

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.3660 of 2015

Tmt.B.Thiraviam

...Petitioner

Vs.

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

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorarified mandamus to call for the entire records leading to the issue of the proceedings in G.O.(D) No.177, Industries (MM.2) Department, dated 11.11.2014 on the file of the first 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 Petitioner : Mr.K.Sridhar

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

ORDER

The petitioner has filed the present writ petition challenging the order passed by the respondent / the Principal Secretary to Government, Department of Industries, Chennai, in proceedings in G.O.(D).No.177, Industries (MM.2) Department, dated 11.11.2014, whereby the request of the petitioner to renew the mining lease was rejected by the respondent.

2. Learned counsel appearing for the petitioner submitted that initially the petitioner applied for mining lease and license over an extent of 6 hectares in S.No.195/1, Kalluthu Village,

Usilampatti Taluk, Madurai District. Thereafter, the respondent granted the mining lease and license for a period of five years commencing from 24.01.1994 to 23.01.1999 vide G.O.Ms.No.631, Department of Industries, dated 06.11.1992 and Government Letter No.46692/MM D2/93-1, dated 25.01.1994. The District Collector, Madurai, in his proceedings dated 24.01.1994, granted lease and the necessary license to quarry Quartz and Feldspar to an extent of 6 hectares in S.No.195/1, Kalluthu Village, Usilampatti Taluk, Madurai District, and thereby necessary lease agreement was also executed in Form K between the District Collector and the petitioner. Thereafter, after the expiry of the lease period, the petitioner applied for renewal of mining lease for a period of 20 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. It is further submitted that she had also obtained the No Objection Certificate(NOC) from all the authorities except the District Forest Officer, Madurai, who had refused to issue the NOC as she filed a writ petition against the said official in respect of another issue. That apart, the Certificate issued by the Revenue Divisional Officer, Usilampatti, does not indicate that there is any Forest Reserve Area in the land sought for mining lease and license by the petitioner, therefore, when the authorities keeping quite during the mining period i.e. from 24.01.1994 to 23.01.1999, only at the time of making renewal application, they cannot raise new ground stating that the place of mining belonging to the petitioner is less than 1 km. from the Reserve Forest Area and that the operation of a quarry over an extent of 6.00.0 hectares of area would certainly cause pollution and disturbance of wild life and forest. Such stand of the respondent in rejecting the request for renewal of mining lease cannot be legally sustained, for, the respondent had not imposed any such condition during the first five years of mining lease period, however, only at the time of making renewal application, the respondent, for the reasons best known to them, wrongly rejected the renewal application.

3. It is further submitted that one another person, namely, Mr.N.Prasad, power of attorney of Late Pakala Suriyanarayana Rao, was granted renewal to an extent of 35.85 acres of poramboke lands in S.F.No.199/3, Kalluthu Village, Usilampatti Taluk, Madurai District, vide G.O.3D.No.11, Industries (MMD2) Department, dated 04.02.2000, which is near to Vikkiramangalam Reserve Forest area, therefore, when the respondent accepted application for renewal of mining lease to the above said person, they cannot reject the renewal in respect of the petitioner since the land in question is situated 1 km. away from the Vikkiramangalam Reserve Forest area and thus the rejection of

renewal of lease period is arbitrary and violative of Article 14 of the Constitution of India and on that basis, he sought for quashing the impugned order.

4. Per contra, learned Special Government Pleader appearing for the respondent, by filing a detailed counter affidavit, submitted that the case of the petitioner can never be compared with one Mr.N.Prasad, for, when the said person applied for renewal on 16.12.1991, he was not given Hill Area Conservation Authority (HACA) clearance, therefore, the District Collector, Madurai, has proposed to suspend the mining lease granted to the said person. Therefore, since the respondent has sent a proposal to suspend the lease granted in favour of the said N.Prasad, the petitioner cannot take advantage of the same . It is further submitted that in the present case, clearance from HACA is mandatory, therefore, the respondent has rightly rejected the case of the petitioner and thus, on this basis, he prayed for dismissal of the writ petition.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. It is no doubt true that originally the petitioner was granted license for a period of five years commencing from 24.01.1994 to 23.01.1999 vide G.O.Ms.No.631, Department of Industries, dated 06.11.1992 and Government Letter No.46692/MM D2/93-1, dated 25.01.1994. After completion of the said lease period, she had also applied for renewal of her lease for a further period of 20 years, vide her application dated 31.08.1998. Along with her application, she had also enclosed the NOC from all the authorities, except the District Forest Officer, Madurai. However, the request of the petitioner for renewal of lease was rejected by the respondent by passing the impugned order. Relevant portion of the said impugned order is extracted hereunder:

5..... the District Collector, Madurai, had recommended to reject the renewal application filed by Tmt.Thiraviam to mine Quartz and Feldspar in S.F.No.195/1 over an extent of 6.00.0 hectares of poramboke lands of Kalluthu Village, Usilampatti Taluk, Madurai District based on the request of Commissioner of Town and Country Planning and the Hill Area Conservation Authority decision 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.

