

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	10/10/2017
PRONOUNCED ON	25/10/2017

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.812 of 2017

M.Ramasamy (Deceased)

- 1.Mrs.Vasantha
- 2.Mr.Rajamanickam
- 3.Mrs.Annalakshmi
- 4.Mrs.Malarmangai
- 5.Mrs.Umamaheswari

Appellants/Petitioners

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Industries Department,
Fort St. George,
Chennai - 600 009.

- 2.The District Collector,
Sivagangai District,
Sivagangai.

Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 22.09.2014 made in W.P.No.181 of 2013, on the file of this Court.

Prayer in WP.No.181 of 2013:Petition filed under Article 226 of the Constitution of India for issuing a Writ of declaration Declaring that the proportionate lease amount of Rs.45,15,273/- representing the non operated area of 24-00-0 hectares out of the total lease granted area of 40-82-5 Hectares, comprised in Survey S.F.No.200 of Kirungakottai Village, Sivagangai District (formerly Pasumpon Muthuramalinga Thevar District) as illegal and consequently direct the respondents to refund the said sum of Rs.45,13,655/- together with interest of Rs.1,58,65,409/- calculate @ 24% p.a. from the date of deposit till 04.12.2012 totaling to Rs.2,03,80,682/- and to pay further interest @ 24%

p.a. on Rs.45,15,273/- from 05.12.2012 to till the date of payment.

For Appellants : Mr.K.Ramakrishna Reddy

For Respondents : Mr.V.Anandhamoorthy
Additional Government Pleader

J U D G M E N T

P.VELMURUGAN, J.

The writ appeal is arising out of the judgment dated 22.09.2014 made in W.P.No.181 of 2013, on the file of this Court. Originally, the Writ Petition was filed by one Mr.M.Ramasamy and at the time of filing of the Writ Appeal, he died and hence, his legal-heirs have filed the present Writ Appeal.

2. It would be appropriate to notice that the aforementioned Writ Petition has been preferred by the writ petitioner for issuance of a Writ of Declaration that the proportionate lease amount of Rs.45,15,273/- representing the non-operated area of 24-00-0 hectares out of the total lease granted area of 40-82-5 Hectares, comprised in Survey S.F. No.200 of Kirungakottai Village, Sivagangai District (formerly Pasumpon Muthuramalinga Thevar District) as illegal and consequently direct the respondents to refund the said sum of Rs.45,13,655/- together with interest of Rs.1,58,65,409/- calculated @ 24% per annum from the date of deposit till 04.12.2012 totalling to Rs.2,03,80,682/- and to pay further interest @ 24% per annum on Rs.45,15,273/- from 05.12.2012 to till the date of payment.

3. Following are the short facts as projected by the writ petitioner before the writ Court:

3.(i) The petitioner was granted a sand quarry lease by the first respondent by issuing G.O. 3(D) No. 331, Industries (MMC-2) Department dated 22.11.1995 in respect of the land measuring 40-82-5 hectares comprised in Survey No. 200 of Kirungakottai Village, Sivagangai District. The lease was for a period of five years commencing from 04.12.1995 to 03.12.2000. The petitioner also executed a lease agreement on 04.12.1995 and it was duly registered. The petitioner also paid the lease amount for the entire extent of land covered under the lease agreement. Even though the order passed by the first respondent in G.O. 3(D) No. 331, Industries (MMC-2) Department dated 22.11.1995 as well as the lease agreement executed by the petitioner on 04.12.1995 indicate the extent of

the land covered under the lease as 40-82-5 hectares, in the proceedings dated 04.12.1995 of the second respondent, the area of land was reduced to 16-00-0 hectares thereby the petitioner was deprived of leasehold land measuring about 24-00-0 hectares of land.

