

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.13433 & 13884 of 2015
and M.P.Nos.1 & 1 of 2015

A.Kandasamy

... Petitioner in W.P.No.13433 of 2015

K.Palanisamy

... Petitioner in W.P.No.13884 of 2015

-Versus-

1.The Government of Tamil Nadu,
Rep. By its Secretary to Government,
Industries Department,
Fort St. George,
Chennai 600 009.

2.The Commissioner of Geology and Mining
Department of Geology and Mining,
Guindy, Chennai 600 032.

...Respondents in both Writ Petitions

Prayer in W.P.No.13433 of 2015: Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Mandamus directing the 2nd respondent to reconsider the mining lease application of the petitioner dated 27.09.2010 for the grant of lease for mining limestone from the patta land bearing S.F.No.1012/1 (0.69.5 Hectare), 1012/3 (0.67.5 Hectare), 1013/2 (1.19.5 Hectares) and 1014/1 (1.57.0 Hectares) - total extent 4.13.5 Hectares in Thenkulam Village, Tirunelveli Taluk and District on merits and pass orders granting mining lease to the petitioner for mining lime stones from the aforesaid lands.

Prayer in W.P.No.13884 of 2015: Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Mandamus directing the 2nd respondent to reconsider the mining lease application of the petitioner dated 17.08.2000 for the grant of lease for mining limestone from the patta land bearing S.F.No.414 admeasuring to an extent of 2.49.5 Hectares in Pudur Village, Tirunelveli Taluk and District on merits and pass orders granting mining lease to the petitioner for mining limestones from the aforesaid land.

For Petitioner in both WPs : Mr.V.Sanjeevi

For Respondents in both Wps :Mr.T.N.Rajagopalan,Spl.G.P.

COMMON ORDER

Seeking to issue a mandamus to the 2nd respondent to reconsider their individual application dated 27.09.2010 and 17.08.2000 with regard to mining of limestones in Thenkulam Village and Pudur Village respectively, the petitioners are now before this court with these writ petition.

2. Since the issue involved in both the writ petitions is one and the same, they are taken up, heard together and they are disposed of by this common order.

3. The petitioners claim to be the absolute owners of the land which are subject matter in the respective writ petition. They were interested in mining limestones from their respective lands. Accordingly, they made individual application in this regard on 27.09.2010 and 17.08.2000 respectively with requisite fees and relevant documents to the District Collector, Tirunelveli, who in turn ordered for inspection by the revenue officials. Accordingly, inspection were carried out and after inspection, the Revenue Divisional Officer and the Deputy Director of Geology and Mining, Tirunelveli have submitted their respective report. Thereafter, the District Collector forwarded their applications to the Commissioner of Geology and Mining with his recommendations for the grant of mining licence. However, citing reference about proximity of a cement industry based on the circular of the 1st respondent dated 05.02.1988, the applications of the petitioners were kept pending.

4. According to the petitioner, in the mean time, the Tamil Nadu Small Mines Owners Federation filed a writ petition in W.P.No.2668 of 2003 seeking to declare the communication of the 1st respondent in Letter Ms.No.121 dated 05.02.1988 as illegal and unenforceable. But, the above said writ petition came to be dismissed on 29.10.2010 and the writ appeal in W.A.No.2556 of 2010 also came to be dismissed on 21.12.2010 by a Division Bench of this Court. The federation took up the matter to the Hon'ble Supreme Court in SLP (C) No.12343 of 2011 and the same was pending.

5. In the mean while, pursuant to the order of this court passed in the writ petition followed by the judgement in the writ appeal, the 2nd respondent rejected the applications of the petitioners. The petitioners took up the matter up to the Hon'ble Supreme Court. The Hon'ble Supreme Court tagged all the matters together and by order dated 07.10.2013 disposed of the Special Leave Petitions observing that the Government of Tamil Nadu has accepted the communication of the Commissioner of Geology and Mining dated 20.07.2012 for lifting the Government's earlier communication dated 05.02.1988 to develop the small mining industries. As of now, there is no such restriction with regard to 20 km radius and in view of the judgement of the Hon'ble Supreme Court, the 2nd respondent is duty bound to reconsider the applications of the petitioners for the grant of licence to the

petitioner for mining limestones from their respective patta lands.

