

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.Nos.19477 and 23928 of 2015
MP.Nos.1 and 1 of 2015

1.M.R.Govindan
2.B.Dheenan

Petitioner in WP.19477/2015
Petitioner in WP.23928/2015

Vs

The District Collector,
Kancheepuram
The District Collector
Thiruvannamalai

Respondent in WP.NO.19477/15

Respondent in WP.NO.23928/15

Prayer:- WP.No.19477 of 2015 is filed to issue a Writ of Prohibition, prohibiting the Respondent from infringing with the right of the Petitioner to quarry and transport stone and earth from the patta lands of the Petitioner, measuring 3.56.5 hectares, in S.F.Nos.3/1A, 1B, 3/2, 5/2 and 86/1, 86/2 and 87/1 (Part), in Sirumayilur and Chittlapakkam Villages, Uthiramerur Taluk, Kancheepuram District, after expiry of the lease period, i.e. after 07.07.2015 on payment of necessary seigniorage fee, that too subject to the result of the issue as to whether the pattadar is liable to pay seigniorage fee or not, since the said issue was referred to the larger Bench of the Honourable Supreme Court.

WP.No.23928 of 2015 is filed to issue a Writ of Prohibition, prohibiting the Respondent from infringing with the right of the Petitioner to quarry and transport rough stone, cut stone, chakkai, jelly and gravel from the patta lands of the Petitioner, measuring 1.00.5 hectares, in S.F.No.25/2, in Ezhacheri Village, Cheyyar Taluk, Tiruvannamalai District, after expiry of the present lease period, i.e. after 18.03.2015 on payment of necessary seigniorage fee, that too subject to the result of the issue as to whether the pattadar is liable to pay seigniorage fee or not, since the said issue was referred to the larger Bench of the Honourable Supreme Court.

For Petitioner : Mr.K.Ramakrishna Reddy

For Respondent : Mr.T.N.Rajagopalan, Spl.GP

ORDER

In these Writ Petitions, the Petitioners seeks for a direction, prohibiting the Respondent from infringing the right of the Petitioners to quarry from their patta lands, after expiry of the lease period, on payment of necessary seigniorage fee subject to the result of the issue as to whether the pattadar is liable to pay seigniorage fee or not, since the said issue was referred to the larger Bench of the Honourable Supreme Court.

2. The case of the Petitioners is as follows:-

a. The Petitioners were granted quarry lease, by the proceedings dated 08.07.2010 and 19.03.2010, in respect of their respective petition mentioned lands, for a period of five years from 08.07.2010 to 07.07.2015 and from 19.03.2010 to 18.03.2015, respectively, under the Rule 19 of the Tamil Nadu Minor Mineral Concession Rules, 1959. The Tamil Nadu State Government, by letter No.Ms.628, dated 10.05.1982, informed all the District Collectors that the pattadars are not the owners of the minerals in their respective patta lands and the Government is the owner of the minerals and also issued GO.Ms.No.130, Industries (K) Department, dated 8.2.1986, amending Section III and Appendix IV and V of the Tamil Nadu Minor Mineral Concession Rules, 1959, but however, the said amendment was not given effect to. Subsequently, by GO.Ms.No.1273, Industries (H-1) Department, dated 9.12.1988, all the rules in Section III have been amended and by GO.Ms.No.608, Industries (MMC-2), Department dated 2.9.1989, further amendments were carried out, in respect of granting of granite quarrying lease in the Government lands. By the said G.O.Ms.No.1273, dated 09.12.1988 and G.O.Ms.No.608 dated 02.09.1989, the 1st respondent sought to give effect to the said G.O.Ms.No.130, dated 08.02.1986, by which headings of Section-III, Appendixes IV & V were amended.

b. The writ petitions filed as against the said G.O.Ms.No.1273, dated 09.12.1988 and G.O.Ms.No.608, Industries (MMC-2) Department, dated 02.09.1989, were dismissed and the writ appeals filed as against the same were also dismissed, holding that the subsoil rights in Patta lands vest with the government. As no SLPs were filed, the said judgement became final. Rule 8C was introduced by G.O.Ms.No.1312, Industries dated 02.12.1977, by which granting of leases for quarrying black granite in favour of private persons was banned. In AIR 1981 SC 711 (2J) (State of Tamil Nadu - Vs. Hind Stones Etc. etc.,) the Honourable Supreme Court, while upholding the validity of the said Rule 8C, has clarified that in so far as the government lands, where the Government is the owner of the mineral, as per Section II of the Tamil Nadu Minor Mineral Concession Rules, the said Rule 8C will apply and in so far as the lands where the mineral rights vest with the pattadars as per Section III of the Tamil Nadu Minor Mineral Concession