(ii) According to the petitioner, the second respondent had unilaterally reduced the extent of land covered under the lease agreement without any notice and it is illegal. Notwithstanding such reduced extent of land permitted to be quarried, the petitioner continued the quarrying operation in the reduced extent of land and completed the lease period of five years. Thereafter, the petitioner filed W.P. No.20636 of 2000 before this Court praying to direct the respondents to permit him to quarry and transport sand from the balance area of land measuring 24-82-5 hectares which was unilaterally reduced by the second respondent. This Court, by an order dated 07.12.2000, granted interim injunction restraining the respondents from interfering with the petitioner's right to quarry the land measuring an area of 24-82-5 covered under the lease agreement. Even thereafter, the second respondent permitted the petitioner only to quarry the land in an area measuring 2.00 acres or 0-82-5 hectares on the ground that the remaining extent of the lands covered under the lease agreement are situate within the prohibitory distance from the drinking water wells. Therefore, by letters dated 20.06.2001, 10.07.2001 and 16.07.2001, the petitioner requested the second respondent to allot alternative land towards the balance non-operated area, but the petitioner was not provided with any such alternative land on the ground that there is no provision in the Tamil Nadu Minor Mineral Concession Rules for grant of such alternative land. According to the petitioner, even though there are alternative lands available for quarrying, the petitioner was not provided with such alternative lands. The petitioner therefore filed another writ petition in WP No. 14373 of 2001 before this Court praying for issuance of a Mandamus directing the respondents to allot alternative sand quarry of 24-00-0 hectares either in S. No. 263 out of the total area of 50-67-5 Hectares and in S.No.163 measuring 8-10-5 Hectares, situated in Seikalathur Village. By order dated 31.10.2001, this Court allowed the said writ petition No. 14373 of 2001 directing the second respondent to allot the alternative sand quarry.

(iii) While the facts are so, the Government issued G.O. (Ms) No.95, Industries Department dated 01.10.2003 introducing Rule 38-A in the Tamil Nadu Minor Mineral Concession Rules, whereby the Government ordered to take over all the sand quarrying sites in the State and vested it with the Public Works Department. The validity of the Government order has been challenged before this Court and the Division Bench of this Court upheld the said Government Order, however, it was held that the existing lease holders can continue the quarrying operations till the expiry of the lease period. Aggrieved by the same, the Government has filed Special Leave Petition and the Honourable Supreme Court, in the decision reported in (2006) 4 SCC 517 modified the order and granted only six months time for quarrying the existing lease. Following the above judgment of the Honourable Supreme Court, the petitioner claims that he is also entitled to the benefits of the order passed by the Honourable Supreme Court. Hence, the petitioner has filed the Writ Petition." .

4. Considering materials placed on record and the facts and circumstances of the case, the learned Single Judge has partly allowed the writ Petition and directed the respondents to refund the amount proportionate to the area of land which the petitioner was not permitted to quarry, together with interest at the rate of 12% per annum from the date of filing the present writ petition viz., 03.01.2013, till the date of payment.

5. Aggrieved against the order of the learned Single Judge with regard to quantum of interest and the period fixed, the appellants, who are the legal-heirs of the deceased writ petitioner, have filed the present Writ Appeal.

6. The learned counsel appearing for the appellants would submit that though several grounds have been raised in the grounds of appeal, the main grounds of challenge in the order passed by the learned Single Judge are:-

(i) The learned Single Judge failed to note that the writ petitioner (deceased) being a businessman and having paid such a huge sum of Rs.76,89,981/- for sand quarry measuring 40.82.5 Hectares, was naturally interested to quarry the entire extent for which the lease was granted, lease amount paid and lease agreement was executed. If the writ petitioner (deceased) moved Writ Petition during the currency of the lease, the authorities would not have permitted the writ petitioner even to enjoy the permitted area. The second respondent having received the five years lease amount, did not permit the writ petitioner (deceased) to quarry 24.82.5 hectares out of 40.82.5 Hectares. Hence, the writ petitioner (deceased) filed a Writ Petition in

