

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2016

Date of Reserving the Order	Date of Pronouncing the Order
02.11.2016	07.11.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.37019 of 2016
and
W.M.P.No.31831 of 2016

S.Devasahayam ... Petitioner

vs

1.The District Collector,
Villupuram District,
Villupuram.

2.The Assistant Director of Geology and Mining,
Office of the District Collector,
Villupuram. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, to forbear the respondents from in any way interfering with the petitioner's right to quarry and transport the quarried mineral from lease granted patta lands of the petitioner measuring 0.12.0 Hectares comprised in S.F.No.13/2A2, 0.05.0 Hectares in S.F.No.14/4, 0.62.0 Hectares in S.F.No.15/11, 0.83.0 Hectares in S.F.No.21/1, totally measuring 1.62.0 Hectares, situated in Ulagapuram Village, Vanur Taluk, Villupuram District, during the currency of the lease, without due process of law.

For Petitioner : Mr.K.Ramakrishna Reddy

For Respondents: Mr.S.Diwakar

Special Government Pleader

ORDER

The petitioner prays for issuance of a writ of Mandamus to forbear the respondents from in any manner interfering with his right to quarry and transport the quarried material from the Patta lands measuring 0.12.0 Hectares comprised in

S.F.No.13/2A2, 0.05.0 Hectares in S.F.No.14/4, 0.62.0 Hectares in S.F.No.15/11, 0.83.0 Hectares in S.F.No.21/1, totally measuring 1.62.0 Hectares, for which the petitioner has been granted a lease which is in currency without due process of law.

2.The petitioner is the owner of the Patta lands for which lease has been granted to quarry rough stones and earth for a period of five years from 04.02.2014 to 03.02.2019. The lease deed was executed on 04.02.2014 and registered as Document No.370/2014. The petitioner is said to have paid the seigniorage fee of Rs.54,000/- on 25.05.2016 and sought for issuance of transport permit to transport 200 lorry loads of rough stones. It is submitted that the request made by the petitioner was not processed on the ground that one John Vincent is said to have given a complaint. The petitioner on coming to know of the same and realising that it is a false complaint lodged a police complaint against the said John Vincent before the Brammahdesam Police Station and it is the case of the petitioner that the family members of John Vincent appeared before the Police and gave statement that the complaint is false and the allegations are baseless. The petitioner is said to have produced No Objection Certificate from the residents who are residing in the houses which have been put up without any approval and most of the residents are quarry workers in the said quarry. The petitioner is also stated to have obtained No Objection Certificate from Ulagapuram Village Panchayat which has been forwarded to the Tahsildar, Vanur.

3.It is further submitted that another complaint was made in the name of Friends Power Movement of Tindivanam and this complaint is also stated to have been withdrawn on 22.06.2016. The Revenue Inspector has submitted his report to the Tahsildar, Vanur on 19.07.2016 and the Revenue Divisional Officer considering all the records has recommended to the District Collector the first respondent for permitting the petitioner to continue the quarrying operation. Since the petitioner's request for grant of transport permit vide representation dated 10.08.2016 was not considered in spite of having met the first respondent and explained all the details, the petitioner is before this Court by way of this writ petition.

4.Mr.K.Ramakrishna Reddy, learned counsel for the petitioner submitted that the action of the first respondent in refusing to issue transport permit is wholly without jurisdiction and as the petitioner has a valid lease in his favour there cannot be refusal to grant transport permits. It is submitted that under identical circumstances, this Court in several writ petitions has passed orders directing issuance of transport permits. In this regard, reliance was placed on the order passed by this Court in W.P.No.34043 of 2002 (K.Chinnaraj vs. The District

Collector, Kanchipuram District, Kanchipuram and another) dated 30.08.2002. It is submitted that all that the petitioner seeks for in this writ petition is to issue a similar direction. It is submitted that even assuming that there are certain allegation against the petitioner, action can be initiated against the petitioner in accordance with law and the petitioner is ready to face all the allegations and for that reason transport permits cannot be withheld and by doing so, the respondents are committing illegality.

