



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
ORDER RESERVED ON:12.06.2017
ORDER PRONOUNCED ON:04.10.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P(MD)No.20339 of 2015
and
MP(MD) .No.1 of 2015

WEB COPY

M/s.P.M.Granites,
rep.by its Managing Partner Mr.A.Prabhu,
No.120/86, New No.2/131,
Keelaiyur Village & Post,
Melur Taluk,
Madurai District.

.. Petitioner

Vs.

1.The District Collector,
Dindigul District, Dindigul.

2.The Assistant Director of Geology and Mining,
Office of the District Collector,
Dindigul.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus to forbear the respondents from in any way interfering with the petitioner's right to quarry and transport quarried mineral from lease granted patta lands of the petitioner measuring 1.71.5 hectares, comprised in S.Nos.39/1B & 49/1B1, situated in V.PUDUKKOTTAI village, Veda sandur Taluk, Dindigul District, during the currency of the lease granted in favour of the petitioner in favour of the subject area.

For Petitioner : Mr.S.Jeyavel

For Respondents : Mr.B.Pugalendhi

Additional Advocate General
assisted by Mr.R.Andharaj

ORDER

This writ petition has been filed praying for a Writ of Mandamus to forbear the respondents from in any way interfering with the petitioner's right to quarry and transport quarried mineral from lease granted patta lands of the petitioner measuring 1.71.5 hectares, comprised in S.Nos.39/1B & 49/1B1, situated in v.pudukkottai village, Veda sandur Taluk, Dindigul District, during the currency of the lease granted in favour of the petitioner in favour of the subject area.



The brief facts of the case are as under:-

2.M/s.PM Granites (PMG) are awarded granite quarrying lease of the petitioner's Patta land admeasuring 1.71.5 hectares comprised in S.Nos.39/1B and 49/1B1 of V.Pudukottai Village, Vedasandur Taluk, Dindigul District vide G.O.(3D) No.78, Industries (MMB-2) dated 16.10.2017. The lease got executed with a validity period of 20 years from 10.12.2007 to 09.12.2027. The granite available in the quarry is multi-colored with a recovery percentage of 8 to 12%. The quarry lease comes with stringent conditions to safeguard the environment, safe distance from the adjacent plots and without hindrance to public utilities besides reclamation of land.

3. The impugned lease was granted with some special conditions attached to the lease. That is, the commercial exploitation rights of the quarry lease shall operate subject to the conditions below.

- The applicant firm should provide a safety distance of 7.5 metres to the adjacent patta land and 10 metres from the Government poramboke land.
- The applicant firm should leave 50 metres safety distance for odai running on the southern side of the lease area without causing hindrance to the odai.
- The applicant firm should not dump any quarry waste and should not carry out any quarrying work to the adjacent government poramboke land.
- The applicant firm should utilize SF No 49/1B1 only as a dumping site and /or to stock the produced materials since EB line and wire are situated.
- A sworn in affidavit shall be filed by the petitioner to adhere to the above conditions before executing the lease.

4. In the course of business, as a routine, the petitioner applied for transport permit paying the requisite seigniorage on 12.12.2012. Inspections were carried out by the Revenue Divisional Officer, Palani at the quarry premises for issue of transport permit in consideration of the petitioner's application. During inspection, some discrepancies and violations of lease conditions were allegedly noticed and an inspection report of the RDO, Palani dated 25.02.2013 was submitted to the District Collector. The report precisely alleged that illegal granite quarrying to an extent of 1225 sq.mtrs was undertaken by the petitioner from nearby poramboke site comprised in SF.No.39/1A (non-lease area) besides dumping of waste in the southern side of the said poramboke site.



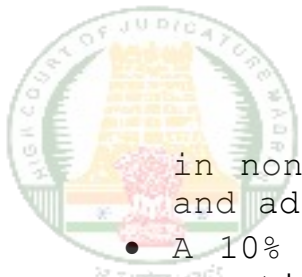
5. Based on the report of the RDO, Palani, a joint inspection was conducted by the Assistant Geologist, Dindigul and Deputy Tahsildar (mines), Dindigul. The joint inspection confirmed the allegations contained in the report of the Revenue Divisional Officer, Palani. Besides, they also allegedly noticed quarrying in the safety distance in the lease site in SF.No.39/1B. The joint inspection estimated illegal quarrying at 28,197 CBM of granite. The waste allegedly dumped in the poramboke land comprised in SF.No.39/1A was estimated at 39,498 CBM. The report also noted that the total transport permit issued to the petitioner firm from the date of commencement of lease to 03.02.2012 was for 690 CBM.