W.P.No.20636 of 2000 before this Court and this Court, while admitting the Writ Petition, granted an order of interim injunction, not to interfere in quarrying operations. He would further submit that even after passing the interim order by this Court in W.P.No.20636 of 2000, restraining the respondents from interfering with the petitioner's right to quarry the entire lease granted area, the second respondent permitted to quarry only a meagre extent of 16.82.5 Hectares, thereby leaving the balance 24.00.00 Hectares and hence, the writ petitioner (deceased) cannot be faulted for the same. Therefore, the appellants / writ petitioner (deceased) are entitled to receive interest from the date of payment of the lease amount and not from the order passed in the Writ Petition in W.P.No.181 of 2013, dated 22.09.2014 and the same is liable to be set-aside.

(ii) The learned Single Judge failed to note that, as per Rule 36-B of the Tamil Nadu Minor Mineral Concession Rules, 1959, the mining dues shall be payable together with interest @ 24% p.a., from due date. Similarly in law and equity the amounts withheld by the first respondent for which the first respondent is not entitled to, shall be refunded together with interest @ 24% p.a. from the date of payment of the said amounts till the date of refund.

7. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the area of land covered under the lease deed as well as the lease agreement was reduced because of the fact that a portion of the land allotted to the petitioner is situated within the prohibitory distance of water sources and therefore, the writ petitioner (deceased) was not permitted to carry on the quarrying operation in those lands. He would further submit that if the writ petitioner (deceased), aggrieved by the reduction in area of land, he ought to have filed a statutory appeal as contemplated under Section 36-D of the Tamil Nadu Minor Mineral Concession Rules, 1959 soon after the execution of the lease deed, but he did not do so. He would further submit that the writ petitioner (deceased) having failed in all his attempt to get lease hold right towards non operated area, he has filed the Writ Petition in W.P.No.181 of 2013 and the learned Single Judge has rightly held that the writ petitioner (deceased) is entitled to interest at the rate of 12% per annum from the date of filing the the Writ Petition in W.P.No.181 of 2013, viz., till the date of payment. Hence, the order passed by the learned Single Judge does not warrant any interference and prayed for dismissal of the Writ Appeal.

8. Heard Mr.K.Ramakrishna Reddy, learned counsel appearing for the appellants and Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the respondents and perused the materials placed on record.

9. Initially, the first respondent granted sand quarrying

lease to the writ petitioner (deceased) in respect of 40.82.5 Hectares in S.F.No.200 situated in Kirungakkottai Village, Manamadurai Taluk, Sivagangai District (formerly Pasumpon Muthurama Linga Thevar District) and the said lease was for a period of five years i.e., from 04.12.1995 to 03.12.2000 and the writ petitioner (deceased) paid five years lease amount year after year for the total extent of 40.82.5 Hectares, totalling to Rs.76,79,731/-. The second respondent having received the five years lease amount for the entire area, did not permit the writ petitioner (deceased) to quarry in 24.82.5 hectares out of 40.82.5 Hectares. Hence, the writ petitioner (deceased) filed a Writ Petition in W.P.No.20636 of 2000 before this Court and this Court, while admitting the Writ Petition, granted interim injunction, not to interfere in quarrying operations. Pursuant to the said order, the second respondent permitted to quarry 0.82.5 Hectares thereby leaving 24.00.00 Hectares, on the ground that, there are drinking water wells etc., Aggrieved by the said action, the writ petitioner (deceased) moved Writ Petition in W.P.No.1473 of 2001, seeking alternative area, equal to the said 24.00.00 Hectares. The learned Single Judge allowed the said Writ Petition by directing the second respondent to allot alternative area. While being so, the first respondent by G.O.Ms.No.95, Industries, dated 01.10.2003 introduced Rule 38-A, taking over the sand quarrying and vesting with P.W.D. Against which, batch of Writ Petitions were filed and initially though interim stay was granted, the writ petitions were finally disposed of permitting to quarry for the rest of the lease period and the said Rule 38-A, contemplates refund of proportionate lease amount. Against the said order of this Court, the aggrieved parties filed SLP's. In a case reported in 2006 (4) SCC 517, while disposing the batch, the Hon'ble Supreme Court modified the order of this Court, thereby permitting to quarry for a notice period of six months, since by the said G.O., the ongoing quarrying operations were stopped without notice. Against the order passed in W.P.No.14373 of 2001, the State filed Writ Appeal in W.A.No.2818 of 2001. The Division Bench disposed the Writ Appeal in W.A.No.2818 of 2001, by order dated 26.09.2007, following the said order of the Hon'ble Supreme Court, directing the second respondent to permit quarry operations for a period of six months, in the alternative area. Since the said order was not complied with, the writ petitioner (deceased) moved contempt Application No.428 of 2010 and the same was dismissed on 09.04.2010, stating that, no contempt is made out. Against the order passed in Writ Appeal in W.A.No.2818 of 2001, directing the second respondent to permit to quarry for a period of six months by allotting alternative area, the respondent moved SLP and the same was dismissed on 14.03.2011. Even after dismissal of the said SLP, since the second respondent did not comply with the order passed in W.A.No.2818 of 2001 and having exhausted all remedies, by letter

