

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.3449 to 3453 of 2015

W.P.Nos.3449, 3451, 3452 and 3453 of 2015

Tvl.Riverwaays Mines and
Minerals Limited,
represented by its Director,
K.Balasubramanian,
6/9, Kasturi Estate, 3rd Street,
Poes Garden,
Chennai - 600 086.

...Petitioner in all petitions

vs.

1. The State of Tamil Nadu rep.by
its Secretary to Government,
Industries Department,
Namakkal Kavignar Maaligai,
Fort St.George, Chennai - 600 009.

2. The District Collector,
Thiruchirappalli District,
Thiruchirappalli.

...Respondents in all the petitions

W.P.No.3450 of 2015

Tvl.S.S.Minerals,
represented by Managing Partner,
L.Samuel Baskaran,
6/9, Kasturi Estate, 3rd Street,
Poes Garden,
Chennai - 600 086.

...Petitioner

vs.

1. The State of Tamil Nadu rep.by
its Secretary to Government,
Industries Department,
Namakkal Kavignar Maaligai,
Fort St.George, Chennai - 600 009.

2. The District Collector,
Thiruchirappalli District,
Thiruchirappalli.

...Respondents

W.P.No.3451 of 2015:

1 Tv1.Riverwaays Mines and
Minerals Ltd Rep. by its Director K.
Balasubramaniyan 6/9 Kasturi Estate 3rd
Street Poes Garden Chennai-86.

[PETITIONER]

Vs

1 The State of Tamilnadu
Rep. by its Secretary to Government
Industries Department Namakkal Kavignar
Maaligai Fort St. George Chennai-9.

[RESPONDENT]

2 The District Collector
Thiruchirapalli District Thiruchirapalli.

W.P.No. 3452 of 2015

1 Tv1.Riverwaays Mines and
Minerals Ltd Rep. by its Director K.
Balasubramaniyan 6/9 Kasturi Estate 3rd
Street Poes Garden Chennai-86.

[PETITIONER]

Vs

1 The State of Tamilnadu
Rep. by its Secretary to Government
Industries Department Namakkal Kavignar
Maaligai Fort St. George Chennai-9.

[RESPONDENTS]

2 The District Collector
Thiruchirapalli District Thiruchirapalli.

W.P.No.3453 of 2015:

1 Tv1.Riverwaays Mines and
Minerals Ltd Rep. by its Director K.
Balasubramaniyan 6/9 Kasturi Estate 3rd
Street Poes Garden Chennai-86.

[PETITIONER]

V_S

- 1 The State of Tamilnadu [RESPONDENTS]
Rep. by its Secretary to Government
Industries Department Namakkal Kavignar
Maaligai Fort St. George Chennai-9.
- 2 The District Collector
Thiruchirapalli District Thiruchirapalli.

Writ Petition No.3449 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd respondent to execute the mining lease deed in respect of mining lease for mining and transportation garnet sand over to an extent of 4.75.0 hectares of Government land comprised in Survey No.390 (Part) situated at Kottathur Village Musiri Taluk, Tiruchirappali District as per the Government Order in G.O.(3D) No.43 Industries (MMD.1) Department dated 27.9.2010 within a period stipulated by this Court.

Writ Petition No.3450 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd respondent to execute the mining lease deed in respect of mining lease for mining and transportation of garnet sand over to an extent of 4.75.0 hectares of Government land comprised in Survey No.390 (Part) situated at Kottathur Village, Musiri Taluk, Tiruchirappalli District as per the Government Order in G.O.(3D) No.57 Industries (MMD.1) Department dated 3.11.2010 within a period stipulated by this Court.

Writ Petition No.3451 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd respondent to execute the mining lease deed in respect of mining lease for mining and transportation of garnet sand over to an extent of 4.90.0 hectares of Government land comprised in Survey No.390 (Part) situated at Kottathur Village, Musiri Taluk, Tiruchirappalli District as per the Government Order in G.O.(3D) No.69 Industries (MMD.1) Department dated 27.10.2010 within a period stipulated by this Court.

Writ Petition No.3452 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd respondent to execute the mining lease deed in respect of mining lease for mining and transportation of garnet sand over to an extent of 4.75.0 hectares of Government land comprised in Survey No.390 (Part) situated at Kottathur Village, Musiri Taluk, Tiruchirappalli District as per the Government Order in G.O.(3D) No.70 Industries

(MMD.1) Department dated 29.12.2010 within a period stipulated by this Court.

Writ Petition No.3453 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd respondent to execute the mining lease deed in respect of mining lease for mining and transportation of garnet sand over to an extent of 4.80.0 hectares of Government land comprised in Survey No.390 (Part) situated at Kottathur Village, Musiri Taluk, Tiruchirappalli District as per the Government Order in G.O.(3D) No.71 Industries (MMD.1) Department dated 29.12.2010 within a period stipulated by this Court.