6. Heard both sides and also perused the records carefully.

7. Admittedly, on the basis of the letter dated 05.02.1988, the applications of the petitioners for the grant of mining licence came to be rejected by the authority. The originating circular in Letter Ms.No.121 dated 05.02.1988 was the subject matter before the Hon'ble Supreme Court in S.L.P.Nos.12343 of 2011. While disposing of the above said SLP and the connected matters, on 07.10.2013, the Hon'ble Supreme Court observed the submissions made by the department and in para 4 and 5 of the above said order read as follows:-

"On 9.9.2013, the following order came to be passed by this court:

"On 2.1.2013, we directed the Government of Tamil Nadu to take a decision within four weeks on the communication sent by the Commissioner of Geology and Mining, Guindy dated 20.07.2012 accepting the request of the President of the present petitioner to lift the Government communication (letter No.M2/121), Industries Department dated 05.02.1988 to develop the small mining industries.

No decision was taken by the Government of Tamil Nadu till the matter was again listed before the Court on 19.08.2013. On that date, Mr.Subramonium Prasad, learned Additional Advocate General for the State of Tamil Nadu prayed for time to seek instructions in light of the order dated 2.1.2013.

Mr.Subramonium Prasad, learned Additional Advocate General prays for some more time today.

More than 8 months have passed since the order was passed by this court on 2.1.2013. We adjourn the matter for two weeks by way of last chance to enable the Government of Tamil Nadu to take a final decision in respect of the communication of July 20, 2012 whereby the Commissioner accepted the petitioner's request to lift the Government communication dated 5.2.1988 to develop the small mining industries. We observed that if within two weeks from today, no formal decision is taken by the

Government of Tamil Nadu, it will be assumed that the State Government has accepted the Commissioner's communication dated July 20, 2012 sent to the petitioner to lift the communication dated 5.2.1988 to develop the small mining industries.

List the matter on 7.10.2013."

5. Till now, no final decision has been taken by the Government of Tamil Nadu in respect of the communication sent by the Commissioner of Geology and Mining, Guindy dated 20.07.2012 whereby the Commissioner accepted the petitioner's request to lift the Government communication dated 5.2.1988 to develop the small mining industries."

8. Ultimately, the Hon'ble Supreme Court by order dated 07.10.2013 disposed of the Special Leave Petition in W.P.No.12343 of 2011 and the other connected matters. Paras 7 & 8 of the order read as follows:-

"7. Having regard to the above, we assume that the Government of Tamil Nadu has accepted the Commissioner's communication dated 20.07.2012 sent to the petitioner to lift the Government communication dated 5.2.1988 to develop the small mining industries.

8. Special Leave Petition is disposed of as above."

9. The petitioners in the present writ petitions were also a party in the connected SLP Nos.29504 and 29505 of 2011 respectively. Subsequent to the above said order of the Hon'ble Supreme Court, the petitioners submitted their individual application on 21.10.2013 and 30.03.2015 respectively to the 2nd respondent for reconsideration of their requests for the grant of mining licences. The petitioner in W.P.No.13433 of 2015 sent further representations on 13.10.2014 and 26.02.2015 as reminders to the 2nd respondent. Having received those applications, the 2nd respondent has not considered the same and hence the petitioners are constrained to approach this court by way of writ petitions.

10. Per contra, the learned Special Government Pleader brought to the notice of this court an amendment effected to Section 10A of the Mines and Minerals (Development and Regulation) Act, 1957 by way of The Mines and Minerals (Development and Regulation) Amendment Act, 2015 and said amendment came into effect w.e.f. 12.01.2015 and, thus, on the basis of subsequent development, the petitioners' requests for the grant of mining licence cannot be reconsidered.

11. In reply, the learned counsel for the petitioners would submit that no doubt the applications of the petitioners for the grant of mining licence had already been considered and rejected by the 2nd respondent, but, on that ground alone, the finding of the Hon'ble Supreme Court cannot be ignored.

12. Section 10A of The Mines and Minerals (Development and Regulation) Act, 1957 reads as follows:-

"10A. (1) All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible.

