

REPORTABLE
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2014
[@Special Leave Petition (Civil) No.5123 of 2011]

M/s. Vivek Exports .. Appellant(s)

-vs-

State of Karnataka & Ors. .. Respondent(s)

JUDGMENT

C. NAGAPPAN, J.

1. Leave granted.
2. This appeal is preferred against the judgment and order dated 4.1.2011 passed by the High Court of Karnataka at Bangalore in Writ Petition No.9325 of 2009

Signature Not Verified

wherein the Division Bench allowed the writ petition filed

Digitally signed by
Meenakshi Kohli
Date: 2014.08.20
12:04:27 IST
Reason:

by the third respondent herein.

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3. Briefly the facts are as follows: Appellant herein was granted a quarrying lease for ornamental stones in Survey No.184 of Jyothi Gowdana Pura of Chamarajanagar Taluk for a period of 5 years from 27.2.1978 and that was further renewed on 18.1.1983 for a further period of five years ending with 26.2.1988. Though an application for another renewal was filed, the same was not considered favourably. Meanwhile Rule 3A of Karnataka Minor Mineral Concession Rules, 1969, was

amended and the validity of the same was challenged by various persons including the appellant herein before the High Court. While matter stood thus, the State Government issued order dated 18.6.1991 resorting to Rule 3 for grant and renewal of quarry leases. The appellant herein applied for lease under the said order and 203 quarry leases were granted under Rule 3 and the appellant herein was also granted lease for a term of ten years. The validity of the Government order dated 18.6.1991 was challenged in Writ Petition Nos.14783 and 14241 of 1991 on the file of the High Court of Karnataka

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at Bangalore and the learned single Judge quashed the said Government order and declared all consequential action taken under it as null and void. The said order was confirmed by the Division Bench of the High Court as well as by this Court in the decision reported in (1996) 7 SCC 416. In the meantime Rule 3A was deleted. The State Government issued Notification dated 21.12.2000 notifying the grant of renewal of quarry lease to the appellant for the same land for a period of ten years and subsequently by order dated 19.4.2008 the Government extended the period of said lease for 20 years with effect from 21.5.2001. The third respondent herein applied for quarry lease over an area of 20 acres in the same survey No. 184 of Jyothi Gowdana Pura of Chamarajanagar Taluk on 13.8.2008 and according to him only in the month of February 2009 he learnt about the grant of lease to the appellant herein over an extent of 15 acres in the same survey number and after obtaining the details by an application under RTI Act, filed the impugned writ petition for quashing the

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Government order dated 21.12.2000 granting lease in favour of the appellant herein and for quashing the

Government order rejecting his application and for a direction to notify the subject land for grant of lease. The Division Bench of the High Court set aside the Government order dated 21.12.2000 as well as the rejection order dated 11.1.2010 and directed the competent authority to reconsider the claim of the third respondent herein and also gave liberty to the appellant herein to show that he has a subsisting valid claim and disposed of the writ petition in the above terms. That is being challenged in this appeal.

4. We heard the submissions of learned senior counsel appearing for the appellant as well as the learned counsel appearing for the respondents.

5. The appellant was granted quarrying lease for ornamental stones on 27.2.1978 for a period of 5 years and the said lease was renewed for a further period of 5 years ending with 26.2.1988, as found by the High Court on verification of original records produced before it.

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Though the applicant filed an application for another renewal the same was not considered favourably and as per Rule 16 of Karnataka Minor Mineral Concession Rules, 1969, it should be deemed to have been refused and the applicant did not have any quarrying lease in the subject land from 27.2.1988 onwards. Pursuant to the decision of the State Government as per Government Order dated 18.6.1991 to resort to Rule (3) for grant of quarry leases the appellant herein applied and was granted quarrying lease for a term of 10 years along with others. As rightly held by the High Court, the lease granted to the appellant on 26.6.1991 was not a renewal but a fresh lease. In fact a total number of 203 leases were granted pursuant to the Government order dated 18.6.1991. The validity of the said Government order

was challenged by filing writ petitions and the learned single Judge quashed the Government order dated 18.6.1991 and declared all consequential action taken under it as null and void. The Writ Appeals preferred by the grantees of leases were dismissed by the Division

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Bench of the High Court. They preferred further appeals to this Court and a three-Judge Bench of this Court in the decision rendered in Alankar Granites Industries and others Vs. P.G.R. Scindia, MLA and others (1996) 7 SCC 416 held that the judgment of the High Court holding the grants to be invalid does not suffer from any infirmity and dismissed the appeals with costs. Thus the lease dated 26.6.1991 granted in favour of the appellant was declared invalid.

