

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.9943 of 2015

And

M.P.Nos.1 and 4 of 2015

N.Thangavel

...Petitioner

Vs.

1.The District Collector,
Erode District,
Erode.

2.The Director,
Geology and Mining,
Thiru.Vi.Ka.Industrial Estate,
Guindy,
Chennai - 600 032.

3.The Assistant Director,
Geology and Mining,
Erode.

...Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in his proceeding in Na.Ka.No.5443/2015/x-1 dated 09.03.2015 and to quash the same as illegal in so far as it rejects the request for operating the quarry for the leftover/unused period of lease between 07.10.2010 and 13.11.2011 and consequently to direct the respondents to permit the petitioner to continue with the quarry operatories for the left over period in Survey No.257/4, Thoppampalayam Village, Erode District.

(Prayer amended as per the order of this Court dated 02.06.2015 made in M.P.No.2 of 2015 in W.P.No.9943 of 2015)

For Petitioner : Mr.C.Selvaraju
Senior Counsel
for M/s.M.Govindarraaj

For Respondents: Mr.A.Kumar
Special Government Pleader

ORDER

This writ petition has been filed by N.Thangavel seeking issuance of Writ of Certiorarified Mandamus calling for the records of the first respondent in his proceeding in Na.Ka.No.5443/2015/x-1 dated 09.03.2015 and to quash the same as illegal in so far as it rejects the request for operating the quarry for the leftover/unused period of lease between 07.10.2010 and 13.11.2011 and consequently to direct the respondents to permit the petitioner to continue with the quarry operations for the left over period in Survey No.257/4, Thoppampalayam Village, Erode District.

2.Learned Senior Counsel appearing for the petitioner would submit that when the District Collector, Erode had announced public auction of lease for the purpose of mining of rock stone, jelly and seized stone, the petitioner has become a successful bidder for the same in respect of Survey No.257/4, Thoppampalayam Village, Sathyamangalam Taluk, Erode District. Resultantly, he was granted lease for a period of five years commencing from 12.04.2010 till 11.04.2015. Therefore, the petitioner has deposited a sum of Rs.75,000/- in the State Bank of India, Erode as one time lease amount payable for five years. After the execution of lease on 12.04.2010, the same was also registered as document no.2066/2010 and the same has also been confirmed by the first respondent in his proceeding in Na.Ka/19692/2010/K-1 dated 12.04.2010.

3.The petitioner commenced the quarrying operations, however, due to certain complaints received by the first respondent, the quarrying operation of the petitioner was temporarily stopped with effect from 07.10.2010 since the complaint mentioned that the continuance of 22 quarries in that area would cause damage to the Bhavani Sagar Dam. After stoppage of the quarrying operations, inspections were conducted by the Revenue Officials along with the officers from the third respondent's office who also conducted separate inspections.

4.Continuing his argument learned Senior Counsel submitted that the first respondent had requested the Department of Mining, Engineering College, Anna University, Chennai to conduct scientific investigation to analyze the veracity of the complaints as to whether running of quarry at the demised site will cause damage to Bhavani Sagar Dam. In the meanwhile a contract was entered into between Anna University and the respondents on 23.03.2011 for undertaking the said exercise and the Revenue Divisional Officer conducted inspection and after thorough verification with the assistance of respondents 2 and 3, a report was submitted on 08.09.2011 wherein it has been stated that except four quarries, other 18 quarries including the petitioner can be permitted to continue their quarrying operations. Only on the basis of the report of the Revenue Divisional Officer, the petitioner was permitted to start his work from 21.11.2011.

5. However, the grievance of the petitioner is that the quarrying operation in Survey No.257/4, Thoppampalayam Village, Sathyamangalam Taluk, Erode District was stopped from 07.10.2010 to 20.11.2011. When the un-used period is running to almost one year one month, it is pleaded, he should be permitted to continue the quarry for the full period of lease subject to adjustment for the period for which he has already operated since he has paid huge money for five years on the basis of the judgment reported in (2003) 1 SCC 726 (Beg Raj Singh Vs. State of U.P. and others), wherein, the Hon'ble Apex Court has held that if the litigant found entitled to right to relief, he should ordinarily be restored to the position in which he would have been if the wrong complained against would not have been done to him. It is further held therein that where the lessee was wrongly disallowed to operate the mining lease for the full lease period but the lease remained inoperative and no third party right created, held, lessee must be allowed to operate the mine for the full period of lease subject to adjustment for the period for which he has already operated.