6. In further proceedings in the said Joint inspection report, the first respondent District Collector issued Notices dated 19.06.2013 and 27.09.2013 requiring the petitioner to show cause as to why penalty should not be imposed on them for illegal quarrying in the adjacent poramboke site (non lease hold area) and the violations noticed in quarrying activities in the lease hold area. During personal hearing on 30.09.2013, the petitioner allegedly admitted to the violations and requested re-inspection in the presence of the lessee.

7. Accepting the request of the petitioner, another inspection was conducted at the site on 28.11.2013 by Tahsildar, Vedansandur, Revenue Inspector (Mines), Surveyor, Assistant Geologist (Mines) and the Assistant Director of Geology and Mining, Dindigul on 28.11.2013. As per the re-inspection report 15,400 CBM of granite blocks were found to be illegally quarried in the poramboke land comprised in SF.No.39/1A (non lease hold area). 8,964 CBM of granite blocks were allegedly found to be quarried in the lease area comprised in S.F.No. 39/1B in violation of the safety distance and a quantity of 39,498 CBM of granite waste was found to be dumped in the government poramboke land comprised in SF.No.39/1A (non lease hold area) and the adjacent patta land in SF.No 50 of the same village.

8. At the conclusion of the above said inspection proceedings, the authorities summed up their findings and violations of the lease grant order as below:-

- The lessee had violated the safety distance of 7.5 meters from the adjacent patta land, 10 meters distance from the adjacent poramboke land and 50 metres distance from the odai under the lease conditions.
- A total of 24,364 CBM of granite blocks had been illegally quarried from the non lease hold poramboke land comprised in SF No 39/1A and in the safety distance area in the lease hold land comprised in SF No 39/1B.
- A quantity of 39,498 CBM of granite waste had been dumped



in non lease hold poramboke land comprised in SF No 39/1A and adjacent patta land comprised in SF No 50.

- A 10% recovery as approved in mining plan was factored to quantify the total quarried blocks (recovered) at 2,436 CBM.
- The stock of recovered granite blocks available at the site was surveyed and found to be 726.26 CBM.
- Based on the above findings, they arrived at the quantity of total illegally quarried granite blocks (recovered) at 1020 CBM. (2,436 - 736 (lying stock) + 690 (cleared under Transport permits)
- By the above acts of omission and commission, the petitioners violated the subsisting mining plan in terms of Rule 19 (1) of the Granite conservation and Development Rules, 1999
- By their failure to file the mining plan for the next 5 years, they had violated Rule 18 (2) of the Granite conservation and Development Rules, 1999.
- The petitioner had also violated Rule 41 of the Granite conservation and Development Rules, 1999 by not filing the statutory half yearly and annual returns.

9. Based on the above findings in the inspection report, the District Collector, Dindigul had levied a penalty of Rs.1,65,59,200/- on the petitioner towards the illegal quarrying and violations of lease conditions vide Pro.Rc.No.839/2012 (Mines) dated 27.01.2015. The petitioner had preferred an appeal against the said order before the appellate authority viz. commissioner of Geology and Mining. A personal hearing was fixed on 21.12.2015 and 01.02.2016.

10. Parallely, the District collector had also recommended to the Government to cancel the lease granted to the petitioner vide ROC No 839/2012 (Mines) dated 19.02.2014. Based on the recommendations, the Additional Chief Secretary had conducted a personal hearing on 14.03.2014 and passed G.O. (D) No 61 Industries (MMB-2) Department dated 11.04.2016 cancelling the petitioner's lease. The same got set aside by the Order dated 02.12.2016 of this Court in WP.No.10322 of 2016 of the petitioner and remanded the matter back to the original authority with a direction to pass orders within a period of 12 weeks, which according to the respondent is still pending.

