

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2016

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR

W.P.No.25601 of 2013

M.P.No.1 of 2013

P.Mariadoss

... Petitioner

Versus

1. The District Collector,
Kancheepuram District,
Kancheepuram.

2. The Assistant Director,
Geology and Mining,
Kancheepuram,
Kancheepuram District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writs of Mandamus, directing the respondents to extend the unutilized lease period of 366 days from 18.09.2013, enable the petitioner to carry on the quarrying operation in Quarry No.9, measuring an extent of 5.00.0 Hectares comprised in S.F.No.99 of Keerapakkam Village, Chengalpat Taluk, Kancheepuram District, under the lease order in Rc.No.40/2003/Q1, dated 18.09.2003, passed by the 1st respondent by considering the petitioner's representations, dated 17.12.2012, 17.06.2013 and 08.07.2013, in the light of the Division Bench judgment of this Hon'ble Court, dated 17.03.2011, made in W.A.Nos.1018 and 1019 of 2010.

For Petitioners .. Mr.N.Manokaran

For Respondents .. Mr.K.V.Dhanapalan,
Additional Government Pleader

O R D E R

Writ Petition has been filed for a Mandamus, directing the respondents to extend the unutilized lease period of 366 days from 18.09.2013 and to enable the petitioner to

carry on the quarrying operation in Quarry No.9, measuring an extent of 5.00.0 Hectares comprised in S.F.No.99 of Keerapakkam Village, Chengalpat Taluk, Kancheepuram District, under the lease order in Rc.No.40/2003/Q1, dated 18.09.2003, passed by the 1st respondent by considering his representations, dated 17.12.2012, 17.06.2013 and 08.07.2013 and in the light of the Division Bench judgment of this Hon'ble Court, dated 17.03.2011, made in W.A.Nos.1018 and 1019 of 2010.

2. Facts leading to the Writ Petition are as follows:

In the year 2002, a jelly quarry No.9, measuring an extent of 5.00.0 hectares in S.No.99 Keerappakkam village was brought for auction through public Tender. The District Collector, Kancheepuram, 1st respondent herein, by proceedings in Na.Ka.No.2151/2002 Q1, dated 14.12.2002, issued a lease auction notification, which was published in District Gazette Notification Special Edition No.31, dated 19.12.2002. The petitioner has submitted a tender to the Assistant Director, Geology and Mining, Kancheepuram, 2nd respondent herein. The tender was opened on 08.01.2003 and he was declared as the successful bidder, in respect of quarry No.9. Since it was a virgin quarry, the lease was granted for a period of 10 years, as per the proceedings of the 1st respondent in R.C.No.40/2003/Q1, dated 18.09.2003. The petitioner deposited 6,55,115/- towards Security Deposit, besides the lease amount before the execution of the lease deed, and also paid seniorage fee, after execution of the lease deed dated 18.09.2003, with the 1st respondent for a period of ten years, between 18.09.2003 and 17.09.2013.

3. The petitioner has further submitted that after the execution of the lease deed, the respondents took time to demarcate the four boundaries to Quarry No.9 and to fix boundary stones, after land survey. Only after his repeated insistence, the respondents conducted survey and identified the four boundaries in line with the map appended with the lease deed, dated 18.09.2003. After the execution of the lease deed, the respondents took considerable time to complete the above process to fix clear-cut boundaries to Quarry No.9. In view of the delay of quarry permit, till the demarcation of the boundaries, the petitioner could not commence the quarry operation from 18.09.2003 to 27.11.2003 for a period of 55 days. In fact, no permit was granted for the said period, which is evident from the original records available in the hands of the respondents.

4. According to the petitioner, things went off well, until one Mr.M.Nagaraj filed W.P.No.21915 of 2010, before

this Court and obtained an order of interim injunction on 27.09.2010, as if the stone quarries are being operated without any valid consent. The said injunction order, was subsequently vacated on 30.09.2010, on the ground that the stone quarry is in existence from the year 2003 and therefore, B.P.No.11, dated 04.04.2007, has no application. However, his quarrying operations were stopped between 28.09.2010 and 13.10.2010, for a period of 16 days and thereafter, after getting the legal opinion, he was permitted to quarry only from 14.10.2010.

5. The petitioner has further submitted that the Tamilnadu Pollution Control Board issued a show cause notice, dated 17.08.2010, asking him, to submit explanation, within 7 days, as to why the consent was not obtained from the Pollution Control Board. Accordingly, he applied for consent, but it was rejected, on the ground that he should get Environment Impact Assessment Clearance (EIA) from the Ministry of Environment and Forests. However, he obtained an order from the Ministry of Environment and Forests to the effect that there was no need to get EIA clearance for the existing quarries. However, without any inspection and ascertaining the position of law, the Pollution Control Board misquoted the B.P.No.11, dated 04.04.2007 and issued a closure order, dated 23.12.2010. The said order was revoked only on 06.09.2011, after holding that there was no need to get Environmental Impact Assessment Clearance for the existing quarries. Due to which, he was not allowed to operate the quarry for a period of 258 days, between 23.12.2010 and 06.09.2011.