dated 24.08.2011, the writ petitioner (deceased) sought for refund of the amount of Rs.45,13,655/- being the proportionate lease amount. Since there was no response for the writ petitioner's letter dated 24.08.2011, he moved a Writ Petition in W.P.No.11873 of 2012 seeking to comply with the order passed in W.P.No.14373 of 2011, by allotting alternative area and permit to quarry for a period of six months as per the order of this Court passed in Writ Appeal No.2818 of 2011. Since the second respondent directed the appellants / writ petitioner (deceased) to withdraw the said Writ Petition stating that, based on the writ petitioner's letter dated 24.08.2011, the second respondent recommended to the first respondent on 18.08.2011, to permit to refund the proportionate lease amount. It is alleged by the writ petitioner (deceased) that as per the instructions of the second respondent, the writ petitioner withdrawn the above mentioned W.P.No.11873 of 2012. Aggrieved by the non-refund of the proportionate lease amount, finally the writ petitioner (deceased) moved the Writ Petition in W.P.No.181 of 2013.

10. From the above, it is clear that both writ petitioner (deceased) / appellants as well as the respondents agitating their claims before this Court and the Hon'ble Supreme Court through several round of litigations. Admittedly, there is no dispute with regard to lease amount paid by the writ petitioner (deceased) / appellants for the period of five years, viz., from 04.12.1995 to 03.12.2000, on various dates, totalling to Rs.76,79,731/- for the total extent of 40.82.5 Hectares. It is also not in dispute that the writ petitioner (deceased) was not permitted by the respondents to carry on the quarrying operation since the portion of the land allotted to the writ petitioner is situated within the prohibitory distance of water sources. It is an admitted fact that though the lease amount paid by the writ petitioner (deceased) / appellants is lying with the respondents, neither the writ petitioner (deceased) was permitted to carry out the quarrying operation in respect of entire extent of land covered in the lease agreement nor alternative site was allotted for the balance of 24.00.00 hectares.

Therefore, the writ petitioner (deceased) / appellants, after exhausting all the remedies, filed the Writ Petition in W.P.No.181 of 2013 and the said Writ Petition was partly allowed by the learned Single Judge and in the said order, the learned Single Judge directed the respondents to refund the amount proportionate to the area of land which the writ petitioner (deceased) was not permitted to quarry together with interest at the rate of 12% per annum from the date of filing the writ petition, viz., 03.01.2013 till the date of payment. On the above backdrop, the points to be decided are as to:-

(i) Whether the appellants / writ petitioner (deceased) are

entitled to receive interest only at the rate of 12% per annum?

(ii) If it is so the date on which they are entitled to receive interest?

