

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.A.No.963 of 2012
and MP No.1 of 2012

The District Collector,
Kancheepuram District,
Kancheepuram. ..Appellant/Respondent

versus

C.Rekha ..Respondent/Petitioner

Writ Appeal filed against the order dated 22.03.2007 in W.P.No.46487 of 2006. This writ petition filed under Article 226 of the constitution of India, to issue a writ of Mandamus to representation dated 18.11.2006 and grant lease to the petitioner for the period of ten years with respect to stone quarry comprised in S.NO.221 of Periyavamani, Medurandagam Taluk, Kancheepuram District over an extent of 0.88.5 hectares.

For Appellant : Mr.K.V.Dhanapalan
Special Government Pleader

For Respondents: Mr.Muthappan

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ appeal filed by the District Collector, Kancheepuram District, appellant herein, is to an order made by the writ Court in W.P.No.46487 of 2006 dated 22.03.2007, by which, the writ Court has directed the appellant to grant lease in favour of the respondent, for 10 years, as provided under Rule 8(8) of the Tamilnadu Minor Mineral Concession Rules, 1959, instead of five years, in respect of the subject quarry. Writ Court has further observed that it is open to the appellant to recover and realise from the writ petitioner, proportionate lease amount for the extended period of five years.

2. Perusal of the order impugned before this Court, shows that the respondent, who had participated in the tender notification dated 30.08.2006, has been granted a lease for a period of five years, as per condition No.4 of the tender-cum-public auction dated 30.08.2016, which reads as follows:

"The period of stone quarry lease mentioned in the Annexure shall be for a period of five years and it shall be counted from the date of execution of the lease deed. The lease period should be mentioned in the tender application as five years."

3. Thereafter, contending inter alia that stone quarry in S.No.221 of Periyavenmani Village, Maduranthakam Taluk, Kancheepuram District, measuring an extent of 0.88.5 Hectares was a virgin quarry, and as per Rule 8(8) of Tamilnadu Minor Mineral Concession Rules, 1959, the period of quarry lease for virgin quarry should be ten years, writ petitioner Ms.C.Rekha, has sent a letter dated 18.11.2016 to the District Collector, Kancheepuram District, Kancheepuram. As the said letter remained unanswered, she has filed W.P.No.46487 of 2006 for a writ of mandamus, directing the District Collector, Kancheepuram District, Kancheepuram, to consider the representation dated 18.11.2006 and to grant lease for a period of ten years, with respect to stone quarry, comprised in S.No.221 of Periyavenmani Village, Maduranthakam Taluk, Kancheepuram District, measuring an extent of 0.88.5 Hectares and for further orders.

4. While opposing the prayer sought for, before the writ Court, the District Collector, Kancheepuram District / appellant herein, has contended that the subject matter of the quarry area had already been exposed for quarry operation, by the local people and therefore, it is not a virgin quarry. The Appellant has also contended that the notification, issued by the District Collector, Kancheepuram / appellant was to grant lease only for a period of five years. According to the appellant, having participated in the tender, which contained condition No.4, which specified that the period of lease would be only for five years and taken the lease accordingly, it is not open to the writ petitioner, to seek for grant of lease for a period of ten years. Adverting to the above, the writ Court has issued the directions stated supra.

5. Assailing the correctness of the order made in W.P.No.46487 of 2006, Mr.K.V.Dhanapalan, learned Special Government Pleader reiterated the very same objections, raised before the writ Court and drew the attention of this Court to condition No.4 of the tender notification and sought for reversal of the order made by the Writ Court.

6. Mr.Muthappan, learned counsel for the respondent/writ petitioner submitted that merely because the subject quarry site was exposed at different points of time by local public,

it cannot said that the quarry site, was not a virgin quarry. According to him, there was no prior auction or lease of the quarry site and therefore, it was a virgin quarry and in such circumstances, notwithstanding the notification, the period of lease, should be ten years.

