

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.23564/2008

MP.No.2/2008

M.Shanmughasundaram

Petitioner

Vs

- 1.The Government of Tamil Nadu
represented by its
Secretary to Government,
Industries Dept. Fort St. George,
Chennai-9
- 2.The Director of Geology and Mining,
Guindy Chennai-32
- 3.The District Collector,
Tirunelveli District, Tirunelveli.

Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, for the relief as stated therein. Fort he reasons stated int he accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a writ of certiorarified Mandamus or any other appropriate writ or order or direction in the nature of writ calling for the records of the first respondents relating to the order issued in Letter No.13243/MMC1/07-4 dt 4.7.2008 and the records of the third respondent relating to the orders issued in Proc. No.M2/78045/2001 dt 10.8.2008 and 13.10.2008, quash the same direct the respondents to refund the proportionate lease amount with interest for the un-expired period of lease from 2.10.2003 to 11.10.2004 as per Rule 38 A of the Tamilnadu Minor Mineral Concession Rules, 1959 and return the Security Deposit furnished in the shape of KVP with regard to the sand quarry in the land bearing S. No.1782 admeasuring 10.00.0 Hectares in Seevalaperi Village, Palayamkottai Taluk, Tirunelveli District within the time frame fixed by the Hon'ble Court, pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice. Prayer amended as per Court order dated 21.01.2009 in M.P. No.3/2008 in W.P.No. 23564/2008 by V.R.S.J.

For Petitioner

: Mr.V.Sanjeevi

For Respondent

: Mr. T.N.Rajagopalan, AGP

ORDER

This Writ Petition is filed to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent, relating to the order issued in Letter No.13243/MMC1/07-4, dated 04.07.2008 and the records of the 3rd Respondent, relating to the orders issued in Proc.No.M2/78045/2001, dated 10.08.2008 and 13.10.2008 and quash the same and to direct the Respondents to refund the proportionate lease amount with interest for the unexpired period of lease from 02.10.2003 to 11.10.2004 as per Rule 38A of the Tamil Nadu Minor Mineral Concession Rules, 1959, return the Security Deposit furnished in the shape of KVP with regard to the sand quarry in the land, bearing S.No.1782, admeasuring 10.00.0 Hectares in Seevalaperi Village, Palayamkottai Taluk, Tirunelveli District.

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

a. The Petitioner was the successful bidder for quarrying sand in the Government Land bearing S.No.782 in Seevalaperi Village, Palayamkottai Taluk, Tirunelveli District for a period of three years, having offered the one time lease amount of Rs.2,83,00000/- (Rupees Two Crores and eighty three lakhs only) and he was granted such a lease by proceedings dated 21.9.2001 of the 3rd respondent. The lease deed came to be executed on 12.10.2001 for a period of 3 years commencing from 12.10.2001 ending with 11.10.2004. The Security Deposit (10%) of the lease amount before execution of the lease deed has been furnished by the Petitioner and after execution of the lease deed, the quarry operation had been commenced from the lease hold land. However, before completing the lease period, the Government of Tamil Nadu in G.O.Ms.No.95, Industries dated 1.10.2003, amended the Tamil Nadu Minor Mineral Concession Rules, 1959, by inserting Rule 38A, where under all existing leases for quarrying sand in Government lands and permissions/leases granted in Ryotwari Lands shall cease to be effective and the right to exploit the sand in the State shall vest with the Government to the exclusion of the others. In the said Rule, it had been further stated that the proportionate lease amount for the unexpired period of lease and the unadjusted seigniorage fee, if any, will be refunded.

b. Rule 38 A of the Tamil Nadu Minor Mineral Concession Rules, 1959, inserted by virtue of the above said Government Order had been challenged by several lessees before this Court and by the judgement dated 11.5.2014 had upheld Rule 38A subject to certain directions issued therein. Aggrieved by the directions passed by this Court in so far as it directs the quarrying operation by the existing lessees, the Government of Tamil Nadu filed Special Leave Petition before the Supreme court of India. The Honourable Supreme Court of India, by its judgement dated 24.3.2006, in Civil Appeal Nos. 5572 to 5644 of 2005 has been pleased to dispose of

the Civil Appeals and permitted the petitioners therein, whose leases were subsisting on 2.10.2003 and whose activities were stopped with effect from that day, will be entitled to carry on the quarrying activities for a period of 6 months or for the actual unexpired period of lease as on 2.10.2003 whichever is less. Though the petitioner was not allowed to quarry sand after 1.10.2003, from the above said land and despite the fact that he is entitled to get refund of the proportionate lease amount for the unexpired period of lease as per the said Rule 38 A, the respondent had delayed the refund of the said amount under the guise of pendency of the penalty proceedings against him.

