

BEFORE THE NATIONAL GREEN TRIBUNAL SOUTHERN ZONE BENCH AT
CHENNAI

O.ANO. 155 OF 2021

BETWEEN:

KondruMardiyya, S.C. Colony,
Gunupudi Village, NathavaramMandal,
Visakhapatnam District- 531115
Email: litigation.life@gmail.com, Ph.No. 91 9312407881

.. Applicant

Versus

1. State of Andhra Pradesh, through the Chief Secretary
Building No.1, 1st Floor, Interim Government Complex,
A.P. Secretariat, Velagapudi, Guntur.
Email: cs@ap.gov.in Phone: 0863- 2441024.
2. Union of India, through its Secretary,
Ministry of Environment, Forest and Climate Change
Indira ParyavarnBhawan, Jorbagh Road,
New Delhi- 110003
Email: secy-moef@nic.in Ph. 011-24695136
3. Mines and Geology Department,
Government of Andhra Pradesh, through Principal Secretary,
Sri Anjaney Towers, D.No. 7-04, B-Block, 5th and 6th Floors,
Ibrahimpattam, Vijayawada
Email: Lsecy_mines@ap.gov.in Ph. 0866-2882170
4. Forest Department, State Government of Andhra Pradesh,
Through Principal Chief Conservator of Forests & Head
Of Forest Force, AranyaBhavan, K.M. Munshi Road,
Nagarampalem, Guntur- 522004
Email: prlccf_hf_apfd@ap.gov.in Ph: 0863-23775500
5. Sri J. Lakshmana Rao, S/o. GaneshwaraRao,
Kakarapadu Village, KoyyuruMandal, Visakhapatnam.
6. District Collector, Visakhapatnam District,
Main Road, Krishnanagar,
Maharani Peta, Visakhapatnam- 530002
Email: Collector_vspm@ap.gov.in Ph: 0891 2563121
7. Andhra Pradesh Pollution Control Board,
Through the Member Secretary
D.No. 33-26-14/D2, Pushpa Hotel Center,
Chalamalavari Street, Kasturibaipet,
Vijayawada- 520010.
Email: membersecy@appcb.gov.in, Ph: 0866 2463200
8. Assistant Director of Mine & Geology, Visakhapatnam
Behind Babaa Bazaar, LawsansBy Colony,
PeddaWaltair, Visakhapatnam- 530001
Email: admin@apmines.gov.in

... Respondents

J. Lakshmana Rao



COUNTER AFFIDAVIT FILED BY THE 5TH RESPONDENT

I, JarthaLakshmanaRao S/o. Late Ganeswararao, aged 37 years, Occ: Business R/o. Kakrapadi Village, KoyyuruMandal, Viskhapatnam District, do hereby solemnly and sincerely affirm and state on oath as follows:

1. I am the 5th Respondent deponent herein and as such I am well acquainted with the facts of the case.
2. This respondent denies each and every averment made in the affidavit filed in support of the application as false and incorrect except those that are specifically admitted herein in this counter affidavit.
3. It is submitted that the 5th Respondent belong to Schedule Tribe Community. The Applicant/5th Respondent made an application to the Secretary, Commerce and Industries Department, State of Andhra Pradesh for grant of mining lease to win laterite mineral in an extent of 199 hectors in un-surveyed hill portion of Bhamidika Village H/o. Sarugudu, NathavaramMadnal, Visakhapatnam District Andhra Pradesh State. In the process of considering the application, the Assistant Director Mines and Geology Anakapalli called for report from the then Tahsildar, NathavaramMandal on classification of the land and availability of area for grant of No-objection Certificate.
4. It is submitted that in this regard, the Tahsildar, Nathavaram physically inspected site and demarked the site as 121 Hectors and held that the area is covered with some bumps with rocky terrain and reddish in color. The Grampanchayat of Sarugudu Village under whose jurisdiction my leased premises falls, had conducted Gram Sabha and passed a Resolution dated 20/23.7.2009 expressing their consent to grant mining lease in Applicant/5th Respondent favour. The Ministry of Environment, Forest & Climate Change, New Delhi after detailed examination of Environment Impact Assessment study coupled with public consultation proceedings, granted environmental clearance dated 17.11.2014. Thereafter, Andhra Pradesh Pollution control Board, Zonal Officer, Visakhapatnam granted consent order for establishment.

J. Lakshmana Rao

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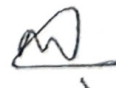
5. It is submitted that after six years from the date of passing of Grampanchayat resolution, at the behest of the then Minister of the government, the government of Andhra Pradesh had cancelled the NOC issued by Gramsabha vide orders dated 18.12.2015 and Tahsildar also cancelled its NOC on an allegation that panchayat's resolution is fictitious. Consequently, the government proposed to cancel the grant orders. Challenging the cancellation of NOC and the proposal of the government to cancel the mining application.

