

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.02.2017

DELIVERED ON: 03.03.2017

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

W.P.No.21518 OF 2007

India Cements Ltd.
represented by its General Manager (Legal Affairs)
having Registered Office at
"Dhun Building"
No.827, Anna Salai
Chennai 600 002
Petitioner

vs.

- 1 The State of Tamil Nadu
represented by the Secretary to Government
Environment and Forest Department
Fort St. George
Chennai 600 009
- 2 The Principal Chief Conservator of Forests
No.1, Jeenes Road
Saidapet
Chennai 600 015
- 3 The District Forest Officer
Tirunelveli Division
Tirunelveli
Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the respondents made in his proceedings No.C.No.6901/2005 "A" dated Nil-07-05, signed on 1.7.2005, confirmed by subsequent correspondence made in C.No.D1/9274/2004 dated 28.05.2007, signed on 01.06.2007 and quash the same and direct the respondents not to interfere with

the peaceful possession and mining operations of the petitioner in 96.71 hectares of Thalaiyuthu Reserve Forest area covered under G.O. No.148 dated 18.06.1989.

For petitioner	Mr. G.R. Lakshmanan
For respondents	Mr. M. Santhanaraman
	Addl. Govt. Pleader (Forests)

ORDER

This writ petition has been filed challenging the proceedings dated Nil-07-05 of the District Forest Officer, Tirunelveli Division, the third respondent herein, signed on 01.07.2005 and confirmed by the very same authority by subsequent correspondence dated 28.05.2007, signed on 01.06.2007 and for a direction to the respondents not to interfere with the peaceful possession and mining operations of the petitioner in 96.71 hectares of Thalaiyuthu Reserve Forest area covered under G.O. Ms.No.148, Environment and Forests Department dated 18.06.1999 (for brevity "G.O. No.148").

2 A vignette of the facts leading to the filing of this writ petition is hereunder:

2.1 That the petitioner was given mining lease for prospecting limestone since 1952, is not in dispute. Limestone was classified as a major mineral by the Mines and Minerals (Regulation

& Control) Act, 1957 and therefore, limestone mining is governed by the Minor Mineral Concession Rules, 1960 (for brevity "the Rules"). The petitioner's lease period was extended from time to time. The petitioner was initially given on lease, an extent of 1,445.79 acres in Thalayuthu Village, Tirunelveli District, which is admittedly a reserve forest area.

2.2 After exploiting the leased portion, the petitioner surrendered 907.39 acres to the Forest Department on 24.08.1978 and retained 538.40 acres. When the penultimate lease period was to expire on 26.02.1988, the petitioner started negotiations with the Government for renewal of the lease and at that time, the petitioner agreed to retain only 96.71 hectares of reserve forest land and handed over the rest to the Forest Department. Concededly, the petitioner handed over 96.71 hectares of their own patta land to the Forest Department for compensatory afforestation in lieu of retaining 96.71 hectares of forest land for mining. This exchange was in compliance with the mandates of the Forest Conservation Act, 1980. The Forest Department also demanded Rs.20 lakhs as compensation for afforestation, which was incontrovertibly paid by the petitioner.

2.3 While the petitioner was continuing with their mining

operations, the District Forest Officer issued an order dated 18.02.1997, calling upon the petitioner to stop the mining operations. The petitioner paid Rs.16.50 lakhs towards cost of afforestation and by G.O. Ms.No.148, the petitioner was granted mining lease for 10 years from 04.05.1998 to 04.05.2008 over an area of 96.71 hectares in Thalayuthu reserve forest. The Government of Tamil Nadu and the petitioner entered into a lease deed dated 01.09.1999, in which, royalty and surface rent payable by the petitioner to the Government of Tamil Nadu were determined.

2.4 While so, the petitioner received a letter dated 01.07.2005 from the District Forest Officer, Tirunelveli, calling upon them to pay a sum of Rs.35,87,953/- towards lease rent for the periods from 1998 to 2003. The petitioner contended before the authorities that they are not liable to pay any lease rent in respect of major minerals, as they are already paying royalty and surface rent stipulated by the Central Government, as mentioned in the lease deed dated 01.09.1999.

