

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.21301 of 2016

S.Nagamani
S/o.Sivaprakasam
No.154, Mettur Main Road
Near Railway Gate
Omalar Taluk
Salem District ... Petitioner

..Vs..

1.The District Collector
Salem District
Salem.
2.The Assistant Director
Geology and Mining
Salem District
Salem. ... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the first respondent to forthwith grant permission to the petitioner to quarry gravel/earth in S.F.N.354 and 342 of Morur Tank, Sankari Taluk, Salem District pursuant to the petitioner's application dated 11.12.2014.

For Petitioner : Ms.C.Sangamithirai

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

ORDER

Heard Ms.C.Sangamithirai, learned counsel appearing for the petitioner and Mr.S.Diwakar, learned Special Government Pleader appearing for the respondents and with the consent of the either side, the writ petition itself is taken up for final disposal.

2.In this writ petition, the petitioner seeks for issuance of a writ of mandamus directing the first respondent to

forthwith grant permission to the petitioner to quarry gravel/earth in S.F.N.354 and 342 of Morur Tank, Sankari Taluk, Salem District pursuant to the petitioner's application dated 11.12.2014.

3.The learned counsel appearing for the petitioner submitted that an identical issue was considered by this Court in W.P.Nos.28019 and 30204 of 2015 and etc., batch [J.Subramani v. The District Collector, Thiruvallur District], in which certain directions were issued. At this stage, it would be beneficial to refer to the operative portion of the order made thereunder:

"19. According to the amended Rules, the Special Committee shall scrutinise the applications and furnish its recommendations to the District Collector within thirty days from the date of placement of the applications before the said Committee. Based on the recommendations of the said Committee, the District Collector shall pass orders on the applications. On the date of passing of the judgment on 03.09.2015 in W.A.No.55 of 2015, Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959 was not amended. The provisions of Rule 12 was amended on 23.09.2015. In the absence of the amended Rules, the Division Bench had directed the District Collector to grant permission for quarrying the Savadu in the Public Works Department Tanks.

20. In the case on hand, admittedly, the petitioners were not granted permission to quarry Savadu in Public Works Department tanks. The District Collector should have passed orders in the applications, submitted by the petitioners, within a reasonable time. But the District Collector kept the application pending for a very long time. However, since the provisions of Rule 12 the Tamil Nadu Minor Mineral Concession Rules, 1959 were amended on 23.09.2015, now, the District Collector cannot grant permission on her own against the provisions of the Amended Rules 12 Tamil Nadu Minor Mineral Concession Rules, 1959. It is settled position that Mandamus cannot be issued against the statute. The ratio laid down in the judgment, relied by the learned Special Government Pleader, reported in (1981) 2 SCC 205(State of Tamil Nadu vs M/s Hind Stone and Others), squarely applies to the facts and circumstances of the present case.

21. In spite of all the authorities, recommending for grant of permission to the petitioners for

quarrying the Savadu in the Public Works Department Tanks, now, mandamus cannot be issued in view of the amended provisions of Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959.

22. When the Amended Rule 12 contemplates that the District Collector can grant permission only after the recommendations of the Special Committee, the District Collector cannot be directed to grant permission, ignoring the provisions of the Amended Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959.

23. The District Collector can pass orders only based on the recommendations of the Special Committee. As per the amended Rule 12, the District Collector shall place all the eligible applications before the Special Committee, for scrutinising the applications and for getting its recommendations.

24. It is open to the District Collector to place the petitioners' applications before the Special Committee, constituted by her, as contemplated under the Amended Rule 12 of the the Tamil Nadu Minor Mineral Concession Rules, 1959. and based on the recommendations of the Special Committee, the District Collector may pass orders on the applications. For the reasons stated above, all the writ petitions are liable to be dismissed and accordingly, the same are dismissed. No costs. Consequently, connected MPs are closed."

