

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.03.2016

CORAM:

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.2114 of 2016
and W.M.P.No.1838 of 2016

M.Venkataraman

... Petitioner

Vs.

The District Collector,
Krishnagiri District,
Krishnagiri.

... Respondent

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the respondent relating to the order passed in ROC.No.165/2011/Mines-1 dated 19.12.2015 and quash the same and direct the respondent to permit the petitioner to quarry and transport the stones from the lease hold land bearing S.F.No.399/1 (Part-A) admeasuring 5.00.0 Hectares in Kallukurukki Village, Krishnagiri Taluk and District for a period of 2 years and 9 months from the date of issue of transport permit.

For Petitioner : Mr.V.Sanjeevi

For Respondent : Mr.T.N.Rajagopalan,
Special Government Pleader

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the records of the respondent relating to the order dated 19.12.2015 and to quash the same and direct the respondent to permit the petitioner to quarry and transport the stones from the lease hold land bearing S.F.No.399/1 (Part-A) admeasuring 5.00.0 Hectares in Kallukurukki Village, Krishnagiri Taluk and District for a period of 2 years and 9 months from the date of issue of transport permit.

2.It is the case of the petitioner that the respondent called for tender applications on 08.07.2009 and for public auction for the grant of lease for quarrying stones from the poramboke land bearing S.F.No.399/1 admeasuring 10.00.0 Hectares by dividing as two parts as Part-A and Part-B measuring 5.00.0 Hectares each, for a period of five years under tender-cum-auction under Rule 8 of the Tamil Nadu Minor

Mineral Concession Rules, 1959. The total extent of the land in respect of S.F.No.399/1 is 13.62.0 Hectares as per the Gazette Notification. In pursuance of the Notification, the petitioner submitted his offer for a sum of Rs.12,50,00,000/- as one time lease amount for the stone quarry in respect of the land bearing S.F.No.399/1 (Part-A) measuring 5.00.0 Hectares and the tender of the petitioner was accepted and he was declared as the highest and successful tenderer entitled to get the lease for the said land. The petitioner remitted the entire lease amount of Rs.12,50,00,000/- within the stipulated time.

3.The respondent by his proceedings dated 27.10.2009 granted quarry lease to the petitioner to quarry the stones from the said land. In respect of the land bearing S.F.No.399/1 (Part-B) measuring 5.00.0 Hectares one Ramakrishnan became the successful bidder and he was granted lease to quarry stones for a period of five years by proceedings of the respondent dated 27.10.2009. The said land was demarcated and handed over to the lessee M.Ramakrishnan and the Lease Deed was also executed in his favour on 08.02.2010. Even before the execution of the Lease Deed, the petitioner requested the Authorities to survey and demarcate the land (i.e.) the land for which lease was granted to the petitioner. In order to execute the Lease Deed within the time prescribed by the respondent and to avoid the cancellation of the lease and on assurance by the Deputy Director of Geology and Mining, Krishnagiri that the Lease hold area will be demarcated after the execution of the Lease Deed, the Lease Agreement came to be executed by the petitioner along with the respondent on 11.06.2010.

4.The petitioner believed that the area of 5.00.0 Hectares (i.e.) the lease hold area was not available on the site in full. In these circumstances, the survey and demarcation of the land was necessitated and more so when the other lessee had operated the quarry in the other part of the survey number, several representations, lastly on 15.10.2012 for survey, demarcation and handing over of land, were made to the Authorities. However, the Authorities did not survey and demarcate the land. Therefore, the petitioner filed a Writ Petition in W.P.No.30780 of 2012 before this Court seeking for issuance of writ of mandamus to direct the respondents to survey and demarcate the land with the assistance of the Land Surveyor and hand over the lease hold area to him. This Court, after notice to the respondents, by order dated 27.11.2012, directed the respondent to consider the representation of the petitioner for survey and demarcation within a period of four weeks. Thereafter, on 28.01.2013 the lease hold area was demarcated by the Deputy Director of Geology and Mining, Krishnagiri with the assistance of the Land Surveyor. Thereafter, the petitioner commenced the quarry operation on 11.03.2013.