6. Once again, the petitioner was denied transport permit for a period of 37 days, between 07.04.2012 and 14.05.2012, under the guise of quoting the penalty order, dated 03.01.2011, which was challenged and stayed in W.P.No.1015 of 2011 and later, the said writ petition was dismissed on 26.03.2012, by giving directions to file an appeal before the Appellate Authority. Accordingly, an appeal has been filed and it is pending. In view of the above, the petitioner could not carry on quarry operations for the following period, due to the reasons beyond my control. The details of the unutilized and loss of period is calculated as under:-

Reasons for stopping the quarrying work	Period of suspension of quarrying work	Total number of unutilized period
Respondents took time for survey and to fix clear-cut boundaries	18.09.2003 to 27.11.2003	55 days

Reasons for stopping the quarrying work	Period of suspension of quarrying work	Total number of unutilized period
Interim injunction granted in W.P.No.21915 of 2010 (PIL)	27.09.2010 to 13.10.2010	16 days
Closure order issued by TNPCB	Order dated 23.12.2010 revoked on 06.09.2011	258 days
Penalty order cited as a reason even after stay order in W.P.No.1015 of 2011	17.04.2012 to 14.05.2012	37 days
Total loss of period during the currency of lease		366 days

7. It is the further case of the petitioner that the respondents and their subordinates directed him to stop quarrying work for the above period and later, after clearing the legal hurdles, permitted him to commence quarry operation. In that process, he was unable to quarry for a period of 366 days, even though he was neither responsible nor liable for the loss of the said periods. Therefore, he has sent a representation, dated 17.12.2012, to the respondents to compensate the loss of period of 366 days on or after 17.09.2013. But there was no response and hence, he sent remainders, dated 17.06.2013 and 08.07.2013 to the respondents, requesting them to compensate the above said loss of lease period.

8. According to the petitioner, he was not able to carry on the quarrying operation for no fault on his part, but, due to the unwarranted intervention of the third parties and misquoting B.P.No.11, dated 04.04.2007, issued by the TNPCB. He was not permitted to carry on quarrying work, only because of the circumstances and sequence of events stated earlier. Extension of the unutilized period cannot be stated to be renewing the terms of the lease, because it is his legitimate expectation that he would be entitled to operate the quarry for the entire lease period of 10 years. According to him, he was stopped quarrying operation, as and when the respondents directed him to stop the quarrying operation and commenced the quarrying work, after the permission granted by the respondents and therefore, he should be allowed to operate the quarry, for the period, by which the quarrying operation granted to him, fell short of 10 years.

9. It is the further case of the petitioner that it is a settled position of law, that the quarry lease holder is entitled to carry on the quarrying operation for the unutilized period, when the lease holder was prevented by sufficient cause for not utilizing the full lease period of 10 years. In respect of unutilised period of quarrying operation, the Hon'ble First Bench of this Court in W.A.Nos.1018 and 1019 of 2010 dated 17.03.2011, while confirming the orders of the learned single Judge in W.P.Nos.15846 and 15847 of 2008, dated 02.04.2009, held as follows:

"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 these 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 to 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.

27. ... However, the case before us is different as indicated above. Considering the peculiar facts and circumstances of the case, we may at this stage observe that by permitting the respondent/writ petitioner to quarry for the unutilized period cannot be stated to be rewriting the terms of the lease.

28. The learned Senior Counsel appearing for the petitioner would submit that the action of the appellant in not extending the benefit to the respondent/writ petitioner is discriminatory and violation of Article 14 of the Constitution of India, as the appellant has implemented the direction issued by this Court in W.P.No.27912 of 2008, and the petitioner therein is also a similarly placed person as that of the respondents/writ petitioner. The petitioner in W.P.No.27912 of 2008, challenged an order passed by the District Collector, Salem and sought for a direction upon him to grant permission to carry on carrying operation in the stone quarry for a period of 16 months during the quarry was suspended. The Government resisted the prayer in the writ petition by raising certain grounds which have been raised by the appellant herein in these appeals. The learned single Judge by relying on the decision on the Hon'ble Supreme Court in Sag Raj Singh and considering the facts of the case allowed the writ petition and directed the

District Collector, Salem to grant permission to quarry for a period of 16 months. The said order and direction issued in the said writ petition being W.P.No.27912 of 2008 was implemented by the District Collector, Salem, by his proceedings, dated 19.06.2009 and the petitioner therein was permitted to quarry for a period of 16 months. Therefore, the Government cannot adopt different yardstick in respect of two cases, where the facts and circumstances are substantially similar.

27. Therefore, we are persuaded to accept the submission made by the learned counsel appearing for the respondent/writ petitioner in this regard as denying benefit to the writ petition would amount to discrimination."

10. Relying on a decision of the Hon'ble Apex Court in 2003 (1) SCC 726, the petitioner has submitted that when he was prevented from quarrying during the currency of the lease period, he must make good use of the period for which, he was unlawfully prevented from carrying on the quarry operation and hence, denial of such benefit would offend his fundamental rights, guaranteed under Articles 14, 19 (1)(g) and 21 of the Constitution of India. It is well settled principles of law that the Principle of Promissory Estoppel and Legitimate Expectation is applicable in all force to the Government and its instrumentalities. It is based upon not only equity, but on honesty, good faith which is the basis of Rule of Law.

