

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON:23.09.2014

DATED: 07.01.2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.23856 of 2006

S.Rajendiran

.. Petitioner

vs.

1. The District Collector,
Cuddalore District,
Cuddalore.

2.The Assistant Director,
O/o.Geology and Mining,
Cuddalore.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India, praying this Court for issuance of Writ of Certiorari to call for the records of the 2nd respondent's proceeding in Na.Ka.No.2238/Geo&Min/1996 dated 27.04.2006 and quash the same.

For Petitioner ... Mr.M.Muthappan

For Respondent ... Mr.R.Lakshmi Narayanan,
(Additional Government Pleader)

ORDER

The petitioner submits that he is the successful bidder in respect of auction conducted for quarrying of sand in respect of R.S.No.1 in Pathirikuppam Village, Cuddalore Taluk and District. He has submitted that originally the above quarry was notified for public auction by Government Gazette No.25, dated 22.10.1996, he has submitted that he has taken the above quarry in the year of 1996. He was the successful bidder in respect of the quarry and proceeding has been issued in his favour confirming the above said auction on 21.05.1997. He has also paid necessary security deposit and necessary lease amount on the same day.

2. The petitioner submits that he has been prevented from carrying on quarrying operation in respect of the above said quarry because of the objection raised by the public. He also submits that he came to understand that one Jeevarathina Naicker has filed Civil Suit in O.S.No.706 of 1992, on the file of the District Munsif Court, Cuddalore and the above said suit has been decreed by granting permanent injunction restraining the District Collector from allowing any person to carry on quarrying operation in respect of the way leading to the above said quarry. The District Collector being aware of the above said facts has not helped him in any way to carry on quarrying operation by providing alternate site for quarrying operation. He has submitted that the lease period came to an end in the year of 1999.

3. The petitioner submits that in the earlier notification issued in the year of 1996, it has not been specifically stated that the Government is not responsible in any way to enable the petitioner to carry on quarrying operation by providing way to the above said quarry in any other manner, if he is prevented by the public. He has submitted that in the meanwhile, the lease period of the petitioner came to an end in the year of 1999. Again the Government has brought the above quarry for tender-cum-public auction by way of Gazette Notification in No.15, dated 21.05.1999 wherein it was stated that it is the responsibility of the persons who have taken the quarry to go to the quarry and carry on quarrying operation and the Government is not responsible in any way if the person is prevented from carrying on quarrying operation.

4. The petitioner further submits that when the petitioner has taken the quarry on lease, the Government being well aware of the fact that the above said Jeevarathina Naicker has filed in O.S.No.706 of 1992 has obtained permanent injunction against the District Collector from allowing anybody to go to the above said quarry situated in Pathirikuppam Village stating that his trees will be affected, if the way is used for quarrying operation then it ought not to have brought the quarry for tender-cum-public auction. The Government is well aware of the fact that the above said suit is pending and the District Collector having known the facts that the above suit was contested and decreed against the Government has chosen to bring the above quarry for tender-cum-public auction in the year 1996 without disclosing the above fact in the District Gazette. Having contested the above matter, the District Collector ought not to have brought the quarry for tender-cum-public auction in the year of 1996.

5. The petitioner further submits that the petitioner was not in a position to carry on quarrying operation from the year of 1996 for a period of three years. The said Jeevarathina Naicker in peace meeting held on 28.12.1999 has undertaken to withdraw all the pending proceedings and has also stated that running of the quarry would be beneficial for the welfare of the Panchayat and also the Government.

If the quarry was operated, it would bring revenue to the Government and also to the local Panchayat. The Revenue Divisional Officer, has also signed the above said agreement in the said peace meeting. Since, the dispute raised by the said Jeevarathina Naicker has been settled amicably, the petitioner has given a representation dated 11.02.2000 to the District Collector requesting him to permit the petitioner to carry on quarrying operation for a full period of three years on payment of necessary charges. In the meantime, the respondents issued a demand note for the payment of lease amount for the second and third year on 12.08.1998 and 29.10.1999, he had challenged the same before this Court in W.P.No.767/99 and 1474/2000 and obtained interim stay since he had not quarried in the first year itself except 44 days. Thereafter, the first writ petition was dismissed and the second writ petition is still pending before this Court but the Stay Petition was dismissed for want of extension.