c. The Revenue Divisional Officer, by his proceedings vide Rc.No.A2/7211/02 dated 24.1.2005, had imposed a penalty of Rs.8,89,540/- for the unauthorized quarry operation to the quantity of 2252 units of sand. Aggrieved by the said order, an appeal had been preferred before the 3rd respondent. The 3rd respondent had confirmed the said order by his proceedings dated 7.10.2005 and a second appeal had been preferred before the 2nd respondent herein. After considering the entire matter, the 2nd respondent by his order dated 25.1.2007 had allowed the appeal and had set aside the order of the District Collector and remitted back the matter to the District Collector for fresh disposal. On receipt of the order of the 2nd Respondent, a representation had been furnished to the 3rd Respondent respondent for refund. Pursuant to which the third respondent had called upon the petitioner for hearing on 12.3.2007. During the course of hearing on 12.3.2007, a petition had been submitted stating that there is absolutely no evidence for illicit removal of 2252 units of sand and that even though the petitioner did not commit any wrong, the fine amount of Rs.8,89,540/- had been agreed to be remitted in order to put an end to the prolonged litigation and to prevent from the sustained loss of interest on the deposit amount, refundable lease amount for non-leased period. The petitioner had also requested the 3rd respondent to refund all the amount inclusive of the proportionate lease amount for the unexpired period of lease after deducting the fine amount of Rs.8,89,540/-.

d. The 3rd Respondent by his proceedings in RC.No.M2/78045/01 dated 28.3.2007 had held that there is no merit to set aside the penalty amount of Rs.8,89,540/- levied by the Revenue Divisional Officer, Tirunelveli and had further stated that the petition preferred by the petitioner on 12.3.2007 requesting to set aside the order of the Revenue Divisional Officer, Tirunelveli was dismissed. The said order of the third respondent is not in conformity with the remand order passed by the 2nd respondent. The order of the 3rd respondent confirming the order of the Revenue Divisional Officer, Tirunelveli, dated 24.1.2005, levying the penalty against the petitioner is illegal and unsustainable. The third

respondent had failed to see that there is absolutely no incriminating materials connecting the petitioner with illicit mining and that there is no evidence available on record to impose the penalty for the alleged illicit quarrying to the quantity of 2252 units of sand and that the order is purely on assumption. The third respondent had failed to consider the petition in a proper manner. Thereafter, the Petitioner submitted a petition on 12.3.2007 requesting the third respondent to deduct the said amount of Rs.8,49,540/- and refund the rest of the amount which is due to the petitioner under the Rules. However, the third respondent by his proceedings in Proc.No.M2/78045/2001 dated 10.8.2008 had rejected the request for the refund of the proportionate lease amount for the unexpired period of lease stating that the quarry lease granted in favour of the Petitioner was cancelled vide the proceedings M3/94816/2003 dated 20.7.2004 for violation of governing Act, and Rules, breach of lease deed conditions and for indulging in illicit quarrying of sand and therefore, he is not entitled for the refund of the lease amount for the non-operative period as decided by this court and the Supreme Court. The third respondent had not passed any order dated 20.7.2004 cancelling the lease as referred to in the order of the third respondent dated 10.8.2008. Thereafter, the petitioner had sought for the copies of all the proceedings from the 3rd respondent under the Right to Information Act, 2005. Pursuant to which the Assistant Director (Geology and Mining), Tirunelveli by his letter dated 10.9.2008, had furnished the copies of the documents. A perusal of the documents furnished to the petitioner shows that the order of the cancellation passed against the petitioner had not been challenged before the Supreme Court and therefore, no relief could be provided to the former lessee. Further, there was no order dated 20.7.2004 where under the lease for the above said land came to be cancelled as stated by the third respondent. The only basis on which the refund is rejected is the order of cancellation of lease by order dated 20.7.2004. However, no such order was passed. Therefore, the order passed by the third respondent is purely based on erroneous assumption and the order of rejection dated 10.8.2008 was passed only based on the instructions given by the 1st and 2nd respondents. Hence, the order of the third respondent rejecting the request of the petitioner for refund of the proportionate lease amount for the unexpired period of lease as per rule 38 A of the Tamil Nadu Minor Mineral Concession Rules, 1959, in view of the cancellation of the lease by order dated 20.7.2004, based on the instructions of the 1st respondent in his letter dated 4.7.2008, is illegal, arbitrary and unsustainable. Since no useful purpose would be served by filing an appeal before the 1st and the 2nd respondents, this Writ Petition has been filed for the relief as stated above.