7. However, learned counsel for the writ petitioner/respondent fairly submitted that while considering the power of the Government to grant lease, in terms of Rule 8 (8) of the Tamilnadu Minor Mineral Concession Rules, 1959, and interpreting the word 'shall' employed in Rule 8 of the Tamilnadu Minor Mineral Concession Rules, 1959, a Hon'ble Full Bench of this Court in C.Muthukrishnan Vs. The District Collector, Tirunelveli District, Tirunelveli and another, reported in 2011 (5) CTC 577, held that the competent authority is empowered to prescribe / fix the period for lease and it is not mandatory that the period of lease should be for ten years. Attention of this Court was invited to paragraph No.18 of the reported judgments, which we deem it fit to extract.

"18. In respect of the 2nd set of cases about which we are concerned, in these batch of cases, it is after the amendment has come into existence, the concerned District Collectors issued notifications calling for tenders for issuing lease by restricting the period as five years. It is based on those notifications issued by the District Collectors, the petitioners have applied for the restricted period of five years and lease deeds were executed subsequently. In the lease deeds executed, no doubt, one of the clauses, namely clause 24, states "The lessee shall abide all the conditions laid down in Tamilnadu Minor Mineral Concession Rules, 1959". This clause read with Rule 8(11) enforces the duty of the lessee to act as per the terms of lease. Mere reference under rule 8(8), as amended by giving a period of 10 years lease by using the word "shall", cannot be construed to be a mandatory duty on the part of the District Collectors while giving notification. Such construction would mean that even in places where minerals may not be available for exploitation for a period of 10 years based on the scientific assessment the District Collector is compelled by giving such lease for 10 years, which, in our considered view, cannot be the intent of the law makers in exploiting minor minerals. Further, such construction would mean that irrespective of any circumstance, when, for the first time, a lease is entered into by the District Collector it would be for a period of 10 years. In our view, while issuing notification, the District Collector decides about the availability of minor

minerals for exploitation and then proceeds to notify indicating the period. It may not be said to be illegal or against the statute merely because the period is mentioned less than 10 years. Even though the statute gives a right to the parties, by virtue of the conduct of the parties, they have accepted to receive lesser benefit and having accepted the same, it is not certainly open to those parties to rely upon the statute to show that the contract voluntarily entered should be modified. If the parties have chosen to challenge the notification of the District Collector that their right has been restricted by notification, that will be on a different footing wherein this Court would be forced to enter into the fact as to whether the District Collector has applied his mind about the availability of minor minerals for exploitation for ten years period. The parties, having eyes wide open to the provisions of the rules, have entered into the terms of contract restricting their legal rights, cannot, in our view, as a matter of right, claim to substitute the statutory provisions in the terms of contract."

8. Perusal of the above judgment, also makes it clear that the Hon'ble Full Bench, has upheld the action of the District Collector, therein, in restricting the period of lease and further observed that if the parties, having eyes wide open to the provision of the rules, have entered into the terms of contract restricting their legal rights, they cannot, as a matter of right, claim to substitute statutory provisions, in terms of the contract.

9. Awarding lease to quarry for any specified period, is the prerogative of the competent authority. When a notification for the above purpose is issued, applicants who desire to accept the conditions for award of lease, and the period specified, with full knowledge of the terms and conditions, participate in the tender. Nobody prevented the writ petitioner from challenging the notification, which prescribed a specific period. At this juncture, it is relevant to extract condition No.4 of the notification.

"4) The period of stone quarry lease mentioned in the Annexure shall be for a period of five years and it shall be counted from the date of execution of the lease deed. The lease period should be mentioned in the tender application as five years."

10. The writ petitioner has participated in the tender. By issuing a writ of mandamus, a notification issued, which remained unchallenged, should not be set at naught. When the writ petitioner, with open eyes and knowledge had participated in the tender and became successful, it is not open to her to

contend that she should have been awarded contract for ten years. She cannot be allowed to wriggle out what she has agreed and acted upon. On the facts and circumstances of this case, the terms and conditions of the tender notification, cannot be permitted to be assailed in a collateral proceedings, where mandamus is sought for. Appellants have the powers to prescribe the period of lease.