6. The petitioner submits that eventhough the petitioner has paid the entire lease amount in the year 1996, he was prevented from carrying on quarrying operation because of the objection of the public and also the decree passed by the Civil Court against the District Collector restraining him to permit any one to use the path way for sand quarry. Since the District Collector has not passed any orders on the representation given by the petitioner to carry on quarrying operation dated 11.02.2000, the petitioner was constrained to file W.P.No.4625 of 2000 and this Court by an order dated 16.03.2000 has directed the District Collector to pass orders on the representation given by the petitioner within eight weeks from the date of receipt of a copy of this order.

7. The petitioner further submits that since the District Collector has not passed any order as per the order of this Court, dated 16.03.2000, the petitioner was constrained to issue a legal notice dated 24.05.2000 calling upon the District Collector to comply with the order of this Court, dated 16.03.2000. He has submitted that after service of notice on the District Collector, he has passed an order in his proceedings No.C/M & M/2238/96, dated 30.05.2000 stating that the request of the petitioner for grant of extension of time for carrying on quarrying operation cannot be considered and has rejected the application of the petitioner. The order of the District Collector has been passed hastily without considering the facts and circumstances of the above case.

8. The petitioner further submits that aggrieved by the order of the District Collector, he has filed the writ petition in W.P.No.9806/2000 before this Court and subsequently he filed an Appeal before the Director of Geology and Mining, who is the Appellate Authority and thereafter the writ petition was dismissed as not pressed. The Assistant Director of Geology and Mining in his order dated 24.01.2001 rejected his appeal. Aggrieved by the same, he filed Second Appeal to the Government and the same was rejected in

G.O.(D).No.235, Industries (MMC-2) Department, dated 29.08.2002 without considering the various judgements of the Supreme Court as well as this Hon'ble Court.

9. Aggrieved by the said order he has filed this writ petition in W.P.No.38368 of 2002 and the same was admitted by this Court on 10.10.2002 and the same is still pending. In the meantime, the State Government has amended the rule in Tamil Nadu Mines and Mineral Concession Rules in G.O.Ms.95 (Industries (MMC-I) dated 01.10.2003 by terminating all existing lease of sand quarries since the Government has been taken over the sand quarrying operation. Hence, he made a representation to the Government as well as District Collector on 2004 requesting them to refund his lease amount at Rs.4,14,100/-. Whileso, suddenly the 2nd respondent herein has issued a demand notice for arrears of lease amount for the 2nd and 3rd year which comes to a sum of Rs.5,61,013/- and further directed to pay the interest from 01.04.1997 at the rate of 24% per annum without any basis. Hence, this writ petition is filed.

10. The learned counsel Mr.M.Muthappan, appearing for the petitioner submits that the petitioner was the successful bidder in respect of public auction conducted for quarrying of sand comprised in R.S.No.1 in Pathirikuppam Village, Cuddalore Taluk and District. The auction was continued on 21.05.1997 and the petitioner has also paid necessary admissible amounts. Thereafter, the petitioner has been restrained from carrying out quarry operations. Knowing the same, the District Collector had not provided alternative site. As a result, the lease period came to an end in the year 1995. At the time of notification, it has not been specifically stated that the Government is not responsible in any way regarding the Civil Court Decree in O.S.No.706 of 1992, wherein decree was granted restraining the District Collector from allowing any person to operate the quarry.

11. Again, the respondent had given publication to carry out the quarry operation, wherein it was disclosed about the Civil Court Decree. Under these circumstances, the respondent's notification dated 22.10.1996 has caused hardship to the petitioner. Thereafter, a peace meeting was held on 28.12.1999, wherein the said Jeevarathina Naicker has given an undertaking to withdraw all the pending proceedings relating to the quarry for the welfare of the village Panchayat. The Revenue Divisional Officer also signed in the said agreement. Thereafter, the petitioner made representation to the District Collector and requested him to permit the petitioner to carry out quarry operation for the entire period of three years on payment of admissible fees. Under these circumstances, the respondent had issued demand notice for the payment of lease amount for the 2nd and 3rd year. The same was challenged before this Court. Subsequently, the said writ petition was dismissed.