3. The Respondents have filed a counter affidavit, containing as follows:-
<https://hcservices.ecourts.gov.in/hcservices/>

a. On 1.7.2002, the Assistant Director of Geology and Mining, Tirunelveli, accompanied by the Special Deputy Tahsildar (Mines) and Special Revenue Inspector (Mines) conducted inspection of the sand quarry leased out in S.F.No.1782 of Seevalaperi Village, Palaymkottai Taluk, to the petitioner. The Assistant Director of Geology and Mining, Tirunelveli, in his inspection report dated 2.7.2002, has stated that the lessee has exceeded the boundary limit and quarried sand in the non-leased out area on the east, north and south of the leasehold area and that the depth of quarrying exceeds more than 1 meter in the northern boundary and it is levelled by using dozer and that the boundary stones were not erected and maintained properly and that the roads were formed without the consent of the Public Works Department within the river course and that the river bunds are damaged at many places. On field verification, the Tahsildar, Palaymkottai, has also reported that without the knowledge of the lessee, namely the petitioner, it may not be possible to remove sand from the non leased out area abutting to the leasehold area and that in some places, the depth of quarrying exceeded 1 meter and it has to be verified with the officials of Public Works Department. Therefore, the Revenue Divisional Officer, Tirunelveli, has issued a show cause notice to the petitioner calling for his explanation as to why the penalty of RS.78,09,000/- should not be levied for illicit quarrying of 5,975 units of river sand. On receipt of the above show cause notice, the petitioner has submitted his explanation.

b. The Revenue Divisional Officer, by his proceedings vide Rc.No.A2/7211/2002, dated 24.1.2005, imposed the penalty of Rs.8,89,540/- for the unauthorized quarry operation to the quantity of 2252 units of sand. Aggrieved by the said order, the petitioner had preferred an appeal before the 3rd respondent herein. The 3rd respondent herein had confirmed the said order by his proceedings dated 7.10.2005. The petitioner has preferred the second appeal before the 2nd respondent and the 2nd respondent by his order dated 25.1.2007 allowed the appeal and had set aside the order of the District Collector and remitted back the matter to the District Collector for fresh disposal. The petitioner had agreed to remit the fine amount of Rs.8,89,540/- in his representation dated 12.03.2007. The 3rd respondent by his proceedings in Rc.No.M2/78045/2001, dated 28.3.2007 had held that there is no merit to set aside the penalty amount of Rs.8,89,540/- levied by the Revenue Divisional Officer, Tirunelveli, and had further held that the petition dated 12.3.2007, preferred by the petitioner is dismissed. The petitioner had not challenged the said order and the petitioner had not paid the penalty amount of Rs.8,89,540/-. Thereafter, the 3rd respondent has passed an order in Proceedings No.M2/78045/2001, dated 29.9.2008 incorporating an errata to the Proceeding No.M2/78045/2006 dated 10.8.2008. Since, proceedings is pending against the petitioner, the petitioner is not entitled to any relief, as per government instructions issued in

Government letter No.3688/MMC1/2004-4, dated 31.3.2004. Hence, the request for refund of proportionate lease amount for the non-operative period is rejected. The petitioner had not challenged the said order dated 29.9.2008. It has been further stated that an appeal is provided to the government against the order passed by the 2nd respondent under Rule 36-(c)(3) of the said Rule. The Writ Petition filed by the petitioner without exhausting the alternative remedies is not maintainable. Hence, the writ petition is devoid of merits and therefore, it is liable to be dismissed

4. The learned counsel for the Petitioner contended that no copy of the alleged order dated 20.7.2004 of the 3rd Respondent was served on the Petitioner, while he was in receipt of copies of other proceedings and that impugned order based on the order dated 20.7.2004, cancelling the lease, is erroneous and as per Rule 38A, the Petitioner is entitled to get refund of the proportionate lease amount for the period from 2.10.2003 to 11.10.2004 (un-expired lease period) with interest.

