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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.06.2017

PRONOUNCED ON: 21.09.2017

CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.P (MD) No.11164 of 2016

M. Shanmughasundaram

... Petitioner

Vs.

1. The District Collector,
Tirunelveli District,
Tirunelveli.

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Madnamus calling for the records relating to the proceedings in RC.No.M2/78045/2001 dated 30.04.2016 and quash the same and further directing the respondents to refund the proportionate lease amount with interest for the unexpired period of lease from 02.10.2003 to 11.10.2004 as per Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 and return the Security Deposit furnished in the shape of KVP with regard to the sand quarry in the land bearing S.No.1782 admeasuring 10.00.0 hectares in Seevalaperi Village, Palayamkottai Taluk, Tirunelveli District.

For Petitioner

: Mr.G.Prabhu Rajadurai

For R.1&2

: Mr.B.Pugalendhi

Additional Advocate General

ORDER

The petitioner prays for issue of certriorarified mandamus to call for the records of the proceedings in RC.No.M2/78045/2001 dated 30.04.2016 and quash the same and to direct the respondents to refund the proportionate lease amount for the period from 02.10.2003 to 11.10.2004 as per Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 (for short 'the Rules') and return the security deposit. The impugned order dated 30.04.2016 had rejected the request of the petitioner to refund the proportionate lease amount for the unexpired lease period on the ground of violations of the lease conditions that ~~enforced in the imposing of penalty of Rs.8,49,540/- and the Government letter No.3688/MMC.1/2004-4 dated 31.03.2004~~



prohibiting the release of refund to erring lessees in terms of Rule 38-A.

2. The petitioner averred that he was a successful bidder for the lease of quarrying sand in the Government Land bearing S.No.1782 in Seevalaperi Village, Palayamkottai Taluk, Tirunelveli District for a period of 3 years having offered the one time lease amount of Rs.2,38,00,000/-. The lease deed was executed on 12.10.2001 valid upto 11.10.2004. A security deposit equal to 10% in the shape of KVP is made by the petitioner before the execution of lease deed.

3. The petitioner averred that before completion of the lease period, the Government of Tamil Nadu in G.O.M.S.No.95 Industries dated 01.10.2003 amended the TNMMCR, 1959 by inserting Rule 38-A where-under all the existing leases for quarrying sand in Government land and permissions/leases granted in Ryotwari Lands shall cease to be effective and the right to exploit the sand in the state shall vest with the Government to the exclusion of the others. The said rule further provides that proportionate lease amount for the unexpired period of lease and the unadjusted seignorage fee, if any, will be refunded.

4. The petitioner avers that the above said rule was challenged by various lessees in a Writ Petition before this court and the Order of this court granting relief for the subsisting lessees was challenged before the Hon'ble Supreme Court. Hon'ble Supreme Court was pleased to allow quarrying by the subsisting leases for a period of 6 months or for the actual expiry period of the lease whichever is less and they had reproduced the relevant paragraphs of the said Order.

5. The petitioner avers that though he was not a party to the judgements before this court or the Hon'ble Supreme Court, he was not allowed to quarry sand from the said land and as such he was entitled to get refund of the proportionate lease amount for the unexpired period of lease as per the said Rule 38 A and the refund was delayed under the guise of pending penal proceedings against him.

6. The petitioner avers that a penalty of Rs.8,89,540/- was slapped on the petitioner by the first respondent in proceeding RC No A2/7211/02 dated 24.01.2005. The second respondent had set aside the above order and remitted the matter back to the first respondent for fresh proceedings in the appeal order dated 25.01.2007. Another representation was submitted by the petitioner to the first respondent for refund. During the hearing in the remand proceedings on 12.03.2007, the petitioner had submitted that there was no evidence of illegal quarrying against him and without admitting the charges he agreed to remit the entire fine amount of Rs 8,89,540/- with a view to put an end



to litigation and the resultant pecuniary losses. Accordingly the petitioner had requested the first respondent to process the refund and release payment after deducting the fine amount of Rs. 8,89,540/-.

