



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2017

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THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P (MD) No.16918 of 2014

and

M.P. (MD) .No.1 of 2014

V.Jeyabharathi

.. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Industries (MMB-1) Department,
Secretariat, Fort St. George,
Chennai -9.

2.The District Collector,
Thanjavur District,
Thanjavur.

3.The Assistant Director,
Mines and Minerals,
Collectorate,
Thanjavur.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Rc.No.151/Mines/2013, dated 06.09.2014 and quash the same and consequently direct the respondents 2 and 3 to refund the security deposit amount of Rs.3,22,000/- deposited by the petitioner's husband in the form of Kisan Vikas Patras to the petitioner forthwith.

For Petitioner

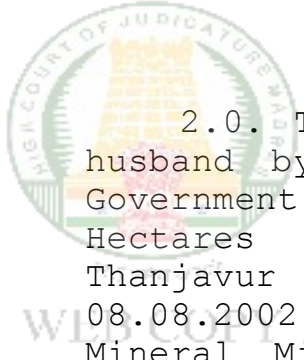
: Mr.K.Mahendran

For Respondents

:Mr.T.R.Janarthanam,
Addl. Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the order passed by the second respondent rejecting her claim to refund the security deposit amount of Rs.3,22,000/- deposited by her husband in the form of Kisan Vikas Patras for quarry lease and seeking a consequential direction to the respondents 2 and 3 to refund the same.



2.0. The petitioner averred among the other things that her husband by name Viswanathan was granted sand quarry lease in Government Poramboke land in S.No.1(P) to an extent of 10.00.0 Hectares situated at Achanur Village, Thiruvaiyaru Taluk, Thanjavur District for a period of three years i.e., from 08.08.2002 to 07.08.2005 as per Rule 8(6)(b) of the Tamil Nadu Mineral Mineral Concession Rules, 1959. The lease deed was executed on 08.08.2002. The petitioner's husband has also deposited a sum of Rs.3,22,000/- as security deposit in the form of Kisan Vikas Patra. While so, the first respondent, by issuing G.O.Ms.No.95, Industries, dated 01.10.2003, has cancelled all the leases for sand quarry from 01.10.2003. As per the said G.O., the Government took possession of the quarry leased out to the petitioner's husband on 03.10.2003.

2.1. The petitioner's husband and other similarly placed persons challenged the said G.O. before the Principal Bench of this Court and this Court, vide order dated 11.05.2004, though upheld the said G.O., gave certain directions in favour of the petitioners therein. Against that order, the Government went on appeal before this Court. The said appeal was dismissed. As against both the order, the Government filed an appeal before the Hon'ble Apex Court. The Apex Court gave certain directions to the State Government, including to extend the lease period for six months or for the actual unexpired period of lease from 02.10.2003, whichever is less. Subsequently, the Government filed a review petition and the same was also dismissed.

2.2. Subsequently, as per the direction of the Hon'ble Supreme Court, the second respondent has extended the lease period of the petitioner's husband for six months i.e., from 15.01.2007 to 14.07.2007 subject to the provisions contained in the Act and Rules and the usual terms and conditions. He was also directed to hand over the possession of the quarry on 16.07.2007 by the second respondent. As per the lease conditions, the petitioner's husband had operated sand quarry for the period from 15.01.2007 to 14.07.2007. As per the records, the petitioner's husband lastly obtained 750 despatch slips and paid necessary seigniorage fee of Rs.1,02,000/-. Because of the illness of the petitioner's husband, even before the expiry of the lease period, he has stopped the quarry operation and closed the sand quarry. In the meantime, the petitioner's husband has not received any show cause notice or any other communication from the respondents either for violating the lease conditions or for not handing over the quarry site to the respondents. While so, the petitioner's husband died on 16.07.2007 due to illness.

2.3. Subsequently, on verification, the petitioner came to know that the amount of Rs.3,22,000/- deposited for sand quarry lying with the second respondent Office as security deposit in the form of Kisan Vikas Patras. Therefore, she approached the second

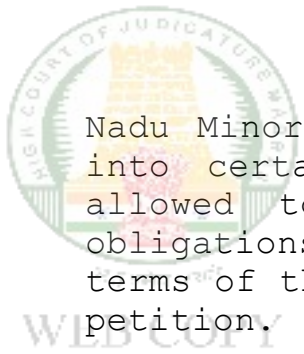


respondent to refund the security deposit amount. But, the second respondent gave an evasive reply. Hence, she made a written representation dated 21.06.2013 to the respondents 2 and 3. As there was no response to the same, she gave another representation dated 03.02.2014 to the second respondent. While so, the second respondent has passed the impugned order by his proceedings in R.C.No.151/Mines/2013, dated 06.09.2014, by which he refused to refund the security deposit amount stating that during the currency of six months lease period, her husband violated the lease conditions and also failed to hand over the quarry on 16.07.2017 as per the respondent's proceedings dated 11.01.2007 and hence, the security deposit amount is ordered to be forfeited to the Government.

2.4. According to the petitioner, though the violation of conditions are alleged to have been made during the currency of six months period i.e., from 15.01.2007 and 14.07.2007, the impugned order has been passed by the second respondent only based on the communication sent by the Assistant Executive Engineer, PWD, River Conservatory Sub Division, Kumbakonam, dated 02.02.2001, to the second respondent stating that the petitioner's husband had transported excess quantity over and above two units of sand and used one despatch slip for several trips and thereby, violated the lease conditions, which shows the non application of mind on the part of the respondents. Further, the impugned order passed by the second respondent does not speak about the particulars regarding the Lorry Registration number, date quantity of excess sand, etc. More over, the second respondent failed to note that the petitioner's husband admitted in Apollo Hospital Chennai, in the month of June 2007 and died on 16.07.2007. But the impugned order shows that the petitioner's husband failed to hand over the quarry site on 16.07.2007, which also clearly proves the non application of mind on the part of the second respondent. Thus, she prayed to set aside the impugned order and to direct the respondents to refund the security deposit amount of her husband.

3. Per contra, in the counter affidavit filed by the second respondent, it is stated that it is not true that the quarry operation was stopped due to the illness of the lease holder. But, it was due to the violation of conditions in the lease agreement by misusing the dispatch slips more than one time and transporting excess quantity than the permitted quantity. As per the proceedings of the second respondent dated 11.01.2007 and as per Rule 10 of the Tamil Nadu Miner Mineral Concession Rules, the petitioner's husband ought to have handed over the possession of the quarry to the concerned Tahsildar on 16.07.2007. But, inspite of the same, it was not handed over by the petitioner's husband. Any person in possession of the leasehold area after the expiry of

<https://hdservices.courtservice.in/hdservices> is premature termination or cancellation shall be deemed to be in unlawful possession of the said land and he shall be liable to be punished as provided in Rule 36-A(4) of the Tamil



Nadu Minor Mineral Concession Rules, 1959. A person, who enters into certain contractual obligations with his eyes, cannot be allowed to turn around and question the validity on those obligations or the validity of the Rules which constitute the terms of the contract. Thus, he prayed for dismissal of this writ petition.

4. I have heard the rival submissions made on either side and perused the materials available on record.

5. According to the petitioner, her husband, due to illness, admitted in the Apollo Hospital, Chennai in the month of June, 2007 and died on 16.07.2007, the date on which, according to the respondents, he failed to hand over the quarry site. In order to substantiate the said submission, the petitioner has produced the Death Certificate of her husband in the typed set of papers, in which it is clearly stated that the date of death of the petitioner's husband is 16.07.2007 and the date of registration of death is 19.07.2007. The respondents have not disputed the same. Thus, it is clear that the petitioner's husband cannot be blamed for not handing over the possession of the quarry site.

6. It is an admitted fact that till the petitioner was not claiming refund of the security deposit which is lying with the respondents, neither any notice nor any order as to the violation of any conditions of the lease has been served by the respondents either to the petitioner's husband or to the petitioner. Only after the petitioner started to claim the security deposit which is lying with the respondents, they have issued the present impugned order stating that as there was violations of the contract, the entire security deposit amount has been forfeited. In the impugned order, the petitioner's husband is alleged to have been violated the conditions of lease only during the currency of six months period, ie., from 15.01.2007 to 14.07.2007. Whereas, for such

violations, the second respondent relied on the proceedings of the Assistant Executive Engineer, River Conservatory Sub Division, Kumbakonam, dated 02.02.2001. Further, as rightly contended by the learned counsel for the petitioner, no particulars regarding the Lorry Registration number, date quantity of excess sand transported, etc. also have not been mentioned in the impugned order. Had there been any violation of lease conditions, the respondents could have very well issued notice to the petitioner's husband and stopped the quarrying operation. But, the respondents did not issue any notice or initiate any proceedings during the life time of her husband.

<https://hcservices.ecourts.gov.in/hcservices/> a clear indication that the respondents did not do anything till the petitioner started to claim for refund of the deposited amount. Only after the petitioner started to claim for



refund of the deposited amount, the respondents have arbitrarily passed the impugned order with bereft of particulars and also with non application of mind, which cannot stand in the eye of law.

8. In view of the above, this writ petition is allowed and the impugned order dated 06.09.2014 is quashed and the respondents are directed to refund the security deposit amount of Rs.3,22,000/- made by the petitioner's husband in the form of Kisan Vikas Patras to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub-Assistant Registrar

To,

1. The Principal Secretary to Government,
Industries (MMB-1) Department,
Secretariat, Fort St. George,
Chennai -9.

2. The District Collector,
Thanjavur District,
Thanjavur.

3. The Assistant Director,
Mines and Minerals,
Collectorate,
Thanjavur.

+1 CC TO SPECIAL GOVERNMENT PLEADER SR NO.14688

gcg

MAS/KP/SAR3:20.04.2017:5P-5C

W.P (MD) No.16918 of 2014
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