2.5 The Office of the Principal Accountant General, Civil Audit, issued a communication dated 07.04.2006 to the Secretary, Government of Tamil Nadu, Forest Department, stating that the

Government should have collected Rs.59,64,062/- towards lease rent and Rs.50,11,840/- towards penal interest from the petitioner for the periods from 1989 to 2005. Based on the said communication, the District Forest Officer passed the impugned order dated 28.05.2007 calling upon the petitioner to pay a sum of Rs.1,09,75,902/-, challenging which, the petitioner is before this Court, besides challenging the letter dated 01.07.2005 as well.

3 At the time of admission on 25.06.2007, this Court passed the following order:

“Mr. S.N. Kirubanandham, Special G.P. takes notice. Status quo to be maintained. Post the matter after two (2) weeks, for filing counter.”

The aforesaid order of status quo was extended on 09.07.2007, 23.07.2007, 02.08.2007 and eventually, on 25.10.2007, status quo was extended until further orders.

4 The respondents have filed their counter affidavit justifying the impugned order.

5 Heard Mr. G.R. Lakshmanan, learned counsel for the petitioner and Mr. M. Santhanaraman, learned Additional Government Pleader (Forests).

6 Mr.G.R. Lakshmanan made the following submissions:

i) The mining lease was given to the petitioner as per the rates prescribed by the Central Government, as limestone is a major mineral and therefore, the State Government has no authority to claim any money.

ii) The petitioner had already surrendered a major portion of the leased land and they retained only 96.71 hectares. That apart, the petitioner had also given 96.71 hectares of their own patta land for compensatory afforestation to the Forest Department and have totally paid a sum of Rs.36.50 lakhs that was demanded by the Forest Department towards cost of afforestation. Ergo, the petitioner cannot be asked to pay any further amount.

7 In support of his contentions, Mr. G.R. Lakshmanan placed reliance upon the judgment of the Supreme Court in **India Cement Ltd. and others vs. State of Tamil Nadu and others [(1990) 1 SCC 12]** and also upon the Division Bench judgment of this Court in **Sri Balaji Minerals, represented by its Proprietor vs. State of Tamil Nadu, represented by Secretary to**

Government and others [2007-8-MLJ 79].

8 Per contra, Mr. M. Santhanaraman, learned Additional Government Pleader (Forest) placed strong reliance upon G.O. Ms.No.272, Environment and Forest Department dated 15.04.1991 (for brevity "G.O. Ms.No.272"), under which, lease rent for forest lands were fixed by the Government and contended that therefore, the petitioner was bound to make the payment for having taken on lease, reserve forest land for industrial and commercial purposes. He placed reliance upon the following covenant in the lease deed dated 01.09.1999 that was entered into by the petitioner with the Government:

"To pay Rents, Royalties Rates and Taxes:

1 The lessee shall pay the rent and royalty reserved by this lease at the times and in the manner provided in parts V and VI and shall also pay and discharge all taxes, rates, assessments, cess or royalties and impositions whatsoever being the nature of public demands which shall from time to time be charged assessed or imposed upon or in respect of the mines or works of the lessee or any part thereof by authority of the Central Government or that of the State Government or otherwise except demands for land revenue and shall also pay interest at the rate of 6% per annum, on all arrears of such rents or royalty from the date whereon the same ought to be paid under these presents."

He submitted that the lease rent has nothing to do with either royalty or surface rent and that lease rent is payable for having

taken on lease, the reserve forest land belonging to the Government of Tamil Nadu. He also placed reliance on Rule 27(1)(d), 27(1)(t) and 72 of the Rules that was framed by the Central Government, in exercise of the powers conferred by Section 13 of the Mines and Minerals (Regulation and Development) Act.