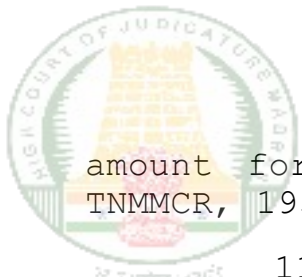
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7. The petitioner avers that the first respondent vide proceedings in R.C.No.M2/78045/01 dated 28.03.2007 had conformed the penalty amount of Rs.8,89,540/- levied by the Revenue Divisional Officer. He avers that there is absolutely no incriminating material connecting him to the illicit quarrying and there is no evidence available on record to impose the penalty for the alleged illicit quarrying of 2252 units of sand and that the order was passed purely on assumption. The petitioner avers that he had requested the respondent to deduct the amount of Rs.8,49,540/- and had requested the refund of the remaining amount.

8. The petitioner avers that by proceedings Proc.No.M2/78045/2001 dated 10.08.2008 the first respondent had rejected the request of the petitioner for refund on the ground that the quarry lease stood cancelled vide proceedings Ms/94816/2003 dated 20.07.2004 for indulging in illicit quarrying of sand and therefore he is not entitled for refund for the non operative period as per the GO/Order of this Court/Supreme Court Order. They assail that the order of cancellation of lease was referred for the first time in the said proceedings.

9. The petitioner avers that this court in order dated 13.10.2015 has in WP No 23564 of 2008, after perusal of the proceedings found that there was no cancellation of the lease and accordingly set aside the order of the first respondent and remanded back for considering the case of the petitioner for refund and pass orders on merits and in accordance with law. In pursuance of the order the petitioner had filed representation dated 04.04.2016 for refund of the proportionate lease amount for the unexpired lease period, which was again rejected by order dated 30.04.2016. The petitioner contends that the said order of the first respondent is illegal in violation of the order dated 13.10.2015 of this court in WP No 23564 of 2008.

10. They invoke the following grounds in support of their contentions. The order is passed in violation of the principles of natural justice and the order dated 13.10.2015 of this court in WP No 23564 of 2008. The order is passed on the ground of the order of cancellation of lease that is non est and is passed without jurisdiction. That no notice of forfeiture was served on them. That the payment of Rs.8,49,540/- is not an admission of guilt. That alternate remedy is not useful as the order suffers from illegality. On the above grounds, the petitioners sought quashing of the proceedings of the first respondent in R.C.No.M2/78045/2001 dated 30.04.2016 and direct refunding of the proportionate lease



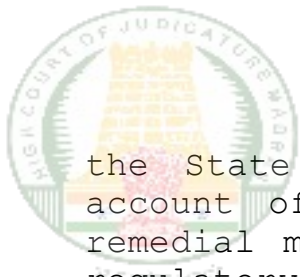
amount for the unexpired period in terms of Rule 38-A of the TNMMCR, 1959 and return of security deposit.

11. The respondents submit that a surprise inspection by the Assistant Director of Geology and Mining, Tirunelveli resulted in detection of illegal quarrying of 2252 units of sand and removal of the same without transport permit by the petitioner lessee. In the resultant proceedings in RC.No.A2/7211/02 dated 24.01.2005, after affording adequate opportunities of hearing to the petitioner, a penalty of Rs.8,89,540/- was imposed. The appeal preferred by the petitioner against the above order was dismissed by the first respondent vide Pro.No. M2/78045/2001 dated 07.10.2005. On further appeal, the issue was remanded back to the first respondent vide order dated 25.01.2017 vide Pro.Roc.11697//MM5/ 2005.

12. They further elaborated the back ground leading to inserting of the new Rule 38-A of TNMMCR, 1959 vide GO Ms.No.95 Industries dated 01.10.2013 and the Order dated 24.03.2006 of the Hon'ble Supreme Court. They further submitted that the proceeding in Pro.Roc.No M2/78045/2001 dated 10.08.2008 was passed after following the Principles of Natural Justice. A modification order dated 13.10.2008 added that the petitioner was not entitled to any relief as per the Government orders issued in Letter No.3688/MMC.1/2004-4 dated 31.03.2004.

