

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.27558 and 27559 of 2016

M/s ABM Granites (India) Pvt.Ltd.,rep.by its Director,
460, Main Road,Perundurai, Erode-638 052.

..Petitioner in both WPs

/vs/

1.The Secretary,
Department of Industries cum
Chairman, Tamil Nadu Minerals Ltd.,
Secretariat, Fort St.George,
Chennai-600 009.

2.Tamil Nadu Mines & Minerals Ltd.,
Rep.by its Managing Director,
No.31, Kamarajar Salai,
Chepauk, Chennai 600 005. ..Respondents in both WPs

Prayer in W.P.No.27558 of 2016:- Writ Petition filed under Article 226 of the Constitution of India, seeking for Writ of Mandamus directing the respondents herein to issue work order with respect to raising cum sale agency granted in Rc.No.2603/P3/2011-1 dated 15.09.2011 and 21.09.2011 and Contract Agreement for Granite Quarries for Raising cum Sale dated 22.09.2011 in File No.2603/P3/11 relating to Demarcated Portion-I measuring 6.00.0 Hec. (Multi-colour Granite Quarry) in Survey No.58, Kodaramkulam Village, Ambasamuthiram Taluk, Thirunelveli District for a period of 5 years from the date of such work orders.

Prayer in W.P.No.27559 of 2016:- Writ Petition filed under Article 226 of the Constitution of India, seeking for Writ of Mandamus directing the respondents herein to issue work order with respect to Raising cum Sale Agency granted in Rc.No.2603/P3/2011-2, dated 15.09.2011 and 21.09.2011 and Contract Agreement for Granite Quarries for Raising cum Sale dated 22.09.2011 in File No.12042/P3/11 relating to Demarcated Portion-II measuring 5.00.0 Hec. (Multi-Colour Granite Quarry) in Survey No.58, Kodaramkulam Village, Ambasamuthiram Taluk, Thirunelveli District for a period of 5 years from the date of such work orders.

For Petitioner in both WPs :Mr.V.P.Sengottuvel

For Respondents :Mr.S.Diwakar, Spl.GP
in both WPs for R1

M/s A.Sri Jayanthi, Spl.GP
for R2

C O M M O N O R D E R

Heard Mr.V.P.Sengottuvel, learned counsel appearing for the petitioner and Mr.S.Diwakar, learned Special Government Pleader appearing for the 1st respondent and Ms.A.Sri Jayanthi, learned Special Government Pleader appearing for the 2nd respondent in both the writ petitions.

2. The petitioner-company has filed these writ petitions praying to issue a direction upon the respondents to issue work orders in respect of the Raising cum Sale Agency (herein after referred to as "RCSA") granted to the petitioner, vide proceedings dated 15.09.2011 and 21.09.2011 and Contract Agreement for Granite Quarries for Raising cum Sale Agency, dated 22.09.2011 in File Nos.2603/P3/11 and 12042/P3/11, relating to the demarcated portions I and II, measuring 6.00.0, 5.00.00 Hecs., respectively, in Survey No.58, Kodaramkulam Village, Ambasamuthiram Taluk, Thirunelveli District, for quarrying multi colour granite.

3. It may not be necessary for this Court to go in to all the documents placed in the typed set of papers nor entire averments as set out in the pleadings of the parties and it is suffice to note the following facts:

The 2nd respondent invited tenders, vide tender notification for RCSA for production of granite blocks. The petitioner participated in the tender, pertaining to the subject "quarry" and the petitioner-company was declared as a successful tenderer and awarded the tenders on 15.09.2011 and 21.09.2011 for a period of five years, from the date of execution of the agreements (i.e.) 22.09.2011 and the work orders, dated 15.09.2011 and 21.09.2011, were issued to the petitioner.

