

PALLAVA GRANITES INDUSTRIES INDIA (P) LTD.

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v.

GOVERNMENT OF ANDHRA PRADESH AND ORS.

MARCH 17, 1997

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

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Lease:

Mining Lease—Grant of—Right to excavate mines from lands of private owner—Consent of land owner—Held, is necessary—The right to excavate the mines from the land of private owner is based on the agreement: unless the lessor gives his consent, no lessee has a right to enter upon his land and carry on mining operations—The right to grant mining lease to excavate the mines beneath the surface is subject to the agreement of the land owners—Therefore, with a view to ensure that there will not be any obstruction in the working of the mining lease and also for the peaceful operation of the excavation of the mines, insistence on the consent of the landlord is necessary—Mines and Minerals.

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CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
Nos. 3146-47 of 1997.

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From the Judgment and Order dated 11.11.96 of the Andhra Pradesh High Court in W.A. No. 1191/96 and W.P. No. 19865 of 1996.

Soli J. Sorabjee, K. Ramakrishna Reddy and K.K. Mani for the Petitioner.

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D.D. Thakur, G. Ramakrishna Prasad, V.S. Reddy and S. U.K. Sagar for the Respondents.

The following Order of the Court was delivered:

These special leave petitions arise from the Judgment of the Division Bench of the Andhra Pradesh High Court, made on 11.11.1996 in Writ Appeal No. 1196/96 and Writ petition No. 19865/96. The petitioner had applied for grant of a lease of land from the owners thereof, respondents 4-7 on August 22, 1991 for a period of 15 years to win over black granite over an extent of 12.08 acres of land in S. Nos. 105/1, 2, 3 of R.I. Puram

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- A village, Chimakkurthy Manal, Prakasam District in Andhra Pradesh. The Director granted the mining lease for six months on August 11, 1994, pending further proceedings. Aggrieved thereby, the respondent-owner filed writ Petition No. 15615/94 challenging the grant of lease without their consent. The writ petition was disposed of on 7.10.1994 with a direction that the lease could be granted only with consent of the respondent-owners.
- B However, without obtaining their consent, lease was executed on January 5, 1995 for 15 years. Notice was issued by the respondent- landlords on January 5, 1996 requesting the petitioner-lessee to handover the land by July 7, 1996 after the expiry of the initial lease. Thereafter there was exchange of the notices etc. and the petitioner filed a writ petition and the
- C High Court directed the authorities to extend the period of lease in terms of the lease granted by the Industries and Mining Department. W.P. No. 13147/96 was disposed of with a direction to the Industries to dispose of the application in accordance with the Rules applicable to them within eight weeks. The order dismissing the writ petition came to be passed on July 10, 1996. The Director granted mining lease again on August 28, 1996.
- D Writ Petition No. 13147/96 was dismissed on the ground of *res judicata*. Writ Petition No. 19865/96 filed by the petitioner to grant mining lease without reference to the consent of the landlords was dismissed on 19.9.1996. Writ Appeal No. 1191/96 was filed by the petitioner against the order dated 23.8.1996 in Writ Petition No. 13147/96. Both came to be
- E dismissed by the Division Bench. Thus, this special leave petition.

- The primary contention raised before us by Shri Soli J. Sorabjee, learned senior counsel, is that there was an earlier judgment of the High Court wherein it was held that there was no need to obtain the consent of the landlords before grant of mining lease and, therefore, the direction issued by the Division Bench on the ground of the prevailing practice is not correct in law.
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- We find no force in the contention. The right to excavate the mines from a land of private owner is based on the agreement; unless the lessor gives his consent, no lessee has a right to enter upon his land and carry on mining operations. The right to grant mining lease to excavate the mines beneath the surface is subject to the agreement of the land owners. Therefore, with a view to ensure that there will not be any obstruction in the working of the mining lease and also for the peaceful operation of the
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- H excavation of the mines, insistence on the consent of the landlord is

necessary. Therefore, we do not find any illegality in the view taken by the High Court warranting interference. A

The special leave petitions are accordingly dismissed.

R.P.

Petitions dismissed.