For petitioners : Mr.R.Yashod Vardhan,
Senior Counsel,
for M/s.R.Murali

For respondents : Mr.T.N.Rajagopalan,
Special Government Pleader

ORDER

With the consent of parties, all these five Writ Petitions are taken up together for disposal at the admission stage itself as identical issues are involved in all the Writ Petitions.

2. These Writ Petitions are filed seeking for Writ of Mandamus directing the second respondent to execute the Mining Lease Deed in respect of Mining Lease for Mining and Transportation of Garnet Sand to an extent of 4.75.0, 4.75.0, 4.90.0, 4.75.0 and 4.80.0 hectares of Government land, respectively, comprised in Survey No.390(Part) situated at Kottathur Village, Musiri Taluk, Tiruchirappalli District, as per the Government Orders in G.O.(3D) No.43 Industries (MMD.1) Department dated 27.09.2010, G.O.(3D) No.57 Industries (MMD.1) Department dated 03.11.2010, G.O.(3D) No.69 Industries (MMD.1) Department dated 27.12.2010, G.O.(3D) No.70 Industries (MMD.1) Department dated 29.12.2010, G.O.(3D) No.71 Industries (MMD.1) Department dated 29.12.2010, respectively.

3. For the sake of understanding the facts of the cases, the facts stated in W.P.No.3449 of 2015 is extracted.

(a) In the affidavit filed in support of the Writ Petition, it is stated by the petitioner that they are the experts in the field of processing of abrasive grade garnet and are having mineral processing plants at Nagalapuram, Tiruchirappalli District with a capacity of production around 1000 Metric Tons per month. They are also establishing a major processing plant with a production capacity of 8000 Metric Tons per month. The garnet is a non-polluting and

environmental friendly, recyclable mineral used as an abrasive. It is also used for polishing metals, removing corrosion, rust and as a water purifier. The garnet is also used in oil refineries to clean the pipe lines etc.,.

(b) Garnet was found abundantly in the petitioner's patta land at Kottathur Village Musiri Taluk in Tiruchirapalli District, and they applied for grant of mining lease to the Government, which also granted lease with regard to those lands and they have been carrying out mining operations in the above lands for the past several years as per the provisions contemplated under the Mines and Minerals (Development and Regulation) Act, 1957 without any violations of the same and fully in accordance with the terms and conditions of the lease agreement.

(c) The petitioners have also submitted four applications dated 7.3.2002 to the first respondent through the second respondent, under rule 22(1) of the Mineral Concession Rules, 1960 seeking for mining lease to mine Garnet sand over an extent of 4.75.0 hectares at Government Eri Poramboke lands comprised in S.F.No.390 (Part) situated at Kottathur Village, Musiri, Taluk, Tiruchirapalli District for a period of 20 years, in each application. The District Collector/2nd respondent has scrutinised all the details submitted by the petitioner and made field inspection of the area and submitted a report that there are no permanent structures and the area applied for grant of mining lease is compact and contiguous and thus satisfies section 6(1)(c) of the Mines and Minerals (Development and Regulation) Act, 1957 and further reported that the area applied for mining lease satisfy section 5(2)(a) of the Mines and Minerals (Development and Regulation) Act, 1957 and recommended for grant of mining lease to mine the mineral garnet, subject to the usual terms and conditions stipulated in the said Act and the conditions specified by the Executive Engineer, PWD, R.C.Division, Tiruchirapalli, vide his letter dated 15.4.2002. Thereafter, the Special Commissioner and Commissioner of Land Administration vide letter dated 7.11.2007 has recommended for grant of mining lease. Similarly, the Commissioner of Geology and Mining vide letters dated 10.10.2007, 09.06.2010 and 29.06.2010 have recommended the application for grant of mining lease subject to certain conditions.

(d) The Government after careful examinations on the recommendations submitted by the various department and in exercise of the power conferred under section 10(3) of the Mines and Minerals (Development and Regulations) Act 1957, granted fresh mining lease to the petitioners for mining Garnet Sand over an extent of 4.75.0 hectares of lands in SF No.390(Part) of Kottathur Village, Musiri Taluk, Tiruchirapalli District for a period of twenty years vide G.O. (3D) 43 Industries (MMD.1) Department dated 27.9.2010 subject to general conditions mentioned in Appendix -1 and subject to the following other conditions stipulated therein. As per the Government Order, an approved mining plan should be submitted to the District Collector, Thiruchirappalli before the execution of lease deed. The