13. They further aver that the impugned order passed by the first respondent subsequent to the order dated 13.10.2015 of the Hon'ble High Court of Madras in WP.No.23564 of 2008 is speaking and it is passed after providing adequate opportunity to the petitioner. They argued that the consent of the petitioner to pay the penalty amount tantamount to acquiescing, and that the Government Letter No 3688/MMC.1/2004-4 stipulated that the proportionate lease amount for the unexpired period and seigniorage fee is subject to condition that no proceedings is pending against the lessees for violation of lease conditions.

14. To appraise the background of the dispute, the brief facts leading to the Order dated 24.03.2006 of the Hon'ble Supreme Court in Civil Appeals No 5572-5644 of 2005 is as under. A public interest litigation (W.P.No.985/2000) was filed in this Court, complaining about indiscriminate illicit quarrying of sand in riverbeds. The High Court issued certain directions to curb illicit quarrying while disposing of the said writ petition. A contempt petition (Contempt Application No.561/2001) was filed complaining of non-implementation of the said directions by the State Government. In the said contempt proceedings, the High Court issued a direction to the State Government on 26.7.2002 to constitute a High Level Committee consisting of scientists, geologists and environmentalists to conduct a thorough scientific survey of the sand quarrying activities in rivers and riverbeds in



the State and submit a report regarding the damage caused on account of indiscriminate illicit quarrying and to suggest the remedial measures. The High Court also suggested that a suitable regulatory legislation may be made by the State on the basis of the report of such Committee, and issued certain interim directions pending such legislation.

15. Accordingly, a High Level Committee was constituted which submitted a report detailing the extensive damage that had occurred on account of haphazard, irregular and unscientific manner of quarrying sand by the quarry leaseholders, thereby impairing smooth flow of water and causing damage to riverbeds, river banks as also the structures (like bridges and transmission powerlines constructed across rivers or imbedded on the riverbed) and drinking water systems branching from rivers, leading to ecological imbalances. It was found that the unauthorized use of Poclain machines for quarrying, and the tendency of lessees to extend quarrying activities beyond the leased area and the permissible depth, were the main causes for the devastating situation.

16. The Committee suggested several measures to remedy the situation, one of which was to impose total prohibition on quarrying by private parties. On considering the said report, the State Government took a decision in public interest to stop quarrying of sand in Government lands and Ryotwari (private patta) lands by private agencies and take upon itself exclusively, all sand quarrying activities in the State. It is in this background, Rule 38A came to be inserted in the Rules by Notification dated 1.10.2003 with effect from 2.10.2003. Prior to insertion of the said Rule, the State Government was granting quarrying lease, the term of such leases being three years or less, under Rule 8 of TNMMCR, 1959. It is stated that as on 2.10.2003, private agencies were holding 135 sand quarrying leases granted by the State Government and 52 permissions for sand quarrying in Ryotwari lands. Out of these, 19 were to expire in 2003, 102 were to expire in 2004, 33 were to expire in 2005 and the remaining 33 were to expire in 2006; and in addition, sand quarrying was carried on by some others on the authority of orders of court, even though no leases had been granted in their favour. With effect from 2.10.2003, the State Government stopped all sand quarrying by private agencies. Several writ petitions were filed in the Madras High Court by the Lessees/permission holders, challenging Rule 38A.

17. On 8.10.2003, a learned Single Judge of the High Court granted an interim stay, until further orders or till the leases granted to the writ petitioners came to an end, whichever was earlier. On 10.10.2003, aggrieved by the interim stay, the State Government moved the matter before a Division Bench immediately which in turn



issued an interim direction on the same day (8.10.2003) directing both parties not to quarry sand from areas covered by leases or court orders, until further orders. Subsequently, the writ petitions, which were pending before the learned Single Judge, were taken up for hearing by the Division Bench along with the writ appeals against the interim order, and were disposed of by a common order dated 11.5.2004.

18. The Division Bench upheld the validity of Rule 38A in so far as it created an exclusive right in the State to quarry sand. It was, however, of the view that the leases/permissions which had already been granted and were in force as on 2.10.2003 when the Rule came into force, could not be terminated without giving a hearing to the concerned lessees/ permission-holders. Consequently, it upheld the validity of Rule 38A subject to the following conditions :

"1. The State is entitled to exploit the sand by quarrying itself on the Government lands, which are not covered by the mining leases of the writ petitioners. The same is applicable to patta lands subject to the permission of the landholders or their tenants or lessees in occupation, which are not covered by the mining leases.