11. Insofar as the point No.(i) is concerned, the learned Single Judge has given a categorical finding and the relevant paragraph is extracted hereunder:-

"9. In this writ petition, the petitioner not only claims refund of the amount proportionate to the non-operated area of land but also seeks interest thereof. It is therefore necessary to consider whether the petitioner is entitled for payment of interest. In the ordinary circumstances, this Court would have directed the respondents to pay interest as claimed by the petitioner especially when the lease amount for the entire extent of land paid by the petitioner was in the hands of the respondents for a long time. But in this case, as mentioned above, the petitioner is also to be blamed for remaining silent without asserting his right atleast till the completion of the five year period of lease. The petitioner is pretty well aware of his right to seek for refund when he was not permitted to carry out the quarrying operation in respect of the entire extent of land covered in the lease agreement. But the petitioner never asserted such right atleast till January 2013 when he filed the present writ petition. Only in this writ petition, for the first time, the petitioner seeks for refund of the amount along with interest. In the earlier two writ petitions filed by the petitioner, such a relief was not sought for by the petitioner. Rather, the petitioner only sought for alternative site to carry out quarrying operations. After having failed in all his attempt to get lease hold right towards the non operated area, the petitioner has filed this writ petition. In other words, the petitioner ought to have sought for the relief prayed for in this writ petition even in the year 1995, but he did not do so. But as mentioned above, only for the first time in this writ petition, the petitioner claimed refund of the amount towards interest. Therefore, at best, the petitioner is entitled for payment of interest only from the date of filing the present writ petition viz., 03.01.2013 till the date of payment.

In the result, the writ petition is partly allowed directing the respondents to refund the amount proportionate to the area of land which the petitioner was not permitted to quarry together with interest at

the rate of 12% per annum from the date of filing the present writ petition viz., 03.01.2013 till the date of payment. No costs. Consequently, connected miscellaneous petition is closed."

With regard to point No.(i) it is the contention of the appellants that as per Rule 36-B of the Tamil Nadu Minor Mineral Concession Rules, 1959, the mining dues shall be payable together with interest @ 24% p.a., from due date. It is pertinent to mention that the respondents granted lease to the writ petitioner in respect of the land measuring a total extent of 40-82-5 hectares. However, admittedly, a lesser extent of land alone was allotted to the writ petitioner on the ground that the remaining lands are situated within the prohibitory distance of water sources and the writ petitioner also did not question the reduction of area of land and continued with the quarrying operation in whatever the extent of land allotted to him for five years. Though the writ petitioner can ventilate his grievance by filing a statutory appeal as contemplated under Section 36-D of The Tamil Nadu Minor Mineral Concession Rules, he did not choose to invoke the said provision. The petitioner, after completion of the five year of lease period, has approached this Court by filing a writ petition in WP No. 20636 of 2000. Therefore, there is a fault on the side of the appellants / writ petitioner also. The appellants / writ petitioner (deceased) having kept silent till the completion of lease period and having known of his right to seek for refund when the writ petitioner (deceased) was not permitted to carry out the quarrying operation in respect of the entire extent of land covered in the lease agreement and in the earlier two writ petitions filed by the writ petitioner also, such a relief was not prayed for by the writ petitioner and hence, he cannot blame the respondents to grant interest at the rate of 24% per annum. The learned Single Judge has also given reason for granting 12% per annum and not granting interest at 24% per annum. Thus, the order passed by the learned Single Judge with regard to payment of interest at the rate of 12% per annum, is justified and does not warrant interference. This point is answered accordingly.

