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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
ORDER RESERVED ON : 20.06.2017
ORDER PRONOUNCED ON:13.07.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WMP.(MD).No.8329 of 2017

in

Rev.Aplw(MD).No.SR.34820 of 2017

in

W.P(MD).No.4690 of 2017

V.V.Mineral,
Keeraikaranthattu,
Tisayanvilai Village,
Tirunelveli.

...Petitioner/Applicant/Third Party

Vs.

- 1.M/s.Indian Rare Earths Limited,
Manavalakurichi,
Kanyakumari District-629 252 ... 1st Respondent/1st Respondent/
Petitioner
- 2.The Secretary to Government,
Industries (MMD1) Department,
Government of Tamil Nadu,
Fort.St.George, Chennai-600 009.
- 3.The Commissioner of Geology and Mining,
Guindy, Chennai-600 032.
- 4.The District Collector,
Kanyakumari District, Nagercoil 629 001.
...R.2 to 4/R.2 to 4/Respondents

PRAYER IN WMP(MD)No.8329/2017: Petition filed under Article 226 of the Constitution of India to grant leave to the petitioner to file the above review application.

Prayer in Rev.Aplw(MD).No.SR.34820/2017:

This review application has been filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure against the order dated 21.04.2017 made in W.P.(MD).4690 of 2017.

Prayer in WP(MD). 4690/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus directing the 3rd respondent to grant the transport permits to the petitioner as conveyed vide its letter dt.MK/HRM-23/2017 dated 23.01.2017 in respect of the Mining Leases in G.O.Ms.1114 dated 12.08.1981 and G.O.3(D) 6 dated 28.01.2000.



For petitioner: Mr. C. Meenakshisundaram
Senior Counsel for
Mr. S. Srinath Sridevan

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For R.1 : Mr. Krishna Srinivasan
for Mr. C. Muthu Saravanan for
M/s. Ramasubramanian Associates

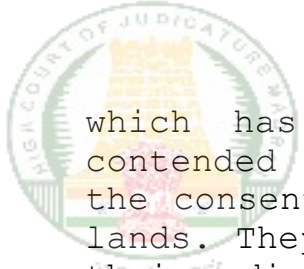
For R.2 to 4 : Mr. B. Puzhalendhi
Addl. Advocate General
assisted by Mr. G. Muthukannan
Govt. Advocate

ORDER

This review application came to be filed against the order dated 21.04.2017 in WP(MD). No 4690 of 2017. The Order in the Writ Petition allowed relief to IREL in respect of their mining entitlement under (i) GOM No 3707 dated 01.11.1968 renewed by GO 3 (D) 6 dated 28.01.2000 and (ii) GOMs No 1114, dated 12.08.1981. The petitioner seeks to grant leave to review the Order on the following grounds.

2. The review petitioner avers in the petition that they were not made party to the writ petition, but their valuable rights are vitally affected by the order in the Writ Petition. In the process, they allege that the Order was obtained by the Writ Petitioner by suppressing facts. They further state that IREL had in Para 11 of the affidavit stated that the CRZ clearance in respect of leases in G.O.Ms.No.1114 dated 12.08.1981 and G.O.3(D)6 dated 28.01.2000 were rejected since the owners of the surface rights have refused to give consent for mining operation. They further aver that IREL had also stated that the review petitioner had opposed the grant of CRZ clearance to IREL and accordingly the applications were rejected. The IREL appeal against the rejection of CRZ clearance was also failed before the Hon'ble NGT and the Civil Appeal No 5824-25 of 2014 preferred by them is now pending before the Hon'ble Supreme Court. The review petitioner points out that IREL had not mentioned that there is no stay in the above Civil Appeal. They state that IREL do not have CRZ clearances to carry out its activities.

3. They allege that when the very same leases were denied environmental clearances on the objections of the review petitioners, IREL is at wrong to seek relief through a Writ Petition without impleading the review petitioner. They contended that the act of IREL will amount to bypassing the Order of NGT on the same subject. They further allege that IREL, having failed to obtain stay against the Orders of NGT, through their reprehensible acts, managed to get a final Order in the impugned writ petition,



which has the effect of setting aside the NGT order. They contended that IREL cannot get environmental clearances without the consent of the review petitioner as they are the owner of the lands. They further allege that for this reason and to succeed in their diabolic intent, they had not impleaded the review petitioner. The review petitioner emphasize that there is currently a *lis* pending on the very same lands and the very same issue, that is established by the NGT Order and the affidavit filed by IREL in the Civil Appeal and therefore, the review petitioner has a direct and substantial interest in the subject matter of the Writ Petition.

