



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) No.10339 2016

M/s.Madhucon Projects Ltd.,
Rep by its Director K.Srinivasa Rao,
"Madhucon House"
Road No.36, Jubilee Hills,
Hyderabad 500 033

..Petitioner

Vs.

The District Collector,
Pudukottai District, Pudukottai.

..Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent's proceedings bearing Rc.No.1432/2012 [G&M], dated 28.04.2016 pertaining to the petitioner's lease hold patta land stone quarry measuring 2.37.5 hectares comprised in Survey S.F.No.164/2, 0.26.0 hectares in S.F.No.164/3, 0.27.0 hectares in S.F.No.165/4, and 1.05.0 hectares in S.F.No.165/5, totally measuring 3.95.5 hectares situated in Rakkathanpatti Village, Kulathur Taluk, Pudukottai District and quash the same and direct the respondent to grant renewal of lease by reconsidering the petitioner's application dated 27.02.2012.

For Petitioner : Mr.K.Ramakrishna Reddy

For Respondent : Mr.B.Pugalendhi,

Additional Advocate General
assisted by Mr.N.S.Karthikeyan,
Additional Government Pleader.

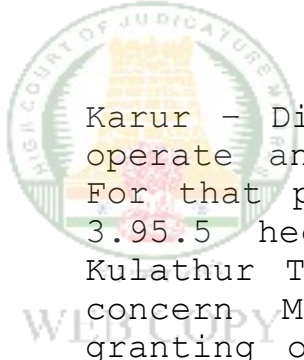
ORDER

Challenging the order passed by the respondent dated 28.04.2016 rejecting the petitioner's application for granting of renewal of lease, the present writ petition has been filed.

2.Heard Mr.K.Ramakrishna Reddy, learned counsel appearing for the petitioner and Mr.B.Pugalendhi, learned Additional Advocate General appearing for the respondents.

3.The case of the petitioner, in brief, is as follows:-

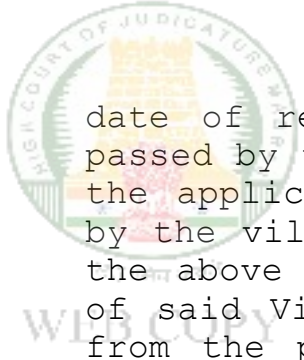
The petitioner is carrying on business of undertaking National Highway Projects, Power Generation, digging of irrigation canals, boring tunnels, quarrying and marketing granite etc., all over India. The petitioner was awarded with a contract to lay and maintain Trichy-Thanjavur National Highway of 60 kms length (NH 67), Madurai - Tuticorin National Highway of 128 kms (NH 45B) and



Karur - Dindigul National Highway of 75 kms (NH 7) under built, operate and transfer system (BOT) during the period 2006-2011. For that purpose, the petitioner obtained lease to an extent of 3.95.5 hectares of land situated in Rakkathanpatti Village, Kulathur Taluk, Pudukottai District from the petitioner's sister concern M/s.Madhucon Land Developers Ltd., and applied for granting of permission to quarry stone in the above said patta land. Subsequently, the Deputy Director of Geology and Mining, Pudukottai inspected the subject area and recommended for grant of lease in respect of the said 3.95.5 hectares of land. Thereafter, quarry lease was granted under Rule 19 of the Tamil Nadu Minor Mineral Concession Rules, 1959 (for short 'Rules') for a period of five years from 2007 to 2012. The said lease period was expired in the year 2012. Thereafter, the petitioner applied for renewal for the above said lease under Rule 19 of the Rules on 27.02.2012. After expiry of the lease period, the Revenue Divisional Officer, Pudukottai issued show cause notice to the petitioner alleging some illicit quarry and thereafter, the petitioner appeared before the Revenue Divisional Officer and raised his objections for the said show cause notice. The Revenue Divisional Officer, Pudukottai, without considering the objections in its proper perspective mechanically levied a sum of Rs.1,97,60,760/- as a penalty for the alleged illicit quarry. Thereafter, based on a fresh inspection report from the Tahsildar, Kulathur stating that there is no account for 350 lorry loads only for which another proceedings was issued by the Revenue Divisional Officer demanding a sum of Rs.5,25,000/- without accepting the same, but with objection, the petitioner paid the said amount.

4.Subsequently, based on the application given by the petitioner for renewal of lease, the Revenue Divisional Officer, after inspection, submitted a report before the first respondent on 17.06.2014 recommending to grant renewal stating that there is no violation of Rules for granting lease in favour of the petitioner and neighbouring land owner one K.J.Sujatha filed renewal application and the said application was considered and lease was renewed for a period of five years.

