

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Writ Petition No.989 of 2003

and

WPMP.No.36793 of 2003

M/s.Southern Enterprises
Registered Partnership Firm
Rep. by its Managing Partner
D.Dhaya Devadass ..Petitioner

-Versus-

1. Government of India
Ministry of Coal & Mines
Dept. of Mines
Rep. by its Secretary
Shastri Bhavan, New Delhi.
2. The Government of Pondicherry
Rep. by its Secretary
Dept. of Industrial Developments
Pondicherry - 605 001. ... Respondents

Petition filed under Section 226 of the Constitution of India praying for issuance of a writ of Certiorarified mandamus, to call for the records of the first and second respondents made in their Order Nos.94/2002 and No.330/Secy. (ind & Com)/2001 respectively, and to quash the said orders dated 23.09.2002 and 06.04.2001 respectively and consequently direct the 2nd respondent to grant the lease to the petitioner on their mining lease applications.

*(Prayer amended as per Court Order dated 07.01.2009 in WPMP.No.1853 of 2008 in WP.No.989 of 2003)

For Petitioner : Mr.S.Vennimalai
For R1 : Mr.G.Baskaran, CGSC
For R2 : No appearance

ORDER

This writ petition has been filed to call for the records of the first and second respondents made in Order Nos.94/2002 and No.330/Secy.(ind & Com)/2001 respectively, quash the said orders dated 23.09.2002 and 06.04.2001 respectively and consequently, direct the 2nd respondent to grant the lease to the petitioner on their mining lease applications.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the 1st respondent.

3. The petitioner's company submitted seven mining lease applications to the 2nd respondent on 15.02.1999 seeking permission for grant of mining lease in respect of garnet sand in Karaikal Beach. The applications of the petitioner were placed before the Lieutenant Governor of Pondicherry, who is the competent authority for necessary orders. The Lieutenant Governor rejected the applications which was communicated to the petitioner by the 2nd respondent vide order dated 06.04.2001. The Lieutenant Governor appears to have given the following six reasons for rejecting the applications viz.,

- "1. That the petitioner's mining lease applications do not satisfy Sec.5(2) (a).
2. That the petitioner's mining leases applications were in respect of fishermen villages.
3. That the mining activity would cause problem for fishermen in Tamilnadu in view of presence of Atomic Minerals.
4. That Mining lease applied area is ecologically sensitive and petitioner has not proved that the garnet sand does not exist in areas other than the Coastal Regulation Zone.
5. That mining would cause sea erosion.
6. That clashes among the local fishermen in Tamilnadu had occurred on account of mining."

4. Aggrieved by the order of rejection, the petitioner's company preferred an appeal before the 1st respondent under Section 30 of the Mines and Development Control Act (for brevity "the Act"). By the impugned order dated 23.09.2002, the 1st respondent has rejected the request of the petitioner's company and has confirmed the order of refusal passed by the Lieutenant Governor of Pondichery, challenging which, the petitioner is before this Court.

5. The 1st respondent has rejected the request of the petitioner's company on the ground that the State Government is the owner of the minerals and it is for the State Government either to grant or refuse to grant the mining lease under Section 10(3) of the Act and that in the present case, the State Government viz., Union Territory of Pondicherry has stated that they have not granted mining licence to any person in Karaikal Beach area. That apart, the contention of the Union Territory of Pondicherry is that the livelihood of the fishermen will be severely affected, if the mining lease is granted and there would be law and order problem to the petitioner's company in the Karaikal Beach area.

6. The learned counsel appearing for the petitioner submitted that it is not open to the Government to take such a stand inasmuch as it is the duty of the Government to protect the lease holders and maintain the law and order. In support of this contention, he relied upon judgment an unreported dated 09.09.2016 of this Court in WP.Nos.11971 & 15451 of 1995 Indian Garnet Sand Company Private Ltd., -VS- The Inspector of Police, Tattarmadam Police Station & five others.

