IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION No.3303 of 2023

CTP Granite & Exports, Rep. by its Sole Proprietor Selvamanickam, S/o S.Manikam, aged 43 years, Occ: Sole Proprietor CTP Granite & Exports, R/o Room No.3, Police Welfare Complex, Opposite HDFC Bank, Mittoor, Chittoor District.

… Petitioner.

Versus

State of Andhra Pradesh, Rep. by its Principal Secretary, Industries and Commerce (M-I) Department, A.P. Secretariat, Velagapudi, Amaravati, Guntur District and three others.

… Respondents.

Counsel for the petitioners	:	Sri V.Siva Prasad Reddy
Counsel for respondents 1 to 3	:	GP for Mines & Geology
Counsel for respondents No.4	:	Sri N.Vijay

ORDER

The above writ petition is filed seeking the following relief:

> "… to issue a writ or writs or order of orders one more particularly in the nature of Writ of Mandamus to declare the transfer of lease proceedings No.5269/D12-1/2022 dated 21.06.2022 issued by the 2nd respondent in favour

> of 4th respondent on the strength of forged signature on the transfer of quarry lease application dated 19.05.2022 forwarded by 3rd respondent as without jurisdiction, illegal, arbitrary and unconstitutional and consequently set aside transfer of lease proceedings No.5269/D12-1/2022 dated 21.06.2022 issued by the 2nd respondent in favour of 4th respondent … …"

2. Petitioner is a proprietary concern represented by sole Proprietor. The case of the petitioner, in brief, is that petitioner granted lease in an extent of 7.152 Hectares in S.No.738/P of Vandadi village, Chinnamandyam Mandal, YSR Kapada District for quarrying colour granite for a period of 20 years valid upto 18.08.2036. The 4th respondent by forging the signatures of Proprietor of petitioner, submitted transfer application dated 19.05.2022 before 3rd respondent. The 3rd respondent without conducting any enquiry, recommended to 2nd respondent for transfer of lease in favour of 4th respondent. The 2nd respondent by proceedings No.5269/D12-1/2022 dated 21.06.2022 granted permission to transfer the quarry lease in favour of 4th respondent. Assailing the same, the above writ petition is filed.

3. a) Counter affidavit was filed on behalf of the respondents 1 to 3. The 3rd respondent deposed to the counter affidavit. In the counter affidavit, it was contended, interalia, that quarry lease for colour granite over an extent of 7.152 Hectares in S.No.738/P of Vandadi village, Chinnamandyam Mandal, YSR Kapada District was granted for a period of 20 years i.e. from 19.08.2016 to 18.08.2036 in favour of petitioner. The Proprietor of the petitioner M.Selvamanickem gave General Power of Attorney to K.Malarvizhi i.e. 4th respondent on 12.11.2018. The Proprietor of petitioner also gave authoritization dated 19.10.2018 to the 4th respondent to act on his behalf in all manners relating to getting of mining permits, quarterly, annual returns and to receive notice from the Assistant Director of Mines and Geology, Kadapa etc.

b) M/s CTP Granite and Exports, Proprietor M.Selvamanickam, filed an application seeking transfer of lease in Form-R under Rule 12 (5) (h) (viii) of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short "**the Rules, 1966**") requesting for transfer of lease in favour Managing Partner of M/s CTP Granite and Exports, duly enclosing application fee *vide* Challan No.61057714892022 dated 12.05.2022 along with notarized affidavit signed by M.Selvamanickam. Form-A contains the details of partners of the firm.

c) The Proprietor of petitioner and 4th respondent are partners of M/s CTP Granite and Exports. After causing survey and inspection of lease, the Assistant Director, Mines and Geology, Kadapa submitted proposals to the Director of Mines and Geology, Ibrahimpatnam for transfer of quarry lease in favour of) M/s CTP Granite and Exports, Managing Partner Malarvizhi. Accordingly, the Director of Mines and Geology *vide* proceedings dated 21.06.2022 transferred the said lease in favour of) M/s CTP Granite and Exports. Lease deed was executed *vide* proceedings No.1734/TQL/2022 dated 29.06.2022.

d) Legal notice dated 06.07.2022 was issued by the Proprietor of petitioner not to change the name in records. The Proprietor of petitioner issued another legal notice dated 16.07.2022 withdrawing the complaint filed through legal notice dated 06.07.2022. Subsequently, the petitioner submitted a notarized affidavit dated 12.07.2022 stating that both Proprietor of petitioner and 4th respondent entered into partnership deed dated 19.10.2018 and reduced the terms and conditions in writing and due to misunderstandings, legal notice dated 06.07.2022 was issued. The partnership deed, where the Proprietor of petitioner and 4th respondent are partners, was registered with Registrar of Firms, Kadapa on 29.11.2018 as document No.231 of 2018 under Section 59 of Indian Partnership Act, 1932 and eventually, prayed to dismiss the writ petition.