5. The learned Special Government Pleader for the Respondents contended that since proceedings is pending against the petitioner, the petitioner is not entitled to any relief, as per government instructions issued in Government letter No.3688/MMC1/2004-4, dated 31.3.2004 and hence, the request for refund of proportionate lease amount for the non-operative period was rightly rejected and that an appeal remedy is provided to the government against the order passed by the 3rd Respondent Rule 36-(c)(3) of the said Rule.

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

7. The Petitioner was granted quarry lease by proceedings dated 21.9.2001 of the 3rd respondent and the Petitioner paid one time lease amount of Rs.2,83,00,000/-. The lease deed came to be executed on 12.10.2001 for a period of 3 years commencing from 12.10.2001 ending with 11.10.2004.

8. In G.O.Ms.No.95, Industries dated 1.10.2003, the Government amended the Tamil Nadu Minor Mineral Concession Rules, 1959, by inserting Rule 38A, which amendment was challenged by several lessees before this Court and by the judgement dated 11.5.2014, this court had upheld Rule 38A and as against the same, the Government filed Special Leave Petition before the Supreme court of India. The Honourable Supreme Court of India, by its judgement dated 24.3.2006, in Civil Appeal Nos.5572 to 5644 of 2005 has been pleased to dispose of the Civil Appeals and permitted the petitioners therein, whose leases were subsisting on 2.10.2003 and whose activities were stopped with effect from that day, to carry on activities for a period of 6 months or for the

actual unexpired period of lease as on 2.10.2003 whichever is less. Though the petitioner was not allowed to quarry sand after 1.10.2003, from the above said lands and despite the fact that he is entitled to get refund of the proportionate lease amount for the unexpired period of lease as per the said Rule 38 A, the respondent had delayed the refund of the said amount under the guise of pendency of the penalty proceedings against him.

9. The Revenue Divisional Officer, dated 24.1.2005, had imposed a penalty of Rs.8,89,540/- for the unauthorized quarry operation to the quantity of 2252 units of sand and in the appeal, the 3rd Respondent confirmed the said penalty, by proceedings dated 7.10.2005. In the second appeal, the 2nd Respondent, by order dated, 25.1.2007 had allowed the appeal and set aside the order of the District Collector and remitted back the matter to the District Collector for fresh disposal. On receipt of the order of the 2nd Respondent, a representation had been furnished to the 3rd Respondent for refund. Pursuant to which the third respondent had called upon the petitioner for hearing on 12.3.2007. The Petitioner agreed to pay the penalty of Rs.8,89,540/- and request for refund of the proportionate lease amount for the unexpired period of lease, after deducting the fine amount of Rs.8,89,540/-. However, the third respondent by his proceedings in Proc.No.M2/78045/2001 dated 10.8.2008 had rejected the request for the refund of the proportionate lease amount for the unexpired period of lease stating that the quarry lease granted in favour of the Petitioner was cancelled vide the proceedings M3/94816/2003 dated 20.7.2004.

10. It is seen from the records that the order of the 3rd Respondent rejecting the request of the Petitioner for refund, in view of the cancellation of the lease by order dated 20.7.2004, based on the instructions of the 1st Respondent in his letter dated 4.7.2008 is illegal, inasmuch as no such order of the 3rd Respondent order dated 20.7.2004, cancelling the lease granted in favour of the Petitioner, referred to in order dated 10.8.2008, was served on the Petitioner nor available on record. The request for refund of the proportionate lease amount after deducting the fine amount of Rs.8,49,540/- is in accordance with Rule 38A.

11. Section 38A of the Rules reads as under:-
"38A. Quarrying of sand by the State Government - Notwithstanding anything contained in these Rules, or any order made or action taken here under or any judgement or decree or order of any Court, all existing leases for quarrying sand in Government lands and permissions/leases granted in ryotwari lands shall cease to be effective on and from the date of coming into force of this Rule and the right to exploit sand in the State shall vest with the State Government to the exclusion of others.