11. The petitioner has further submitted that right to carry on lawful business has to be protected on the basis of the legitimate expectation and promissory estoppel, since it can be invoked, where there is an irreparable loss to him, and public interest does not suffer. The Hon'ble Apex Court in State of Karnataka v. Umadevi reported in 2006 (4) SCC 1, held as follows:

"46. The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn"

12. Therefore, the petitioner has submitted that

any attempt made to interfere with the existing quarry operation on or after 17.09.2013, would cause serious repercussion, in the on going quarry work and moreso, in the event of any deviation or diversion, would result in loss of work to the workers, breach of business commitments, default in settlement of the dues to the bank, delay in recovery of the dues from the purchasers.

13. The respondents have filed a detailed counter affidavit, contending inter alia that the lease of stone quarry in respect of S.No.99(Part) quarry No.9 of over an extent of 5.00.0 hectares of Keerapakkam Village, Chengalpattu taluk, was brought under tender-cum-auction on 08.01.2003, for a period of 10 years, under the provision of Rule 8(8) of the Tamil Nadu Minor Mineral Concession Rules, 1959. The petitioner was the highest bidder, quoting the bid amount of Rs.65,51,150/- and that the lease was confirmed in his name, vide proceedings, dated 18.09.2003. The lease agreement was executed on 18.09.2003, for a period of 10 years from 18.09.2003 to 17.09.2013 and commenced the quarry operation. The petitioner has remitted the seigniorage fee for the material quarried and obtained transport permit on 23.09.2003.

14. As regards extension of lease for 55 days, on the ground that the area was not demarcated, the respondents have submitted that as per Rule 8(6)(e) and (f) of the Tamil Nadu Minor Mineral Concession Rules 1959, the lease deed shall be executed by the applicant on the appointed day and time with a map of the demarcated leased out area appended to the lease deed and no lessee is entitled to raise any dispute, with reference to the survey and demarcation of the area leased out to him, after execution of the lease deed. The petitioner has obtained the transport permit on 24.9.2003 and operated the leased out area. He has not applied for issue of transport permit on remittance of seigniorage fee from 3.10.2003 to 27.11.2003 and he himself stopped the quarrying operation, on his own accord and therefore, he is not entitled for the extension of lease for 55 days.

15. As regards extension of lease for 16 days, in lieu of non operative from 28.09.2010 to 13.10.2010, due to due to interim injunction granted in W.P.No.21915 of 2010 dated 27.9.2010, it is the case of the respondents that the said injunction has been vacated on 30.09.2010, giving liberty to the Pollution Control Board, to proceed as per law. On 27.09.2010, the petitioner has obtained transport permit, valid upto 04.10.2010, but subsequently, the petitioner has not applied for issuance of transport permit, by remitting seigniorage fee. Since, the interim order was in force for 3

days, the petitioner has obtained transport permit on 27.9.2010, which was valid upto 04.10.2010, the question of non operative period, sought for by the petitioner, does not arise.

16. Insofar as extension of lease for 258 days, in lieu of closure of quarry, as per the orders of the Pollution Control Board, in view of the order of this Court in W.P.No.21915 of 2010, dated 30.09.2010, the respondents have contended that the Tamil Nadu Pollution Control Board has stated in their Proceedings No.TNPCB/LAW/LAI/F.030955/MMN-KPM/ORGANGE/2010/A-1, dated 23.12.2010 that the petitioner was carrying out operations, without obtaining the consent of the Board, under the provision of section 21 of the Air (Prevention and Control of Pollution) Act, 1981, causing air pollution, which attracts public complaint and therefore, he was directed to close down the quarry, with immediate effect.

17. Subsequently, as per the directions of the Tamil Nadu Pollution Control Board, Chennai, vide Proceedings TNPCB/LAW/LAI/F030955/MMN-KPM-ORANGE/2010/A-2, dated 06.09.2011, the District Environmental Engineer has inspected the subject quarry and observed that no stone quarrying activity was carried out in Quarry No.9 and that the machineries and vehicles used for quarrying were kept idle. As recommended by the District Environment Engineer, in exercise of the powers conferred under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, the closure order, dated 23.12.2010, has been revoked. However, a show cause notice has been issued, for violations, committed by the petitioner. After rectification of the violations noticed, the order was revoked on 06.09.2011. Therefore, it is the contention of the respondents that the petitioner has violated the Tamil Nadu Pollution Control Board norms, for which, the Board has ordered to stop the quarry operations and hence, no compensation can be granted, as a matter of right.

18. In respect of non-operative period of 37 days, in lieu of the penalty, the respondents have submitted that a team of officials inspected the subject area on 15.07.2010, 16.07.2010 and 23.07.2010 and noticed the violations committed by the petitioner, by indulging in illicit quarrying in the adjacent non-lease hold area. The actual area quarried illicitly has been measured and assessed a quantity of 7390 lorry loads of earth, 14399 lorry loads of rough stone. In this regard, the Revenue Division Officer, Chengalpattu, has imposed a penalty of Rs.4,88,53,800/-, vide proceedings in Rc.No.3153/2010/A, dated 03.01.2011. Aggrieved over the same, the petitioner filed W.P.No.1015 of 2011, in which, interim stay was granted. However, the Hon'ble Division Bench of this Court,

by order, dated 26.03.2012, dismissed the said writ petition, with a direction to file an appeal, before the authority. Accordingly, he filed an appeal, against the penalty order and the same was rejected on 29.8.2013. The respondent has not denied issue of transport permit and the petitioner was not prevented from quarrying and transport of rough stone during the period of 37 days from 7.4.2012 to 14.5.2012. Further, the petitioner has not approached the authority for issue of transport permit by remitting the necessary seigniorage fee. Therefore, the respondents have contended that the petitioner is not entitled for the extension of lease for a period of 37 days.

