

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2017

CORAM

THE HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE M.SUNDAR

W.A.No.983 of 2017
and
C.M.P.No.13762 of 2017

The District Collector,
Krishnagiri District,
Krishnagiri. .. Appellant/Respondent

Vs.

M.Venkataraman .. Respondent/Petitioner

Appeal filed under Clause 15 of Letters Patent against the order dated 08.03.2016 made in W.P.No.2114 of 2016 on the file of this Court.

WP.No.2114/16:

Filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate Writ or order or direction in the nature of Writ, to call for the records of the respondent relating to the order passed in Roc.No. 165/2011/Mines-1 dated 19.12.2015 quash the same direct the respondent to permit the petitioner to quarry and transport the stones from the leasehold land bearing S.F. No.399/1 (Part-A) admeasuring 5.00.0 Hectares in Kallukurkki Village Krishnagiri Taluk and District for a period of 2 years and 9 months from the date of issue of transport permit

For Appellant .. Mr.T.N.Rajagopalan
Spl. Government Pleader

For Respondent .. Mr.V.Sanjeevi

* * * * *

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

This appeal is directed against the order dated 08.03.2016 passed by the learned Single Bench allowing the writ petition being W.P.No.2114 of 2016 filed by the respondent.

2. The writ petition was filed challenging the order dated 19.12.2015 passed by the appellant/District Collector, Krishnagiri, rejecting the request of the respondent/writ petitioner to extend the lease for a period of two years and nine months beyond the date of expiry of the lease, as specified in the lease deed i.e., 10th June 2015.

3. The respondent/writ petitioner had also sought orders on the appellant to allow the respondent/writ petitioner to quarry and transport the stones from the leasehold land bearing Survey Field No.399/1 (Part-A) admeasuring 5.00.0 Hectares in Kallukurukki Village, Krishnagiri Taluk and District (hereinafter referred to as "demised land") for a period of two years and nine months from the date of issuance of transport permit.

4. It appears that the appellant called for tender applications on 08.07.2009 for public auction for grant of lease for quarrying stones from the demised land for a period of five years, pursuant to which the respondent/writ petitioner applied. The offer of the respondent/writ petitioner was accepted.

5. Deed of lease dated 11th June 2010 was executed. The Deed of lease, inter alia, provides as follows:

"23. The lease period starts from the 11th day of June 2010 and ends on the 10th day of June 2015."

6. However, as recorded in the order under appeal, it is not in dispute that even though the lease deed was executed on 11th June 2010 and was to remain in force from 11th June 2010 to 10th June 2015, there was, admittedly, no quarrying operations from 11th June 2010 till 11th March 2013, for the reason that the land had not been surveyed and demarcated.

7. The respondent/writ petitioner had earlier filed a writ petition being W.P.No.11236 of 2015, which was disposed of by a Single Bench of this Court (R.Mahadevan, J.) by an order dated 7th October 2015 with the following observation:

"7. The admitted facts are that the Respondent, by proceedings dated 27.10.2009, granted quarry lease to the Petitioner for a period of five years and the lease agreement was executed on 11.06.2010 and the lease period had expired on 10.06.2015. In spite of the representation of the Petitioner dated 15.10.2012, requesting for survey, demarcation and handing over of land, no action had been

taken. Hence, the Petitioner filed a Writ Petition in W.P.No.30780/2012, wherein, this Court by order dated 27.11.2012, directed the Respondent to consider the representation of the Petitioner for survey and demarcation. Based on the said order of this Court and on representation of the Petitioner dated 24.12.2012, the leasehold area was demarcated on 28.1.2013 and the Petitioner started to receive the transport permit on and from 11.3.2013 and the Petitioner commenced the quarrying operation on 11.3.2013."

By the aforesaid order, the Single Bench remitted the matter back to the appellant for fresh consideration within a period of six weeks from the date of receipt of a copy of the said order dated 7th October 2015. Thereafter, by an order No.Roc.165/2011/Mines-I, dated 19th December 2015, the District Collector, Krishnagiri rejected the prayer for extension of the lease observing that there was no rule and/or provision for entertaining the request of the respondent/writ petitioner.

8. Challenging the said order of rejection dated 19th December 2015, the petitioner filed yet another writ petition being W.P.No.2114 of 2016 which culminated in the order under appeal.

9. Mr.T.N.Rajagopalan, learned Special Government Pleader appearing on behalf of the appellant has drawn our attention to Rule 8 of Tamil Nadu Minor Mineral Concession Rules, 1959 and in particular to Rule 8(8), which provides as follows:

"8. Leasing of lands for quarrying minor minerals other than the minerals covered under rules 8-A and 8-C of these rules.-

(1) to (7)

(8) The period of lease for quarrying stone in respect of the virgin areas, which have not been subjected to quarrying so far, shall be ten years. The period of lease for quarrying stone in respect of other areas shall be five years. The period of lease for quarrying sand and other minor minerals, other than the minerals covered under rules 8-A and 8-C of the said rules, shall not exceed three years and shall not be less than one year and shall be subject to the following conditions, namely :-

(i) The date of commencement of the period of lease granted under this rule shall be the date on which the

lease deed is executed.
(ii) The lease shall expire on the date specified in the lease deed and in no case extension of the period of lease shall be made."