12. Insofar as point No.(ii) is concerned, it is an admitted fact that the appellants / writ petitioner (deceased) had paid the lease amount for the period of five years, viz., from 04.12.1995 to 03.12.2000, totalling to Rs.76,79,731/- for the total extent of 40.82.5 Hectares. It is also an admitted fact that the appellants / writ petitioner (deceased) was not permitted by the respondents to carry out the quarrying operation since the portion of the lands allotted to the writ petitioner is situated within the prohibitory distance of water sources. It is also not in dispute that initially, the writ petitioner (deceased) had filed a Writ Petition in W.P.No.20636

of 2000, for a direction to allot the balance area of 24.82.5 Hectares and in the Writ Petition, though an interim order has been granted, the writ petitioner (deceased) was permitted to quarry 0.82.5 Hectares thereby leaving 24.00.00 Hectares, on the ground that, there are drinking water wells etc., Further, the writ petitioner (deceased) filed another Writ Petition in W.P.No.1473 of 2001, seeking alternative area, equal to said 24.00.00 hectares. The learned Single Judge allowed the said Writ Petition by directing the second respondent to allot alternative area. While being so, the first respondent by G.O.Ms.No.95, Industries, dated 01.10.2003 introduced Rule 38-A, taking over the sand quarrying and vesting with P.W.D. It shows that in the year end of 2000 itself, the respondents have found the balance lands of 24.00.00 hectares are situated within the prohibitory distance from the drinking water sources and further they have decided not to allot alternative site equal to 24.00.00 hectares. In such circumstances, the respondents ought to have refunded the proportionate lease amount for the area to which the writ petitioner (deceased) was not allowed to quarry even during the year 1995, but it was not done. The learned Single Judge observed that "The petitioner is pretty well aware of his right to seek for refund when he was not permitted to carry out the quarrying operation in respect of the entire extent of land covered in the lease agreement. But the petitioner never asserted such right atleast till January 2013 when he filed the present writ petition viz., W.P.No.181 of 2013. Only in this writ petition, for the first time, the petitioner seeks for refund of the amount along with interest." Therefore, the learned Single Judge held that the writ petitioner (deceased) is entitled to receive interest from the date of filing of the writ petition in W.P.No.181 of 2013, viz., 03.01.2013. In our considered view that though the respondents having received the entire lease amount, not permitted the appellants / writ petitioner (deceased) to carry out the quarrying operation and when they came to know that the lands covered under the lease agreement are situated within the prohibitory distance from the drinking water wells and they did not allot any alternative site for balance land of 24.00.00 hectares by stating that there is no provision to allot alternative site for non-operated area of land. The moment they have decided that they were not in a position to allot entire lands covered under the lease agreement, the respondents should have refunded immediately the amount proportionate to the area of land which the writ petitioner was not permitted to quarry with interest. Though the writ petitioner (deceased) did not ask for any interest during the lease period i.e., before expiry of lease period of five years, the respondents, at least, should have refunded the lease amount equal to 24 hectares, the date on which Writ Petition in W.P.No.20636 of 2000 was filed on 04.12.2000. But, they have not done so. However, the

respondents have not preferred any appeal against order passed by the learned Single Judge in writ petition in W.P.No.181 of 2013. Hence, the order passed by the learned Single Judge with regard to writ petitioner is entitled to receive interest of 12% per annum is confirmed. At the same time, in view of the above discussion, the order regarding the date on which they are entitled to get interest alone is set-aside and modified as the appellants are entitled to receive interest from the date of filing of the first Writ Petition in W.P.No.20630 of 2000, viz., dated 04.12.2000. This point is answered accordingly.

13. In the result, the Writ Appeal is partly allowed directing the respondents to refund the amount proportionate to the area of land which appellants / writ petitioner (deceased) was not permitted to quarry together with interest at the rate of 12% per annum from the date of filing of the initial Writ Petition in W.P.No.20636 of 2000, viz., 04.12.2000 till the date of payment. Further, the respondents are directed to refund said payment within three months from the date of receipt of copy of the judgment, failing which, the respondents are liable to pay interest at the rate of 24% per annum from the date on which the three months period is expired. There is no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

r n s

To

1.The Secretary to Government,
Government of Tamil Nadu,
Industries Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Sivagangai District,
Sivagangai.

+1cc to Mr.K.Ramakrishna Reddy, Advocate, S.R.No.75085

W.A.No.812 of 2017

MR(CO)
GN(02/11/2017)