19. Relying on Rules 8(8)(i) and (ii), provide that "the date of commencement of the period of lease granted under this rule shall be the date on which the lease deed is executed" and "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" respectively, the respondents have contended that as the lease expired on 17.9.2013, the petitioner has no right over the expired lease hold area. The quarry was taken possession by the Tahsildar, Chengalpattu on 17.9.2013, after the expiry of the lease and therefore, there is no provision in rules to extend the lease after expiry of the lease.

20. The respondents have contended that the judgment made in W.A.Nos.1018 and 1019 of 2010, dated 17.03.2011, relied on by the petitioner, is not relevant to the present writ petition. However, in a similar decision in Thiru.K.S.P.Gunasekaran v. the District Collector, Kanchipuram [W.P.No.38931 of 2006, dated 06.11.2006], seeking extension of lease for the non operative period, the Hon'ble Apex court has dismissed as follows:-

"In respect of the first spell of four months ie. from December 2001 to April 2002, the reasoning stated for not carrying on the quarrying operation is due to the disturbances given by the villagers by filing a Writ Petition and a writ appeal. It is not the respondents, who were responsible for filing the writ petition and the writ appeal. If at all the petitioner is the person, who is to defend the same and get it vacated. It is well settled that, the petitioner has to put his own affairs in a proper manner, if any difficulty arises in carrying on the quarrying operation because any third parties and not at the instance of the Government, the respondents are not legally liable to extend the period. This proposition is taken and followed by this court in a catena of cases. Hence, the first spell of four months from December 2001 to April 2002 cannot be granted as

the petitioner is not legally entitled to the same."

21. The respondents have further submitted that the lease agreement is a concluded contract and rights accrued in the contract cannot be extended against the statute. The rights and obligation in the contract cannot be re-written. However, the petitioner was given an opportunity for personal hearing on 20.09.2013 and 03.10.2013, but on both days, the petitioner had not turned up and therefore, the representation of the petitioner would be considered and disposed in accordance with provisions of rule.

22. The respondents have further submitted that it is settled law that the word, "extension", means a prolongation of the existing lease (Provash Chandra Dalui v. Biswanath Banarjee, AIR 1989 SC 1834). According to the respondents, if the original lease is over, there is no question of granting any extension. If such extension is granted, it would amount to granting of fresh lease, after expiry of the original lease.

23. Relying a decision of this Court in L.Boomiraja vs District Collector, Dindugul District [W.A.No.2062 of 2003, dated 28.04.2005], the respondents have submitted that the Court cannot extend the period of lease, on equitable considerations. According to them, a Hon'ble Division Bench of this Court in Director General of Foreign Trade, Ministry of Commerce, New Delhi v. M/s.R.B. & Sons, Chennai and another reported in (2004) 5 CTC 596, has already distinguished the decision of the Hon'ble Supreme Court in Beg Raj Singh v. State of UP., reported in (2003)1 SCC 726. A Hon'ble Division Bench held that a Court cannot direct extension of the period of licence, lease or other grant, where it is for a fixed period of licence, lease or other grant, where it is for a fixed period and the court must maintain judicial restraint in this connection." According to the respondents, if the licensee or lessee was prevented to operate for a part of the period of the licence or lease, then his remedy is to get refund of proportionate amount of license or refund of proportionate amount of licence or lease fee or compensation for any damage, he might have suffered, but the period of licence or lease cannot be extended by the Court.

24. The respondents have further submitted that courts must exercise self restraint and should not encroach into the domain of the Executive or the Legislature, as held by the Court in Rama Muthuramalingam v. Deputy Superintendent of Police reported in (2004) 4 LW 737. It is also well settled that Court cannot add or delete from a statute as that is the function of

the Legislature or its delegates.

25. Reliance has been placed on a decision in P.Radhakrishnan v. the District Collector, Dindugul [W.A.Nos.326 and 327 of 1992, dated 26.03.1992], wherein, it was held "the parties settled all their rights and obligations in the lease deeds and they must ultimately speak and the claim of the appellant to have more rights than what have been secured under the lease deeds cannot be sustained."

26. It is further submitted that in W.A.No.669 of 2009, a Hon'ble Division Bench observed that, "Where a statute occupies the field, the principles of equity and promissory estoppels have no role to play, vide Electronics Corporations of India Ltd. v. Secretary Revenue Department, Government of Andhra Pradesh [1999] 4 SCC 458." As per Rule 8(8)(ii) of the abovesaid Rules, the lease shall expire on the date specified in the lease deed and no case extension of the period of lease shall be made". The respondents therefore submitted that when there is a specific bar created under law for such extension of the period of lease, which is exhaustive in nature, the prayer of the petitioner, governed and bound by the specific contract, entered into by him, with the respondents, being statutory in nature, should not be granted. Hence, the respondents have prayed for dismissal of the writ petition.