6. The Government after careful examination have decided to accept the recommendation of the District Collector, Madurai, and the Commissioner of Town and Country Planning and accordingly reject the renewal of mining lease application of Tmt.B.Thiraviam to mine Quartz and Feldspar in Poramboke S.F.No.195/1, over an extent of 6.00.0 hectares of Kalluthu Village, Usilampatti Taluk, Madurai District, as per rules 10(3) of the Mines and Minerals (Development and Regulation) Act, 1957, based on the Hill Area Conservation Authority clearance decision taken on 27.10.2009 on the grounds mentioned in para 5 above."

From the above said order passed by the Government, it is very clear that the Government decided to reject the request of the petitioner only upon considering the recommendation of the District Collector, Madurai and the Commissioner of Town and Country Planning, and also based on the decision taken by the Hill Area Conservation Authority on 27.10.2009. Therefore, such view of the respondent, in my view, cannot be interfered with.

7. Moreover, the argument of the learned counsel for the petitioner that the respondent after granting renewal of lease in favour of one N.Prasad, whose land is also lying very close to Vikkiramangalam Reserve Forest Area, cannot refuse to accept the renewal application of the petitioner which is situated 1 km away from the said Forest Area, does not appeal to this Court, for, the respondent, in their counter affidavit at paragraph 25, have clearly stated that since the said person Mr.N.Prasad was not granted with HACA clearance for mining operation, the District Collector, Madurai,

has proposed to suspend the mining lease granted to the said lessee, therefore, when the respondent has taken steps to suspend the mining operation of the said N.Prasad, the argument of discrimination falls to ground, hence, this Court is not inclined to entertain the writ petition. Accordingly, this Court, finding no merit in the writ petition, dismisses the same. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

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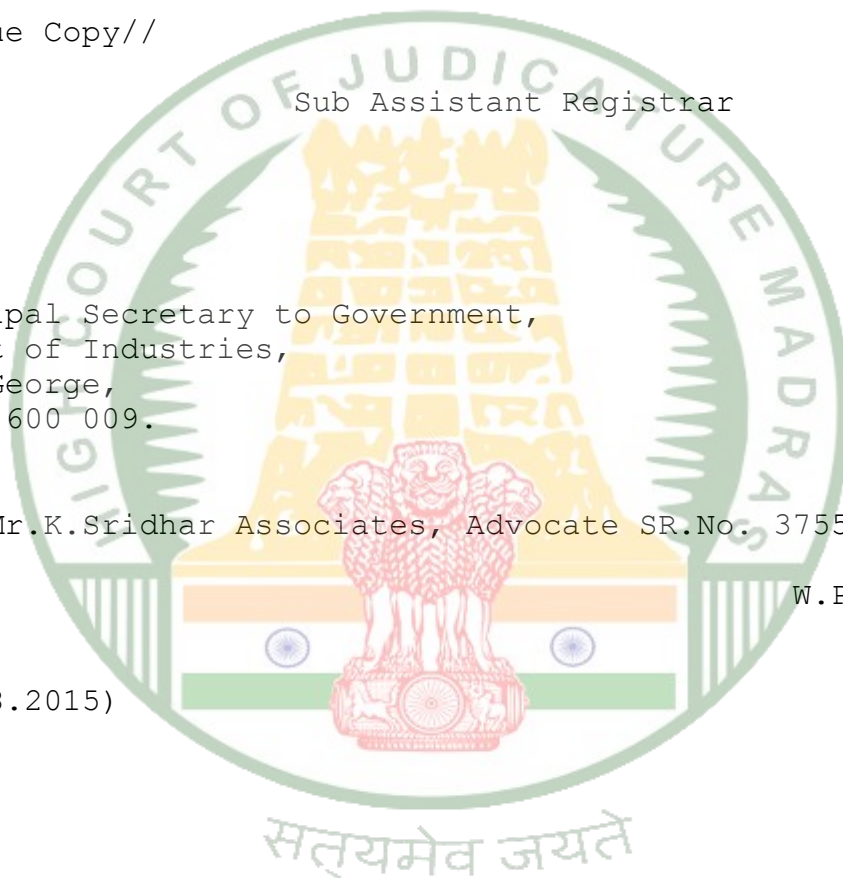
The Principal Secretary to Government,
Department of Industries,
Fort St. George,
Chennai - 600 009.

2 CCs to Mr.K.Sridhar Associates, Advocate SR.No. 37554

W.P.No.3660 of 2015

LRS (CO)

PSI (24.08.2015)



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