

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2016

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
20.06.2016	22 .06.2016

Coram

The Hon'ble Mr. Justice **T.S. SIVAGNANAM****W.P.No.26240 of 2013**

K.Desingu

... Petitioner

Vs

1.The District Collector,
(Geology & Mining Department),
Villupuram District,
Villupuram.

2.The Deputy Director,
Geology & Mining,
Villupuram.

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus to direct the first respondent to permit the petitioner to carry on quarrying operation for the stoppage period of 4 years and 2 months as per the Lease Deed dated 29.08.2008, in respect of the petitioner's Stone Quarry in S.No.54/3, measuring to an extent of 2.36.5 hectares in Thiruvakkarai Village, Vanur Taluk, Villupuram District.

For petitioners .. Mr.K.R.Krishnan

For Respondents .. Mr.S.Diwakar Spl., G.P.,

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Mandamus, to direct the first respondent to permit the petitioner to carry on quarrying operation for the period during which the petitioner was unable to carry on operation which according to the petitioner is for a period of four years and two months from and out of the period of lease granted in the lease deed dated 29.08.2006.

2. The undisputed facts are that the petitioner was declared as successful bidder in a tender cum public auction in respect of stone quarry situated in survey No.54/3 measuring to an extent of 2.36.5 hectares in Thiruvakkarai Village, Vanur Taluk, Villupuram District and the petitioner has paid the lease amount along with other charges as fixed by the first respondent in his proceedings, dated 20.08.2008. The first respondent executed a lease deed in favour of the petitioner permitting the petitioner to quarry stone for a period of five years ending with 28.09.2013. The petitioner has come forward with this Writ Petition raising a plea that he was prevented from quarrying for a period of four years and two months, out of five years period on

account of an objection raised by the Executive Officer of the Arulmighu Chandramouliswarar temple, Thiruvakkarai, which is a temple under the control of the Tamil Nadu Hindu Religious and Charitable and Endowments Board and under the care and maintenance of Archaeological Survey of India.

3. The learned counsel for the petitioner referred to the decision in *M.Venkataraman vs. The District Collector, Krishnagiri in W.P.No.2114 of 2016*, where permission to quarry was granted after taking into consideration the decision of the Hon'ble Division Bench in the case of *The District Collector, Namakkal vs. K.Anbarasi & Anr., reported in 2011 (1) CWC 673*, and the decision in W.A.No.542 of 2012, dated 26.04.2012.

4. The first respondent has filed a counter affidavit contending that neither the first respondent nor the second respondent has given any oral or written instruction, stopping the petitioner from carrying on quarrying operation. While admitting that the said temple had sent an objection letter to the petitioner on 24.09.2009 it is stated that the first respondent did not pass any orders prohibiting quarrying operations. It is stated that the petitioner for the first time on

10.12.2010, i.e., after a lapse of 22 months after the lease was executed in his favour, made a representation to the District Collector. It is further admitted that the demarcation was done pursuant to the directions issued by the District Collector, but that does not mean that the petitioner was prevented by any authority or public in commencing the quarrying operation.

5. Therefore, it is the case of the respondent that the petitioner on his own volition did not exercise his right to quarry as granted in the lease deed and therefore, the question of granting extension of time does not arise. With regard to the contention that no transport permit was granted to the petitioner, it is submitted that unless the petitioner applies for a transport permit, the question of granting does not arise and this can hardly be a reason to seek for extension.

6. In the light of the above stand taken by the respondent, this Court directed the learned Additional Government Pleader to produce the files and also permitted the learned counsel for the petitioner to peruse the same.

7. From the perusal of the files, it is seen that the respondents were made known about the objections raised by the temple for the first time, when the petitioner submitted a representation dated 10.12.2010, received by the office of the first respondent on 22.12.2010 and by the office of the second respondent on 13.12.2010. The files do not show that the temple had forwarded the copy of the objection dated 24.07.2009 to the second respondent though it is stated that copy has been marked to the second respondent. Thus, the respondents were correct in contending that for the first time, the petitioner made the representation only on 10.12.2010. Further, the files disclose that there is no written order passed by the first respondent preventing the petitioner from carrying on quarrying operations or stopping the quarry. However, the first respondent took note of the representation dated 10.12.2010, and issued a proceedings on 31.01.2011, wherein the first respondent directed, survey to be conducted and it appears that though such a direction was issued, no further action was initiated by the respondents and therefore, the petitioner approached this Court and filed W.P.No.22689 of 2013, in which the temple was impleaded as the third respondent, seeking for direction to the Tahsildar, Vanur Taluk, who was impleaded as the second respondent, to measure the leasehold area and submit a report

as per the orders passed by the District Collector, dated 08.05.2013, which in fact is an order reiterating the earlier order dated 31.01.2011. The said Writ Petition was disposed of by order dated 19.08.2013, directing the Tahsildar to comply with the direction of the District Collector, within three weeks. It is only thereafter the Tahsildar submitted a report dated 03.09.2013, in which there is a reference to the objection given by the temple and other related records. Ultimately, after conducting survey and submission of the report of the surveyor, the temple had given a no objection only on 02.09.2013.

8. In the light of the above facts, which are borne out by records, it is clear that from December 2010, till September 2013, the petitioner had been prevented from enjoying his leasehold rights to quarry rough stone for the reasons beyond his control and during the said period there was total inaction on the part of the Tahsildar, Vanur Taluk, who failed to obey two directions issued by the District Collector vide dated 31.01.2011, & 08.05.2013 and it is only after this Court in the earlier Writ Petition issued directions, the Tahsildar initiated action and survey was conducted, the area was demarcated and no objection certificate was also granted. Therefore, for the said period, the petitioner is entitled to be granted extension so that he would be able to enjoy the fruits of the lease granted.

9. As pointed out earlier, this benefit would accrue to the petitioner only from December 2010 as until then he did not bring to the notice of the respondents about the objections raised by the temple.

10. In the light of the above discussion, the Writ Petition is partly allowed and the respondents are directed to grant extension of quarry lease to the petitioner for a period of two years and nine months from the date on which the first respondent issued a proceedings to the said effect. No costs. Consequently, connected Miscellaneous Petition is closed.

22.06.2016

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Index :Yes/No
Internet :Yes/No

To

1.The District Collector,
(Geology & Mining Department),
Villupuram District,
Villupuram.

2.The Deputy Director,
Geology & Mining,
Villupuram.

T.S.SIVAGNANAM, J.
pbn

Pre-Delivery O r d e r in
W.P.No.26240 of 2013

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