7. This Court gave its anxious consideration to the submissions made by the learned counsel for the petitioner.

8. On a reading of the order relied upon by the learned counsel for the petitioner, it is seen that the petitioner in that case was already issued with a mining lease licence and under those circumstances, when some anti social elements prevented the petitioner therein from carrying on business activities, this Court came to the rescue of the petitioner therein.

9. On the contrary, in this case, there has not been grant of licence to any one by the Union Territory of Pondicherry as the Government wants to preserve the rights of native fishermen and also to ensure that there is no law and order problem. Maintenance of law and order is a State subject and this Court cannot interfere into such decision in exercise of its power under Article 226 of the Constitution of India since nobody has a fundamental right to do mining operation.

10. Taking into consideration, several aspects including ecological and environmental aspects and that nobody can claim mining licence as a matter of right, this Court does not find any serious infirmity in the order dated 06.04.2001 passed by the 2nd respondent or the impugned order dated 23.09.2002 passed by the 1st respondent rejecting the plea of the petitioner's company.

In the result, this petition is dismissed. However, if, in future any fresh mining lease is granted to any person in Karaikal Beach area, it is open to the petitioner also to stake a claim. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Secretary
Dept. of Mines
Ministry of Coal & Mines
The Government of India
Shastri Bhavan, New Delhi.

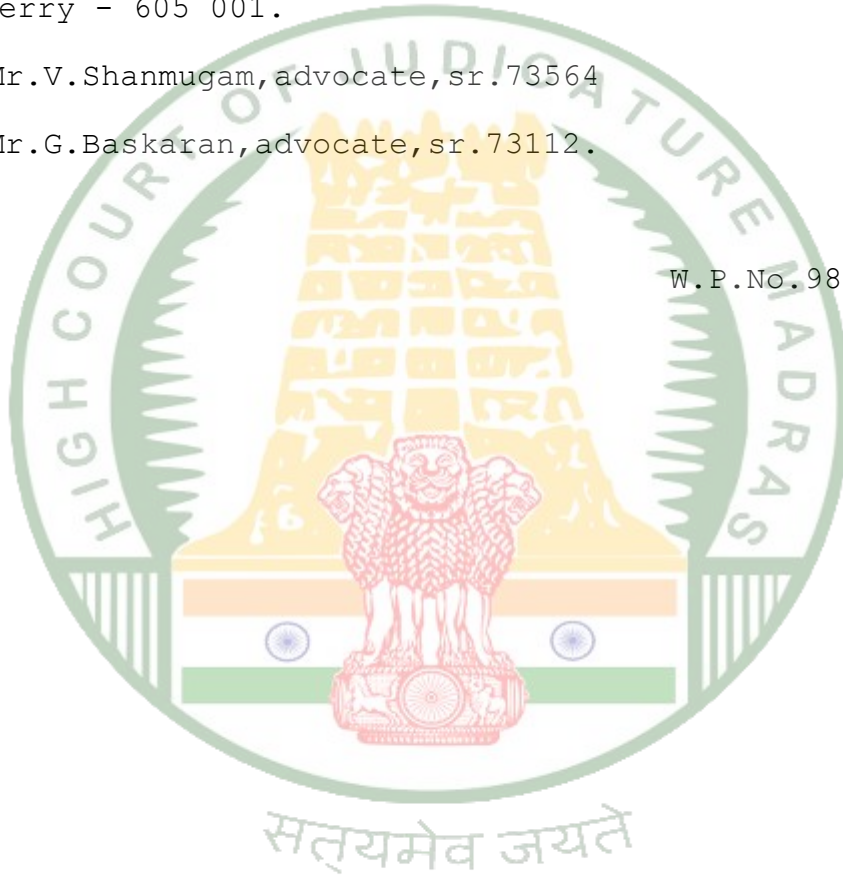
2. The Secretary,
Dept. of Industrial Developments
The Government of Pondicherry
Pondicherry - 605 001.

+1 cc to Mr.V.Shanmugam, advocate, sr.73564

+1 cc to Mr.G.Baskaran, advocate, sr.73112.

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krd 9/1

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