6. On behalf of the appellant a contention was raised that the application filed by the appellant on 22.6.1994 seeking the renewal of the lease under the transitory provision Rule 59 of Karnataka Minor Mineral Concession Rules, was pending before the State Government. This contention is devoid of merit for the reason that original lease dated 26.6.1991 granted to appellant was already declared invalid.

7. The first respondent Government issued Notification dated 20.11.2000 under Rule 8-A calling upon interested persons to apply for grant of lease in Survey No.184

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namely the subject land. Despite the above, it issued further Notification dated 21.12.2000 notifying the grant of renewal of quarry lease to the appellant for the same land for a period of 10 years and subsequently by order dated 19.4.2008 it extended the period of said lease for 20 years. The original lease granted to the appellant on 26.6.1991 having been held to be invalid, its renewal on 21.12.2000 as a corollary, is also invalid as rightly held

by the High Court.

8. The main contention of the appellant is that the third respondent has challenged the renewal of the quarry lease after 9 years of its grant and in the absence of proper explanation, the writ petition is liable to be dismissed on the ground of delay and laches. It is the contention of the third respondent that he applied for quarry lease over subject land on 13.8.2008 and, thereafter only he learnt about the grant of lease to the appellant, and after collecting the details, he filed the writ petition challenging the grant of renewal as well as the order rejecting his application for grant of lease.

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9. Delay in this case has not worked to disadvantage of appellant as he has worked the lease for nearly 10 years. No matter the lease was renewed, the grant itself was held illegal by the High Court. Delay would have assumed importance if the petitioner had altered his position to his detriment, so as to make any interference to the grant in his favour inequitable. No such plea was raised by the appellant before the High Court or in this appeal. Mr. Dushyant A. Dave, learned senior counsel, feebly argued that the appellant had changed his position to his detriment. But when called upon to substantiate the plea on the basis of record he fairly conceded that not only the averments made were inadequate but no supporting material was placed on record. Therefore, candidly he gave up the plea based on estoppel promissory or otherwise and rested his case only on delay.

10. In a case where lease has been quashed by the Court for whatever reason, granting renewal of such a quashed lease was impermissible and may amount to a

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fraud on the power of renewal exercised by the State Government. Such being the position, delay is not enough to defeat the action brought by the third respondent before the High Court. While dealing with the exercise of power under Article 136 of the Constitution of India, this Court in the decision in Royal Orchid Hotels Limited and another Vs. G. Jayarama Reddy and others (2011) 10 SCC 608, observed thus :

"Another principle of law of which cognizance deserves to be taken is that in exercise of power under Article 136 of the Constitution, this Court would be extremely slow to interfere with the discretion exercised by the High Court to entertain a belated petition under Article 226 of the Constitution of India. Interference in such matters would be warranted only if it is found that the exercise of discretion by the High Court was totally arbitrary or was based on irrelevant consideration."

11. In the present case the discretion exercised by the Division Bench of the High Court to ignore the delay in

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filing of writ petition, in our view, is not vitiated by any error. Further in the impugned judgment an opportunity has also been provided to the appellant to show that he has a subsisting valid claim before the competent authority.

12. There is no merit in the appeal and the same is dismissed. No costs.

.....J.
(T.S. Thakur)

.....J.
(C. Nagappan)

.....J.
(Adarsh Kumar Goel)

New Delhi;
August 19, 2014.

ITEM NO.1A
(For Judgment)

COURT NO.12

SECTION IVA

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Civil Appeal No. 7773 of 2014
(@ SLP (C) No. 5123 of 2011)

M/S VIVEK EXPORTS

Appellant(s)

VERSUS

STATE OF KARNATAKA & ORS.

Respondent(s)

Date : 19/08/2014

This appeal was called on for pronouncement
of Judgment today.

For Appellant(s)

Mr. Dushyant A. Dave, Sr. Adv.
Mr. Visvanatha Shetty, Sr. Adv.
Mr. L.M. Chidanandyayya, Adv.
Mr. S. Udaya Kumar Sagar, Adv.
Ms. Bina Madhavan, Adv.
Mr. Shivendra Singh, Adv.
For M/s. Lawyer S Knit Co.

For Respondent(s)

Mr. Rajesh Mahale, Adv.
Mr. Krutin R. Joshi, Adv.
Mr. Shivendra Dwivedi, Adv.

Ms. Anitha Shenoy, Adv.

Hon'ble Mr. Justice C. Nagappan pronounced the reportable judgment
of the Bench comprising Hon'ble Mr. Justice T.S. Thakur, His Lordship
and Hon'ble Mr. Justice Adarsh Kumar Goel.

Leave granted.

The appeal is dismissed in terms of the signed reportable
judgment.

(MEENAKSHI KOHLI)
COURT MASTER

(JASWINDER KAUR)
COURT MASTER

[Signed reportable judgment is placed on the file]