Rules, the said Rule 8C will not apply.

c. The language of Rule 8C is clear that it cannot have any application to the lands, in which the right to minerals belongs to the pattadars. Rule 8C is only concerned with leases for quarrying black granite and it cannot, therefore, have any application to cases where no lease is sought from the Government. In the case of lands, in which the right to minerals belongs to private owners and those owners seek permission to quarry black granite, the applications will have to be dealt with under the relevant rules in Section III of the Tamil Nadu Minor Mineral Concession Rules. Rule 8C, it may be noted, does not impose a general ban on quarrying black granite, but only imposes a bar on the grant of leases of quarrying black granite.

d. By letter dated 06.06.2015, the petitioner in WP.No.19477 of 2015 informed the respondent about his intention to continue quarry operation of stone and earth from the subject patta lands, after expiry of the present lease period i.e., after 07.07.2015 and he was informed that they are waiting for necessary instructions from the government. The said action of the respondent is not only arbitrary, but also against law and against Article 14 and 19(1)(g) of the Constitution of India. Hence, these Writ Petitions have been filed for the reliefs as stated above.

3. In WP.No.19477/2015, the Respondent filed a counter, wherein it is averred as follows:-

a. The Petitioner was granted quarry lease for quarrying rough stone in respect of the subject lands for a period of 5 years from 08.07.2010 to 07.07.2015, by proceedings dated 08.07.2010 and the lease period had expired on 07.07.2015. One month before the expiry of the quarry lease, the Petitioner filed an application in Appendix VI of Tamil Nadu Minor Mineral Concession Rules 1959, on 03.06.2015, for the grant of stone quarry lease for the same patta lands and the same is under process. As per the order of the Honourable Supreme Court dated 27.02.2012, made in IA.Nos.12-13/2011 in SLP(c). No.19628-19629 of 2009 (State of Hariyana Vs. Deepak Kumar), the Environmental Clearance for the grant of minor mineral quarry leases is mandatory. The Tamil Nadu Minor Mineral Concession Rules 1959 has been amended vide G.O.Ms.No.79/Industries (MMC1) Department dated 06.04.2015, by introducing New Rules 41 and 42. As per Rule 41 and 42, approved Mining Plan and Environment Clearance is mandatory for the grant of lease for minor minerals irrespective of classification of land.

b. In order to evade getting Environment Clearance from the State Level Environment Impact Assessment Authority, the petitioner filed the Writ Petition, by suppressing the Supreme Court of India order dated 27.02.2012. The quarry lease application of the petitioner dated 5.6.2015 is under process. The Petitioner applied for a fresh quarrying lease in the same patta lands just one month before the expiry of the lease period. As per the Rules 41 and 42, approved Mining Plan and Environment Clearance is mandatory for the grant of lease for minor minerals irrespective of classification of land. Further, there is no Rule or provision in Tamil Nadu Minor Mineral Concession Rule, 1959 for extension/renewal of rough stone quarry leases. The petitioner cannot do mining activities without the permission from the authorities under the Act and Rules. In such circumstances, this Writ Petition is liable to be dismissed.

4. In WP.No.23928/2015, the Respondent filed a counter, wherein it is averred as follows:-

a. The Petitioner was granted quarry lease for quarrying rough stone in the subject lands vide proceedings, dated 19.03.2010 for a period of 5 years under Rule 19(1) of the Tamil Nadu Minor Mineral Concession Rules, 1959 and the lease period expired on 18.03.2015. The writ petitions and the writ appeals filed against the amendments were dismissed. As per amended Section III of the Tamil Nadu Minor Mineral Concession Rules, 1959, for ryotwari lands, in which the minerals belongs to the Government, the petitioner has to prefer an application before the District Collector, Tiruvannamalai for the grant of quarry lease under Appendix-VI of the Rule 19(1) of the Tamil Nadu Minor Mineral Concession Rules, 1959.

b. The Mines and Minerals (Development and Regulation) Act, 1957 also recognizes the right /power of the State Government in respect of the minerals vide Section 10, 16(1)(b), 17A and vide Rule 27(1)(m), 59 and 60 of the Mineral Concession Rules, 1960. The Petitioner, subsequent to the expiry of the lease period, had not applied afresh for the grant of rough stone quarry lease in the above area and that the Petitioner had not submitted letter dated 04.03.2015 to the Respondent, requesting to continue quarry operation of stone and earth from the subject lands, for which, the quarry lease already granted had expired. There is also no rule provision in the Tamil Nadu Minor Mineral Concession Rules, 1959 for the renewal or extension of quarry lease for rough stone, cut stone, chakkai, jelly and gravel.