5.In the meantime, once again, another show cause notice was issued by the respondent dated 16.10.2015 alleging that the petitioner has illegally quarried rough stone in the adjoining lands namely, non leased out area, to an extent of 2,31,597 cbm and for that, the petitioner has submitted a suitable reply denying the said allegations. Despite that the respondent has passed an order imposing an fine amount of Rs.8,63,85,681/-. Challenging the said order, the petitioner has filed a writ petition in W.P(MD)No.1500 of 2016. This Court by an order dated 25.01.2016 granted interim stay of operation of the said order passed by the respondent and directed the respondent to consider the application for renewal of lease on merits and in accordance with law and pass orders within a period of six weeks from the



date of receipt of a copy of the order. Pursuant to the order passed by this Court, the impugned order has been passed rejecting the application of the petitioner based on some objections filed by the villagers of Rakkathampatti. According to the petitioner, the above objection was given by one N.Gurumurthy, the President of said Village Panchayat who has demanded a sum of Rs.28 lakhs from the petitioner for his official expenses and also for the election expenses. Since the petitioner refused, he has made false allegations against the petitioner. Based on the above complaint given by the President of the said village, the respondent has rejected the petitioner's application for renewal of lease. Challenging the said rejection order, the present writ petition has been filed.

6.The respondent has filed a detailed counter affidavit inter alia contending that when the currency of earlier lease, the petitioner indulged in illegal quarry and the Assistant Director, Survey and Land Records, Pudukottai inspected the area and reported that the petitioner illicitly quarried rough stones in large scale from the non lease hold area and assessed the illicit quarry to 2,31,597 cbms. Based on the said report, an enquiry was conducted by the respondent and subsequently, imposed a penalty of Rs.8,63,85,681/-. When the said order was challenged before this Court, this Court by an order 25.01.2016, granted interim stay of penalty and directed the respondent to consider the application for granting renewal of lease. It is further stated that now the respondent has filed a petition for vacating the stay and the same is pending. Subsequently, the Tahsildar, Kulathur Taluk, in his letter dated 22.02.2016 forwarded the objections received from the public of Rakkathampatti village wherein it is stated that the petitioner has exceeded the lease boundary and carried out quarrying operation without remitting necessary charges to the Government and thereby caused revenue loss to the exchequer and if fresh renewal of lease is granted, their agricultural operations will be affected. Apart from that the President of Rakkathampatti village has also submitted a representation to the District Collector stating that the petitioner has quarried stone even after the expiry of the lease period which is causing heavy loss of revenue to the panchayat. The villagers of the said village has also made representation stating that due to indiscriminate quarrying operations of the petitioner, the villagers are not able to sleep during night hours and in order to protect the environment and ecology of the area, the renewal should not be granted for quarry. Considering the above objections of the villagers and President of the said village and in order to protect the environment and ecology, and in the interest and welfare of the public of Rakkathampatti village, the respondent rejected the petitioner's application for granting of renewal of lease.



7. It is further stated that against the order passed by the respondent, an appeal is provided under Rule 36-C(2) of the Rules before the Director of Geology and Mining and without exhausting the appeal remedy, the petitioner has approached this Court by way of filing this writ petition. It is further stated in the counter affidavit that as per Rule 20 of the Rules, when the District Collector refuses to grant quarrying lease only the reasons therefor shall be communicated to the applicant in writing and the Rules do not contemplate any opportunity of personal hearing to the applicant. Hence, the petitioner cannot allege that the impugned order has been passed in violation of principles of natural justice.

8. Mr. K. Ramakrishna Reddy, learned counsel appearing for the petitioner would submit that when the respondent rejected the petitioner's application for lease only on the ground of objections filed by the villagers of Rakkathampatti village and the objections filed by the President of that village, according to the petitioner, the entire village people not raised objection for granting of lease. Apart from that when the respondent solely relying upon the objection given by the above said villagers, he ought to have given an opportunity to the petitioner to dispute the above allegations made by the villagers but the respondent without conducting any enquiry whatsoever, even without conducting any personal inspection, he simply accepted the objections of the villagers and passed an order rejecting the application. Hence, the order of the respondent is highly arbitrary and in violation of principles of natural justice, hence, the impugned order is liable to be set aside. He would further contend that against the order of the District Collector imposing penalty, the writ petition is pending before this Court and the said order is also stayed, hence it cannot be a reason for rejecting his application for granting of lease. He would further contend that since the petitioner is now engaged in maintaining of road works and to complete the said work, it is required lot of blue metals, in view of the rejection of the application for renewal, the petitioner is not in a position to complete the work assigned to him. In support of his submission, learned counsel appearing for the petitioner relied upon the following judgments:-