2. The writ petitioners whose Mining leases expired as on this day and which are covered by the Court orders shall not be entitled for any relief. This will not cover the Court orders passed to make up the deficiency of the lease period.

3. The respective District Collectors shall issue notices to the petitioners with regard to the mining leases where there is an allegation of infraction of environmental laws and if there is a contest, then hold an enquiry by affording opportunity to them and then pass orders basing on the material on record. The above exercise shall be made by the District Collector within a period of two months from the date of receipt of a copy of this order and until then, the status quo with regard to mining operations as obtained on this day, shall be maintained.

4. In so far as the cases not covered by environmental violations are concerned, the said writ petitioners shall be entitled to continue their sand quarry operations till the expiry of their respective lease periods. But this shall not preclude the respondents/Government from terminating their leases by issuing a prior notice of six months as contemplated under Clause 11 of Appendix I of the Rules in so far as the Government lands are concerned.



5. In the cases relating to the petitioners, where there is an allegation of breach of conditions of lease, then a notice has to be issued to them affording opportunity and then pass orders basing upon the material on record. But until then, they shall be entitled to quarry."

Some of the writ petitioners, being aggrieved by the judgment upholding validity of Rule 38A, approached this Court. This Court did not entertain the SLPs.

19. The State has challenged the judgment of the High Court in these appeals by special leave, being aggrieved by the conditions stipulated by the court while upholding the validity of Rule 38A. According to the State, the Rule ought to have been upheld unconditionally, so that there could be cessation of all quarrying activities relating to sand in the State by private agencies with effect from 2.10.2003. Though leave was granted on 5.9.2005, the interim prayer of the State to stay the conditions imposed by the High Court was not granted. Instead, hearing was expedited. The state elaborately contended that the High Court ought to have upheld the Rule 38 A unconditionally.

20. The Respondents contend that Rule 38A does not conform to section 4A(3) of the Act in as much as it mandates that no order making a premature termination of a mining lease shall be made except after giving the holder of the lease a reasonable opportunity of being heard; and that it, therefore, follows that any Rule made by the State Government for regulating mining leases in respect of minor minerals, in exercise of the rulemaking power conferred by the Act, should conform to Section 4A(3); and that Rule 38A made by the State, to the extent it provides for termination or cessation of all existing leases/permissions relating to sand, without affording a hearing to the affected leaseholder/s, is clearly contrary to the express provisions of Section 4A(3) is invalid.

21. The Hon'ble Supreme Court in its judgement dated 24.03.2016 in Civil Appeals No 5572-5644 of 2005, after elaborately discussing the various provisions of the Act and the case laws cited concluded that the New Rule 38 A was valid to the extent it vested the rights of sand quarrying with the state from the date of its notification. However, it held that the effect of the New Rule, 38 A terminating the rights of the subsisting leases as on the date of the notification without giving an opportunity of being heard as contemplated in the Act, had civil consequences on the lessees. To save the valid part of the Rule, It drew its attention to the conditions that all quarrying leases granted by the State Government contained a provision for termination simplicitor. That is, the leases can be terminated prematurely by giving a notice of six months without any liability of



compensation.

22. In regard to mining leases subsisting as on 2.10.2003, the Hon'ble Supreme Court read down Rule 38A as terminating such leases in terms of the contract (lease deeds) by six months, without assigning cause and without any liability to pay compensation. Such of those writ petitioners (Respondents herein) whose leases were subsisting on 2.10.2003 (and whose activities were stopped with effect from that day) will be entitled to carry on the quarrying activities for a period of six months or for the actual unexpired period of the lease (as on 2.10.2003), whichever is less.

23. This benefit will be available to even those who have orders of court for grant of mining leases, but where mining leases were not executed for one reason or the other. It is, however, made clear that the State Government is at liberty to prematurely terminate the leases for any of the causes mentioned in section 4A(2), by giving a notice and hearing under Section 4A (3), if they want to terminate any lease within the said period of six months.

24. The Hon'ble Supreme Court, accordingly, allowed these appeals in part. In place of the conditions stipulated by the Division Bench while upholding the validity of Rule 38A, we hold and direct as follows :

"(i) That part of Rule 38A which vests the exclusive right to quarry sand, in the State Government, is upheld.