4. The 4th respondent filed separate counter affidavit and reiterated the averment regarding granting lease in favour of petitioner. It was contended that the Proprietor of petitioner and 4th respondent formed into partnership firm in the year 2018 and 4th respondent being the Managing Partner. The Proprietor of petitioner was unable to repay the loan and offered to transfer the subject mining lease in lieu of discharge of loan amounts. The transfer of lease in favour of M/s CTP Granite and Exports was done in accordance with the procedure contemplated under the Rules, 1966. Petitioner approached the Court, seven months thereafter and eventually prayed to dismiss the writ petition.

5. Reply affidavit was filed on behalf of the petitioner. It was contended that respondents 1 to 3 did not deny the averments in the affidavit regarding forgery of signatures and no enquiry was conducted. The quarry lease is compulsorily registerable document under Section 17 of the Registration Act, 1908.

6. Heard Sri V.Siva Prasad Reddy, learned counsel for petitioner, learned Government Pleader for Mines and Geology for respondents 1 to 3 and Sri K.Sai Naveen, learned counsel representing Sri N.Vijay, learned counsel for 4th respondent.

7. Learned counsel for the petitioner would contend that lease was not transferred in accordance with Rules. He also would contend that by forging signature of Proprietor of petitioner, application was submitted.

8. Learned counsel appearing for 4th respondent would contend that proprietor of petitioner and 4th respondent entered into a partnership and the same was registered. Later, lease was transferred in accordance with the Rules. He also would point out that petitioner got issued legal notice

and later got the same withdrawn. Petitioner to settle private disputes approached the court by suppressing facts with unclean hands.

9. Learned Government Pleader while adopting the arguments would further contend that 2nd respondent passed the orders impugned strictly in accordance with law.

10. The points for consideration are:

i) **Whether the proceedings issued by the 2nd respondent vide No.5269/D12-1/2022 dated 21.06.2022 is contrary to Rule 12 (5) (h) (viii) of the Rules, 1966?**

ii) **Whether the petitioner approached the court by suppressing material facts?**

iii) **Whether transferee of lease is arrayed as party respondent?**

11. Undisputed facts, as per record, are that lease was granted in favour of petitioner for an extent of 7.152 Hectares in S.No.738/P of Vandadi village, Chinnamandyam Mandal, YSR Kapada District for quarrying colour granite for a period of 20 years. Form-G was executed on 19.08.2016. The lease period is from 19.08.2016 to 18.08.2036. As seen from the

material papers filed along with counter affidavit, the Proprietor of petitioner and 4th respondent entered into partnership and the same was registered in the name of M/s CTP Granite and Exports on 23.11.2018 with Registrar of Firms, Kadapa. Form-A discloses the names of Proprietor of petitioner and 4th respondent as partners. Partnership deed dated 23.11.2018 and GST Registration Certificate were filed along with counter affidavit and in fact those papers were also filed along with transfer application.

12. The application for transfer of lease in Form-R was made in the office of 3rd respondent on 19.05.2022 seeking transfer of unexpired lease period from petitioner to M/s CTP Granite and Exports, a Proprietary Firm. Along with application, as stated supra, the affidavits of Proprietor of petitioner and 4th respondent, partnership deed, Firm Registration Certificate and GST Registration Certificate were filed. Consent letter dated 13.06.2022 signed by the petitioner is duly notarized. After following the procedure, 3rd respondent submitted a report. The 2nd respondent basing on the report of 3rd respondent, issued proceedings impugned in writ petition.

13. During the course of hearing, learned counsel for petitioner would submit that lease is for non-captive purpose and hence, lease cannot be transferred in view of Rule 12 (5) (h) (viii) of the Rules, 1966. Learned Government Pleader and learned counsel for 4th respondent drew the attention of the Court to amendment to Rule 12 (5) (h) (viii) of the Rules, 1966. Rule 12 (5) (h) (viii) (a) is substituted by way of G.O.Ms.No.58 Industries & Commerce (M.II) Department dated 08.03.2019. As per Rule 12 (5) (h) (viii) (a), the holder of a lease, with the prior written approval of the Director of Mines & Geology, may be permitted to transfer such lease in favour of the existing mineral based industry or to a new mineral based industry, which shall be established within 2 years from the date of execution of transfer lease deed. It further manifests that if the industry is not established within two (2) years, no further extension of time shall be granted and the lease shall be cancelled. In view of the same, the contention of learned counsel for petitioner that the quarry lease granted is for non-captive purpose and the same is not transferrable, falls to ground.