The proportionate lease amount for the unexpired period of the lease and the unadjusted seigniorage fee, if any, will be refunded. "

12. A perusal of GO.2(D)No.25 Industries (MMC1) Department, dated 18.8.2009, the Government Pleader was consulted and opinion was given on 5.1.209, which reads as under:-

"On the basis of the observations of the Honourable Supreme Court and the provisions of the amended rule 38A, this Court has directed the Respondents to consider the representation of the Petitioner and pass appropriate orders on merits and in accordance with law within a period of 8 weeks from the date of receipt of a copy of this order. After perusing the entire records and the provisions of the Act, it is quite evident that under Rule 38A, a provision is made for refund of the proportionate lease amount for the unexpired period and unadjusted seigniorage fee shall remain undisturbed and accordingly, the Petitioner will be entitled to refund proportionate lease amount for the unexpired period of lease and unadjusted seigniorage fees need not be disturbed and accordingly, you can refund the proportionate lease amount to the Petitioner. "

13. In 2006-4-SCC-517 (State of Tamil Nadu and another Vs. P.Krishnamurthy and others) it has been held as under:-

35. Section 4A(3) requires the grant of an opportunity of hearing only for premature termination of mining leases (and prospective licences with which we are not concerned). If anyone was carrying on quarrying of sand as on 2.10.2003 in whatsoever circumstances other than in pursuance of mining leases, there is no question of hearing them before stopping quarrying activities in pursuance of Rule 38A, as hearing is required only in regard to those holding subsisting leases. Therefore, all quarrying permits for sand stood terminated with effect from 2.10.2003. All quarrying by any person, other than those holding mining leases also ceased with effect from 2.10.2003.

36. In regard to mining leases subsisting as on 2.10.2003, we have read down Rule 38A as terminating such leases in terms of the contract (lease deeds) by six months, without assigning cause and without any liability to pay compensation. Such of those writ petitioners (Respondents herein) whose leases were subsisting on 2.10.2003 (and whose activities were stopped

with effect from that day) will be entitled to carry on the quarrying activities for a period of six months or for the actual unexpired period of the lease (as on 2.10.2003), whichever is less. This benefit will be available to even those who have orders of court for grant of mining leases, but where mining leases were not executed for one reason or the other. It is, however, made clear that the State Government is at liberty to prematurely terminate the leases for any of the causes mentioned in section 4A(2), by giving a notice and hearing under Section 4A(3), if they want to terminate any lease within the said period of six months.

37. We, accordingly, allow these appeals in part. In place of the conditions stipulated by the Division Bench while upholding the validity of Rule 38A, we hold and direct as follows :

(i) That part of Rule 38A which vests the exclusive right to quarry sand, in the State Government, is upheld.

(ii) That part of Rule 38A which purports to terminate quarrying leases/permissions forthwith (from 2.10.2003) is read down in terms of Para 26 above.

(iii) The provision in Rule 38A for refund of proportionate lease amount for the unexpired period of lease and unadjusted seigniorage fee, shall remain undisturbed.

(iv) It is made clear that except to the limited relief as a consequence of reading down as per para 26 above, the respondents will not be entitled to any other reliefs which have been granted by the High Court.

(v) Parties to bear their respective costs."

13. It is seen that the fine amount of Rs.8,89,540/- was agreed to be paid and no copy of the order dated 20.7.2004, cancelling the lease granted to the Petitioner, based on which the request for refund of the proportionate lease amount for the unexpired period of lease, after deducting the fine amount of Rs.8,89,540/-, was cancelled, was served on the Petitioner nor available on record.

14. For the reasons stated above and in view of the provisions of the Act and Rules and the decisions, stated supra, the impugned orders are set aside. The matter is remanded back to the Respondents for fresh consideration. The

Respondents are directed to consider the case of the Petitioner for refund and pass orders, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

15. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Srcm

To:

- 1.The Government of Tamil Nadu
The Secretary to Government,
Industries Dept. Fort St. George,
Chennai-9.
 - 2.The Director of Geology and Mining,
Guindy, Chennai-32.
 - 3.The District Collector, Tirunelveli District,
Tirunelveli.
- + 1 cc to Mr. V. Sanjeevi, Advocate Sr.56369
+ 1 cc to Government Pleader Sr.57127

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CTK(CO)
Eu 27.10.15

सत्यमेव जयते

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