(ii) That part of Rule 38A which purports to terminate quarrying leases/permissions forthwith (from 2.10.2003) is read down in terms of Para 26 of the Order.

(iii) The provision in Rule 38A for refund of proportionate lease amount for the unexpired period of lease and unadjusted seigniorage fee, shall remain undisturbed.

(iv) It is made clear that except to the limited relief as a consequence of reading down as per para 26 above, the respondents will not be entitled to any other reliefs which have been granted by the High Court.

(v) Parties to bear their respective costs."

25. The following inferences could be drawn from the above Order of the Hon'ble Supreme Court. The validity of Rule 38 A to the extent that the right of sand quarrying is vested exclusively with the Government from 02.10.2003 was upheld. Rule 38 A is read down as far as it terminated the lease rights that subsisted as on 02.10.2003. The Hon'ble Court thought it fit in the scheme of the Act to restrict the rights to a period of 6



months in respect of the longer leases and the actual unexpired periods for the shorter leases that subsisted as on 02.10.2013.

26. In essence, the power of the Government to take over the sand quarrying operations in the state from 02.10.2003 was unequivocally upheld. A limited protection to offset the civil consequences arising out on account of premature termination were provided to the subsisting lease rights by way of extended quarry entitlement for 6 months as provided under the lease deeds. In effect, the subsisting leases that had expiry period of more than 6 months will be restricted to 6 months and that with lesser period will be entitled to such unexpired lesser periods. Besides, the Order makes it clear that the Government reserved the rights and powers to terminate licenses during the extended period in terms of Section 4-A (2) and 4-A (3) of the Act. The Order came to be passed on 24.03.2006.

27. In the back ground, I have gone through the rival contentions and perused the materials available on record.

28. Now, the grievance of the petitioner is that their lease deed got terminated vide the issue of G.O.M.S.No.95 Industries dated 01.10.2003 inserting a new rule 38-A in the TNMMCR, 1959. They contend that they are entitled for the proportionate lease amount for the unexpired lease period and the same have to be refunded to them in terms of the new Rule 38-A. They had sought to quash the proceedings in Rc.No.M2/78045/2001 dated 30.04.2016 of the first respondent on the ground that the order is passed in violations of the Order dated 15.10.2015 of this court in WP(MD). No.23564 of 2008 filed by the petitioner. The above order in WP.No.23564 of 2008 had observed that the order of the cancellation of the lease of the petitioner was not communicated to them and did not exist in the file of the respondent's proceedings in Rc.No.M2/78045/2001 dated 10.08.2008 and remitted the matter back to the first respondent for fresh consideration on merits.

29. In my considered opinion, what was referred back to the authorities for consideration is the only question before this Court for which the order passed by the learned Judge in the Writ Petition in W.P.(MD).No.23654 of 2008 is usefully extracted below:-

"10. It is seen from the records that the order of the 3rd Respondent rejecting the request of the Petitioner for refund, in view of the cancellation of the lease by order dated 20.7.2004, based on the instructions of the 1st Respondent in his letter dated 4.7.2008 is illegal, inasmuch as no such order of the 3rd Respondent order dated 20.7.2004, canceling the lease granted in favour of the Petitioner, referred to in order dated 10.8.2008, was served



on the Petitioner nor available on record. The request for refund of the proportionate lease amount after deducting the fine amount of Rs.8,49,540/- is in accordance with Rule 38A.

11. Section 38A of the Rules reads as under:-

"38A. Quarrying of sand by the State Government - Notwithstanding anything contained in these Rules, or any order made or action taken here under or any judgment or decree or order of any Court, all existing leases for quarrying sand in Government lands and permissions/leases granted in ryotwari lands shall cease to be effective on and from the date of coming into force of this Rule and the right to exploit sand in the State shall vest with the State Government to the exclusion of others. The proportionate lease amount for the unexpired period of the lease and the unadjusted seigniorage fee, if any, will be refunded."