c. The Petitioner had applied for the grant of quarrying lease for Rough stone in S.F.No.65/6 to an extent of 0.95.5 hectares of patta lands in Ezhacheri Village, Cheyyar Taluk, Tiruvannamalai District on 30.06.2014, which is located adjoining to the already lease expired area of patta land, in S.F.No.25/2 under Rule 19(1) of the Tamil Nadu Minor Mineral Concession Rules 1959.

d. On expiry of the lease, if the petitioner is truly willing to continue quarrying operation, he ought to have applied afresh for the grant of rough stone quarry lease. The Petitioner, instead of availing such opportunity, has approached this Court. The grant of quarry lease is strictly bound by the rules and regulations laid down by statute and Rule 19(1) of Tamil Nadu Minor Mineral Concession Rules, 1959. The Petitioner cannot do mining activities without the permission from the authorities under the Act and Rules. In such circumstances, this Writ Petition is liable to be dismissed.

5. The learned counsel for the Petitioner contended that in so far as the government lands, where the Government is the owner of the mineral, as per Section III of the Tamil Nadu Minor Mineral Concession Rules, the said Rule 8C will apply and in so far as the lands where the mineral rights vest with the pattadars as per Section III of the Tamil Nadu Minor Mineral Concession Rules, the said Rule 8C will not apply and that the language of Rule 8C is clear that it cannot have any application to lands in which the right to minerals belongs to the pattadars and that Rule 8C is only concerned with leases for quarrying black granite and it cannot, therefore, have any application to cases where no lease is sought from the Government and that in the case of lands in which the right to minerals belongs to private owners and those owners seek permission to quarry black granite the applications will have to be dealt with under the relevant rules in Section III of the Tamil Nadu Minor Mineral Concession Rules. The learned counsel for the Petitioners further submitted that Rule 8C does not impose a general ban on quarrying black granite, but only imposes a bar on the grant of leases of quarrying black granite and relying on various decisions of this court and the Honourable Supreme Court, sought for issuance of Writ of Prohibition, as prayed for in these Writ Petitions.

6. The learned Special Government Pleader for the Respondent submitted that since the main prayer in the Writ Petition is one for issuance of Writ of Prohibition, prohibiting the Respondent from interfering with the right to quarry and transport stone and earth from the petitioners' patta land, the contentions made by the petitioners are not relevant to the prayer and not acceptable and that as per Rule 41 and 42, approved Mining Plan and Environment Clearance is mandatory for grant of lease for minor minerals irrespective of classification of land and that in order to evade getting Environment

Clearance from the State Level Environment Impact Assessment Authority, the petitioners filed these Writ Petitions, by suppressing the Supreme Court of India order dated 27.02.2012 and that the quarry lease application of the petitioner in WP.No.19447/2015, dated 5.6.2015 is under process and that the Petitioner in WP.No.19447/2015 applied for a fresh grant in the same patta lands just one month before the expiry of the lease period and that as per amended Section III of the Tamil Nadu Minor Mineral Concession Rules, 1959, for ryotwari lands, in which the minerals belongs to the Government, the petitioner in WP.23928 of 2015 has to prefer application before the District Collector, Tiruvannamalai for the grant of quarry lease under Appendix-VI of the Rule 19(1) of the Tamil Nadu Minor Mineral Concession Rules, 1959. The learned Special Government Pleader for the Respondent further submitted that there is no Rule provision in Tamil Nadu Minor Mineral Concession Rule, 1959 for extension / renewal of rough stone quarry leases and that the petitioner cannot do mining activities without the permission from the authorities under the Act and Rules and that the Mines and Minerals (Development and Regulation) Act, 1957 also recognizes the right /power of the State Government in respect of the minerals vide Section 10, 16(1)(b), 17A and vide Rule 27 (1)(m), 59 and 60 of the Mineral Concession Rules, 1960. The learned Special Government Pleader for the Respondent also submitted that the Petitioner in WP.No.23928/ 2015, subsequent to the expiry of the lease period, had not applied afresh for the grant of rough stone quarry lease in the above area and that the Petitioner in WP.No.23928 of 2015 had not submitted letter dated 04.03.2015 to the Respondent, requesting to continue quarry operations and applied for quarrying lease for the adjacent lands in some other survey number and that there is also no rule provision in the Tamil Nadu Minor Mineral Concession Rules, 1959 for the renewal or extension of quarry lease for rough stone, cut stone, chakkai, jelly and gravel and that the grant of quarry lease is strictly bound by the rules and regulations laid down by statute and Rule 19(1) of Tamil Nadu Minor Mineral Concession Rules, 1959. The Petitioner cannot do mining activities without the permission from the authorities under the Act and Rules and prayed for dismissal of these writ petitions.