10. Placing emphasis on Rule 8 and in particular sub-rule (8)(ii), the learned Special Government Pleader submitted that the date of commencement of the period of lease is the date on which the lease deed is executed and the lease is to expire on the date specified in the lease. It was emphatically argued that sub-rule (8)(ii) makes it clear that in no case extension of the period of lease is to be made.

11. If sub-rule (8)(ii) was to be literally interpreted and construed to mean that no extension of the period of lease could be made irrespective of whether the lessee could at all exploit the lease, the said rule would have to be declared arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

12. Sub-rule 8(ii) is to be interpreted and construed to mean that lease is not ordinarily to be extended beyond the period of lease. However, where a lessee is unable to exploit the lease and carry on quarrying operations for no fault of the lessee, but due to any act or omission of the lessor, as in this case where the lessee could not quarry stones as the demised land had not been surveyed and demarcated, the lease would necessarily have to be deemed to have commenced on and from the date on which demarcation was made and the demarcated area was in possession of the lessee.

13. The learned Special Government Pleader appearing on behalf of the appellant submitted that initially demarcation was done and later pursuant to the order dated 27th November 2012 in W.P.No.30780 of 2012 fresh demarcation also done. The fact remains that the appellant authorities accepted the order of the Court dated 27.11.2012 directing demarcation.

14. Moreover, while disposing of W.P.No.11236 of 2015, the learned Single Bench had arrived at the factual finding that the lease agreement had been executed on 11th June 2010 on the assurance of the Deputy Director of Geology and Mining, Krishnagiri that the lease hold area would be demarcated after execution of the lease deed. The Court found that the respondent/writ petitioner herein had made several representations, one of which was dated 15th October 2012, requesting for survey, demarcation and handing over of land, but no action had been taken. Ultimately, the lease hold area was

demarcated by the Deputy Director of Geology and Mining, Krishnagiri only on 28th January 2013 and the respondent/writ petitioner commenced quarrying operations on 11th March 2013.

15. It is axiomatic that the lease cannot commence and expire if the lease is non-operative in effect, due to any omission or lapse on the part of the lessor. If a lease is non-operative for all practical purpose for such omission or lapse, the aforesaid period would have to be excluded in computing the period of lease.

16. Since it was not disputed that demarcation had taken place only in 2013 i.e., on 28th January 2013 and the respondent/writ petitioner had been granted transport permit on and from 11th March 2013, the learned Single Bench held that the impugned order, which was in effect a non-speaking order, was liable to be set aside. The learned Single Bench further rightly held that even though it was the settled legal position that the period of lease could not be extended as there was no rule providing for such extension, yet, considering the non-operative period, extension would not hit by rule 8(8)(ii) of the Tamil Nadu Minor Mineral Concession Rules, 1959. In the said writ petition being W.P.No.11236 of 2015, the learned Single Bench set aside the impugned order and remitted the matter back to the appellant for fresh consideration.

17. Perhaps, this was a fit case where writ of mandamus could have been granted for a direction on the authorities to allow the respondent/writ petitioner to continue with the quarrying activities for the aforesaid period of two years and nine months, being the period during which no quarrying activities could be carried out.

18. In this context, it would be pertinent to mention that in District Collector, Namakkal District, Namakkal v. K.Anbarasi and another, reported in 2011 (1) CWC 673, a Division Bench of this Court held as follows:

"26. As noticed in the case of Beg Raj Singh - Vs - State of U.P. & Ors. (2003 (1) SCC 726), the Hon'ble Supreme Court granted the relief in favour of the lessee by observing that the sand mine could not be operated as it has been stopped because of the order of the State Government and such order having been unsustainable in accordance with stipulations contained in the mining lease, the Supreme Court granted the benefit to the lessee therein. The Supreme Court also took note of the fact that in the interregnum, no third party interest has been created. In the case of

the respondents also, the quarry could not be operated for a period of 283 days on account of the order of suspension. As noticed above, this Court by order 26.10.2005 in W.P.Nos.34567 & 34568 of 2005, directed the appellant to pass final orders on the show cause notice issued to the respondents. Despite direction issued, no final orders were passed, which compelled the respondents to approach this Court once again by way of the two writ petitions in W.P.Nos.1207 & 1208 of 2006, challenging the order of suspension dated 11.07.2005, and in the said writ petition, an order of interim injunction was also granted. Therefore, it is clear that the appellant did not avail the opportunity granted by this Court in its order dated 26.10.2005 and chose to remain dormant in the matter. Thus, as in the case of Bag Raj Singh, referred supra, the respondent herein cannot be blamed for the period during which the quarry could not be operated."

Judicial propriety demands that we follow the judgment in K.Anbarasi (supra) rendered by a Bench of Co-ordinate strength.

19. We do not deem it necessary to interfere with the order under appeal. The appellant shall re-consider extending the period of the lease in the light of the observations made in this judgment read with the order of the learned Single Bench which has now merged with this judgment.

20. The appeal is not entertained and the same is dismissed. No costs. Consequently, CMP.No.13762 of 2017 is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

bbr

To

The District Collector,
Krishnagiri District,
Krishnagiri.

+2cc to Government Pleader sr.64069,62711

+1cc to Mr.V.Sanjeevi, Advocate sr.62489

W.A.No.983 of 2017

pvs (co)

ss(12/10/2017)