12. A perusal of GO.2(D) No.25 Industries (MMC1) Department, dated 18.8.2009, the Government Pleader was consulted and opinion was given on 5.1.2009, which reads as under:-

"On the basis of the observations of the Honorable Supreme Court and the provisions of the amended rule 38A, this Court has directed the Respondents to consider the representation of the Petitioner and pass appropriate orders on merits and in accordance with law within a period of 8 weeks from the date of receipt of a copy of this order. After perusing the entire records and the provisions of the Act, it is quite evident that under Rule 38A, a provision is made for refund of the proportionate lease amount for the unexpired period and unadjusted seigniorage fee shall remain undisturbed and accordingly, the Petitioner will be entitled to refund proportionate lease amount for the unexpired period of lease and unadjusted seigniorage fees need not be disturbed and accordingly, you can refund the proportionate lease amount to the Petitioner."

13. In **2006-4-SCC-517 (State of Tamil Nadu and another Vs. P. Krishnamurthy and others)** it has been held as under:-

35. Section 4A(3) requires the grant of an opportunity of hearing only for premature termination of mining leases (and prospective licences with which we are not concerned). If anyone was carrying on quarrying of sand as on 2.10.2003 in whatsoever circumstances other than in pursuance of mining leases, there is no question of hearing them before stopping quarrying



activities in pursuance of Rule 38A, as hearing is required only in regard to those holding subsisting leases. Therefore, all quarrying permits for sand stood terminated with effect from 2.10.2003. All quarrying by any person, other than those holding mining leases also ceased with effect from 2.10.2003.

36. In regard to mining leases subsisting as on 2.10.2003, we have read down Rule 38A as terminating such leases in terms of the contract (lease deeds) by six months, without assigning cause and without any liability to pay compensation. Such of those writ petitioners (Respondents herein) whose leases were subsisting on 2.10.2003 (and whose activities were stopped with effect from that day) will be entitled to carry on the quarrying activities for a period of six months or for the actual unexpired period of the lease (as on 2.10.2003), whichever is less. This benefit will be available to even those who have orders of court for grant of mining leases, but where mining leases were not executed for one reason or the other. It is, however, made clear that the State Government is at liberty to prematurely terminate the leases for any of the causes mentioned in section 4A(2), by giving a notice and hearing under Section 4A(3), if they want to terminate any lease within the said period of six months.

37. We, accordingly, allow these appeals in part. In place of the conditions stipulated by the Division Bench while upholding the validity of Rule 38A, we hold and direct as follows:

(i) That part of Rule 38A which vests the exclusive right to quarry sand, in the State Government, is upheld.

(ii) That part of Rule 38A which purports to terminate quarrying leases/permissions forthwith (from 2.10.2003) is read down in terms of Para 26 above.

(iii) The provision in Rule 38A for refund of proportionate lease amount for the unexpired period of lease and unadjusted seigniorage fee, shall remain undisturbed.

(iv) It is made clear that except to the limited relief as a consequence of reading down as per para 26 above, the respondents will not be entitled to any other reliefs which have been granted by the

(v) Parties to bear their respective costs."



13. It is seen that the fine amount of Rs. 8,89,540/- was agreed to be paid and no copy of the order dated 20.7.2004, canceling the lease granted to the Petitioner, based on which the request for refund of the proportionate lease amount for the unexpired period of lease, after deducting the fine amount of Rs. 8,89,540/-, was cancelled, was served on the Petitioner nor available on record.

14. For the reasons stated above and in view of the provisions of the Act and Rules and decisions stated supra, in the impugned orders are set aside. The matter is remanded back to the respondents for fresh consideration. The respondents are directed to consider the case of the petitioner for refund and pass orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order."