7. This court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

8. The Petitioners were granted quarry lease, by the proceedings dated 08.07.2010 and 19.03.2010, in respect of their respective petition mentioned lands, for a period of five years from 08.07.2010 to 07.07.2015 and from 19.03.2010 to 18.03.2015, respectively. The petition mentioned lands, to which quarry lease was granted to the Petitioners, are the patta lands. Only

the Petitioner in WP.No.19477 of 2015 has filed an application dated 5.6.2015 before the Respondent.

9. It is the specific case of the Petitioners that mineral and subsoil rights vest with the pattadars and not with the Government and Rule 8C is applicable only to the Government lands, where the Government is the owner of the minerals and not to the lands where the mineral rights vest with the pattadars and hence, Petitioner's applications will have to be dealt with under the relevant provisions of the Tamil Nadu Minor Mineral Concession Rules.

10. On the other hand, it is the contention of the Respondent that once the lease period is over, the lessee has no right to continue the operation and that Environment Clearance is mandatory for the grant of lease for minor minerals irrespective of classification of land and that the application of the petitioner in WP.No.19447 of 2015, dated 5.6.2015 is under process and the petitioner in WP.23928 of 2015 has not made any application and that there is also no rule provision in the Tamil Nadu Minor Mineral Concession Rules, 1959 for the renewal or extension of quarry lease and the Petitioners cannot do mining activities without the permission from the authorities under the Act and Rules.

11. The learned counsel for the Petitioner relied upon the following decisions of various Courts in support of his contentions, viz.

- 1.AIR 1971 Mad 483 (T.Swaminathan Vs. State of Madras),
- 2.AIR 1981 SC 711 (2J) (State of Tamil Nadu Vs. Hind Stones)
- 3.1990 TNLJ 374 (V.Ganagarathinam Vs. The State of Tamil Nadu)
- 4.1999(8) SCC 150 (2J) (Sundaram Granites Vs. Imperial Granites)
- 5.2001-6-SCC 627 (2J) (ONGC Vs Association of Natural Gas Consuming Industries),
- 6.2004 4 SCC 697 (2J) (Deoraj Vs. State of Maharashtra)
- 7.2011 4 SCC 450 (Mineral Area Development Authority Vs. SAIL)
- 8.2013 9 SCC 725 (3J) (Thressiamma Jacob and others Vs. Geologist, Department of Mining and Geology and others)
- 9.2014 2 SCC 279 (Dalmia Cement Bharat Limited Vs.State of Tamil Nadu)

12. In the decision reported in 1990 TNLJ 374 (V.Ganagarathinam Vs. The State of Tamil Nadu), it was held that the mineral rights in the patta lands vest with the Government, for the past 24 years, the Government is exercising power as owner of the minerals in patta lands. However, in a recent judgement of the Honourable Supreme Court reported in 2013 9 SCC 725 (3J) (Thressiamma Jacob and others Vs. Geologist, Department of Mining and Geology and others), it was held that the mineral right in patta lands vest with the pattadar and not with the Government, thereby overriding the earlier decisions in this regard and referring the liability to pay royalty (seigniorage) to the larger Bench.

13. In 2013 9 SCC 725 (3J) (Thressiamma Jacob and others Vs. Geologist, Department of Mining and Geology and others), it has been held as under:-

"47. The next case relied upon by the High Court is T. Swaminathan (Dead) and Another v. State Of Madras and others, AIR 1971 Mad 483. A passage occurring in the said judgement was relied upon in support of the conclusion that a ryotwari pattadar has no right to the subsoil/minerals. It is unfortunate that the Madras High Court opined that it is a well established proposition that all minerals underground belong to the Crown and now to the State. Such a statement of law is recorded without any explanation whatsoever nor examination of any legal principle. From our discussion so far, we have already reached the conclusion that neither in England nor in this country, at least in the Old Madras Province, during the British regime, there was any such established proposition of law that all the minerals belong to the Crown. On the other hand, the available material only leads to an inevitable conclusion otherwise.

50. Equally the observations made in the case of V. Gangarathinam v. State of Tamil Nadu, 1990 TNLJ 374 is without any basis.