5.The learned counsel referred to Rule 36(1-A) of the Tamil Nadu Minor Mineral Concession Rules, 1959 and submitted that in terms of Clause (a) of the said Rule, no lease shall be granted for quarrying stone within 300 meters from any inhabited site which has been defined to mean a Village site or Town site or House site as referred to in the revenue records or a house site or a layout approved by the Local Body or Town or Country or Metropolitan Planning Authority who has been empowered to approve such area as a house site or a layout area. It is submitted that all the so called houses which have come up are much after the lease was granted in favour of the petitioner and in any event these houses would not fall within the definition of "inhabited site" and therefore there is no prohibition under Rule 36(1-A)(a) of the Tamil Nadu Minor and Mineral Concession Rules, 1959. It is further submitted that because of a false complaint, the District Collector has passed an order on 14.10.2016 directing the petitioner is willing to obtain consent to operate and the petitioner will obtain the necessary consent but citing the pendency of the writ petition the Pollution Control Authorities are refusing to entertain the petitioner's application for grant of consent to operate. With these facts, the learned counsel would submit that the transport permits may be directed to be issued for the quarried materials by adopting the reasons assigned by this Court in the case of K.Chinnaraj (supra) and the petitioner will approach the authorities concerned and obtain consent to operate the unit and in the event, show cause notice is issued to the petitioner for any alleged violation the petitioner will defend the said proceedings in the manner known to law.

6.The learned Special Government Pleader appearing for the respondents produced the written instructions given by the District Collector dated 24.10.2016, from which it is seen that the petitioner has been carrying on quarrying operation from the commencement of lease till 20.04.2016 and during the currency of the lease period several petitions from the Villagers of Ulagapuram Village were received raising various issues because of the stone quarry operated by the petitioner. It is further stated that enquiry has been conducted by the revenue

authorities and an opportunity of personal hearing was granted to the petitioner and individual depositions have been recorded. Further it is stated that the Assistant Director of Geology and Mining, the second respondent herein has been ordered to inspect the said quarry for any violation and he has stated that boundary stones were not planted to confine the leasehold area and further report has been called from the Revenue Divisional Officer, Villupuram. This written instruction given by the District Collector was produced before this Court when the writ petition was heard on 26.10.2016 and after taking into consideration the stand taken by the District Collector, the Court directed the Special Government Pleader to get further instructions with regard to the report called from the Revenue Divisional Officer, Villupuram by the District Collector. Accordingly, the report submitted by the Revenue Divisional Officer to the District Collector dated 01.11.2016 was produced along with annexures. By referring to the said report, the learned Special Government Pleader submitted that the petitioner has violated the lease conditions and quarried in Government poramboke land and also quarried in his patta land for which lease was not granted and these were the findings during the inspection and the procedure for imposing penalty is under process. Therefore, it is submitted that so far as the issue of transport permit is concerned, the Court may take a decision in the matter leaving it open to the first respondent to proceed in accordance with law with regard to the other allegations.

7. Heard the learned counsel appearing for both the parties and perused the materials placed on record.

8. The undisputed facts are that the petitioner has a valid lease till 03.02.2019 for quarrying rough stones in S.F.Nos.13/2A2, 14/4, 15/11 and 21/1, Ulagapuram Village, Vanur Taluk, Villupuram District. The petitioner seeks for a direction upon the respondents to issue transport permits for the quarried material. However, as on date, the petitioner is unable to quarry because the District Collector has passed an order on 14.10.2016 directing the petitioner to obtain consent to operate. The learned counsel for the petitioner submits that the petitioner will obtain consent to operate as ordered by the District Collector and certain directions may be issued by this Court to facilitate the process since the Officers are not entertaining the petitioner due to pendency of the writ petition.

9. Though several decisions were enclosed in the typed set of papers, the learned counsel referred to the decision in the case of K.Chinnaraj (supra) and prayed for similar directions. In the said case, the petitioner sought for a direction to issue

transport permit for the quarried sand on payment of seigniorage fee. In the said case a show cause notice was pending against the petitioner therein alleging that he has quarried below the permitted level affecting agricultural activities and thereby violated the lease conditions. The grievance of the petitioner therein was that though fifteen days time was granted to give explanation to the show cause notice, without waiting for the explanation, the respondents have refused to issue transport permit, thereby actually interfering with the rights under the lease deed. Considering the said facts, the court observed that action can be taken only after opportunity is given to the petitioner to give his explanation and refusal to issue transport permit without giving opportunity to explain that he actually violated the conditions of lease would result in indirect cancellation of lease. Accordingly, the writ petition was disposed of by directing the respondents therein to issue transport permits and simultaneously leaving it open to the respondents to take action in accordance with law on payment of seigniorage fee and other legal dues.