4. Objections were filed by the respondents. They distinguished the lease permits in respect of which CRZ clearances were denied by the authorities, that are impugned in the NGT Order presently under appeal before the Hon'ble Supreme Court and the lease permits that are pending environmental clearances by MOEF that is covered in the Writ Petition. They also highlighted to distinguish the mining lease renewed through GOMs 3(D) No.06, the environmental clearance of which is pending before the MOEF, from the Original mining lease in GO.Ms.3(D).74 the environmental clearances of which is impugned in the Civil Appeals.

5. The respondents herein strongly objected to the locus standi of the petitioner to interfere with the legitimate relief granted to the Writ Petitioner. They pointed out that Transfer permits were issued by the authorities to the Writ Petitioner until January, 2017 in respect of leases in (i) G.O.Ms.No.3707, dated 01.11.1968, renewed by G.O.3 (D) No.6 dated 28.01.2000 and (ii) GOMs No 1114, dated 12.08.1981 and that the review petitioner had no grievance until then.

6. A memo came to be filed by the Review petitioner that they were to be impleaded in the Writ Petition because the review petitioner had issues with the Writ Petitioner that had been settled in their favour by the Hon'ble NGT and the same taken on appeal is pending before the Hon'ble Supreme Court which fact was not properly placed before this Court in the Writ Petition. They alleged that the respondent herein had filed the Writ petition and obtained relief, without impleading the Review petitioner and MOEF, including the direction to MOEF to process their application within one month.

7. They had also questioned the legitimacy of the deemed extension of lease claimed by the respondents herein in the Writ Petition. They had also taken pains to explain the reason why the Government could not issue transfer permits to the respondents. They also averred that AMCR, 2016 is applicable only to uranium and thorium and not applicable to other minerals like illuminate, rutile etc. They contended that transport permit can be issued only to monazite that is declared as a prescribed substance.



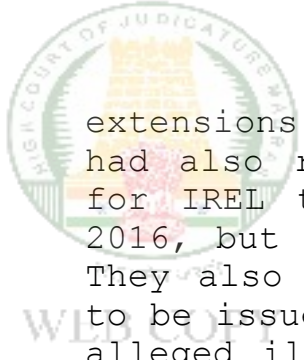
8. They further averred that Monazite or Zircon are not supplied from Orissa Plant and that the writ petitioner had also sold monazite to other countries. They also allege that monazite production were stopped from 2004. They had also speculated that IREL manavalakurichi separates Monazite or Orissa Plant is producing Ammonium Di uranite. They also allege that IREL sells monazite and strategic material to other countries. They averred that, by obtaining year wise production of monazite and other strategic materials and the supply details to NFC and other Government Departments, the court can very well find that IREL sells these to private companies within and outside India. They had also suggested to appoint an advocate commissioner to survey the land with the help of District Surveyor and the fact of the lease getting submerged can be proved. They allege that the writ petitioner indulge in mining in non lease hold area through permits issued for lease hold area. They also allege that mining lease issued in G.O.No.3(D)No.6 dated 28.01.2000 has lapsed. They also allege that the writ petitioner shows monazite as a cover to mine other minerals.

9. They aver that the District collector had stopped issuing transport permit because of the NGT order. They claim that the applications of IREL could not be processed, apparently by MOEF because the matter is subjudice in view of the case pending before the Hon'ble Supreme Court.

10. On the above said averments, they sought to grant leave to the review applicant to make his elaborate submission to prove that there is error apparent on the face of the record.

11. I have carefully gone through the rival contentions. The review petitioner sought this Court to grant leave to review the Order largely on two premises. One, on the presumption that their rights were affected by the order inasmuch as a lis is pending before the hon'ble Court in Civil Appeal Nos. 5824 and 5825 of 2014 between IREL and the review petitioner. This presumption arises from their belief that the leases in respect of which relief granted in the writ petition are covered in the Order of the Hon'ble NGT and then in the Civil Appeal pending before the Hon'ble Supreme Court. On this presumptuous belief, they claim right of being heard in the Writ Petition and in the process allege diabolic intent on the part of the Writ petitioner to obtain the order behind their back and by not putting the facts of the lis in proper perspective before the Court in the Writ Petition. They sought to rely on the NGT order and the affidavit of IREL in the Civil Appeal filed against the NGT Order in support of this belief.

