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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON: 12.06.2017

PRONOUNCED ON: 05.10.2017

CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.P (MD) No. 22408 of 2016

K. Rajendran

.. Petitioner

Vs.

The District Collector,
Madurai District, Madurai.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in R.C.No.657/2010-Mines dated 04.05.2013 passed by the respondent quash the same and consequently direct the respondent to refund of the lease amount of Rs.45,00,000/- paid by the petitioner in respect of the rough stone and jelly quarry lease in government land in S.F.No.352(2) (part-I) of Sokkampatti Village, Melur Taluk, Madurai District.

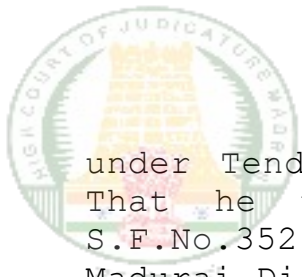
For Petitioner : Mr.V.Nagendran

For Respondent : Mr.Muthukannan
Government Advocate

ORDER

This writ petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in R.C.No.657/2010-Mines dated 04.05.2013 passed by the respondent quash the same and consequently direct the respondent to refund of the lease amount of Rs.45,00,000/- paid by the petitioner in respect of the rough stone and jelly quarry lease in government land in S.F.No.352(2) (part-I) of Sokkampatti Village, Melur Taluk, Madurai District.

2. The petitioner submits that as per the extra ordinary District Gazette Notification No.40 dated 25.10.2010 issued by the respondent, he had applied for stone quarries in Madurai District



under Tender cum Auction in terms of Rule 8(1) of TNMMCR, 1959. That he was the successful bidder for the quarry site in S.F.No.352(2) (Part-1) of Sokkampatti Village, Melur Taluk, Madurai District for a bid amount of Rs.45,00,000/-

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3. The petitioner submits that he had remitted the bid amount of Rs.45.00.000/- and quarry permission was granted for a period of 5 years vide the respondents Proceedings in Roc.No.657/2010-Mines dated 16.12.2010. In the meantime, the petitioner was diagnosed with kidney problems and had to undergo biweekly dialysis on the advice of the doctors. The petitioner submits that the bid amount of Rs.45,00,000/- was not his own funds and was borrowed from friends and relatives.

4. The petitioner submits that he received a letter dated 02.02.2011 from the respondent requesting him to execute the lease deed within a week's time. The fact of his indisposition and the dialysis treatment at Madurai Meenakshi Hospital and his inability to execute the lease deed was represented to the respondent vide his letters dated 02.02.2011, 04.04.2011, 26.09.2011, 30.04.2012 and 17.12.2012 with a request to return the lease amount.

5. The petitioner submits that the respondents without considering his representation, vide an order dated 04.05.2013, cancelled the lease and forfeited the lease amount of Rs.45,00,000/- to the State Government in terms of TNMMCR, 1959. The petitioner submits that he is put to great hardship and irreparable loss by the above decision of the respondent. He submits that the health problem was unforeseen and that the respondent failed to take note of his inability to execute the lease owing to his precarious circumstances.

6. The petitioner submits that he has three girl children in the age group of 16 and 24 and he could not follow up or participate in the proceedings owing to his indisposition and he is seeking remedy before this Hon'ble court after the original order of cancellation was made available to him in the first week of November, 2016.

7. The petitioner submits that the respondent erred in not considering the representations regarding his health and family conditions. It was contended that even if forfeiture is provided under the statutes, it should be made only in respect of the earnest money only and not the entire lease amount and that the principles of natural justice suffered in his case. It was also mentioned that the inability of the petitioner to execute the lease was communicated to the respondent at the earliest point of time and sought relief.

8. The respondent avers that the impugned order of



cancellation and forfeiture was passed under proper authority of law and in terms of para 10 of the tender Notification and prayed to dismiss the petition on the grounds of laches and availability of alternate remedy. It was averred that the respondent had no discretion to consider the representations of the petitioner. It was contended that the act of the delayed request of refund by the petitioner cause huge revenue loss to the exchequer. It was further averred that the principles of natural justice was duly followed and resisted the grounds of the petitioner made on account of health and family situations. It was averred that the proceedings was done strictly in accordance with Rule 8(7) of the TNMMCR, 1959 and, therefore, the petition be dismissed.

9. I have carefully considered the contents of the writ petition and the counter filed by the respondent. The petitioner avers that after successful bidding and payment of the bid amount of Rs.45,00,000/- he had to undergo treatment for serious illness and undergo biweekly dialysis and could not execute the lease deed or operate the quarry. The same was reported to the respondent along with the medical evidences of the illness to withdraw from the contract and refund of the bid amount, vide his various representations. Besides the misfortune of falling ill, it is averred that he had no male heir to take forward the contract and the money paid towards the bid amount was also borrowed. The petitioner had frequently sent letters to the respondent dated 04.04.2011, 26.09.2011, 30.04.2012 and 17.12.2012. He had also made a representation on 31.12.2012 to the Government. He had further mentioned his poor financial state of affairs to seek refund of the amount and requested relief after filing the medical certificates indicating chronic kidney problems and his undergoing haemodialysis.

10. The respondent would submit that the rule 8(7) of TNMMCR, 1959 is unambiguous and that he had no discretion. He had also contended that female entrepreneurs are a norm of the day and therefore there is no reason for the petitioner to back off from the tender conditions. It was also submitted that the bid amount was paid in piece meal as late as 30.11.2010 and refund was sought only on 31.12.2013 causing loss of revenue to the exchequer. It contended that the Writ Petition was filed after a long time and therefore it suffers from laches besides availability of alternate remedy and therefore, is liable to be dismissed.

11. The cases that are filed in this court regarding Mines and minerals always come with allegations of illegal quarrying of leased land and adjacent government porompoke lands, competing business interests, collusions etc. with the government at the receiving end causing huge losses to the public exchequer. This is a rare case where the bidder had paid the amount but could not execute the lease deed because of serious illness. The claim of illness is backed by authentic medical records and is serious enough to substantiate the apathy of the petitioner. This is an



extra ordinary case requiring extra ordinary remedy. The plight of the petitioner arouses the conscience of this court to warrant writ interference. The only provision that comes in the way of the relief to the petitioner according to the respondent is the amended Rule 8(7) of the TNMMCR, 1959 that gives no executive discretion. As such, no purpose will be served in preferring the appeal available as alternate remedy. It is seen from the records that the inability of the petitioner to execute the lease deed owing to his health position was communicated during April, 2011. Even then, the law cannot be rigid in special cases. Condoning delay in empathetic cases will only serve justice better. By hearing the case involving extra ordinary facts, nothing is lost. At best, the petitioner gets justice.

12. The petitioner is aware of the inconvenience caused by him to the Government by way of his succeeding in the bid and his inability to operate the quarry and is willing to forego the earnest money. Besides, the petitioner forgoes the interest on the deposit amount and therefore, no commercial motives can be attached to his actions. I find that the claim of the petitioner about his inability to execute and operate the lease owing to his misfortune of ill health that was beyond his control is bona-fide. Therefore the writ petition is liable to be disposed of on the above terms. Accordingly, this writ is disposed of to the extent indicated below and I make the following order.

- The impugned order dated 04.05.2013 in proceeding RC No 657/2010-Mines in the file of the respondent is set aside.
- The respondent is directed to refund the lease amount paid by the petitioner after deducting the earnest deposit money for the tender within a period of 4 weeks. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To,

The District Collector,
Madurai District, Madurai.

+ 1 cc TO Mr.V.Nagendran , Advocate in SR No. 81609

ssm

AE/SV MMS/SAR4/09.10.2017/4P/3C