5.The petitioner started to receive the transport permit only on and from 11.03.2013 and the Deputy Director of Geology and Mining, Krishnagiri started issuing transport permits only on and from 11.03.2013. Though the Lease Deed was executed on 11.06.2010, admittedly, there was no quarry operation from 11.06.2010 till 11.03.2013 for the reason that the land was not surveyed and demarcated. The lease period was from 11.06.2010 to 10.06.2015. Since the petitioner could not carry on the quarry operation from 11.06.2010 to 11.03.2013 (i.e.) for 2 years and 9 months on account of the land not surveyed and demarcated, the petitioner sent a representation on 09.02.2015 to the respondent. Since the respondent failed to consider the said representation, the petitioner filed a Writ Petition in W.P.No.11236 of 2015 for issuance of a direction to the respondent to permit him to quarry and transport stones for the unutilized period of 2 years and 9 months. Pending the said Writ Petition, the respondent passed an order, dated 04.05.2015, rejecting the request of the petitioner for permitting him to quarry and transport stones. Thereafter, the prayer in the said Writ Petition was amended for certiorarified mandamus to quash the order dated 04.05.2015 and for consequential direction by way of mandamus. This Court, by order dated 07.10.2015, set aside the impugned order dated 04.05.2015 and remitted the matter to the respondent for fresh consideration. The respondent was also directed to dispose of the representation in the light of the observations contained in the order. After the orders of this Court, the respondent, without following the directions of this Court made in W.P.No.11236 of 2015 and the scope of the remittal order, passed the impugned order dated 19.12.2015 rejecting the request of the petitioner.

6.The learned counsel for the petitioner, in support of his contentions, relied upon the following judgments:

(i)2011 (1) CWC 673 [The District Collector, Namakkal District, Namakkal Vs. K.Anbarasi and another] wherein a Division Bench of this Court held as follows:

"24.The learned Single Judge, who heard the Writ Petition opined that during the said period, the Respondents were prevented from quarrying and they cannot be blamed for the same and therefore, it is reasonable and justifiable to allow them to quarry for the unutilized period. This direction is called in question in the present Writ Appeals.

25.In the preceding paragraph of this judgment, we have extensively indicated the law laid down by the Hon'ble Supreme Court and this Court in various decisions in the matter of extension of lease. One common feature in all those cases are that the Hon'ble Supreme Court as well as this Court analyzed the facts and circumstances of each case and granted

relief or declined the grant relief. No doubt the settled legal position is that the period of lease cannot be extended as there is no rule providing for such extension. Yet, there has been some departure from the said Rule in the decisions referred to supra."

(2) An unreported judgment of a Division Bench of this Court made in W.A.No.542 of 2012 dated 26.04.2012, wherein the Division Bench held as follows:

"On account of the frequent stoppage quarrying operations, the petitioner lost out on the quarrying operations for nearly 18 months during the lease period of five years. The petitioner approached the authorities for extension of the lease by 18 months during which he was not permitted to carry out the quarrying operations. However, the same was rejected as there was no provision for such an extension under the relevant rules and he preferred an appeal, which was also dismissed. He also preferred a second appeal, but since Writ Petitions had come to be entertained by this Court for similar reliefs, the petitioner withdrew the second appeal. Citing the case of one K.Selvam of Karur who was granted permission pursuant to the order passed in W.P.No.27912 of 2008 on account of stoppage of quarrying operations for 16 months, against which no appeal has been filed by the State, the petitioner approached the learned Single Judge by filing the Writ Petition on the above grounds."

7. Mr. T.N. Rajagopalan, the learned Special Government Pleader appearing for the respondent submitted that in the Lease Deed executed on 11.06.2010 in Clause-6 (18), it is clearly mentioned that on any account neither the lease period can be extended nor renewed for a further period. In Clause-23, it has been stated that the lease period starts from 11.06.2010 and ends on 10.06.2015. Therefore, as per Rule 8(8) (ii) of the 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 learned Special Government Pleader submitted that the order passed by the respondent is proper. That apart, the learned Special Government Pleader also submitted that after giving due opportunity of personal hearing to the petitioner, the request of the petitioner was rejected by the respondent. The learned Special Government Pleader also submitted that the petitioner had not remitted seigniorage fee and applied for the transport permit during the period from 11.06.2010 to 27.01.2013 and if the petitioner had remitted the seigniorage fee and applied for the transport permit, then

only the officials can issue transport permit.