6. It is submitted that the 5th Respondent have filed Writ Petitions No. 36605/16 and WP.No 30956/2016. The writ petitions were allowed on 28.6.2018 where under the Hon'ble High Court was pleased to set aside the impugned orders holding that the resolution of Grampanchayat is valid and further directed the respondents therein to take necessary steps for executing mining lease infavour of the Applicant/5th Respondent in respect of the subject land and execute the lease deed within a period of six weeks from the date of receipt of the order. Accordingly, in implementation of the orders of Hon'ble High Court at Hyderabad, the Director of Mines and Geology granted quarry lease in my favour under lease deed dated 05.02.2021 Ever since the date of execution of lease deed, I have been doing the mining operation without violating any norm fixed by Ministry of Environment and Forest and Climate Change and Andhra Pradesh Pollution Control Board authority and the terms of lease with all valid permits.

7. It is submitted that the persons who tried to take away my mining lease earlier, having failed in getting my permissions cancelled with their political power, now projected their associate i.e, the Applicant herein to approach this Hon'ble Tribunal with false allegations. The applicant in this O.A is the Secretary of a political party viz; Telugu Desam Party, Anakapallii Parliamentary Constituency. The applicant approached this Hon'ble Tribunal by creating false allegations as if I am undertaking mining operations without obtaining Forest clearance. All the allegations that the 1st respondent /applicant in the above OA are made with malicious intention to disturb my lawful mining activity in order to please the political ill-will of local politicians.

8. It is submitted that the applicant himself filed documents which show that the erstwhile common High Court of AP and Telangana at Hyderabad set aside the orders passed cancelling resolution of grampanchayat. But he has deliberately suppressed the said fact in his affidavit and pleaded again that the resolution of grampanchayat is fictions. This fact itself show that the applicant has no genuine grievance and he has approached this Hon'ble Tribunal with unclean



J. Gulharao 

hands. Moreover the applicant do not belong to agency area but belongs to plain area situated about 50 kilometers away from mining area village and he does not belong to Schedule Tribe. Thus he is no way concerned or affected with my mining operations and he is not aware of location and ecology of our area.

9. It is submitted that In reply to the allegations that the forest land has been leased for mining activity without obtaining Forest Clearance and the part of mining land is covered by Sarugudu Extension-5 Reserve Forest Block and is dense forest with 0.7 density and hill region with more than 30 degree slope and that out of 121 hectores leased to me, 5.30 hectares of land fall under Sarugudu Reserve Forest are false. It is submitted that the mining area of this respondent is not part of Sarugudu Reserve forest. Infact the mining area of this respondent is far 3 kms away from the boundary of Sarugudu Reserve Forest and it is covered by rocks. It is submitted that there is no forest much less the reserved forest in my mining area and the alleged density of tree and existence of wild life is baseless and it is only creation of the applicant for the purpose of maintaining this application before this Hon'ble Tribunal.

10. It is submitted that the other allegation that this respondent has not obtained forest clearance and failed to obtain other permissions under other statutory laws is false. I submit that this respondent obtained Environmental clearance from the Ministry of Environment and Forest and Climate Change and clearance from Andhra Pradesh Pollution Control Board and obtained consent from the Tahsildar with regard to classification of the land and also obtained No-objection from the Gramasabha as required under PESA Act.

11. It is submitted that the erstwhile common High Court of Andhra Pradesh and Telangana at Hyderabad, having observed that this respondent has all requisite permissions, was pleased to direct the mining authorities to execute lease deed in favour of the petitioners vide orders in WP.No. 30956/2016 dated 28.06.2018 and the said order has become final. Accordingly the Mining authorities have granted mining lease in 5th respondent favour. Hence, the allegation that this respondent did not get required permission is baseless. It is submitted that as the main grievance of the applicant that the land of this 5th respondent falls in Sarugudu Reserved Forest-5 is false, the question of obtaining permission under Section 2 of the Forest (Conservation) Act 1980 does not arise.



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12. It is submitted that In reply to the allegation that this respondent is constructing road in the forest area in gross violation of the provisions of Forest (Conservation)Rules 2003 is false and baseless. It is submitted that this respondent never constructed any road through forest area at any point of time. It is submitted that applicant projected his grievance as if this respondent using road passing through reserve forest. It is submitted that neither formed a new road nor using existing road through reserve forest. It is submitted that from the mining area to Siripuram, there is a road existing through a non-forest area and the local panchayat has given its consent to me to use the said road under its resolution dated 04.05.2021.

13. It is submitted that the dump yard in challur village. In order to reach the dump yard, there are two roads. One is via sirpuram, yerakannapalem, sarugudu, ramannapalem, rajaram raghavapatnam, jaldam villages and another one is through reserve forest of East Godavari, this respondent never used the reserve forest road, but has been using only the long road. In fact the 5th respondent requested the consent forest officials seeking permission to use the road through reserve forest, but so far my request is not at considered. It is submitted that the 5th respondent not using the road passing through reserve forest. The 5th respondent uses the road of reserved forest only upon obtaining permission from the concerned authorities, but not before that.