4. On the other hand, the learned Special Government Pleader appearing for the respondents submitted that in terms of the recent amendment to the Tamil Nadu Minor Mineral Concession Rules, 1959 vide G.O.(Ms.) No.233, Industries (MMC.2) Department, dated 23.09.2015, the petitioner is liable to comply with the conditions stipulated under Rule 12(2-A) of the Rules, which reads as follows:

"12(2-A) (a) If the available quantity as estimated by the Public Works Department/Rural Development and Panchayat Raj Department exceeds 30 cbm., subject to the conditions specified in sub-rule (2), quarrying for other than bonafide domestic or agricultural purposes earth, silt, savudu, etc., from the beds of tanks under the control of the Public Works Department or Rural Development & Panchayat Raj Department which are notified by the District Collector in the District Gazette under sub-rule (2), shall be made subject to the previous permission being obtained from the District Collector concerned on payment of the cost of minerals and seigniorage fee for the quantity of the above said mineral sought to be removed at the rates specified in Appendix-II

to these rules. For obtaining permission, an application shall be submitted to the District Collector in Form in Appendix-VI-C to be accompanied with a non-refundable application fee of Rs.1,500/- remitted in the District Treasury concerned and with the following documents, namely:-

(i) An affidavit showing the details of areas mineral-wise in each district of the State, which the applicant or any person jointly with him -

- (a) already holds under a quarrying lease;
- (b) already applied for but not yet granted;
- (c) being applied for simultaneously;

(ii) A valid mining no-dues clearance certificate obtained from the Collector of the District in Form in Appendix-VIII to these rules or an affidavit stating that the applicant is not holding any quarry lease in the State and that there are no mining dues to be paid to the Government; and

(iii) An affidavit stating that the applicant has -

- (a) filed up-to-date income tax returns;
- (b) paid the income tax assessed on him;
- (c) paid the income tax on the basis of the self assessment as provided in the Income Tax Act, 1961 (Central Act 58 of 1962).

(b) The District Collector shall place all eligible applications before a Special Committee constituted by the District Collector consisting of the following officers, namely :-

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| 1) District Collector | Chairman |
| 2) Revenue Divisional Officer concerned. | Member |
| 3) Project Director,
(District Rural Development Agency) | Member |
| 4) Executive Engineer (Public Works Department),
in charge of Tanks. | Member |
| 5) Joint Director of Agriculture of the District | Member |
| 6) Deputy Director or Assistant Director of
Geology and Mining of the District, | |

Convener

as the case may be.

(c) The Special Committee shall scrutinize the applications and furnish its recommendations to the District Collector within thirty days from the date of placement of applications before the said Committee.

(d) For selection of eligible applicants, the Special Committee shall take into consideration the nature of proposed usage of minerals, previous experience and performance of the applicant in the field of quarrying and mineral trade and to furnish specific recommendations on the quantity of mineral to be removed and period of permission to be granted. The Special Committee shall also decide as to whether the quantity of minerals removed is granted equally among all eligible applicants or proportionately depending upon the quantity applied for by the applicants:

(e) Based on the recommendation of the Special Committee, the District Collector shall pass orders on the applications.

(f) The period of permission to be granted under this sub-rule shall not exceed three months.

(g) Permission granted under this sub-rule shall not be renewed or extended for any reason including that the person permitted could not mine or remove the mineral for whatever reason. He will not be entitled for refund of any cost or money incurred in the process. If the permitted quantity is not removed within the stipulated period, the applicant will not be entitled for removal of unutilized quantity of mineral.

(h) In the event, it is found that, the permission-holder has removed in excess of the permitted quantity or if any other violation of the conditions of grant of permission is brought to notice, the permission shall stand cancelled and damages if any to the tank, approach road, etc., will be recovered from him depending upon the excess quantity mined and the extent of damage caused to the tanks. Any cost incurred for the restoration of the tank shall also be recovered from the permission-holder."

5. In terms of the above amended rule, an affidavit has to be filed by the petitioner apart from complying with other conditions. The learned counsel appearing for the petitioner submitted that the petitioner is ready and willing to comply with all the conditions as per the amended rule and the application may be directed to be considered.

6. In the light of the above, the petitioner is directed to comply with the conditions stipulated under Rule 12(2-A) of the Tamil Nadu Minor Mineral Concession Rules, 1959 and file appropriate affidavits and other regards and thereafter, the District Collector is directed to place the application complete in all respects, before the special committee constituted as per the Rules and based on the recommendations of the special

committee, the District Collector is directed to pass appropriate orders on the application filed by the petitioner.

7.The writ petition is disposed of with the above directions. No costs.

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s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

1.The District Collector
Salem District
Salem.

2.The Assistant Director
Geology and Mining
Salem District
Salem.

+ 1 cc to M/s.C.Sangamithirai, Advocate SR 34504

+ 1 cc to Govt.Pleader SR 34882

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