27. The petitioner has filed a rejoinder, contending inter alia that on 30.09.2010, the respondents have refused to issue transport permit on the ground that they have to get the legal opinion from the learned Government Pleader. Accordingly, they have issued the transport permit only on 14.10.2010, after getting the legal opinion on 12.10.2010 in L.O.No.976 of 2010. Therefore, the petitioner has contended that it is not correct on the part of the respondents to state that he has not applied for issue of transport permit for the period of 16 days, ie., from 27.09.2010 to 13.10.2010.

28. The petitioner has further contended that the closure order was issued, on the ground that he has to get clearance from the Environmental Impact Assessment Authority, but the said order was revoked by the Tamil Nadu Pollution Control Board on 06.09.2011, holding that the EIA notification, dated 14.09.2006 has given prospective effect only and it has not been given retrospective effect, compelling the existing quarry lease holders to get clearance from the EIA authority.

29. The petitioner has further submitted that in pursuance to the order, dated 26.03.2012 made in W.P.No.1015 of 2011, against the penalty order, dated 03.01.2011, he has filed

a statutory appeal, dated 01.08.2012, under Rule 36 C, but the said appeal seemed to have been rejected on 29.08.2013. He came to know about the disposal of the appeal petition, dated 01.08.2012, only from the counter affidavit and the said order has been passed, without serving any enquiry notice and no opportunity of hearing was given in the appeal petition and more so, the order rejecting the appeal has not been communicated to him, to challenge the same in the manner known to law. The action of the respondents is against the rudimentary principles of Natural Justice.

30. Pending writ petition, the 1st respondent has issued a notice, dated 13.09.2013, asking the petitioner to appear before him, for enquiry on 20.09.2013, but, he has sent a representation dated 16.09.2013, requesting the 1st respondent to defer the hearing, in view of the pendency of the above writ petition. However, without taking note of his representation, dated 16.09.2013, someone from the office of the 2nd respondent has called him, over phone at 3.00 p.m., and informed him that both the respondents were on other duty and that enquiry would be adjourned to some other date. However, without knowing the said fact, and his petition, dated 16.09.2013, the respondents have alleged that he has not turned up for personal hearing on 20.09.2013.

31. The petitioner has further submitted that the subject matter of the issue, is no longer integra, in view of the law, declared by the Hon'ble First Bench of this Court in W.A.Nos.1018 and 1019 of 2010, dated 17.03.2011. In the similar circumstances, this Court was pleased to grant relief to the petitioners in W.P.Nos.15846 and 15847 of 2008 on 02.04.2009 which was later confirmed, in the above judgment in W.A.Nos.1018 and 1019 of 201, dated 17.03.2011.

Heard the learned counsel for the parties and perused the materials available on record.

32. Vide proceedings, dated 18.09.2003, the Collector of Kancheepuram District has issued orders, granting lease for the period of 10 years, in respect of Quarry No.9, measuring an extent of 5.00.0 hectares in S.No.99, Keerappakkam Village, subject to the conditions contained therein. Extension of lease period for 366 days, sought for by the petitioner, are as follows:

“(a) Between 03.10.2003 to 27.11.2003, for 55 days for the reasons that the area was not demarcated.

(b) He has requested extension of 17 days in lieu of non operative period from 28.09.2010 to

13.10.2010 due to interim order in W.P.No.21915 of 2010, dated 27.09.2010.

(c) Tamil Nadu Pollution Control Board issued in Proceedings No.TNPCB/LAW/LA1/F.030955/MMN-KPM/ORANGE/2010/A1, dated 23.12.2010, to stop the quarrying that the unit is carrying out quarrying operations without obtaining consent of the Board for a period of 258 days from 23.12.2010 to 06.09.2011.

(d) Non operative period from 07.04.2012 to 14.05.2012 for a period of 37 days as W.P.No.1015 of 2011, filed against the levy of penalty dismissed on 26.03.2012."

33. As per Rule 8(6)(e) and (f) of the Tamil Nadu Minor Mineral Concession Rules 1959, the lease deed shall be executed by the applicant on the appointed day and time with a map of the demarcated leased out area appended to the lease deed. It is the case of the respondents that no lessee is entitled to raise any dispute, with reference to the survey and demarcation of the area leased out to him, after execution of the lease deed.

34. In the case on hand, lease deed was executed on 18.09.2003. Though the petitioner has contended that he could not commence the quarry operation from 18.09.2003 to 27.11.2003 for a period of 55 days, in view of the rejection of quarry permit, till the demarcation of the boundaries, it is the case of the respondents that the petitioner has obtained the transport permit on 24.9.2003 and operated the leased out area. He has not applied for the issue of transport permit on remittance of seigniorage fee from 3.10.2003 to 27.11.2003 and therefore, it is the case of the respondents that the petitioner himself has stopped the quarrying operation, on his own accord and thus, not entitled for the extension of lease for 55 days. There is no dispute, with reference to the above fact.