6. Learned Senior Counsel appearing for the petitioner drawing the notice of this Court to the report of the Revenue Divisional Officer dated 08.09.2011 pointed out that only by the report dated 08.09.2011, the petitioner's quarry along with 17 other quarries were permitted to re-start the quarrying operation from 21.11.2011. The District Collector, Erode, accepting the report submitted by the Revenue Divisional Officer should have acceded to the request of the petitioner to operate for the un-used period namely, for one year. As it has not been done so, the refusal on the part of the respondent is not only causing loss to the petitioner but also running contrary to the ratio laid down by the Hon'ble Supreme Court aforementioned.

7. Per contra, learned Special Government Pleader appearing for the respondents would submit that when the petitioner has entered into a lease agreement dated 12.04.2010 agreeing to the terms and conditions mentioned therein that at no point of time, for any reason extension of lease would be granted, he is bound by the same. Therefore, he is not entitled to ask for extension of the lease period on the ground that he was not permitted to operate for the period commencing from 07.10.2010 to 20.11.2011. Adding further the learned Special Government Pleader would submit that even though the petitioner was granted quarry lease for a period of five years by the District Collector in R.C.No.19692/2010/X-1 dated 12.04.2010 from 12.04.2010 till 11.04.2015, on receipt of complaint from the Bhavani Sagar Dam area Aayacut Agriculturists about the functioning of quarry in Bhavani Sagar area, in order to protect the Bhavani Sagar Dam and also environment, a report has been called for from the Department of Mining Engineering, Anna University, Chennai for the influence of blasting in the vicinity of Bhavani Sagar Dam. One another report was called for from the Revenue Divisional Officer,

Gobichettipalayam. Accordingly, the Revenue Divisional Officer, Gobichettipalayam in his report dated 08.09.2011 recommended the subject quarry to continue with certain conditions. On receipt of the report, the petitioner was permitted to continue the quarry. However, before the expiry of lease, the petitioner sent representation requesting to operate the quarry for the period from 07.10.2010 to 20.11.2011 stating that the quarry work was stopped during the said period. But the request of the petitioner was rejected. As per Rule 9 (8) (ii) of Tamil Nadu Minor Mineral Concession Rules, 1959, the lease shall expire on the date specified in the lease deed and in no case extension of the period of lease shall be made. Therefore, the petitioner is not entitled for the prayer.

8.This Court is unable to find any justification in the said contention for the reason that the petitioner is admittedly a successful bidder in respect of Survey No.257/4, Thoppampalayam Village, Sathyamangalam Taluk, Erode District and the petitioner has deposited a sum of Rs.75,000/- in the State Bank of India, Erode as one time lease amount payable for five years commencing from 12.04.2010 till 11.04.2015. The one another indisputable fact in the present case is that the quarrying operation of the petitioner was temporarily stopped with effect from 07.10.2010 on the basis of a complaint from the Bhavani Sagar Dam area Aayacut agriculturists about the functioning of quarry in Bhavani Sagar area. Subsequently, a report has been called for from the Department of Mining Engineering, Anna University, Chennai with regard to the influence of blasting in the vicinity of Bhavani Sagar Dam. One another report was also called for from the Revenue Divisional Officer, Gobichettipalayam. Lateron, the Revenue Divisional Officer, Gobichettipalayam in his report dated 08.09.2011 has recommended the continuation of the quarry work except four quarries. On the basis of the report of the Revenue Divisional Officer, Gobichettipalayam, the petitioner was permitted to continue the quarrying operations.

9.Pursuant thereto when the petitioner along with 17 other quarries had the benefit of restarting the quarrying operations from 21.11.2011, the petitioner who was stopped from quarrying operation from 07.10.2010 till 20.11.2011 is entitled to quarry for the same unused period for which he was not allowed to operate. As per the judgment of the Hon'ble Apex Court, as rightly indicated by the learned counsel appearing for the petitioner, the Hon'ble Apex Court in (2003) 1 SCC 726 (Beg Raj Singh Vs. State of U.P. and others), has held as follows:

"A plaintiff or petitioner having been found entitled to a right to relief, the court would as an ordinary rule try to place the successful party in the same position in which he would have been if the wrong complained against would not have been done to him. The present one is such a case. The delay in final decision cannot, in any manner,

be attributed to the appellant. No auction has taken place. No third-party interest has been created. The sand mine has remained unoperated for the period for which the period of operation falls short of three years. The operation had to be stopped because of the order of the State Government intervening which order has been found unsustainable in accordance with stipulations contained in the mining lease consistently with the GO issued by the State of Uttar Pradesh. Merely because a little higher revenue can be earned by the State Government that cannot be a ground for not enforcing the obligation of the State Government which it has incurred in accordance with its own policy decision.

