case, and if that were so, any such grant could be ignored. We regret our inability to accept that submission. We say so firstly because, the validity of the grant of occupancy rights in favour of Pennaiah by the Statutory Tribunal was not under challenge before the High Court nor was any challenge ever thrown to the orders passed by it or the implementation thereof in the relevant revenue record before any other forum. Even the State under whom respondent No.3 SIMORE claims the right to carry out mining operations, never found fault with the grant of land in favour of Pennaiah. It is, therefore, too late in the day for any one to question the legality of the order granting land situate in Survey No. 27 to Pennaiah, or to assert that notwithstanding what has happened in the statutory proceedings, the area falling under Sy. No. 27 must be recognised as government land, hence a part of area leased to SIMORE. Secondly because in the record of rights Survey No.27 is shown to be privately held by Pennaiah and after his death by Yallamma his widow. The State Government and Kumaraswamy Devaru Temple to whom the land was dedicated before its grant to Pennaiah, have accepted that position; and raised no dispute or question as to the correctness of the revenue record. The report submitted by the Deputy Commissioner, the spot inspection, and the very grant of a lease qua the area in question, all lend credence to the revenue record that recognises the land in question to be private land.

17. Such being the case the only question that calls for determination is whether respondent no.3 SIMORE is right in insisting that the area in which the appellant proposes to carry on his mining activity is a part of the area leased to former. It was argued by Mr. Andhyarujina that the area sought to be exploited for mining purposes by the appellant comprised the workers colony of SIMORE. That assertion was stoutly denied by the appellant according to whom the mining operations are confined to the area originally demarcated at the time of the grant of the lease. Be that as it may what needs to be examined is whether the appellant is mining within his lease area or beyond. This would in turn require the area leased to the appellant to be demarcated again assuming that an earlier demarcation had also taken place, especially because SIMORE denies any such previous demarcation having been conducted. According to SIMORE the officer said to have done so was placed under suspension for dereliction of duties. It is unnecessary for us to go into the validity of any previous demarcation. It is obvious that when large areas are granted for mining purposes, some confusion as to the boundaries of such areas especially if they are adjacent to each other is nothing abnormal. What in such cases needs to be done is to conduct a fresh demarcation and fix boundaries so that the parties holding such areas stay within the limits of their respective areas instead of straying into the adjacent area.

18. We may at this stage advert to another submission made by Mr. Dave that the Director (Mines) could not have stopped the mining operations of the appellant on the basis of what was according to Mr. Dave a frivolous complaint filed by SMIORE that alleged overlapping of the lease areas. He contended that a valid lease having been granted to the appellant after following the requisite formalities and the procedure prescribed under the relevant rules and after proper demarcation of the privately held area that was available for mining, the Director should not have on a sketchy report from the Drawing Section of the Department stopped the

mining activities. It was further contented by Mr. Dave that since the mining activity had been stopped under the orders of the Director (Mines), the High Court was in error in not only upholding the said direction but extending their efficacy till such time the dispute between the parties was resolved by the Civil Court.

19. The mere pendency of a suit in a Civil Court could not be an impediment for the appellant to start or continue his mining activity, unless there was an injunction restraining - him from doing so. No such injunction has been issued by the Civil Court. That does not, however, mean that the Government or the Director (Mines) for that matter could not in the event of any dispute between the appellant and SIMORE regarding the identity and demarcation of the area leased to both of them direct the appellant to refrain from carrying on the mining activity as an interim measure till such time the issue was sorted out. But once such an interim direction was issued, the authority doing so had to take steps to resolve the dispute. It could not let the dispute fester and result in a stalemate. So also the restraint order could not be continued by the High Court till the dispute was adjudicated upon by the Civil Court. Doing so would amount to one authority making an interim order pending a final order to be made by another. The power to make an interim order is, except where it is specifically taken away by the statute, implicit in the power to make a final order. It is exercised by the authority who has to make the final order or an authority exercising appellate or revisional jurisdiction, against an order granting or refusing an interim order. The exercise of the power implies that - the authority seized of the proceedings in which such an order is made will eventually pass a final order; the interim order serving only as a step in aid of such final order. The law, in our view, does not permit the making of an interim order by one authority or Court pending adjudication of the dispute by another except in the situation mentioned above. Ms. Shenoy was, therefore, right in her submission that the order of restraining mining operation was meant to be a temporary and interim arrangement meant to remain in force only till such time the Director (Mines) examined the issue regarding the alleged overlapping of the area and passed a final order on the subject.

20. Ms. Shenoy was, however, unable to justify the restraint order passed by the Director (Mines) in the absence of the report of the Drawing Section which was the sole basis for the order passed by the Director (Mines). If the Drawing Section had indeed undertaken an exercise the same ought to have been disclosed to the High Court and to this Court so that the validity of any such exercise could be examined. Absence of the report said to have been - made by the Drawing Section and non-production of any material indicating the process by which the Drawing Section came to the conclusion that there was overlapping of the two areas, one privately owned and the other belonging to the State, lend support to the submission made by Mr. Dave that the order of restraint passed by the Director was made in haste. We do not, however, propose to dwell any further on this aspect nor do we propose to vacate the interim restraint order issued by the Director on the ground that it was based on material that was tenuous and remained un-substantiated before us. In our opinion the real problem lies in the demarcation of the two areas leased to the appellant on the one hand and SIMORE on the other. As observed earlier the ownership of the areas claimed by both the lessees vests in different owners. So long as the areas leased to them are identifiable on spot by different survey numbers and boundaries, there is no question of any overlapping. The

confusion regarding boundaries in turn is a matter the answer to which lies only in a proper demarcation of the areas.

21. It was submitted by Mr. Dave that dispute between the appellant and SIMORE has considerably delayed the mining activity of the appellant, and that a direction ought to be issued to the authorities to expedite the process of demarcation. He urged that keeping in view the bad blood generated between the parties it would be more appropriate to entrust the entire process of demarcation and identification of the leased areas to the Geological Survey of India. We, however, see no reason to issue any such direction at this stage. While the appellant may have some apprehensions about the fairness of the officers of the concerned department we do not consider them to be sufficient for us to mistrust the State functionaries in the absence of any material to suggest that there is any real likelihood of bias. That does not mean that the process of identification and demarcation of the area leased to the appellant should not be undertaken by senior level officers of the State Government to ensure that there is no scope for any mischief or miscarriage of justice.

22. In the result we allow these appeals, set aside the impugned order passed by the High Court and allow Writ Petition No. 17281 of 2010 filed by the appellant in part and to the following extent:

> "(1) The Secretary, Department of Industries and Commerce, Government of Karnataka, shall constitute a Committee of officers for conduct of the demarcation and identification of the boundaries of the area leased to the appellant in terms of Mining Lease No.2622. The Committee so constituted shall include the Deputy Commissioner of the District concerned, the Chief Conservator of Forests or his nominee who shall be an officer not below the rank of Assistant Conservator of Forests, the Director of Survey and a Senior Officer of the Mines Department to be nominated by the Secretary. The Secretary shall be free to nominate any other official or officials whom he considers suitable for the purpose of identification and demarcation of boundaries of the areas covered by the mine held by the appellant. (2) The Secretary shall monitor the progress made by the Committee from time to time. A suitable order based on the report and other material, if any, placed before the Secretary shall then be passed by him after affording to each party an opportunity of being heard in the matter. The order so passed shall supersede the order dated 5.3.2010 passed by the Director (Mines).
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> (3) The above directions shall be carried out by the Secretary expeditiously but not later than six months from the date a copy of this order is received/served upon the Secretary to Government by the parties.
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> (4) The parties shall bear their own costs."