District Collector was directed to take necessary further action for execution of lease deed and also instructed in the Government Order to report the date of execution of the lease deed to the Government and Commissioner of Geology and Mining as soon as the deed was executed. The District Collector was also directed to ensure compliance of the concerned provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the Mineral Concession Rule, 1960 and other applicable Acts and Rules including Forest (Conservation) Act, 1980 by the lessee before the lease deed is executed. The lessee shall not enter upon or commence mining operations in any reserve forest situate upon the said land without thirty days previous notice in writing to the District Forest Officer nor without obtaining any written sanction of that Officer nor otherwise than in accordance with such conditions as that officer may in his absolute discretion prescribe and the lessee shall not cut any trees grown on the area granted in excess of 20 per cent of the number of trees on the whole area under the lease without the previous permission of the District Forest Officer and the value of such trees etc., shall be paid for by the lessee at rates to be fixed by the District Forest Officer and the lessee must not deface or interfere with any boundary stone or marks, if any boundary mark is accidentally damaged, that must be brought to the notice of the Range Officer.

(e) In accordance with the Government Order dated 27.9.2010, the petitioner submitted a mining plan to the Regional Controller of Mines, IBM, Ministry of Mines, Government of India in the month of March 2013 to get an approval. The Regional Controller of Mines, IBM, has approved our mining plan vide our dated 22.5.2013 as per the provisions prescribed under clause (b) of Sub-Section 2 of Section 5 of the Mines and Minerals (Development and Regulations) Act, 1957 with certain conditions. One such condition is that the exploration as proposed may be completed as per the time schedule given in the mining plan.

(f) After submission of the approved mining plan, the District Collector/2nd respondent herein vide notice dated 31.5.2013 directed the petitioner to remit the security deposit and surface rent. The 2nd respondent in the said notice requested the petitioner to produce non-judicial stamp paper based on the production details of garnet sand furnished in the approved mining plan and also requested to produce bank guarantee before execution of lease deed.

(g) In compliance of the notice dated 31.5.2013 issued by the 2nd respondent, the petitioners produced the Non-Judicial Stamp Papers, the original challans for remittance of surface rent and security deposit remitted, in the proper Head of account of the Government on 3.6.2013 at the State Bank of India, Tiruchirapalli and subsequently, three reminders have been sent to the second respondent on 25.9.2013, 14.11.2014 and 25.11.2014 to execute the lease deed but till date the 2nd respondent has not executed the same. Therefore, the petitioners pray this Court to issue a direction to the 2nd

respondent to execute the Mining Lease Deed referred to above.

4. Per contra, the second respondent has filed a common counter affidavit denying the allegations made in all these Writ Petitions and contended that the Writ Petitions are not maintainable in law or on facts. Though the petitioners have stated that they had produced Non-Judicial Stamp Papers, Original Challan for remittance of Security Deposit and Surface Rent etc., they had sent them belatedly and defaulted in executing the lease deed within the stipulated period of six months prescribed under rule 31(1) of Mineral Concession Rules, 1960. The petitioners had not submitted the mining plan and executed the lease deed within the stipulated period of 6 months as per Rule 31(1) of the Mineral Concession Rules, 1960. The non-execution of the lease deed within the stipulated period of six months from the date of order of the Government is the default on the part of the petitioner. The petitioners instead of applying to the Government for extension of time limit for execution of lease deed had approached this Court. Therefore, the Writ Petitions are not maintainable as there is an alternative efficacious remedy for the petitioners.

5. Mr.R.Yashod Vardhan, learned Senior Counsel, appearing for the petitioners, reiterating the averments made in the affidavit filed in support of the Writ Petitions submitted that the first respondent/State Government after careful examinations on the recommendations submitted by the various department and in exercise of the power conferred under section 10(3) of the Mines and Minerals (Development and Regulation) Act, 1957, Granted fresh mining lease to the petitioners for mining Garnet Sand over an extent of 4.75.0, 4.75.0, 4.90.0, 4.75.0 and 4.80.0 hectares of Government land, respectively, comprised in Survey No.390(Part) situated at Kottathur Village, Musiri Taluk, Tiruchirappalli District, as per the Government Orders referred to above. In the said G.O., the Government fixed the rate of Royalty and Dead Rent as per Sections 9 and 9A of the Mines and Minerals (Development and Regulation) Act, 1957 and Surface Rent as per Rule 72 of the Mineral Concession Rules, 1960. In pursuance of the Government Order dated 27.9.2010, the petitioners submitted a mining plan to the Regional Controller of Mines, IBM, Ministry of Mines, Government of India in the month of March 2013 to get an approval. The Regional Controller of Mines, IBM, has approved the petitioners' mining plan vide order dated 22.5.2013 as per the provisions prescribed under clause (b) of Sub-Section 2 of Section 5 of the Mines and Minerals (Development and Regulations) Act, 1957 with certain conditions. One such condition is that the exploration as proposed may be completed as per the time schedule given in the mining plan. In compliance of the notice dated 31.5.2013 issued by the 2nd respondent, the produced the Non-Judicial Stamp Paper, the original challan for remittance of surface rent and security deposit remitted in the proper Head of account of

the Government on 3.6.2013 at the State Bank of India, Tiruchirapalli and subsequently, reminders have been sent to the second respondent to execute the lease deed but till date the second respondent has not executed the same, which has constrained the petitioners to file these Writ Petitions for the relief stated above.

