

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2015

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MRS.PUSHPA SATHYANARAYANA

W.A.No.1491 of 2015

B.Thiraviam

.. Appellant/Petitioner

Vs.

State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Department of Industries,
Fort St. George,
Chennai-600 009.

.. Respondent/Respondent

Writ Appeal filed under Clause 15 of Letters Patent
against the order dated 23.07.2015 in W.P.No.3660 of 2015 on the
file of this Court.

WP.NO.3660 of 2015:Petitin Under Article 226 of the Constitution
of India, to issue a Writ of Certiorarified Mandamus, calling
for the entire records leading to the issue of the proceedings
in GO (D) No.177 Industries (MM.2) Department dt 11.11.2014 on
the file of the 1st respondent and quash the same and direct the
respondent to renew the Quarry Mining Lease of the land to an
extent of 4.75 Hectares in S.No.195/1 Kalluthu Village
Usilampatti Taluk Madurai District for a further period of 20
years from the date of renewal.

For Appellant .. K.Sridhar

For Respondent .. Mr.T.N.Rajagopalan
Special Government Pleader

* * * * *

JUDGMENT

(Judgment of the Court was made by The Hon'ble Chief Justice)

The appellant, having subsisting mining lease, is
aggrieved by the orders passed on 11.11.2014 by the Principal
Secretary to Government, Department of Industries, State of

Tamilnadu rejecting the request of the petitioner for renewal of the mining lease.

2. The mining lease was initially granted from 24.01.1994 to 23.01.1999 vide G.O.Ms.No.631, Department of Industries, dated 06.11.1992 read with Government Letter No.46692/MM D2/93-1, dated 25.01.1994. It is the case of the petitioner that after the expiry of the lease, the petitioner applied for renewal of the mining lease for a period of twenty years under Section 7 of the Mines and Minerals (Development and Regulation) Act, 1957 read with Rule 9 of Mineral Concession Rules, 1960 vide application dated 31.08.1998. The petitioner claims to have obtained clearances from all concerned authorities except the No Objection Certificate from the District Forest Officer, Madurai. On refusal to grant the No Objection Certificate, the petitioner filed W.P.No.27751 of 2008, which is stated to be still pending. But as stated by the learned counsel for the petitioner, the said writ petition has become infructuous in view of the subsequent event, being the impugned G.O.(D) No.177, Industries (MMA.2) Department, dated 11.11.2014. The said Government Order has been issued in view of the recommendation of the District Collector, Madurai to reject the renewal application of the petitioner to mine Quartz and Feldspar over an extent of 6.00.0 hectares of poramboke land of Kalluthu Village, Usilampatti Taluk, Madurai District based on the request of the Commissioner of Town and Country Planning and Hill Area Conservation Authority (HACA) taken on 27.10.2009 on the following grounds:-

(1) Vikkiramangalam R.F. is located in less than a Km from the proposal site. As per Board Standing Orders Sec-35 Vol.III, no assignment of land up to 3 chain length (60m width) from the boundary of the R.F. shall be made.

(2) Operation of a quarry over an extent of 6.00.0 Hectares of area would certainly cause pollution and disturbance of wild life and forests from environmental protection angle.

(3) Approach road (Cart track) passes through Vikkiramangalam R.F. This cart track will be utilized for vehicular traffic, which is clearly a case of diversion of forest land for non forestry purpose.

3. The petitioner assailed this decision by filing W.P.No.3660 of 2015, which has, however, been dismissed by the learned Single Judge vide order dated 23.07.2015.

4. The submission of the learned counsel for the appellant as recorded while issuing notice and reiterated today

is that the impugned order has merely dittoed the HACA's report and has not examined the plea raised by the petitioner qua three aspects.

5. The stand of the petitioner is that the first aspect ex facie does not exist, as the mining area of the appellant is 1000 metres (1 Km) away. The learned Special Government Pleader, in fact, cannot dispute that the requisite distance does exist as it is not as if it is 999 metres or less, but is 1000 metres - 1 Km. Thus, ex facie the first ground for rejection by the HACA is erroneous.

6. Insofar as the second ground is concerned, once again, it is undisputed that the Tamil Nadu Pollution Control Board has restricted the quarrying area to 4.75.0 hectares and the petitioner is entitled to quarry that area only in S.No.195/1. The submission of the learned Special Government Pleader is that the appellant is required to get the specific area demarcated by the revenue authorities out of 6.00.0 hectares. To our mind, this would be a procedural exercise which could have been easily carried out by the respondent, if it so desires. But obviously, they have acted on the basis as if the petitioner would get the rights for 6.00.0 hectares, while the fact is that all that was required to be done was to restrict the area of lease from 6.00.0 hectares to 4.75 hectares. Thus on this ground also, we find that the order of HACA is erroneous.

7. The last aspect is the issue of route to be adopted by the petitioner, being within the prohibited reserve forest area. The stand of the petitioner is that there is an alternative route available and it cannot be required to go through the third party land as it is a cart track. On the other hand, the stand of the respondent is that the cart track also appears to be going through a private land, for which permission would be required.

8. The aforesaid aspect also has not been examined by the HACA correctly as if there was an alternative route available and it was felt that there is some consent required qua the third party land. That should have been the reason why the appellant could have been asked to procure the consent, instead of rejecting her request.

9. We are, thus, of the view that the impugned order dated 11.11.2014 as affirmed by the learned Single Judge is liable to be set aside and the HACA would have to examine the matter in the limited scope referred to us as aforesaid.

10. The learned Special Government Pleader seeks to bring to our notice the subsequent event of the notification having been issued on 10.02.2015 by the Ministry of Mines, Government

of India in S.O.423(E) in exercise of the powers conferred by clause (e) of section 3 of the Mines and Minerals (Development and Regulation Act, 1957 declaring both minerals i.e. Quartz and Feldspar as minor minerals, in addition to the minerals already declared by the earlier notification. The result is that these minerals are now no more major minerals, but minor minerals. Naturally, the Statute would have application from the date it came into force, i.e. 10.02.2015. This is, however, a matter of fact and the effect of the issuance of S.O.423(E) has not been set out.

11. The result of our order is that the rejection of renewal by the HACA has been set aside and the limited aspect has to be examined by the HACA as stated aforesaid.

12. The appeal is accordingly allowed, while remitting the matter back to the HACA. Necessary decision be taken within a maximum period of three months from the date of receipt of the order, after giving opportunity of hearing to the petitioner and permitting her to produce any additional materials. On the aforesaid being complied with, the State Government would take a decision within a maximum period of one month thereafter. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
The Principal Secretary to Government,
Department of Industries,
Fort St. George,
Chennai-600 009.

+2 ccs to M/s.K.Sridhar Associates Advocate
sr.66774
+1 cc to the Government Pleader sr.66743

W.A.No.1491 of 2015

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