14. The other contention of learned counsel for petitioner that signatures of Proprietor of petitioner were forged and application was made by 4th respondent is also meritless and falls to ground. Along with counter affidavit, legal notice dated 06.07.2022 issued on behalf of petitioner. Another legal noticed dated 16.07.2022 issued on behalf of petitioner withdrawing legal notice dated 06.07.2022 was filed. Both notices were issued by the same counsel. The affidavit dated 12.07.2022, was duly notarized, shows issuance of legal notice, withdrawing legal notice, settlement of disputes and also registration of partnership. Whether the signatures of Proprietor of petitioner were forged or not, the authorities need not go into and consider those aspects in the light of legal notices and notarized affidavit filed on behalf of proprietor of petitioner.

15. The application was made before the authorities as per Rule 12 (5) (h) (viii) of the Rules, 1966 and after considering the report of the 3rd respondent, 2nd respondent transferred the lease in favour of 4th respondent. The Proprietor of the petitioner is also one of the partners in the Partnership firm in whose favour the lease was transferred. It is pertinent to

mention here that petitioner did not array the transferee as party respondent to the writ petition. Instead, arrayed the Managing Partner of transferee as party respondent. Thus, transferee of lease for the unexpired period was not shown as party respondent to the writ petition. On ground alone the writ petition is liable to be dismissed.

16. The documents as stated *supra*, were filed along with the counter affidavit. However, in the reply affidavit except making averment regarding alleged forgery of signatures, nothing has been stated about these documents. This instance makes the thing more than discernable that the Proprietor of petitioner is aware of those documents and however, approached the Court by suppressing material facts. These documents, *prima facie*, show that the Proprietor of petitioner is also partner to the partnership firm.

17. Thus, the discussion made *supra,* discerns that the petitioner approached this Court by suppressing material facts. Doctrine of *suppresio veri suggestio falsi* and *suppresio veri expressio falsi* would apply to the facts of the case.

18. In **Prestige Lights Limited vs. State Bank of India**[1], the Hon'ble Apex Court held as under:

> "33. It is thus, clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter."

19. In **S.J.S. Business Enterprise (P) Ltd. v. State of Bihar**[2], the Hon'ble Apex Court held as under:

> "As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken [R. v. General Commrs. for the purposes of the Income Tax Act for the District of Kensington, (1917) 1 KB 486: 86 LJKB 257: 116 LT 136 (CA)]. Thus, when the liability to income tax was questioned by an applicant on the ground of her non-residence, the fact that she had purchased and was maintaining a house in

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[1] **2007 (8) SCC 449**
[2] **2004 (7) SCC 166**

> the country was held to be a material fact, the suppression of which disentitled her to the relief claimed [Ibid]. Again when in earlier proceedings before this Court, the appellant had undertaken that it would not carry on the manufacture of liquor as its distillery and the proceedings before this Court were concluded on that basis, a subsequent writ petition for renewal of the licence to manufacture liquor at the same distillery before the High Court was held to have been initiated for oblique and ulterior purposes and the interim order passed by the High Court in such subsequent application was set aside by this Court [State of Haryana v. Karnal Distillery Co. Ltd., (1997) 2 SCC 431: AIR 1977 SC 781]. Similarly, a challenge to an order fixing the price was rejected because the petitioners had suppressed the fact that an agreement had been entered into between the petitioners and the Government relating to the fixation of price and that the impugned order had been replaced by another order [Welcom Hotel v. State of A.P., (1983) 4 SCC 575:1983 SCC (Cri) 872: AIR 1983 SC 1015]."

20. A conspectus of above authoritative pronouncements discloses that the person approaching the Court under Article 226 of the Constitution of India should not suppress the material facts. If there is suppression of facts, the Court may refuse to entertain the petition and dismiss it without going into merits of the matter.

21. Since the petitioner approached the Court by suppressing the material facts, this Court does not find any illegality in the proceedings impugned in the writ petition.

There are no merits in the writ petition and writ petition is liable to be dismissed with costs.

22. Accordingly, the writ petition is dismissed with costs of Rs.10,000/- (Rupees ten thousand only) to be payable to the Andhra Pradesh State legal Service Authority, Amaravati within a period of four weeks.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE SUBBA REDDY SATTI

6th July, 2023

PVD