35. Insofar as the 2nd extension of 16 days, sought for by the petitioner, in view of the non operative period from 28.09.2010 to 13.10.2010, due to interim order in W.P.No.21915 of 2010, dated 27.09.2010, it is the case of the respondents that it is at the instance of one Mr.Nagaraj, who had filed W.P.No.21915 of 2010 and obtained an order of injunction on 27.9.2010. The said order of injunction has been subsequently vacated on 30.09.2010, giving liberty to the Pollution Control Board, to proceed as per law. Here again, it is the case of the respondents that on 27.09.2010, the petitioner has obtained transport permit, which was valid upto 04.10.2010 and that he has not applied for issue of transport permit, by remitting seigniorage fee. Interim order was valid only for 3 days and that the petitioner has obtained transport permit on 27.9.2010, which was valid upto 04.10.2010. When the injunction was vacated, the petitioner could have carried on the

quarry operations, by remitting seigniorage fee. Therefore, there is no question of non operative period of 16 days from 28.09.2010 to 13.10.2010.

36. As regards extension of lease for 258 days, in lieu of closure of quarry, it could be seen from the materials on record that the Pollution Control Board has issued a notice to the petitioner and that there was no direction for closure. Subsequently, the Tamil Nadu Pollution Control Board, vide proceedings, dated 23.12.2010, has directed closure of the quarry and the contents of the said order is reproduced hereunder:

"Tamil Nadu Pollution Control Board enforces the provisions of Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. As per Section 33 of the Water (Prevention and Control of Pollution) Act, 1974, as amended in 1988 & Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, as amended in 1987, the Board is empowered to issue directions for closure, prohibition or regulation of any industry and stoppage of electricity or any other services. Instructions have been issued by Tamil Nadu Electricity Board in this regard, vide reference second cited.

In this connection, a copy of Board's proceedings first cited is also enclosed in which direction have been issued under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, as amended, for closure of the unit of M/s.Mariyadoss stone quarry. S.F.No.99 part Keerapakkam Village, Chengalpattu Taluk, Kancheepuram District (Quarry No.9) in view of the reasons stated therein.

It is hereby further directed in exercise of the powers conferred under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, that the power supply to the said unit should be stopped with immediate effect.

The receipt of the proceedings may be acknowledged and the action taken in this regard may also be intimated to this office early."

37. On 06.09.2011, Tamil Nadu Pollution Control Board, in exercise of the powers conferred under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, as amended in 1987, has revoked the closure order, dated 23.12.2010, issued to the unit of the petitioner, subject to certain conditions. The said order is extracted hereunder:

TAMIL NADU POLLUTION CONTROL BOARD

Proc.No.TNPCB/LAW/LA1/F.030955/MMN-KPM/QRANGE/2010/A-2
Dated:06.09.2011

Sub: TNPC Board - Industries -
M/s.Mariyadoss stone quarry, S.F.No.99 part,
Keerapakkam Village, Chengalpattu Taluk, Kancheepuram
District (Quarry No.9) - Revocation of closure issued
under section 31A of the Air (Prevention and Control of
Pollution) Act, 1981 as amended in 1987- Orders issued
- Regarding.

- Ref: 1.
Proc.No.TNPCB/LAW/LA1/F.030955/MMN-KPM/ORANGE/2010/A-1
Dated:23.12.2010
2. W.P.No. 42/2011 filed by the unit in
the Hon'ble High Court of Madras.
3. The Hon'ble High Court of Madras
Order Dated:02.02.2011 against the RDO, Chengalpattu
Procs. Dated:28.09.2010.
4. Unit's application for consent
Dated:22.07.2011.
5. District Collector, Kancheepuram
Letter Rc. No. 615/2010-Q3, Dated:29.07.2011
6. Unit's letter Dated:04.08.2011.
7. Lr. No. DEE/TNPCB/KPM/F.
1946/2011, Dated:29.07.2011
8. Unit's letter Dated:18.08.2011.
-

Directions were issued to the unit of
M/s.Mariyadoss Stone Quarry, S.F.No.99 part,
Keerapakkam Village, Chengalpattu Taluk, Kancheepuram
District (Quarry No.9) under section 31A of the Air
(Prevention and Control of Pollution) Act, 1981 as
amended in 1987 for the closure of the said unit and
stoppage of power supply in this office proceedings
first cited for the reasons stated therein.

In the reference 2nd cited, the unit has
filed a writ petition in the Hon'ble High Court of
Madras in WP.No.42/2011 against the above Board's
closure direction praying to quash the same.

In the reference 6th cited the unit enclosing its counsel letter reporting that they are willing and accept to withdraw the said writ petition filed in view of grant of consent to the quarry revoking earlier closure order Dated:23.12.2010.

In the reference 3rd cited, the Hon'ble High Court of Madras in its order Dated:02.02.2011 has stayed the proceedings of the RDO, Chengapattu imposing fine for mining in excess area than the leased area.

In the reference 4th cited, the unit has submitted the application for consent under both the Acts and reported that they have started the quarry activity in the year 2003 and the requirement for environmental clearance for the minor mineral came into force only in the year 14.09.2006. Therefore they are operating stone quarry prior to EIA Notification Dated: 14.09.2006 and hence, they continue to operate without obtaining Environment clearance until the mining lease due for expires on 17.09.2013, based on the Ministry of Environment and Forests Circular No. J-15012/35/2007-IA.JI (M) Part Dated:02.07.2007. It was also reported that, the SEIAA constituted by Ministry of Environment and Forests also informed through letter No.SEIAA/TN/RTI, Dated:30.12.2010 that the EIA Notification Dated:14.09.2006 has given prospective effect.

