

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON:31.07.2014

DATED:12.01.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.41739 of 2002

and

W.P.M.P.No.61713 of 2002

Order Reserved on
31.07.2014

Judgment Pronounced on
12.01.2015

S.Rajendran

...

Petitioner

Vs.

The District Collector,
Kanyakumari District,
Nagercoil.

...

Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus to direct the respondent to compute the lease period of five years in respect of quarrying in Survey No.10/1 Aloor Village, Kalkulam Taluk, Kanyakumari District measuring an extent 0.64.0 hectares.

For Petitioner : Mr.M.Jawahar

For Respondents: Mr.M.S.Ramesh

Additional Government Pleader

O R D E R

The petitioner submits that the respondent granted him as licence to quarry stone in Aloor Village in Kalkulam Taluk in P.P.No.1011 in area measuring 0.64.0 hectare which has been classified as Government Poromboke by order dated 08.10.1998 in his proceedings No.307/pa.ma.au/97. The period of lease granted to him was from 03.11.1997 to 31.03.2002. From the said date he has been carrying on quarrying activities in the aforesaid area, lawfully in accordance with the rules and regulation and the terms of agreement. In these circumstances, he received a

letter 16.08.1999 in No.408/pa.ma.su/99 from the respondent stating that there were college buildings which were situated more than 100 meters away on the south western side of the quarry and that students go to the contiguous areas for studying and for leisure in non-college hours and that some pieces of stones are falling near the place and that the quarrying operations are causing apprehension and danger and that the Director of Mines and Geology, Nagercoil had inspected the site and given a report and that in such circumstances his lease was bound to be cancelled. His explanation was not sought in the above notice and no opportunity of bearing was granted.

2. The petitioner gave a reply dated 23.08.1999 to the respondent in person on the same date itself after consulting his lawyer and he had stated that the educational institution was situated more than 10 meters away and that it was not prohibited by the rules and the quarrying rights were granted after examination of the area in the existing circumstances. He had also stated that he was operating in a manner which did not cause any danger to anyone and that the complaint was motivated and that he was prepared to undertake all safety measures suggested by the competent authorities. He had also asked for a personal hearing and a legal inspection in his presence and also a copy of the report against him. After he gave the above reply, he did not hear anything from the respondent. Suddenly he received the order dated 22.02.2000 in Mu.Mu.408/pa.ma.su/99 cancelling the lease granted to him. The respondent had relied on Rule No.36(5) (C) of the Tamil Nadu Minerals Concession Rules, 1959 and Rule 6(ii) of the lease conditions. His lease has been cancelled w.e.f 01.03.2001. Hence, he has filed a writ petition before this Court in W.P.No.5516 of 2000 and obtained an order of interim stay in W.M.P.No.8356 of 2000 on 20.11.2000.

3. On 06.12.2000 the respondent passed an order in his proceedings Na.Ka.No.200/Pu.Ma.Su/2000 allowing him to quarry in the same land from 31.03.2002. As per the Gazette Notification, he is entitled to do quarrying upto 17.12.2002. Hence, a period of nine months and 17 days is in shortage for five years. Because of the order passed by the respondent in his proceedings Mu.Mu.408/Pa.Ma.Su/99, dated 22.02.2001 and he was stopped from quarrying from 01.03.2000. Then he has filed a writ petition in W.P.No.5516/2000 and obtained an order of stay and he was allowed to quarry from 06.12.2000. Hence, the petitioner is entitled to quarry for another nine months eight days. According to the Gazette Notification he can quarry "Rubble and Jelly" from the leased out quarry for a period of five years. But because of the shortage period and of the respondent's order he was not able to do quarrying for a total period of 18 months and 23 days. He respectfully submits that he has invested huge amount and made an agreement with the Labourers and the contractors for a period of five years. If

the petitioner is not allowed to operate for the balance period of 18 months and 23 days he will be put to great hardship and irreparable loss. This Court has granted eight months time to the petitioner for another quarry as per the order in W.P.No.7364/2002. He has submitted a written representation to the respondent requesting to allow him a further period of 18 months and 23 days. But no order has been passed. Now, the respondents are taking steps to vacate him from the lease area.

4. The highly competent counsel Mr.M.Jawahar, appearing for the petitioner submits that the Respondent/District Collector had granted licence to quarry stone in Aloor Village in Kalkulam Taluk to an extent of 0.64.0 hectares. The said land has been classified as Government Poramboke land. The lease period had been effected from 03.11.1997 to 31.03.2002. The petitioner had operated the quarry as per the terms and conditions agreed by both parties. Under the circumstances, the petitioner has received communication dated 16.08.1999 which directed the petitioner to stop the quarry operations since the College building is situated within 100 meters from the quarry site. Actually, there is no endangerment to the college students. Further, the quarry operation was carried out during the non-college hours. Further, the respondent had issued lease cancellation order dated 22.02.2000. This final order had been passed without conducting prior enquiry. Further, the petitioner has not completed five years lease period as per the agreement. The petitioner had filed writ petition No.5516 of 2000 and obtained interim stay. Thereafter, the petitioner was permitted to operate the quarry. Hence, the highly competent counsel entreats the Court to permit the petitioner to operate the quarry for 18 months and 23 days as per the initial agreement made between both parties.

5. The highly competent Additional Government Pleader submits that the petitioner was granted lease from 03.11.1997 to 31.03.2002 for operating the quarry in the said subject land. Thereafter, a complaint had been received stating that the college building namely Ayyappan Womens College is situated within 100 meters from the quarry site. Actually, there is no endangerment to the college students. Further, the quarry operation was carried out during the non-college hours. Further, the respondent had issued lease cancellation order dated 22.02.2000. This final order had been passed without conducting prior enquiry. Further, the petitioner has not completed five years lease period as per the agreement. The petitioner had filed writ petition No.5516 of 2000 and obtained interim stay. Thereafter, the petitioner was permitted to operate the quarry. Hence, the highly competent counsel entreats the Court to permit the petitioner to operate the quarry for 18 months and 23 days as per the initial agreement made between both parties.

6. The highly competent Additional Government Pleader submits that the petitioner was granted lease from 03.11.1997 to 31.03.2002 for operating the quarry in the said subject land. Thereafter, a complaint had been received stating that the college building viz., Ayyappan Womens College, situated within 100 meters from the quarry site, hence the students lives are endangered and also there is noise pollution. Therefore, the cancellation order was issued by the District Collector for public interest. Subsequently, the petitioner had filed in W.P.No.5516 of 2000 and obtained interim order dated 20.11.2000. Pursuant to the said stay order. The District Collector had issued permission to continue quarrying by order dated 31.03.2002. If any shortage period is there as per the initial agreement, the petitioner's relief is in the same writ petition in W.P.No.5516 of 2000. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition.

7. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the petitioner had not produced any authenticated documents to show the period of shortage as per the initial lease period. Further, the petitioner's remedy lies in the earlier writ petition in W.P.No.5516 of 2000. Therefore, the above writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

The District Collector,
Kanyakumari District,
Nagercoil.

+ 1 cc to Govt. Pleader, High Court, Madras SR 20642

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