Therefore, the impugned order of the High Court dismissing the petition filed by the appellant is set aside. Instead, it is directed that the appellant shall be allowed to operate the mine for a full period of three years subject to adjustment for the period for which he has already operated. The appellant shall remain liable to pay royalty and make other payments to the State Government in accordance with the terms of the lease."

10.The above observation of the Hon'ble Apex Court, in my considered view, is squarely applicable to the case of the petitioner. As I cited above, the petitioner was granted quarry lease as per Rule 8 (1) of Tamil Nadu Minor Mineral Concession Rules, 1959 to quarry rough stone in Government poromboke land in S.F.No.257/4, to an extent of 1.38.0 Hectares in Thoppampalayam Village, Sathyamangalam Taluk, Erode District for a period of five years by the District Collector in his proceeding in R.C.No.19692/2010/X-1 dated 12.04.2010.

11.Admittedly, before the expiry of five year period, on entertaining a complaint, the quarry operation was stopped from 07.10.2010 to 20.11.2011. Admittedly, the counter filed by the respondents shows that no tripping sheet to transport was given during the non-operated period, therefore, the petitioner shall be allowed to operate the quarry for the full period of lease adjusting to the period for which he has already operated.

12.Accordingly, it is directed that the petitioner shall be allowed to operate the quarry for a period of one year as he was stopped from carrying on the quarry operation from 07.10.2010 to 20.11.2011. Needless to mention that the respondents shall issue the transport permit to transport the quarried materials for the said period.

13.With the above direction this writ petition is disposed of.
No costs. Consequently, the connected miscellaneous petitions are
also closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The District Collector,
Erode District,
Erode.

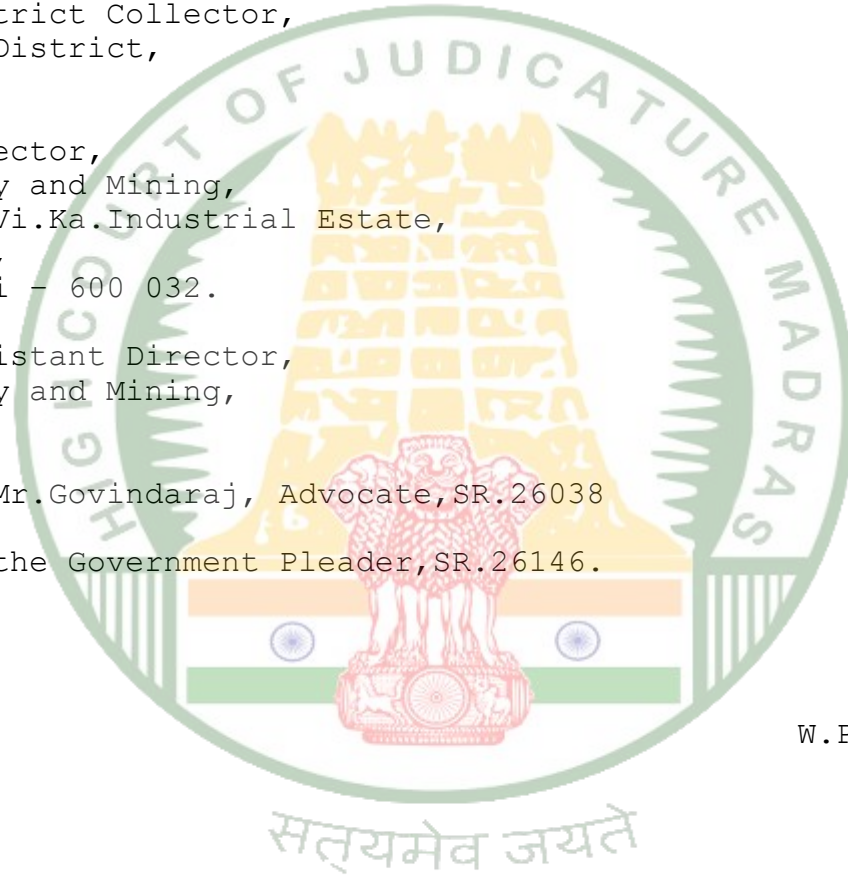
2.The Director,
Geology and Mining,
Thiru.Vi.Ka.Industrial Estate,
Guindy,
Chennai - 600 032.

3.The Assistant Director,
Geology and Mining,
Erode.

+1 cc to Mr.Govindaraj, Advocate,SR.26038

+1 cc to the Government Pleader,SR.26146.

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