Further it was reported that lease hold area granted is 5.00.0 hectors only and not increased further. Not withstanding the above situation the, RDO's allegation of illicit mining in the order Dated:03.01.2011 which has been stayed in W.P.No. 1015 of 2011 cannot be the constituted by Ministry of Environment and Forests also informed through letter No.SEIAA/TN/RTI Dated:30.12.2010 that the EIA Notification Dated:14.09.2006 has given prospective effect.

Further it was reported that lease hold area granted is 5.00.0 hectors only and not increased further. Not withstanding the above situation the, RDO's allegation of illicit mining in the order Dated:03.01.2011 which has been stayed in W.P.No. 1015 of 2011 cannot be the consideration to misinterpret the word "Increase in lease area". The lease hold area can be increased only by an order passed by the District Collector by increasing the extent in the lease order and lease deed.

Based on the above, the unit's quarry site was inspected by the District Environmental Engineer on 29.07.2011 and observed that no stone quarrying activity was carried out in Quarry No.9. The machineries and the vehicles used for quarrying activity were kept ideal.

Hence the District Environmental Engineer, has recommended to consider the unit's request on suspension of closure direction and restoration of powers supply to the unit subject to certain conditions.

In the reference 8th cited the unit has re-iterated the Board that, they are not attracted by the EIA Notification 2006 and requested to issue consent to the unit and revocation of closure order issued to the unit.

In view of the above said reasons and in exercise of the powers conferred under section 31A of the Air (Prevention and Control of Pollution) Act, 1981 as amended in 1987, the closure order dated:23.12.2010 issued to the unit of M/s.Mariyadoss Stone Quarry, S.F.No.99 part, Keerapakkam Village, Chengalpattu Taluk, Kancheepuram District (Quarry No.9) is revoked with immediate effect subject to the following conditions.

"(1) The unit shall comply with the final order in W.P.No.1015 of 2011 immediately.

(2) The unit shall carryout the mining only in the area earmarked as per lease agreement made with the District Collector Procs., dated 18.09.2003."

The receipt of this proceedings shall be acknowledged.

Sd/- xxxx
Chairman.

Simultaneously, on 06.09.2011, the Tamil Nadu Pollution Control Board has also restored the power supply.

38. From the perusal of the orders, stated supra, for the violations noticed by the Tamil Nadu Pollution Control Board, notice has been issued and action has been taken. Order, dated 06.09.2011, of the Tamil Nadu Pollution Control Board itself, is explanatory, as to why, closure was effected and subsequently revoked. Thus, as rightly contended by the respondents, the directions of the Board, stopping quarrying operation and the lease of the quarry period, cannot be

compensated, as a matter of right.

39. Insofar as lease period of 37 days, between 07.04.2012 and 14.05.2012, from the material on record, it could be disclosed that the team of officials inspected the subject area on 15.07.2010, 16.07.2010 and 23.07.2010 and noticed certain violations, alleged to have been committed by the petitioner, by indulging in illicit quarrying in the adjacent non-lease hold area. The actual area quarried illicitly has been measured and assessed as 7390 lorry loads of earth and 14399 lorry loads of rough stone.

40. Material on record further discloses that the Revenue Division Officer, Chengalpattu, has imposed a penalty of Rs.4,88,53,800/-, vide proceedings in Rc.No.3153/2010/A, dated 03.01.2011. Being aggrieved by the same, the petitioner has filed W.P.No.1015 of 2011 and the same was dismissed on 26.03.2012, with a direction to file an appeal, before the authority. Accordingly, he has filed an appeal, against the penalty order and the same has been rejected on 29.8.2013. Thereafter, the District Collector, Kancheepuram, appellate authority, has issued a notice, dated 13.09.2013 to the petitioner and the same is extracted hereunder:

"A stone quarry lease was granted to Thiru.P.Mariadoss in Government land S.No.99 Part Quarry No.9 over an extent of 5.00 hect. of Keeerapakkam Village, Chengalpattu Taluk, Kanchipuram District, for a period of 10 years from 18.09.2003 to 17.09.2013, under the provision of Rule 8(8) of the Tamil Nadu Minor Mineral Concession Rules, 1959, vide Collector's Proceedings Rc.40/2003-Q3, dated 18.09.2003. The lease period is due to expire on 17.09.2013.

The Lessee Thiru.P.Mariadoss has represented in the References 2nd Cited that quarry operation was not carried out for the period of 366 days during the existence of lease period due to the interruption of some 3rd parties and requested to consider the extension of 366 days to compensate the loss. In the mean time, he has filed Writ Petition No.25601 of 2013 with the prayer to consider the request to extend the non-operative period. The representation of the lessee has to be disposed in accordance with the provision of rule after affording an opportunity of personal hearing. Therefore, the Lessee Thiru.P.Mariadoss is directed to appear for personal enquiry before the District Collector at Kanchipuram on 29.09.2013 at 4.00 PM."