12. Second, they saw error apparent on the face of the records, questioning the IREL claim of the currency of the leases in respect of which relief were ordered in the Writ Petition. This conclusion is on the basis of their understanding that deemed



extensions of leases are not 'sanctioned' under the statutes. They had also registered their frustrations that the order paves way for IREL to trade not just atomic minerals covered under AMCR, 2016, but also other minerals that are present in the mined sand. They also contended that the transport permits, if allowed, were to be issued only to AMCR, 2016 prescribed minerals. They had also alleged illegal mining indulged in by IREL. They had extensively assumed and argued wearing the mantle of the other respondent authorities in the Writ Petition.

13. Accordingly, upon perusal of the NGT order and the IREL affidavit in the Civil Appeals, I find that the leases (i) GOM No 3707 dated 01.11.1968 renewed by G.O.3 (D) No.6 dated 28.01.2000 and (ii) GOMs No 1114, dated 12.08.1981 in respect of which relief were given to IREL in the Writ Petition are not subject of the pending lis. Accordingly, all the averments and contentions that were made on the basis of the pendency of the lis become presumptuous and redundant. Furthermore, the fact that the transport permits in respect of the two leases were continued to be issued to IREL until the letter dated 11.01.2017 issued by the Commissioner, Geology and Mining, is admitted by the respondent authorities in their common counter in the Writ Petition. They had categorically further admitted that the issue of Transfer permit was stopped in pursuance of the Hon'ble NGT Order in the case of **Naresh Zargar vs State of Madhya Pradesh and others reported in Manu/GT/0052/2016**. The Order of the NGT in the review petitioner's case does not appear to have a role. Therefore I find that the fear of violations of the vital rights of the review petitioner is ill-founded. It appears that the affidavit of the review petitioner and their memo suffer from factual infirmities borne out of carelessness and confusions.

14. On the second premise that the review petitioner seeks to grant leave, they appear to fish and search error apparent on the face of the records by raising various issues donning the mantle of the enforcement authorities. I have gone through the issues raised by the petitioners one by one and find that they are raised on the basis of flawed reading of the writ petitioner's affidavit and the order in Writ Petition. The common counter filed by the respondent authorities in the writ petitions is in harmony with the facts presented in the petitioner affidavit and the Order in Writ Petition. Interestingly, none of the allegations made by the review petitioner are found in the common counter of the respondent authorities in the Writ Petition. The statutory requirement of Environment clearances for mining licenses is for the purposes of mining operations and the attendant environmental safeguards only. I do not see any rationale behind the charge of trading in other minerals apart from minerals prescribed under AMCR, 2016. Nor do I think that vague allegations of wrong doing can be a ground for interfering with the Order in the Writ Petition. In any event, the allegations, if any, regarding any



wrong doing on the part of IREL is not a subject of the Writ Petition. Least, they can be a cause of review of the order of this court.

15. In view of the above, I do not find any infirmity in the Order dated 21.04.2017 passed in WP No 4690/2017 and therefore the prayer to grant leave to file review petition is not justified. No case is made out by the petitioner regarding grievance or injury to their interests on account of the order in WP or no error apparent on the face of the record is pointed out by the petitioner to grant leave.

16. In view of the above, I make the following order.

17. Leave not granted. Petition dismissed. Consequently, connected review petition is rejected. No costs.

Sd/-

Assistant Registrar (CS-III)

/True copy/

sub Assistant Registrar

To

1. The Secretary to Government,
Industries (MMD1) Department,
Government of Tamil Nadu,
Fort. St. George, Chennai-600 009.

2. The Commissioner of Geology and Mining,
Guindy, Chennai-600 032.

3. The District Collector,
Kanyakumari District,
Nagercoil 629 001.

+1cc to Mr. S. Ramasubramanian Associates, Advocate, SR. 65047

+2cc to Mr. S. Srinath Sridevan, Advocate, SR. 26549

M.P. (MD) .No. 8329 of 2017

in

Rev. Aplw (MD) .No. SR. 34820 of 2017

in

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ssm

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