9 This Court gave its anxious consideration to the rival submissions.

10 For better appreciation of the issue at hand, it may be profitable to extract the aforesaid provisions:

Rule 27 Conditions:

(1) Every mining lease shall be subject to the following conditions:

- a
 - b
 - c

d The lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent and water rate at such rate not exceeding the land revenue, water and cessess assessable on the land, as may be specified by the State Government in the lease;

e to s

t the lessee shall pay to the occupier of the surface of the land such compensation as may become payable under these rules;

Rule 72: Payment of compensation to owner of surface right, etc:

1 The holder of a prospecting licence or mining lease shall be liable to pay the occupier of the surface of the land over which he holds the prospecting licence or as the case may be, the mining lease, such annual compensation as may be determined by an officer appointed by the State Government by notification in this behalf in the manner provided in sub-rules (2) to (4).

2 In the case of agricultural land, the amount of annual compensation shall be worked out on the basis of the average annual net income from the cultivation of similar land for the previous three years.

3 In the case of non-agricultural land, the amount of annual compensation shall be worked out on the basis of average annual letting value of similar land for the previous three years.

4 The annual compensation referred to in sub-rule (1) shall be payable on or before such date as may be specified by the State Government in this behalf."

11 Mr. G.R. Lakshmanan's contention that the State of Tamil Nadu cannot demand lease rent qua a major mineral, as the same is an exclusive prerogative of the Central Government, has to fall to ground, for the simple reason that, qua major minerals, the Central Government has the power to fix royalty and surface rent and it does not have the power to decide the lease rent that is payable for having taken on lease, the land belonging to the State

Government. This is evident from the fact that the Rules framed by the Central Government itself contemplates payment of royalty, surface rent and annual compensation by the lessee. Thus, surface rent should not be confused with lease rent. Rule 27(d) clearly states that surface rent shall not exceed the land revenue, water and cesses assessable on the land, as may be specified by the State Government in the lease.

12 In the lands in question, surface rent has been fixed at Re.0.63 per annum per hectare of the area, which is obviously pittance and can never be construed as lease rent. The paragraph from the lease deed which has been extracted above clearly states that, apart from the rent and royalty referred to in the lease deed, the lessee shall pay other impositions in the nature of public demands that is made from time to time, by the Central Government or the State Government. *(emphasis supplied)*

13 A reading of Rule 72 of the Rules that is extracted above also mandates the holder of a prospecting mining lease to pay to the occupier of the surface of the land, such annual compensation worked out on the basis of average annual letting value for a similar land for the previous three years. Rule 72 was introduced with effect from 10.02.1987. If G.O. Ms.No.272 is read

in the context of the clause in the lease deed titled "to pay rents, royalties, rates and taxes" and Rules 27(1)(d), 27(1)(t) and 72 of the Rules, it is beyond cavil that a holder of mining lease is bound to make payments in the nature of public demands to the occupier of the land.

14 At this juncture, it may be apposite to extract the relevant portion of G.O. Ms.No.272:

"3. The rates suggested by this Principal Chief Conservator of Forests in para 2 above have been examined in detail. The Government consider that his suggestion for collection at the rate of 15% of the market value of land for industrial and commercial purposes and for agricultural purposes for cultivation of commercial crops will be too much. The Government accordingly direct that the following rates of lease rent/permit fee be fixed for the use of forest lands for the purposes indicated below:

S.No. (1)	Purpose of land use (2)	Amount of lease rent/permit fee fixed (3)
1	Industrial and commercial purposes	12 ½ % (Twelve and a half percent) of the market value of land
2	Agricultural purposes for cultivation of commercial crops	12 ½ % (Twelve and a half percent) of the market value of land

4. The Government also direct that the market value of the forest land will be refixed at the end of every three years. Since market value will be refixed every 3 (three) years, there is no need to increase the percentages of the market value of the forest land themselves from time to time.

5. The Principal Chief Conservator of Forests is requested to adopt the rates mentioned in para 3 above in respect of the lease/use of forest lands for any of the

purposes mentioned therein.”