"(i) In *Yeswant Gajanan Joshi and others Vs. The Hindustan Petroleum Corpn. Ltd.*, reported in AIR 1988 Bombay 408

(ii) In *Shri Sitaram Sugar Company Ltd., Vs. Union of India and others* reported in (1990) 3 SCC 223

(iii) In *Whirlpool Corporation Vs. Registrar of Trade Marks* reported in (1998) 8 SCC 1

(iv) In *Thressiamma Jacob Vs. Geologist Department of Mining and Geology* reported in (2013) 9 SCC 725"



9. Per contra, learned Additional Advocate General appearing for the respondents would submit that when the currency of the earlier lease, the petitioner indulged in large scale illicit quarrying and after enquiry, the District Collector imposed penalty of Rs.8,63,85,681/-. The said order has been stayed by this Court in writ petition (MD)No.1500 of 2016. Apart from that large number of villagers raised objections for grant of renewal of lease alleging that petitioner is using heavy explosives which causes heavy damage to the villagers and it is also affecting agricultural operations. He would further contend that in the interest and welfare of the public of Rakkathampatti village, the respondent rejected the petitioner's application for granting of renewal of lease.

10. He would further contend that Rule 20 of the Rules contemplates that for rejection of any application for granting of lease, the District Collector has to send only reasons for rejection and the Rule does not contemplate any enquiry before passing such order. Hence, when Rule does not contemplate any enquiry, there is no necessity for conducting enquiry and giving opportunity to the petitioner. Apart from that against the order passed by the District Collector, an appeal is provided under rule 36-C(2) of the Rules and without availing such appellate remedy, the petitioner cannot file the present writ petition challenging the order passed by the respondent.

11. I have considered the submissions made by the learned counsel on either side and perused the materials available on record.

12. So far as the first and foremost contention of the learned counsel appearing for the petitioner that before passing the impugned order no enquiry was conducted and was no opportunity was given to the petitioner to dispute the allegations raised against the petitioner. A cursory reading of the impugned order shows that the impugned order has been passed mainly on the objections raised by the villagers and the President of the Rakkathampatti Village Panchayat wherein serious allegations of mala fide was raised against him. The respondent simply accepted the allegations of the villagers and also the President of the Village Panchayat has passed the impugned order rejecting the application. Even though the Rules do not contemplate any enquiry and notice, which only requires the reasons therefor should be communicated to the applicant in writing, and when the respondent is relying the above allegations for rejecting the application of the petitioner, the respondent ought to have given an opportunity to the petitioner to dispute the said allegations.

<https://hcservices.ecourts.gov.in/hcservices/> 13. Perusal of the order shows that even the respondent did not conduct any personal inspection to satisfy himself whether the allegations made against the petitioner are true or not but he



simply accepted as if the allegations made against the petitioner by the villagers and the President of Village Panchayat are true and accepted and passed the impugned order rejecting the application for granting renewal of lease.

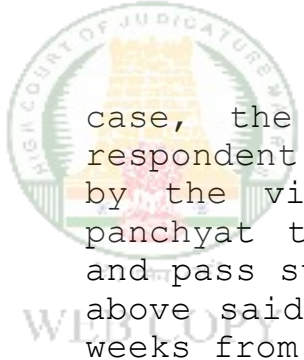
14. In the above circumstances, this Court is of the view that the impugned order has been passed in total violation of principles of natural justice. It is now well settled law that the alternative remedy is not a bar for filing writ petition where there is violation of principles of natural justice. The Supreme Court in Whirlpool Corporation (supra) has held as follows:-

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field".

15. Admittedly, the respondent has not even furnished a copy of the objection filed by the villagers of the Rakkampatti village and the President of said Village Panchayat to the petitioner before passing the impugned order to enable him to dispute the said allegations. Therefore, the respondent has violated the principles of natural justice by passing the impugned order without giving any opportunity to the petitioner.

16. In the above circumstances, the impugned order passed by the respondent dated 28.04.2016 is set aside and the matter is remanded back to the respondent for passing fresh orders. Accordingly, without expressing any opinion on the merits of the



case, the matter is remanded back to the respondent and the respondent is directed to furnish a copy of the objections filed by the villagers as well as by the president of the village panchayat to the petitioner and thereafter conduct fresh enquiry and pass suitable orders on merits and in accordance with law. The above said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To
The District Collector,
Pudukottai District, Pudukottai.

+2cc to M/s.K.Ramakrishna Reddy, Advocate in SR.78505
+1cc to the Special Government Pleader, in SR.79074

Order made in
Writ Petition (MD) No.10339 2016
02.12.2016

sms
PBK/GSV-PM 09/12/2016 ::7P-5C: