

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.13729 of 2004

A.Venugopal

... Petitioner

vs.

1. The Government of Tamil Nadu,
rep. by its Secretary to Government,
Industries Department,
Fort St. George,
Chennai 600 009.
 2. The District Collector,
Karur District, Karur.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Declaration, declaring Rule 8-E of the Tamil Nadu Minor Mineral Concession Rules, 1959, as introduced by G.O.Ms.No.603 Industries (MMC-1) Department, dated 17.09.1998 and the proceedings of the second respondent made in Ref.Na.Ka.D.No.898/95, dated 01.06.2000 and Na.Ka.D.No.898/95, dated 07.11.2003 as unconstitutional and illegal.

For Petitioner : Mr.V.Sanjeevi

For Respondents : Mr.Akhil Akbar Ali,
Government Advocate

O R D E R

The petitioner has come up with this Writ Petition seeking to declare Rule 8-E of the Tamil Nadu Minor Mineral Concession Rules, 1959, as introduced by G.O.Ms.No.603 Industries (MMC-1) Department, dated 17.09.1998 and the proceedings of the second respondent made in Ref.Na.Ka.D.No.898/95, dated 01.06.2000 and Na.Ka.D.No.898/95, dated 07.11.2003 as unconstitutional and illegal.

2. According to the petitioner, in G.O.Ms.3(D) No.354 Industries (MMB-2) Department, dated 07.12.1995, the Government of Tamil Nadu, by exercising the powers conferred under Rule 39 of the Minor Minerals Concession Rules, 1959, granted lease to him for quarrying multi colour granite from the poramboke lands

bearing S.F.No.629 (Part) admeasuring an extent of 2.00 Acres in Vadaseri Village, Kulithalai Taluk, Karur District for a period of ten years, subject to certain conditions. The lease deed was executed between the petitioner and the second respondent on 16.12.1995 for a period of ten years from 16.12.1995 to 15.12.2005.

3. The Government issued an order in G.O.Ms.No.603, Industries, dated 17.09.1998 amending the rules by introducing Rule 8-E of the Tamil Nadu Minor Minerals Concession Rules, 1959. As per the said amendment, which has been directed to come into force from 17.09.1998, the lessees who have been granted quarry leases under Rule 39 for quarrying granites are required to pay a one time lease amount, besides seigniorage fee or the dead rent. The one time lease amount directed to be paid in terms of the amended rule viz. Rule 8-E is to be fixed by the Collectors of the respective Districts, where the lands are situated, on an amount equal to the highest lease amount paid by a lessee under the tender system introduced in Rule 8-A on and from 06.09.1989 or the highest lease amount paid by any lessee under the tender cum auction system introduced by Rule 8-A on and from 13.07.1996, whichever is greater.

4. Following the aforesaid amendment, the 2nd respondent has issued an order in Na.Ka.No.898/95, dated 01.06.2000 fixing one time lease amount to be paid by the petitioner for the entire ten years period, viz. for the period from 1995 to 2005 in respect of the quarry granted on lease to the petitioner on 17.12.1995. The 2nd respondent fixed the amount as Rs.13,50,000/- as one time lease amount to be paid by the petitioner and he did not fix the lease amount as prescribed under Rule 8-E. According to the petitioner, the 2nd respondent appears to have relied upon the letter of the Government, dated 01.07.1999 and fixed the lease amount by calculating the probable stock of granite available in the quarry for 10 years and calculating 20% of the seigniorage fee for the said quantum.

5. Since the petitioner did not pay the one time lease amount as demanded by the 2nd respondent, an order was passed by the 2nd respondent vide RC.D.No.898/1995, dated 06.10.2000 cancelling the lease granted to the petitioner in G.O.3(D) No.354 Industries (MMB-2) Department, dated 07.12.1995 recording the fact that he did not remit the one time lease amount. Further, the 2nd respondent passed yet another order dated 07.11.2003, demanding the one time lease amount till the cancellation of lease and fixed Rs.6,48,740/- as proportionate one time lease amount till cancellation of lease and also threatened to take Revenue Recovery proceedings for recovery of the same. The Tahsildar, Tiruchirappalli demanded a sum of Rs.6,89,870/- from the petitioner and in default, threatened to recover the same by resorting to Tamil Nadu Revenue Recovery

Act. In such circumstances, having no other alternative, the petitioner has approached this Court by way of the present Writ Petition.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. Learned counsel for the petitioner submitted that the issue involved in this Writ Petition is covered by a decision of this Court in the case of Sri Balaji Minerals vs. State of Tamil Nadu reported in (2007) 8 MLJ 79, wherein, it is held as follows:

"30. In the above view of the matter, though it cannot be said that the State Government has no right to levy any amount as lease amount or consideration for grant of leases after introduction of such rule, in the facts of the present case, it can be said that the provisions contained in Rule 8-E are inoperative because the State Government did not have the right to frame Rules directing collection of lease amount in respect of leases which had already vested with the lessees. It is of course true that the State government could have issued notice terminating such leases by giving six months notice. However, it was not the intention of the State to terminate the leases. Moreover, as already indicated, by virtue of stay order, the lessees were allowed to carry on the quarrying operation and the normal period has come to an end."

8. Hence, following the ratio laid down in the said decision, this Writ Petition is allowed on the same terms. No costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To:

1. The Secretary to Government,
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Fort St. George,
Chennai 600 009.
2. The District Collector,
Karur District, Karur.

W.P.No.13729 of 2004

ss (5/9/2017)