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M/S VIVEK EXPORTS  
v.  
STATE OF KARNATAKA & ORS.  
(Civil Appeal No. 7773 of 2014)

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AUGUST 19, 2014  
[T.S. THAKUR, C. NAGAPPAN AND  
ADARSH KUMAR GOEL, JJ.]

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*LEASE - Renewal of, validity - Held: If original lease is held invalid, its renewal is also invalid - In the instant case, writ petition was filed challenging the renewal of quarry lease in favour of appellant after nine years of its grant - 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 fraud on the power of renewal exercised by the State Government - Delay in this case had not worked to the disadvantage of appellant as he had worked the lease for nearly 10 years - Such being the position, delay was not enough to defeat the action brought by the third respondent before the High Court - The discretion exercised by the High Court to ignore the delay in filing of writ petition was not vitiated by any error - Delay and latches.*

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**The appellant was granted quarrying lease for ornamental stones on 27.02.1978 for a period of 5 years and the said lease was renewed for a further period of 5 years ending with 26.02.1988. An application of renewal was again filed but same was not considered favorably. Meanwhile Rule 3A of Karnataka Minor Mineral Concession Rules, 1969 was amended and validity of same was challenged in the High Court. The State government issued order dated 18.06.1991 resorting to Rule 3 for grant and renewal of quarry leases. The appellant applied for lease under the said order. On**

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26.6.1991, 203 quarry leases were granted under Rule 3 and the appellant was also granted lease for a term of 10 years. The third respondent filed writ petitions challenging the validity of Government Order dated 18.06.1991. The High Court quashed the said order and this was upheld by the Supreme Court. In the meantime, Rule 3A was deleted. A B

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 19.04.2008 the Government extended the period of said lease for 20 years with effect from 21.05.2001. The third respondent applied for quarry lease over an area of 20 acres in the same survey on 13.08.2008. However, in February, 2009 third respondent learnt about the grant of lease to the appellant over 15 acres in the same survey number. The third respondent filed a writ petition for quashing Government order dated 21.12.2000 granting lease in favour of the appellant and for quashing the Government order rejecting his application and for a direction to notify the subject land for grant of lease. The High Court set aside Government Order dated 21.12.2000 as well as the rejection order dated 11.01.2010 and directed the competent authority to reconsider the claim of the third respondent and also gave liberty to the appellant to show that he has a subsisting valid claim and disposed of the writ petition in the above terms. The instant appeal was filed challenging the order of the High Court. C D E F

The main contention of the appellant was 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 was the contention of the third respondent that he applied for G

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A 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.

B Dismissing the appeal, the Court

C HELD: 1. 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 High Court quashed Government order dated 18.6.1991 and declared all consequential action taken under it as null and void. The grantees of leases preferred further appeals to this Court and it was held that the judgment of the High Court holding the grants to be invalid does not suffer from any infirmity. Thus lease dated 26.6.1991 granted in favour of the appellant was declared invalid. [Para 5] [1160-E-G]

E *Alankar Granites Industries and Ors. Vs. P.G.R. Scindia, MLA and Ors. (1996) 7 SCC 416: 1996 (1) SCR 721 - referred to.*

F 2. 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. [Para 6] [1160-H; 1161-A]

G 3.The first respondent Government issued Notification dated 20.11.2000 under Rule 8-A calling upon interested persons to apply for grant of lease of the

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subject land. Despite that, 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. [Para 7] [1161-B-D]

4. 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. 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 fraud on the power of renewal exercised by the State Government. Such being the position, delay was not enough to defeat the action brought by the third respondent before the High Court. In the instant case, the discretion exercised by the High Court to ignore the delay in filing of writ petition was not vitiated by any error. Further in the impugned judgment an opportunity was also provided to the appellant to show that he has a subsisting valid claim before the competent authority. [Paras 9 to 11] [1161-G-H; 1162-A-C, F-G]

*Royal Orchid Hotels Limited and Anr. Vs. G. Jayarama Reddy and Ors. (2011) 10 SCC 608: 2011 (11) SCR 701 - relied on.*

A **Case Law Reference:**

1996 (1) SCR 721 Referred to Para 5

2011 (11) SCR 701 Relied on Para 10

B CIVIL APPELLATE JURISDICTION : Civil Appeal No.7773  
of 2014.

From the Judgment and order dated 04.01.2011 of the High Court of Karnataka at Bangalore in Writ Petition No. 9325 of 2009.

C Dushyant A. Dave, Visvanatha Shetty, L.M. Chidanandyayya, S. Udaya Kumar Sagar, Bina Madhavan, Shivendra Singh (for Lawyer's Knit Co.) for the appellant.

D Anitha Shenoy, Rajesh Mahale, Krutij R.Joshi, Shivendra Dwivedi for the respondents.

The Judgment of the Court was delivered by

**C. NAGAPPAN, J.** 1. Leave granted.

E 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 wherein the Division Bench allowed the writ petition filed by the third respondent herein.

F 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  
G various persons including the appellant herein before the High  
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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 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 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.

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

B 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. 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 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.

H 6. On behalf of the appellant a contention was raised that the application filed by the appellant on 22.6.1994 seeking the

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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. A

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 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. B  
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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. E  
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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 H

A 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  
B 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 fraud on the power  
of renewal exercised by the State Government. Such being the  
C 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  
D 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  
E 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."

F 11. In the present case the discretion exercised by the  
Division Bench of the High Court to ignore the delay in filing of  
writ petition, in our view, is not vitiated by any error. Further in  
the impugned judgment an opportunity has also been provided  
G 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.