6. The learned Senior Counsel further submitted that in view of the inordinate delay on the part of the second respondent in execution of lease, the petitioners are unable to commence the mining operations and cater the raw material needs of the mineral processing industry established by the petitioners. The petitioners have brought to the knowledge of the authorities seeking to execute the lease deed as the time had already been lapsed for a period of four years from the date of the Government Order and eighteen months from the date of the Mining Plan approved by the Regional Controller of Mines. As per the terms and conditions of the Government Order in grant of lease, the petitioners have complied with all the conditions stipulated therein. The petitioners have remitted the surface rent, security deposit and also submitted the required stamp papers with the second respondent for execution of mining lease deed. There is no legal impediment to the second respondent to execute the mining lease deed in favour of the petitioner. Though the petitioner has been making earnest efforts to seek the execution of mining lease in respect of subject area but the second respondent is delaying the execution of the lease deed without complying with the directions given in the Government Order. As such, the learned Senior Counsel appearing for the petitioners prayed that the Writ Petitions be allowed and direction be issued to the second respondent to execute the mining lease deed.

7. The learned Special Government Pleader appearing for the respondents reiterating the averments made in the counter affidavit has submitted that it is the statutory provision that the petitioners have to submit the approved mining plan under rule 22(4) of the Mineral Concession Rules, 1960, Rule 9 and 10 of the Mineral Conservation and Development Rules, 1988 and as per the conditions in Para 12(6) of the Government Order stated before execution of the lease deed. It is also mandatory of the petitioner to adopt the provisions of the approved mining plan. But, the petitioner failed to submit the approved mining plan within the stipulated time to execute the lease deed within the period stipulated in Rule 31(1) of Mineral Concession Rules, 1960. Therefore, the petitioners have violated the conditions of Government Orders issued in this regard as well as the Rule provisions of 22 (4) Mineral Concession Rules, 1960. The petitioners have belatedly furnished the Non-Judicial Stamp Papers, the original challans for remittance of surface rent and security deposit. Therefore, the lease deed could not be executed within the stipulated period. Under the circumstances, the only course open for the petitioner is to approach the Government. The

petitioners instead of approaching the Government, have filed the present Writ Petitions. Since alternative efficacious remedy is available to the petitioners, these Writ Petitions are liable to be dismissed.

8. Heard the learned Senior Counsel appearing for the petitioners as well as the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

9. It is stated in the counter affidavit filed by the respondents in Paragraph 13 that the petitioners submitted the Non-Judicial Stamp Papers, the original challans for remittance of surface rent and security deposit, belatedly and defaulted in executing the lease deed within the stipulated period of six months prescribed under Rule 31(1) of the Mineral Concession Rules, 1960. However, till date, it appears that the petitioners have not made any Applications before the Government seeking condonation of delay. Under the circumstance, it is not permissible for the second respondent to execute the lease deed as sought for by the petitioners. Therefore, the prayer sought for by the petitioners cannot be granted and the Writ Petitions are liable to be dismissed. However, the learned Special Government Pleader submitted that this Court may direct the petitioners to approach the Government for extension of time for execution of the lease deed.

10. This Court finds merits in the submissions of the learned Special Government Pleader. Admittedly, as per the respective Government Orders referred to above, six months period to execute the lease deed was already lapsed and the petitioners have not made any applications seeking for condonation of such delay. Therefore, without going into the merits of the case, liberty is given to the petitioners to approach the first respondent/Secretary to Government, Industries Department, Chennai and to submit necessary application within a period of one week from the date of receipt of a copy of this order. If any such application is filed, the first respondent shall consider the same and pass appropriate orders on merits and in accordance with law within a period of three weeks from the date of receipt of a copy of this order. The Writ Petitions are dismissed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

asvm

To

1. The Secretary to Government,
The State of Tamil Nadu rep.by
Industries Department,
Namakkal Kavignar Maaligai,
Fort St.George, Chennai - 600 009.

2. The District Collector,
Thiruchirappalli District,
Thiruchirappalli.

1 CC to Mr.R.Murali, Advocate SR.No. 32172

1 CC to the Government Pleader, SR.No. 32106

W.P.Nos.3449 to 3453 of 2015

SCD (CO)
PSI (31.07.2015)



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