54. Mines and Minerals Act is an enactment made by the Parliament to regulate the mining activities in this country. The said Act does not in any way purport to declare the proprietary rights of the State in the mineral wealth nor does it contain any provision divesting any owner of a mine of his proprietary rights. On the other hand, various enactments made by the Parliament such as Coking Coal Mines (Nationalisation) Act, 1972 and Coal Bearing Areas (Acquisition and

Development) Act, 1957 make express declarations under Section 4 and 7 respectively providing for acquisition of the mines and rights in or over the land from which coal is obtainable. If the understanding of the State of Kerala that in view of the provisions of the Mines and Minerals Development (Regulation) Act, 1957, the proprietary rights in mines stand transferred and vest in the State, it would be wholly an unnecessary exercise on the part of the Parliament to make laws such as the ones mentioned above dealing with the nationalisation of mines.

55. Even with regard to the minerals which are greatly important and highly sensitive in the context of the national security and also the security of humanity like uranium - the Atomic Energy Act, 1962 only provides under Section 5 for prohibition or regulation of mining activity in such mineral. Under Section 10 of the Act, it is provided that the Government of India may provide for compulsory vesting in the Central Government of exclusive rights to work those minerals. The said Act does not in any way declare the proprietary right of the State.

56. Similarly, the Oilfields (Regulation and Development) Act, 1948 deals with the oilfields containing crude oil, petroleum etc. which are the most important minerals in the modern world. The Act does not anywhere declare the proprietary right of the State.

57. For the above-mentioned reasons, we are of the opinion that there is nothing in the law which declares that all mineral wealth sub-soil rights vest in the State, on the other hand, the ownership of sub-soil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. In the instant appeals, no such deprivation is brought to our notice and therefore we hold that the appellants are the proprietors of the minerals obtaining in their lands. We make it clear that we are not making any declaration regarding their liability to pay royalty to the State as that issue stands referred to a larger Bench."

14. In a batch of Writ Petitions in WP.No.23887 of 2006, etc., this Court by order dated 20.2.2012, in paragraph 13, it has been held as under:-

"13. With the above said background of this matter, this court is of the considered view that it is suffice for this court to direct the Respondent herein to consider and dispose of the applications/ representations submitted by the Petitioner seeking for the relief of renewal or extension of the period of the raising contracts."

This issue is not related to the subject matter on hand.

15. Similarly, in WP.No.22670 of 2007, by order dated 22.2.2012 and in WP.No.24506 of 2005, by order dated 11.11.2013, this court has held as under:-

"Learned Advocate General submitted that the applications for renewal will be considered and orders will be passed on the applications within a period of four months from today. He submitted that the Petitioners have been allowed to continue the quarrying operation only by virtue of the interims orders passed by this court and the State is entitled to fix the rental/ charges for the period after the expiry of the lease under rule 39 of the Minor Mineral Concession Rules till fresh permission is granted. He submitted that the State Government will fix the rental/ charges within a period of 30 days from today. We make it clear that only after the revised rental/ charges are paid, as fixed by the State Government, within a period of eight weeks, the applications for renewal will be considered by the State Government. It is needless to say that the Petitioners will be entitled to carry on the quarrying operations till their application for renewal are considered and disposed of."

The above cases are connected with grant of quarry lease for granites and not similar to the cases dealt herein.

16. Further, the Honourable Supreme Court, by order dated 27.2.2012 in SLP(C)No.19628 of 2009, has held that the Environmental Clearance for the grant of minor mineral quarry lease is mandatory.

17. In view of the above said judgements, though the mineral and subsoil rights vest with the pattadars and not with the State Government, the petitioner cannot do mining activities without the permission from the authorities under the Act and Rules and further, as contended by the Respondents, as per the order of the Honourable Supreme Court dated 27.2.2012 in

SLP.No.19628 of 2009. For granting stone quarry lease, as per the present Rules 41 and 42, approved mining plan and environment clearance is mandatory, irrespective of classification of the lands and accordingly, the Petitioners have to make necessary applications.

18. Only the Petitioner in WP.No.19477 of 2015 has filed a renewal application dated 5.6.2015 before the Respondent, which is pending. In such case, on the Petitioner complying with all the legal requirements, the said application shall be disposed of, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

19. In so far as the Petitioner in WP.No.23928 of 2015 is concerned, it is for the Petitioner to file necessary application and if such an application is filed, the same shall be disposed of, on merits and in accordance with law, after affording an opportunity of hearing to the Petitioner.

20. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, the connected MPs are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Srcm

To:

1.The District Collector, Kancheepuram

2.The District Collector Thiruvannamalai

+1 cc to Ramakrishna Reddy Advocate sr.66365

WP.Nos.19477 and
23928 of 2015

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