11. In Har Shankar Vs. Deputy Excise and Taxation Commissioner, reported in 1975 (1) SCC 737, the Hon'ble Supreme Court held that Writ jurisdiction of the High Court under Article 226 of the Constitution of India was not intended to facilitate avoidance of obligations voluntarily incurred. The Hon'ble Apex Court further held that one who makes a bid for the grant of privilege to vend liquor in wholesale or retail with full knowledge of the terms and conditions attaching to the auction, cannot be permitted to wriggle out of the contractual obligations arising out of the acceptance of his bid.

12. In State of Haryana v. Jage Ram reported in 1980 (3) SCC 599 and State of Punjab v. Dial Chand Gian Chand & Co. reported in 1983 (2) SCC 503, the Hon'ble Apex Court held that persons who offer their bids at an auction to vend country liquor with full knowledge of terms and conditions attaching thereto, cannot be permitted to wriggle out the contractual obligations arising out of the acceptance of their bids, by a petition under Article 226 of the Constitution.

13. The District Collect, Kancheepuram / appellant has notified the tender, prescribing the lease period, as five years. In the light of the Hon'ble Full Bench decision, wherein the power of the District Collector to fix the period of lease, has been sustained, and when the respondent with her eyes open had participated in the tender notification, with the restricted period of five years of lease, as rightly contended by the learned Special Government Pleader, it is not open to the respondent to wriggle out the terms of contract, at a later point of time.

14. In the light of the above discussions and following the Hon'ble Full Bench decision, order impugned in this appeal is set aside. Consequently, the appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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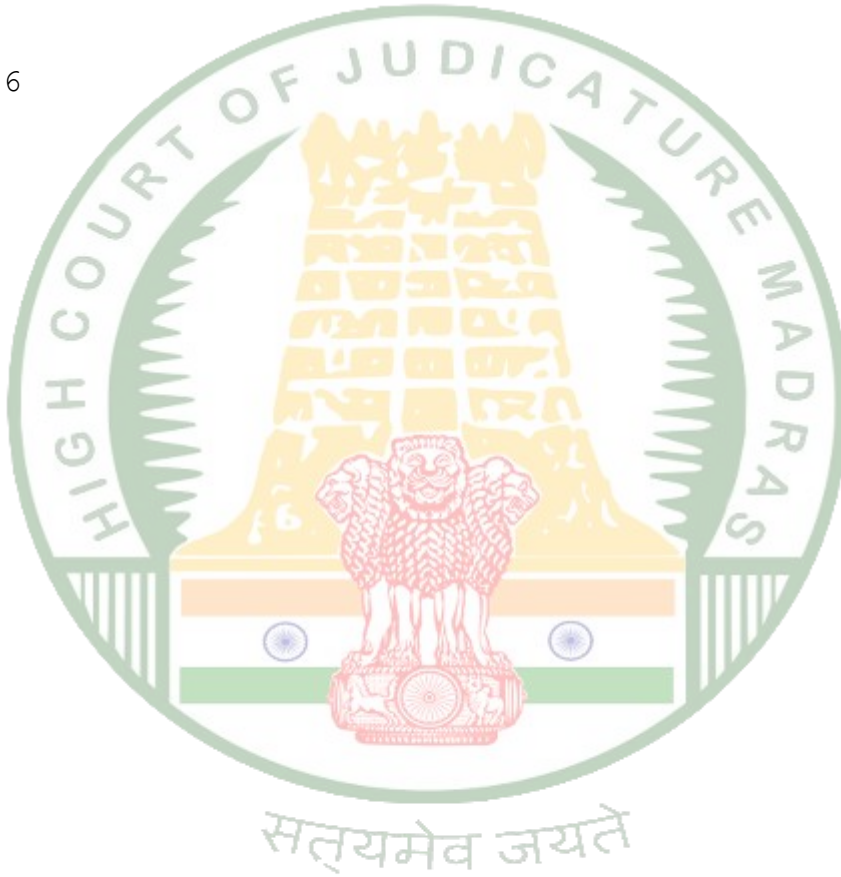
1. The District Collector,
Kancheepuram District, Kancheepuram.

2. The Government Pleader, High Court, Madras.

+ 1 cc to Mr.M. Muthappan, Advocate SR.62096

W.A.No.963 of 2012

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