8. In the case on hand, though the petitioner was declared as the successful bidder in the auction held on 02.09.2009 and the quarry was granted on 27.10.2009 to him, the Lease Deed was executed on 11.06.2010. The lease period was from 11.06.2010 to 10.06.2015. Admittedly, the poramboke land bearing S.F.No.399/1 admeasuring 10.00.0 Hectares was divided into two parts as Part-A and Part-B admeasuring 5.00.0 Hectares each. Both the lands were brought for auction for the grant of lease for quarrying stones for a period of five years through tender-cum-auction. It is also not in dispute that Part-B was allotted to one M.Ramakrishnan and the said land was surveyed, demarcated and handed over to him and the Lease Deed was also executed in his favour on 08.02.2010. While so, the respondent should have surveyed the land granted to the petitioner and demarcated the land, in which the petitioner can conduct quarrying operations. In spite of the repeated representations given to the respondent, the respondent did not survey and demarcate the land, in spite of the fact that the petitioner was the successful bidder in the auction and the Lease Deed was executed in his favour. Even before the execution of the Lease Deed, the petitioner requested the Authorities to survey and demarcate the land in order to avoid any complications in identifying the land granted to him. The conduct of the petitioner would establish that absolutely there was no malafide intention on his part when he had already paid the full bid amount of Rs.12,50,00,000/- to the respondent. In fact, by requesting for surveying and demarcating his lands, he had only proved that he did not want to violate any conditions of the lease by encroaching into other man's land. Had the respondent surveyed and demarcated the land of the petitioner, he could have started quarrying of the stones after the execution of the Lease Deed. But even the representation given by him lastly on 15.10.2012 was considered only after the petitioner approached this Court in W.P.No.30780 of 2012. Thereafter, the respondent rejected the petitioner's request for quarrying the land for 2 years and 9 months, which is the unutilized period of quarrying operations by the petitioner. From 11.06.2010 to 11.03.2013, the petitioner was not carrying on the operations for the reason that the land was not surveyed and demarcated. It cannot be said that only because of the default committed by the petitioner, he could not carry on the quarrying operations from 11.06.2010 to 11.03.2013. The petitioner cannot be penalized for no fault of him. In the event of the petitioner having carried on the quarrying operation and by mistake, if he had encroached into the adjacent land, there is every possibility that the respondent had taken severe action against him for violation of the Agreement. In order to avoid any such happenings, the petitioner had bonafidely requested the respondent to survey and demarcate the land in spite of

having paid the entire bid amount in the year 2009 itself. Therefore, the judgments of the Division Bench of this Court relied upon by the learned counsel for the petitioner squarely applies to the facts and circumstances of the present case.

9. In these circumstances, I am of the view that the petitioner can be permitted to carry on the quarrying operation for the period of 2 years and 9 months, which is the unutilized period from 11.06.2010 to 11.03.2013, provided the petitioner satisfies all the requirements under the provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959. Since the respondent has not considered all these aspects, the impugned order dated 19.12.2015 is liable to be set aside. Accordingly, the same is set aside. The respondent is directed to permit the petitioner to quarry and transport stones from the lease hold area bearing S.F.No.399/1 (Part-A) admeasuring 5.00.0 Hectares in Kallukurukki Village, Krishnagiri Taluk and District for a period of 2 years and 9 months from the date of issue of transport permit. Further, the petitioner is directed to obtain the environmental certificate and other requirements of the Tamil Nadu Minor Mineral Concession Rules, 1959 before the issuance of the transport permit.

10. With these observations, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The District Collector,
Krishnagiri District,
Krishnagiri.

+1 cc to Mr.V.Sanjeevi, Advocate, sr.14560
+1 cc to Government Pleader, sr.15039

W.P.No.2114 of 2016
and W.M.P.No.1838 of 2016

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