12. The very competent counsel further submits that the petitioner has paid the entire lease amount in the year of 1996 itself. But, he was prevented to carry out the quarry operations, since the Civil Court Decree is in force. The District Collector had not passed any order on his representation. Thereafter, this Court had given specific direction to the District Collector to dispose the petitioner's representation on merits within a specified period. This order has been passed in another writ petition. However, the District Collector rejected the petitioner's representation. Thereafter, the petitioner has filed an appeal before the Director of Geology and Mining. The same was rejected. Subsequently, an administrative 2nd appeal was also ejected by the Government. The aggrieved petitioner made another representation to the Government requesting them to refund the lease amount of a sum of Rs.4,14,100/- which the petitioner had already paid. Under the circumstances, the respondents had issued demand notice for arrears of lease amount of a sum of Rs.5,61,103/- with interest at the rate of 24% per annum and the said order is an arbitrary one.

13. The highly competent counsel Mr.R.Lakshmi Narayanan, appearing for the respondents submits that the petitioner was granted lease to operate sand quarry with effect from 01.04.1996 to 31.03.1999. As such, the petitioner had operated quarry for the entire period. Therefore, the petitioner is liable to pay a sum of Rs.3,95,573/- towards 2nd year lease amount and Rs.5,41,440/- towards 3rd year lease amount. After calculating the mode of payment, the petitioner is liable to pay a sum of Rs.5,61,013/- with interest at the rate of 24% per annum. The said amount had been claimed as per the lease agreement dated 16.05.1997.

14. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsel on either side and on perusing the typed set of papers, it is seen that the same respondents had issued demand notice on an earlier occasion for the said period. The same was challenged before this Court and it was dismissed. Subsequently, the impugned order has been passed by the 1st respondent, which is suitable for execution. As such, the above writ petition does not generate sufficient force to allow it. Hence, the above writ petition is dismissed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

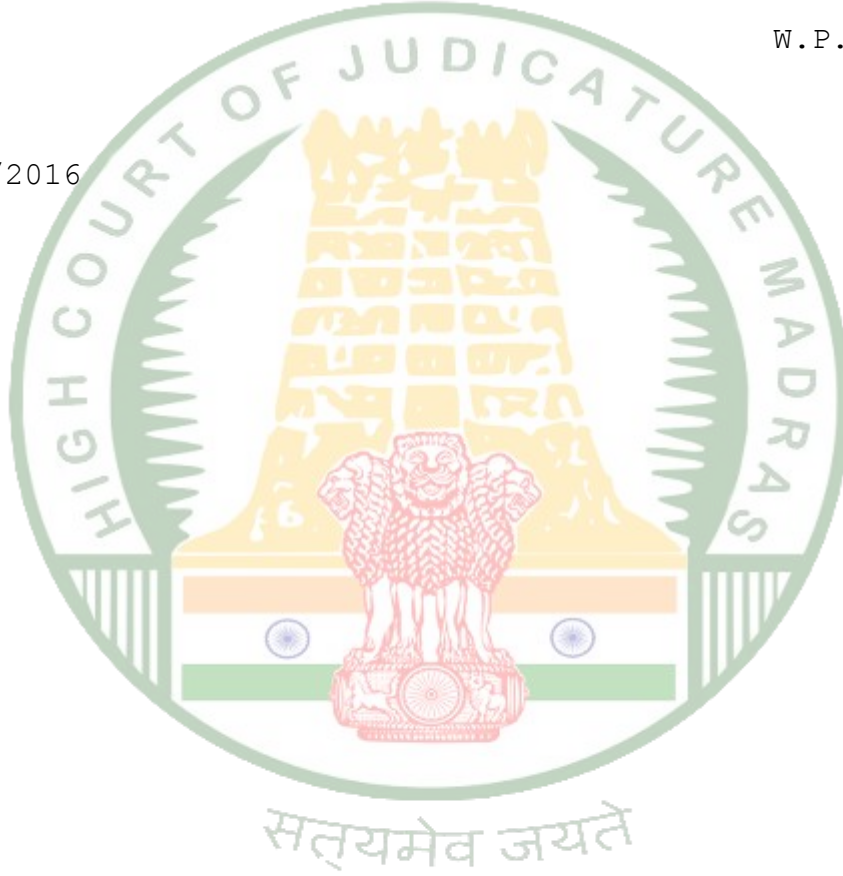
1. The District Collector,
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2.The Assistant Director,
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+1cc to M/s.M.Muthappan, Advocate Sr.1391

W.P.No.23856 of 2006

BVR(CO)
RVR 12/02/2016



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