30. A reading of the above order categorically states that the order of cancellation of the lease of the petitioner was not communicated to him nor it was found on the file of the respondents and therefore, the rejection of refund of the amount of cancellation was set aside by this Court by an order dated 15.10.2015 made in W.P.(MD).No.23564 of 2008 and against which, there was no appeal filed by the respondents and therefore, the order of the learned Judge has become final. If the learned Judge would have taken into consideration that the acceptance of payment of penalty amount would amount to forfeiture of the entire amount, he need not have discussed Rule 38-A, in a detailed manner and passed an order in favour of the petitioner. The reason assigned by the respondents in the impugned order has been very well discussed in the order passed by the learned Judge and only after setting aside the order, the matter has been remitted back to the authorities to consider the case of the petitioner for refund of the security deposit in terms of Section 38-A of the Rules. However, the authorities have misconstrued the word 'consideration' and once again rejected the case of the petitioner. As no appeal has been preferred against the order of the learned Single Judge, the said order has become final. However, taking advantage of the fact that the petitioner accepted the fine amount, the security deposit amount has been forfeited by the respondents, which cannot be sustained in the eye of law for the simple reason that all these issues have already been discussed in W.P.(MD).No.23564 of 2008 by setting aside the order impugned therein. In other words, the respondents, to suit their needs cannot keep on giving different reasons for rejecting the claim of the petitioner and admittedly, in the case, there was no cancellation of lease and that was categorically found by the learned Single Judge. Similarly, as to the violations or illegal minining, the Director of Geology and Mining already passed a detailed order stating that the proceedings had taken place behind



the back of the petitioner and remanded back the matter for fresh consideration. No doubt that the new Rule 38-A itself is born on the necessity to curb the rampant abuse of the environment in violation of lease conditions by the lessees, under orders of this Court in the contempt petition. There cannot be any quarrel on this. However, in the case on hand, the petitioner stands in a different footing and therefore, the petitioner has to be considered depending upon the facts involved in this writ petition.

31. Added further, it appears that the District Collector gave a personal hearing to the petitioner and had again passed the non-speaking order which was the subject matter in the above writ petition. At the risk of repetition, the said aspects were considered by my learned Brother Judge (**Justice.R.MAHADEVAN, J**) and the impugned order therein was set aside by this Court and it was remanded only for the authorities to pass orders for refund as per the provisions of Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, 1959. Again, the respondents have passed the present impugned order which amounts to contempt of the order passed by this Court in W.P.(MD)No.23564 of 2008. In order to give quietus to the issue on hand only, the petitioner had accepted agreed upon the fine amount fixed by the authoirty and to sum up, the petitioner's prayer for refund of proportionate lease amount for the unexpired period of lease after surrendering the contractual rights holds good. Therefore, in my considered opinion, the present impugned order has been passed without application of mind and therefore, it stands set aside and the authorities are directed to refund the deposited amount for non-quarried period after deducting the penalty amount and any other amounts, as per law, to be paid by him. Further, in the present facts and circumstances of the case, since the petitioner has been unnecessarily put to face the litigations inspite of the orders passed by this Court, the ends of justice would be met, if the interest is awarded at the rate of 12% interest per annum from the date of filing W.P.(MD).No.23564 of 2008. Accordingly, 12% interest per annum is awarded to the petitioner. The entire amount along with interst shall be given to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

32. In view of the above, the Writ Petition is allowed.

Sd/-

Assistant Registrar(AD)

/True Copy/

Sub Assistant Registrar



To,

1.The District Collector,
Tirunelveli District,
Tirunelveli.

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

+1cc to Mr.G.PRABHU RAJADURAI Advocate in SR. No. 80651
SSM
JS/SV.MMS/SAR.1/3.10.2017/14P-4C

W.P (MD) No.11164 of 2016
21.09.2017



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Pre-delivery order made
in
W.P. (MD) .No.11164 of 2016

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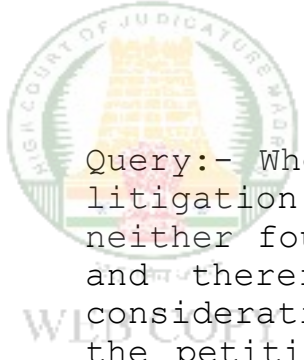
To

THE HON'BLE MRS.JUSTICE.J.NISHA BANU

Most respectfully submitted,

(S.Selvam)

Private Secretary to Hon'ble Judges



Query:- Whether the learned single Judge in the previous round of litigation has specifically observed that the cancellation deed is neither found in the file nor it has been served on the petitioner and therefore, set aside and remanded the matter for fresh consideration. Even in the impugned order, it has been stated that the petitioner has come forward for settlement in the lok adalat only to give the quietus to the issue in question. In such circumstances, whether it is right on the part of the respondents to passed the impugned order, when there is no cancellation of lease.