11. The petitioner had disputed some of the facts available on record. The petitioner states that subsequent to their application for transport permit dated 12.12.2012, the District Collector directed the Tahsildar, Veda sandur to inspect the quarry. That the Tahsildar, Veda sandur inspected the petitioner's quarry, got satisfied with the quarrying operations



and filed a favorable report recommending transport permits. Thereafter, for unforeseen reasons, the District Collector directed RDO, Palani to inspect the subject quarry. The petitioner claims that the said RDO, Palani had also filed a favorable report with the District Collector and recommended issue of Transport Permits. The petitioner alleges that Mr. Pulivel, Deputy Tahsildar (mining), on the instigation of rival businessmen, had returned the alleged original report of the Revenue Divisional Officer, Palani with a request to file a false report to cause cancellation of the lease of the Petitioner. The petitioner avers that the report of the Revenue Divisional Officer, Palani alleging illegal quarrying and violations of the lease conditions thus found its way in to the records of proceedings of the District Collector. It was also alleged that during the personal hearing fixed for adjudicating the Show Cause Notice, the said Deputy Tahsildar (Mines) had taken the petitioner's signature in a pre-prepared letter under disguise on a promise of closing the complaint and issue transport permit.

12. The petitioner further submits that the seigniorage for the requisite transport permits were paid by him while applying for transport permits and therefore the respondents had no authority whatsoever to withhold the issue of transport permits for that quantity of materials for which seigniorage is paid. They further submitted that it is a settled law that transport permits cannot be denied as long as the lease is subsisting and therefore the act of the respondents in withholding the transport permit amounted to suspension of lease without authority of law. They relied on a catena of decisions delivered by this Court including in WP No 14529 of 2006 and WP No 34043 of 2002 in support of their contention.

13. In effect, the petitioner advanced the argument that by law and equity, they are entitled to quarry and transports the quarried materials on payment of necessary seigniorage, so long as the lease is subsisting. They contended that by their arbitrary and illegal actions, the respondents had brought the business of the petitioner to standstill that amounted to suspending the lease. They had also mentioned their commitments in time bound supply contracts with intending buyers to press the urgency of relief with no avail. They averred that suspending quarry operations or withholding transport permits is unknown to mining laws and prayed for interim orders directing issue of transport permits and issue of writ orders to forbear the respondents from interfering with their right to quarry and transportation of quarried materials from the leased patta land.

<https://hcservices.ecourts.gov.in/hcservices/> have gone through the rival contentions. The petitioners disputed some of the facts on records. The petitioner avers that the allegations leveled against them are unfounded and



the action of the respondents is arbitrary, biased and initiated at the instigation of business rivals. On the contrary, perusal of records indicates that three inspections were carried out at the lease premises of the petitioner at three different dates. On all three inspections, illegal quarrying and deposit of granite waste at the government poramboke land comprised in survey no 39/1A is noticed and recorded. In the last two inspections, illegal quarrying violating the conditions of lease agreement in respect to safety (restricted) area in the leased plot comprised in SF No was 39/1B also was noticed and recorded. The third inspection was conducted allegedly at the request of the Petitioner. We cannot lose sight of the fact that substantial violations is noticed and recorded in each of the three inspections. As such, a prima facie case is made out against the petitioner for violation of Section 4 (1) and 4 (1) (a) of MMA 1957. On summing up the findings, the respondents demonstrated sufficient cause to initiate actions under Rules 18, 19 and 41 of Granite Conservation and Development Rules, 1999.

15. Perusal of records indicates that a rational mix of officers participated in the inspections on the three different dates. The method adopted by the authorities to arrive at the quantification of illegally quarried granite blocks appears fair and reasonable. The violations indulged in by the petitioners and the quantity of granite blocks illegally mined is enormous. Therefore, in the face of the documents and events, I am constrained to observe that the petitioner had no case to dispute the facts on record of proceedings of the respondents. No material evidences are brought on record by the petitioner to substantiate the allegations of bias by the respondent authorities. Therefore, I am inclined to hold that the allegations are unsubstantiated. The fear of the petitioner that actions were initiated on account of business rivalry is irrelevant, to say the least.