10.The learned counsel for the petitioner contended that similar direction may be issued in this writ petition also as it is an identical case while leaving it open to the authorities to take action in accordance with law for any alleged violation.

11.For the petitioner to be entitled to a similar relief as granted in the case of K.Chinnaraj (supra), it is necessary that the factual position in the present case is looked into. As noticed above, the allegation against the said K.Chinnaraj was that he had quarried to a depth more than what is permitted which affected the agricultural activities. In other words, there was no allegation of quarrying outside the leasehold area and the allegation was pertaining to the permissible depth to which quarrying could be made. In the instant case, the allegations against the petitioner are two fold. Firstly that the petitioner has partially quarried in Government poramboke land in S.F.No.15/10 to an extent of 0.02.0 ares out of 0.05.0 ares to a depth of nearly 14 meters. The second allegation is that the petitioner has quarried in S.F.No.15/8B, though this land is a patta land of the petitioner, no lease was granted for quarrying but the petitioner has quarried to a depth of 17 meters. It is stated that the matter is under progress for action being taken for the above said two allegations. Along with the report of the Revenue Divisional Officer, the statement of the Revenue Tahsildar, Villupuram dated 01.11.2016 as well as a sketch have been enclosed. From the sketch it is seen that the areas where the allegation of illegal quarrying is said to have been done is sandwiched between the petitioner's patta land

in S.F.No.15/11 and 21/1 for which lease was granted.

12.The learned Special Government Pleader submitted that it was very difficult to ascertain whether quarrying was done in the leasehold area or otherwise as the other patta lands of the petitioner and the Government Poromboke land is in between the leasehold patta lands of the petitioner. In any event, the report of the Revenue Divisional Officer, Villupuram is yet to fructify into a show cause notice. Therefore, the respondents are given liberty to proceed further in accordance with law based on the report of the Revenue Divisional Officer, Villupuram dated 01.11.2016.

13.In the light of the said conclusion, this Court is of the considered view that until the proceedings are concluded in the manner known to law pursuant to the report of the Revenue Divisional Officer dated 01.11.2016 permitting the petitioner to remove the quarried materials would result in hampering further action being taken as the matter is still in the form of a report of the Revenue Divisional Officer and it is for the District Collector to take further action. Thus the issue as to whether the petitioner is entitled for transport permit for already quarried material can be considered only after the District Collector proceeds further pursuant to the report of the Revenue Divisional Officer dated 01.11.2016 and for the present, the same should be deferred.

14.The next issue is with regard to the prayer sought for by the petitioner from in any manner interfering with the quarry operations. Admittedly, the lease is subsisting and there is no order passed either suspending or cancelling the lease. Therefore, the petitioner is entitled to enjoy the benefits of lease in accordance with the conditions. However, the petitioner is unable to quarry as of now because he has not obtained consent to operate as per the direction issued by the District Collector in proceedings dated 14.10.2016. Since the petitioner has undertaken to obtain consent, there will be a direction to the appropriate authority to consider the petitioner's application for grant of consent to operate the quarry in the leasehold area in accordance with law without in any manner being influenced by the allegations which are now pending against the petitioner of having illicitly quarried in Government poromboke land and in non-leasehold patta land. This direction shall be complied with by the competent authority within a period of three weeks from the date on which necessary application is made.

15.In the result, the prayer sought for by the petitioner to grant transport permit for the already quarried material shall

stand deferred for the present since the allegation is that the petitioner has quarried in Government poromboke land and in non-leasehold patta land and after the District Collector initiates appropriate proceedings, he may consider for issuance of transport permit. Secondly, the petitioner is directed to submit an application for grant of consent to operate the quarry in the Survey Numbers mentioned in the lease deed and if such application is filed, it shall be considered and processed in accordance with law within a period of three weeks, uninfluenced by the allegations which are now pending against the petitioner.

16. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1 The District Collector,
Villupuram District
Villupuram

2 The Assistant Director of Geology and Mining
Office of the District Collector,
Villupuram

+2cc to Mr.K. Ramakrishna Reddy, Advocate, S.R.No.63629
+1cc to the Government Pleader, S.R.No.63927

trm(CO)
md(21/11/2016)

W.P.No.37019 of 2016 and
W.M.P.No.31831 of 2016

WEB COPY