15 Dictates of common sense also inform that lease rent by the State Government for having leased out prime reserve forest land belonging to the Government should be different from royalty and surface rent. This can be best explained with an analogy. If a person were to mine in his own patta lands, he will have to necessarily pay royalty and surface rent to the State of Tamil Nadu. Obviously, he cannot be charged lease rent, for, the land belongs to him. A person can take on lease, a land from another person, for which, he will have to necessarily pay lease rent to the lessor, apart from paying royalty and surface rent. Juxtaposing the Government, which is the owner of the reserve forest, in the place of a private land owner, the holder of a mining lease cannot claim exemption from payment of lease rent on the ground that he is paying royalty and surface rent.

16 Mr. G.R. Lakshmanan's contended that G.O. Ms.No.272 was also in force when the petitioner entered into the lease deed with the Government on 01.09.1999 and that the Government should have incorporated the terms of G.O. Ms.No.272 in the lease deed itself.

17 In the considered opinion of this Court, it would have been an ideal situation had that been done. Just because it was not done, it cannot be stated that the present demand, based on the objections of the Accountant General, is invalid.

18 In **India Cement Limited** (supra), the issue that fell for consideration before the Supreme Court was whether the holder of a mining licence qua major minerals is liable to pay local cess and surcharge under Sections 115 and 116 of the Madras Panchayats Act, 1958. In that context, the Supreme Court held that a cess on royalty, being a tax on royalty, is beyond the competence of the State Legislature and therefore, struck down the demand.

19 The above case will have no application to the present case, for, as explained above, the State Government is simply claiming lease rent for the forest land that belongs to them which has been leased out to the petitioner. That apart, this demand is in the nature of a public demand and further, the Rules framed by the Central Government itself sanctions it.

20 Coming to the reliance placed upon the judgment of the Division Bench of this Court in **Sri Balaji Minerals** (supra), this

Court finds that the said judgment was delivered in the context of interpreting the Tamil Nadu Minor Mineral Concession Rules, whereas, in the case at hand, we are concerned with a major mineral which is covered by the Central Rules. However, a reading of paragraph no.15 of the said judgment supports the case of the Government better, than the case of the petitioner and the same is as follows:

“15. The submission made by the learned Senior Counsels on behalf of the petitioners that Section 15(3) only contemplates payment of royalty or dead rent, and therefore no other amount can be claimed cannot be countenanced. Section 15(3) only contemplates the minimum which is required to be provided. In other words, holder of mining lease is at least required to pay royalty or dead rent whichever is more. Obviously the rules to be framed by the State Government must include provisions relating to payment of royalty or dead rent by the lessee. This, however, does not circumscribe the ambit and the width of the rule making power contained in Section 15(1), 15(1A)(d) and 15(1A)(g). The amount fixed as lease amount can be considered as another form of collection of rent or part of terms and conditions for the lease.” (emphasis supplied)

21 In view of the foregoing discussion, this Court is of the considered view that the claim of lease rent by the State Government in terms of G.O.Ms. No.272, cannot be said to be illegal. However, levy of interest on the petitioner for the said amount cannot be sustained, for the simple reason that, for the failure of the authorities of the State to incorporate the terms of G.O.Ms.No.272 in the lease deed that was executed on 01.09.1999 and for their act of waking up only after the Accountant General had pointed out the mistake, the petitioner cannot be penalised

with interest. Accordingly, the demand of lease rent is sustained and the demand for payment of interest thereon for the alleged belated payment is set aside.

In the result, this writ petition stands partly allowed. Costs made easy.

03.03.2017

cad

P.N.PRAKASH,J,

cad

To

- 1 The Secretary to Government
 Environment and Forest Department
 Government of Tamil Nadu
 Fort St. George
 Chennai 600 009
- 2 The Principal Chief Conservator of Forests
 No.1, Jeenes Road
 Saidapet
 Chennai 600 015
- 3 The District Forest Officer
 Tirunelveli Division
 Tirunelveli

W.P.No.21518 of 2007

03.03.2017

<http://www.judis.nic.in>