16. A careful reading of the lease agreement indicates that the rights flowing from the lease agreement is not absolute. The right accrued on the petitioner is contractual and conditional and come with obligations and responsibilities. The conditions serve to safeguard the environment and avert hindrance to public utilities. Therefore, I am of a firm view that the rights accrued to the petitioner under the contract cease to operate upon violation of the conditions. No less, when the production is suppressed by the lessee.

17. Admittedly, the petitioner enjoyed the rights under the lease order from December 2007 to 2012 without hardship. The violations came to light upon inspection of the quarry at the time of considering the issue of transport permits at the request of the petitioner. The proceedings are initiated legitimately during the course of considering the application for issue of transport



permits. The transport permits are a machinery provision to regulate legitimate mining. The tool of transport permit is a means to enforce these conditions to regulate legitimate mining. The lease agreement read with the conditions indicates that the collection of seigniorage is not the sole objective of the lease order. The concerns regarding the environment laws are an integral part of the lease order. Therefore payment of seigniorage does not confer any right on the petitioner to beget transport permit particularly when a proceeding for large scale violations/ illegal quarrying is initiated.

18. I had appreciated the case laws relied by the petitioner with the issue on hand. I find that the issue involved in the case on hand is more specifically covered in the Order dated 15.02.2013 of this Court in WA (MD) Nos 906 and 907 of 2012 in the case of M/s PRP Exports. The Hon'ble Supreme Court had refused to interfere with the above said Order in the appeal preferred by the party and dismissed the same in SLP (C)Nos 18662 -18663 of 2013 enhancing the binding precedence of the Order dated 15.02.2013 of this Court in WA(MD)Nos.906 and 907 of 2012. I am in find issue in the instant case is covered in the Writ Appeal. I concur with the view that court interference is not warranted when the departmental proceedings are underway particularly when the violations are enormous in a mining lease order. In view of the Writ Appeal and Special Leave Petition cited above, the cases relied by the petitioner do not persuade the case of the petitioner.

19. I also find that the inability of the petitioner to file the mining plan, apparently owing to the violations noticed and the proceedings initiated by the respondents, further burdens the case of the petitioner. It is now a settled position of law that mining cannot be permitted without requisite environment clearance in view of the decision of the Hon'ble NGT Order in the case of Naresh Zargar vs State of Madhya Pradesh.

20. Further I find that the aggregate of the orders of the Hon'ble Supreme Court in the case of Deepak Kumar etc vs State of Haryana and others etc and the Order of Hon'ble NGT in the cases of Jatinder Singh vs Union of India and the orders of Hon'ble NGT in Naresh Zargar vs Madhya Pradesh and Others holds an unanimous view that allowing of mining without proper environmental clearances (a mining plan is a basic requisite for issue of environmental clearance) leads to rampant unscientific mining that will irrevocably damage the environment, which cannot be allowed.

<https://hcservices.ecourts.gov.in/hcservices/> In view of the foregoing discussions, I am of the strong view that the right of quarrying in a mining lease is unfettered only when all of the following conditions are met.



- The lease is in currency
- The lessee holds a valid environment clearance from the appropriate authority
- An approved mining plan of the lessee is in place
- Statutory Periodical returns are filed by the lessee
- No proceeding against the lessee for substantial violation of conditions to the mining lease order is initiated or pending
- Needless to say, the transport permit entitlement accrue only when the right of quarrying under the mining lease order is unfettered.

22. Accordingly, I hold that the respondents are entitled to complete the proceedings in the alleged violations and the illegal quarrying indulged in by the petitioner in accordance with law without interference of the Court. Such exercise shall be carried out by the respondents within a period of 12 weeks from the date of receipt of a copy of this order. Accordingly, the Writ Pettition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To,

1.The District Collector,
Dindigul District, Dindigul.

2.The Assistant Director of Geology and Mining,
Office of the District Collector,
Dindigul.

SSM

VB/KK/SAR4/11/10/2017/8P/3C

**order made in
W.P (MD) No.20339 of 2015
04.10.2017**