(2) Without prejudice to sub-section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015:-

(a) applications received under section 11A of this Act;

(b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the licensee, as the case may be,-

(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be prescribed by the Central Government;

(ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(iii) has not become ineligible under the provisions of this Act; and

(iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of reconnaissance permit or

prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by the State Government;

(c) where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfilment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this subsection except with the previous approval of the Central Government."

13. Be that as it may, the 2nd respondent is duty bound to consider the representations of the petitioners and pass appropriate orders for the grant of licence for mining limestones in the light of the observations made by the Hon'ble Supreme Court in its order dated 07.10.2013 made in S.L.P.(C) No.12343 of 2011 and connected SLP (C) Nos.29504 & 29505 of 2011.

14. In the result, the writ petitions are disposed of and the 2nd respondent is hereby directed to consider the application of the petitioner in W.P.No.13433 of 2015 dated 21.10.2013 followed by reminders dated 13.10.2014 and 26.02.2015 and the application of the petitioner in ***WP.No.13884 of 2015** dated 30.03.2015 in the light of the observation made by the Hon'ble Supreme Court in the Special Leave Petitions cited supra as well as the recent amendment made to The Mines and Minerals (Development and Regulation) Act, 1957 after affording due opportunity to the respective petitioner and pass orders thereon on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar

*Amended as per order

dated 15/09/2015

-s/d-

Assistant Registrar(CSIII)

dt:16/9/2015

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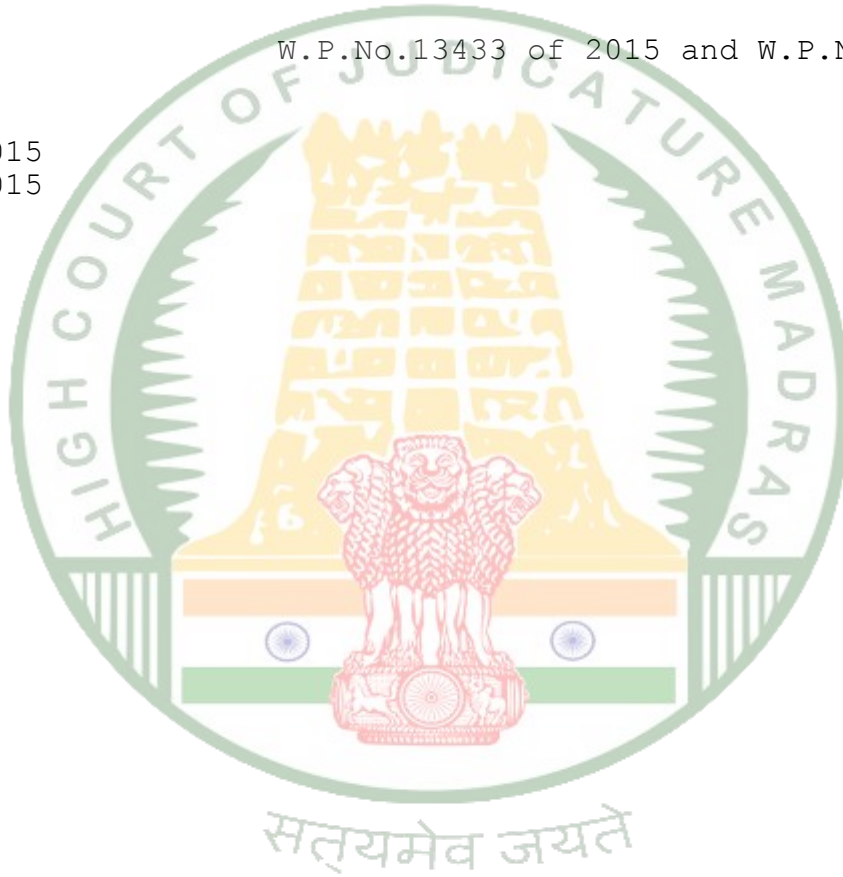
To

- 1.The Secretary to Government, (To be Substituted with order Industries Department, (already despatched on 07/09/2015) Fort St. George, Chennai 600 009.
- 2.The Commissioner of Geology and Mining Department of Geology and Mining, Guindy, Chennai 600 032.

+2 ccs to Mr.V.Sanjeevi , Advocate Sr.No.*50300

W.P.No.13433 of 2015 and W.P.No.13884/15

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