14. It is submitted that In reply to the other allegation that the mining area falls under Fifth schedule of the Constitution of India and thus requirement of getting consent from the Grama Sabha in order to initiate mining operations is essential and that resolution obtained by me from Grama Sabha is fabricated and the same was canceled by the concerned authority on 16.11.2015 under section 246 (1)(b) of the Andhra Pradesh Panchayatraj Act 1994 are not correct.

15. It is submitted that the filing of material pertains to the mining lease proceedings pertains to Rc.No.285/2016/A dt.29.7.2016, show that the applicant is having knowledge over the entire proceedings of my mining lease process for the last 10 years. But the applicant failed to mention the real facts. It is submitted that mining area of this respondent falls under SaruguduGrampanchayat. The SaruguduGrampanchayat in its gramasabha consented for grant of mining lease in my favour and in this regard, it has passed resolution on 23.7.2009. After six years from the date of passing of resolution, by virtue of orders passed by then Minister, the government cancelled the resolution alleging that the resolution is fictitious. Challenging the same the 5th respondent filed the Writ Petition No.30956 of 2016 before erstwhile Common



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High Court of Andhra Pradesh and Telangana, Hyderabad and the Hon'ble High Court was pleased to hold that the resolution is genuine and the orders passed cancelling the resolution are illegal and allowed the writ petition. The material papers filed by this applicant also reflect the fact that the 5th respondent filed writ petition against the cancellation of resolution, but the applicant has not chosen to disclose the said fact in his application and thereby committed deliberate suppression of crucial and material fact before this Hon'ble Tribunal.

16. It is submitted that in reply to the allegation that permission is given to widen road and we are transporting the vehicles through the said forest road is false. I submit that as mentioned by this respondent in the above paragraphs, this respondent is not widening any forest road and I am not transporting my mineral through the forest road.

17. It is submitted that the allegation that 30 hectares of the land out of 121 hectares of mining area falls within Sarugudu Reserve forest is false. I submit that my mining area is situated at a faraway place from the Sarugudu Reserve Forest and not even an inch of mining land of this respondent falls under Sarugudu Reserve Forest. I submit that as the mining area falls beyond 500 meters from Sarugudu Reserve Forest, no clearance as alleged by the respondent is required.

18. It is submitted that the other allegation that Tahsildar Nathavaram addressed letter dated 29.7.2016 informing that the Assistant Director Mines and Geology, Anakapalli stated that Grampanchayat resolution is cancelled and all the lease permissions based on the resolution should be canceled and he also requested the Zonal Director of Mines and Geology, Anakapalli to take necessary action for rejection of my application of lease and the District Collector also addressed letter dated 23.2.2017 to that effect alleging that the resolution of Grampanchayat is fictitious and that despite all these proceedings, the 5th Respondent undertaking mining operation are all false. I submit that all the above proceedings narrated by the applicant lost their subsistence by virtue of the orders passed by Hon'ble High Court of Andhra Pradesh and Telangana at Hyderabad whereunder the Hon'ble court set aside the cancellation of resolution holding that the resolution passed by the grampanchayat in my favour is genuine.

19. It is submitted that the mining area of this respondent has no trees to fell and the allegation of the respondent that large scale of trees are being fell is false and baseless. It is submitted that the mining area does not fall under forest land nor reserve forest and it has never been notified. Hence, the provisions of Forest (Conservation) Act and the rules framed thereunder or the STs

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and Traditional Forest Dwellers (recognition of Forest Rights) Act 2006 have no application to my land.

20. It is submitted that this respondent craves leave of this Hon'ble Tribunal to raise additional counter in the course of proceedings, if required.

In the above circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the above Original Application No.155 of 2021 and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and thus render justice.

Solemnly affirms Visakhapatnam

District Andhra Pradesh on
this the 15th day of December, 2021
and signed his name
in my presence

BEFORE ME


Advocate Visakhapatnam

VERIFICATION

I, JarthaLakshmanaRao S/o. Late Ganeswararao, aged 37 years, Occ: Business R/o. Kakarapadi Village, KoyyuruMandal, Visakhapatnam District, do hereby verify that the contents of Paras of above application are based on record and information are true to the best of my knowledge and belief.

Hence, verified on the 15th day of December 2021 at Visakhapatnam

J. Lakshman Rao 
DEPONENT

VISAKHAPATNAM : DISTRICT

**BEFORE THE NATIONAL GREEN
TRIBUNAL SOUTHERN ZONE BENCH
AT CHENNAI**

O.A.No. 155 OF 2021

BETWEEN:

Kondru Mardiyya, S.C. Colony
...Applicant

Versus

State of Andhra Pradesh and
others ...Respondents

COUNTER AFFIDAVIT FILED BY
RESPONDENT No. 5

Filed on: 15/12/2021

Filed by: O. MANOHAR REDDY

COUNSEL FOR RESPONDENT NO.5