41. Thereafter, the petitioner has made a representation on 17.09.2013, to the District Collector, appellate authority, to defer the enquiry proceedings to some other date. Pursuant to the same, the appellate authority, vide proceedings in Rc.No.615/2010 03, dated 21.09.2013, has passed the following order,

"Thiru.P.Mariadass of Chennai-45 has represented in his letter second cited stating that he was granted stone quarry lease for a period of 10 years from 18.09.2003 to 17.09.2013, under the provision of Rule 8(8) of the TNMMC Rules, 1959 (vide District Collectors proceedings 40/2003, dated 18.09.2003 and it expired on 17.09.2003. Thiru.P.Mariadass has represented that the quarry operation was not carried out for a period of 366 days during the existence of the lease period due to the interruption of third parties and requested to consider the extension of 366 days to compensate the loss. In this connection the opportunity of hearing has been given to Thiru.P.Mariadass on 20.09.2013 at 4.00 P.M. But you have not turned up for the personal hearing on 29.09.2013 and therefore, the personal hearing is postponed to 03.10.2013 at 4.00 P.M. Therefore, you are hereby directed to appear before the District Collector for personal hearing on 03.10.2013 at 4.00 P.M., at Collectorate, Kanchipuram, without fail."

42. Appeal filed by the petitioner is stated to has been rejected on 29.8.2013. Here again, it is the case of the respondents that they did not deny issuance of the transport permits to the petitioner, from 07.04.2012 to 14.05.2012, for a period of 37 days. It also their contention that the petitioner has not approached the authority concerned for issuance of transport permits, by remitting seigniorage fee. No materials have been placed before this Court that the petitioner has approached the authority concerned for obtaining transport permits, by remitting seigniorage fee.

43. Rule 8(8)(i) provides that "the date of commencement of the period of lease granted under this rule shall be the date on which the lease deed is executed" and Rule 8(8)(ii) provides that "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". The respondents have contended that as the lease expired on 17.9.2013, the petitioner has no right over the expired lease hold area. The quarry was taken possession by the Tahsildar, Chengalpattu on 17.9.2013, after the expiry of the lease and therefore, there is no provision in

rules to extend the lease after expiry of the lease.

44. According to Rule 8(6)(f), no lessee is entitled to raise any dispute with reference to the survey and demarcation of the area leased out to him after execution of the lease deed. The petitioner has participated in tender cum auction after verifying the notified area and he is very much aware of the boundary of the area and then only offered the highest lease amount and declared as the successful tenderer. The petitioner has accepted the lease condition and executed the lease deed. Further, the petitioner has operated the quarry for the entire lease period without raising any dispute. In the above circumstances, the petitioner is not entitled for the extension of lease for 55 days.

45. The petitioner claimed 16 days as non-operative period from 28.9.2010 to 13.10.2010. Since, he has obtained transport permit on 27.9.2010 which was valid upto 4.10.2010 and the interim injunction granted on 27.9.2010 in W.P.No.21915 of 2010 has been vacated on 30.9.2010. Further, the petitioner has violated the Tamil Nadu Pollution Control Board norms, for which, they have issued notice to stop the quarrying on 23.12.2010. As the petitioner has rectified the Pollution Control Board norms, they have revoked the order on 6.9.2011. Further, the petitioner has approached the authority only on 7.10.2011 and requested for the issue of transport permit by remitting seigniorage fee and transport permit has been issued on the day itself. As the petitioner has violated and contravened the section 31(A) of the Air (Prevention and Control of Pollution) Act 1981, the closure of quarry for the period of 258 days was within the provisions of Rules and the petitioner did not hold any right for claiming the period as non operative.

46. With regard to the non operative period applied for from 7.4.2012 to 14.5.2012 for a period of 37 days, it is submitted that violation has been noticed and the petitioner indulged in illicit quarrying in the adjacent non lease hold area. The actual quantity quarried illicitly has been measured to 7390 lorry loads of earth, 14399 lorry loads of rough stone. In this regard, the Revenue Divisional Officer, Chenglepattu has imposed penalty of Rs.4,88,53,800/- as per the proceedings in Rc 3153/2010/A, dated 03.01.2011. Aggrieved by this order, the petitioner has filed writ petition and this Court in the order in MP No 1 of 2011 and In W.P No 1015 of 2011, dated 02.02.2011, has ordered interim stay. The Hon'ble Division Bench in order, dated 26.03.2012, dismissed the writ petition with a direction to file an appeal before the authority. The petitioner has filed appeal against the penalty order and the same was rejected on 29.8.2013. The petitioner was

not prevented from quarrying and transport of rough stone during the period of 37 days from 7.4.2012 to 14.5.2012. Further, the petitioner has not approached the authority for issue of transport permit by remitting the necessary seigniorage fee. Therefore, the petitioner is not entitled for the extension of lease for a period of 37 days. In the light of the discussion and decisions, relied on by the respondents, this Court is not inclined to grant the relief prayed for.

47. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

skm

To

1. The District Collector,
Kancheepuram District,
Kancheepuram.
2. The Assistant Director,
Geology and Mining,
Kancheepuram,
Kancheepuram District.

1 cc to M/s.N.Manokaran, Advocate, sr.40918

W.P.No.25601 of 2013

mpi co
kra 03.08.2016

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