4. Though such was the factual position, unfortunately, the petitioner could not enjoy the fruits of the agreements, for the reasons beyond their control. This was well within the knowledge of the respondents, more particularly, the 2nd respondent, as could be seen from the letters dated 15.09.2011 and 21.09.2011 given to the petitioner, which state that when the RCSA is a provisional for operating quarry, owned by the 2nd respondent, as per the tenders, for the period of five years from the date of agreements, subject to the outcome of W.P.No.13266 of 2010, the works could be commenced only after the stay order granted

in W.P.No.3274 of 2011, dated 11.07.2011, is vacated. Thus, the communications dated 15.09.2011 and 21.09.2011 make it abundantly clear that though the work orders were issued on 15.09.2011 and 21.09.2011, it is of little avail, as unless and until the stay, which is obtained in the Public Interest Litigation, was vacated, the petitioner could not enter the quarry.

5. The undisputed fact is that the interim orders granted in those cases, which prevented the petitioner from operating the quarry, rather which led to the 2nd respondent, not permitting the petitioner to operate the quarry till the stay order is vacated, this position continued till March, 2015. However, the said public interest writ petition, which was pending before the Madurai Bench of this Court, was transferred to the file of the National Green Tribunal on its constitution and re-numbered as A.Nos.256 and 257 of 2013 (SZ). The contentions raised by the applicant therein viz., Ambai Taluk Tamirabarani Vivasayigal Nala Sangam, Tirunelveli, before the National Green Tribunal is that, there is a Tiger Reserve and the area is ecologically sensitive area and for any quarrying activity, within 25 km of the boundary of the National Park or Sanctuary, necessary clearance has to be obtained from the Union of India etc., Ultimately, the case was rejected by the National Green Tribunal, by a common order, dated 05.03.2015, holding that obtaining of Environmental Clearance from Ministry of Environmental Forests is not required nor mandatory, as envisaged under EIA Notification, 2006.

6. It appears that the order passed by the National Green Tribunal has become final, as no further appeal has been preferred. After which, the petitioner has given a representation on 23.03.2015 requesting to issue work orders for commencing the quarrying operations. The 2nd respondent did not effect any reply nor took a decision on the matter and after waiting for a considerable length of time, the petitioner has filed these writ petitions.

7. The contention raised by the learned Special Government Pleader appearing for the respondents, as culled out from the counter affidavits, is that the second respondent has taken a decision, which appears to be a Board Resolution (date not furnished) wherein they have resolved, not to engage RA/RCSA system henceforth and to operate all quarries and mines departmentally by utilizing departmental men and machineries and if any more work force is required in future, the labour contract system may be adopted. As could be seen from the said Resolution, the Board has taken a decision that henceforth i.e., on and after the Resolution, they would operate the quarries themselves by utilizing the departmental men and machinery. The undisputed fact is that the petitioner

was granted the work orders in the year 2011 and the period of 5 years should start from the date, on which the work orders were issued (i.e.) on 21.09.2011.

8. Ms.S.Sri Jayanthi, learned Special Government Pleader appearing for the 2nd respondent submitted that the competent authority to grant permission as sought for in this writ petition is the first respondent.

9. This submission is stated to be rejected for the simple reason that the Government had already handed over the lands to the 2nd respondent, though it may be only for 30 years, the RCSA was granted by the second respondent and the second respondent stated that though the petitioner is a successful bidder and the work orders are given to them, they cannot operate the quarry, unless the stay is vacated. Ultimately, it appears that it is the writ petitioner, who effectively defended the matter before the National Green Tribunal and obtained the orders.

