

A M/S. VICTORIAN GRANITES (P) LTD.

v.

P. RAMA RAO AND ORS.

SEPTEMBER 9, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

A.P. Mines & Mineral Concession Rules, 1966.

C Rule 31—Leasehold rights—Original Lessee transferring to another firm—Prohibition contained in clause (8) of Appendix to the lease and clause (ix) of Rule 31 against transfer or assignment or sub-lease except with prior permission of competent authority after two years—Next day Deputy Director ordering transfer—No publicity given—No objections invited—After notice, Government setting aside the transfer—Held : There is a facade of compliance of law, but it is only a subterfuge to comply with the law and an attempt by D a private company to secure unjustifiable enrichment—The entire transaction is smacked of mala fides and would defeat constitutional objectives—Government had rightly set aside the assignment of leases granted to petitioner and sub-lease in favour of another firm—Restructuring of Rules and contractual clauses consistent with constitutional philosophy—Suggestion to Government—E Constitution of India, Art. 39(b).

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12368 of 1996.

F From the Judgment and Order dated 4.12.95 of the Andhra Pradesh High Court in W.P. No. 6592 of 1994.

K. Parasaran and K. Swami for the Appellant.

K.R. Chowdhary for the Respondents.

G The following Order of the Court was delivered :

Leave granted.

H This appeal by special leave arises from the judgment and order of the Division Bench of the Andhra Pradesh High Court made on December 14, 1995 in W.P. 6592/94. The appellant had filed a revision under Section

35-A of the A.P. Mines & Mineral Concession Rule, 1966 (for short, the "Rules"). The Government after issuance of notice, set aside the transfer of the leasehold rights had by the first respondent, P. Rama Rao, who was the original lessee, to M/S. Magam Inc. in respect of the leasehold interests in the four leases granted in various G.Os. for about 103 acres which facts are not in dispute. When the matter came up for hearing, this Court issued notice as to how and under what circumstances P. Rama Rao came to transfer these leasehold interests to the second respondent, and whether they are sustainable in law? the respondents have filed their counter-affidavits. We have heard the learned counsel on both sides.

It is not in dispute that P. Rama Rao had applied for and obtained leases on various dates for quarrying granite in R.L. Puram in Chimokurthy Mandalam of Prakasam District for a period of ten years on October 7, 1989. Subsequently, on October 8, 1990, he had executed the lease deed. He transferred the leases in favour of Magam Inc. on October 8, 1992. The question is : whether the transfer of the leasehold right is valid and sustainable in law? It is true, as contended by Shri K.R. Chowdhary, learned counsel for the respondents, that clause (8) of Appendix to the Lease and clause (ix) of Rule 31 of the Rules, prohibit transfer or assignment or sub-lease or the leasehold interests in the mining lease, granted in favour of the lessee, except with prior permission by the competent authority after expiry of two years. At the relevant time, the competent authority was the Deputy Director. Exactly on expiry of 2 years from the date of the grant of the lease, P. Rama Rao had applied on October 7, 1992 for assignment of the lease in favour of Magam Inc. and the next day, viz., October 8, 1992, the Deputy Director, promptly and willingly had ordered transfer to Magam Inc. of the leasehold rights had by P. Rama Rao. It does not appear that any publicity was given inviting objections from others. The question, therefore, is : whether the action taken by the Deputy Director is valid in law?

It is true that a facade of compliance of law has been done by P. Rama Rao and Magam Inc. for having the transfer of the leasehold interests had by P. Rama Rao made in favour of the letter. The best of the legal brains will be available to escape the clutches of law and transactions would be so shown to be in compliance of semblance of law. In that pursuit, payment of royalty and permits remained in the name of P. Rama Rao. The court has to pierce through the process, lift the veil and reach the

- A** genesis and effect. Article 39(b) of the Constitution envisages that the State shall, in particular, direct its policies towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Socio-economic justice is the arch of the Constitution. The public resources are distributed to achieve that objective since liberty and meaningful right of life are hedged with
- B** availability of opportunities and resources to augment economic empowerment. The question is : whether the transfer is to subserve the above common good and constitutional objective? It is true that when the individuals have been granted lease of mining of the property belonging to the Government, the object of such transfer was to augment the economic
- C** empowerment of the transferee by himself or by a co-operative Society or partnership composing persons to work out the mines to achieve economic empowerment. Whether such a transfer could be made a subterfuge to circumvent the constitutional philosophy and thereby the constitutional objective be sabotaged in that behalf? Answer would be obviously in the
- D** negative. It is seen that the Government has amended the rules and given powers to the Director to grant assignment after the two years from date of leave from one firm, in favour of another firm of the lease rights obtained by one, and if it is sought to be transferred within two years, prior permission of the Government is required to be obtained. The object is to have control in the hanky-panky and shady transactions done in collabora-
- E** tion and collusion with the lower level officers for illegal gratification and to prevent the depletion of the assets of the State for personal benefit of the vested interests, defeating the constitutional objective behind Article 39(b) of the Constitution, the preamble and fundamental rights enshrined in the Constitution. This system of transfer would encourage corruption
- F** and nepotism and official acts done in secrecy would sabotage the constitutional objectives. Big fish will always eats away small fish in diverse forms, so as to drive the latter away from the area. Legal form of action, if given primacy, the constitutional objective would be easily defeated, creating monopoly in the market by few vested interests controlling the economy. The problem has to be broached from this perspective and must seek an
- G** answer to the question whether such transactions would elongate and subserve common good?

H In this case, as rightly contended by Shri K.R. Chowdhary, there is a facade of compliance of law, but, as stated earlier, it is only a subterfuge to comply with the law and an attempt by a private company whose

polishing center is situated in Chittor District and Head Office in Madras to secure unjustifiable enrichment. We have got out own doubts with regard to the very constitution and genuineness of the partnership said to have been entered into between P. Rama Rao and other partners of Magam Inc. However, in this case, it is not necessary for us to go into that issue. Suffice it to state that the entire transaction is smacked of *malafides* and would defeat the constitutional objectives. The Government should restructure their rules and contractual clauses consistent with constitutional philosophy. The Government, therefore, has rightly, though for different reasons, set aside the assignment of leases granted by P. Rama Rao and sub-lease in favour of Magam Inc. by exercising its *sou motu* power.

The appeal is accordingly allowed. The order of the High Court stands set aside and that of the Government stands confirmed, but in the circumstances, without costs.

G.N.

Appeal allowed.