10. Earlier, this Court had an occasion to consider a case, where a person was granted permission to quarry rough stones in a land owned by the Government. The lease was executed by the District Collector and for the reasons beyond the control of the lessee, the lessee could not operate the quarry and after his demise, his wife also could not operate the quarry. As a result, the period of almost four years came to an end and the period of lease itself expired. The lessee's wife filed a writ petition in W.P.No.13218 of 2016 before this Court praying for grant of extension of the period of lease for un-utilised period to enable her to quarry and transport the quarried materials. Somewhat identical stand, as taken by the second respondent, in this writ petition, was taken by the District Collector in the said writ petition and contended that the lease period is fixed and the question of granting extension does not arise. The Court took into the consideration various decisions of the Hon'ble Division Bench on the said point and granted the relief and directed the respondents therein to extend the lease period by three years, eight months and seventeen days, the un-utilised period. At this stage, it would be beneficial to refer to the operative portion of the order, which reads thus:-

"11. In the light of the above decision, reasons assigned by the respondent in the impugned order and the stand taken by the respondent does not merit consideration. There is always a discretion vested and the Court is entitled to examine as to the manner in which each case have to be considered. Thus, taking into consideration all the above facts and circumstances of the case and in the light of the above discussion, the impugned order is held unsustainable and liable to be set aside. Accordingly, it is set aside.

12. Now, coming to the relief that the petitioner is entitled to, it is seen that the petitioner has sought for extension of the lease period by 3 years, 8 months and 17 days, stating that this is a non operative period. As already pointed out, though lease was not transferred in her name, the petitioner had been operating the quarry up to 18.5.2010, soon after the demise of her husband on 27.11.2009. The petitioner had thereafter intimated about the demise of her husband only on 22.7.2011, which application was not considered for 2½ years by the respondent. Thus considering the facts and circumstances of the case, this Court is inclined to hold that the petitioner is entitled to an extension of lease for a further period of three years with effect from the date of issue of transport permit.

13. In this regard, the respondent is directed to issue an order to the petitioner permitting her to continue to quarry operation from the date of issue of transport permit for a period of three years, within a period of four weeks from the date of receipt of a copy of this order."

11. Though the above order pertains to the lease granted under the provisions of the Tamil Nadu Minor and Minerals Concession Rules, 1959, it makes little difference, since the lands vested with the 2nd respondent are admittedly the lands owned by the Government and the lands were directed to be handed over to the 2nd respondent to enable the 2nd respondent, wholly owned Government Company to exploit the mineral resources. Therefore, the analogy, which has been applied in the above referred decision, is also equally extensible to the case on hand.

12. As mentioned above, the work orders could not have been given effect to, on the said date, because, the letters given by the 2nd respondent to the petitioner dated 15.09.2011 and 21.09.2011 are evidently clear that unless the stay order was vacated, the petitioner cannot operate the quarry. As mentioned, the matter attained finality before the National Green Tribunal on 05.03.2015, after which, the petitioner gave a representation on 23.03.2015. If the 2nd respondent has acted in a reasonable manner, they could have at least permitted the petitioner to operate quarry for remaining period. But for the reasons best known, they kept the matter pending. Now, they are estopped from taking shelter under such Resolution, which by their own showing, is prospective.

13. In the result, these writ petitions are disposed of, by directing the 2nd respondent to consider the petitioner's representation, dated 23.03.2015, taking note of the

observations made in this order and without reference to the Resolution passed by the Board of the respondents, which has been held to be only prospective in effect and a decision should be taken on merits and in accordance with law, after referring to the conditions of tenders and in consonance with the stand taken by the 2nd respondent in their communications dated 15.09.2011 and 21.09.2011 in R.C.Nos.2603/P3/11-1 and 2603/P3/11-2, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

srk/ari

To

1.The Secretary,
Department of Industries cum
Chairman, Tamil Nadu Minerals Ltd.,
Secretariat, Fort St.George,
Chennai-600 009.

2.Tamil Nadu Mines & Minerals Ltd.,
Rep.by its Managing Director,
No.31, Kamarajar Salai,
Chepauk, Chennai 600 005.

1 cc to Government Pleader, Sr. 58151

2 cc to M/s.V.P. Sengottuvel, Advocate, Sr. 58104, 58103

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and 27559 of 2016

PPA (CO)
kk 25/10

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