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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :13.06.2017

PRONOUNCED ON:09.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.4158 of 2016

A.Rajmohan

.. Petitioner

Vs.

1.The Secretary to Government,
Industries Department,
Government of Tamil Nadu,
Chennai-600 009.

2.The Commissioner of Geology and Mining,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai-32.

3.The District Collector,
Karur District, Karur.

4.The Executive Engineer,
Public Works Department (WRD),
R.C.Division, Tiruchirapalli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of mandamus directing the respondents 1 to 3 to grant permission to the petitioner to quarry sand for a period of 6 month on payment of proportionate lease amount in any one of the available quarry site over an extent of 10 Hec. of Cauvery River, Kulithalai Taluk Karur District pursuant to the directions of the Supreme Court.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.T.R.Janardhanam

Additional Government Pleader



directing the respondents 1 to 3 to grant permission to the petitioner to quarry sand for a period of 6 months on payment of proportionate lease amount in any one of the quarry site over an extent of 10 hectare of Cauvery river, Kulithalai thaluk, Karur District pursuant to the directions of the Hon'ble Supreme Court.

2. The petitioner submits that he was a successful bidder for the sand quarry lease comprised in Survey No 1 in K.Pettai Village, Kulithalai Thaluk, Karur District in Karur District pursuant to the District Collector's notification dated 01.12.1996. One day prior to public auction, there was an amendment to Rule 8 (a) (1) of the TNMMCR, 1959 that the lessee has to pay entire 3 years lease amount in one lumpsum instead of paying 1st year lease amount and 20% over and above the previous lease amount. Accordingly no proceedings was issued in his favour for granting lease. The petitioner approached this court for grant of lease. This Hon'ble Court by order dated 04.10.2012 directed to grant lease to the petitioner by increasing the lease amount 60% over and above what he was offered for the last three years in the auction held on 20.12.1996.

3. While the petitioner approached for payment process, Rule 38-A was introduced in TNMMCR, 1959 wherein all the existing sand quarries were taken over by the Government and the proposed lease amount would be refunded to the existing lessees. Among many subsisting lessees, the petitioner had filed WP.No.29573 of 2003 and obtained an order of interim stay. The case went upto Supreme Court and the Hon'ble Supreme Court vide order dated 24.03.2006 in Civil Appeals Nos 5572-5644 of 2005 disposed of all the cases.

4. The operative portion of the order of the Hon'ble Supreme Court is as follows.

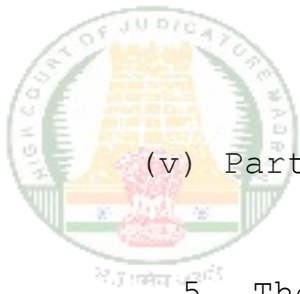
"We, accordingly, allowed these appeals in part. In place of the conditions stipulated by the Division Bench while upholding the validity of Rule 38A, we hold and direct as follows :

(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."

5. The petitioner submits that he had made a representation with the first respondent on 25.06.2007, 21.12.2011 and 01.07.2013 followed with legal notice dated 19.12.2013 requesting for grant of lease for a period of 6 months. The first respondent had issued a letter dated 20.12.2013 to the second and third respondents calling for remarks of the representations as well as legal notice.

6. The petitioner submits that since there was no progress, he had issued another legal notice dated 20.07.2014 to the first respondent for grant of lease quarry by passing appropriate order on his representations. The district collector in his proceedings dated 24.07.2014 directed the petitioner to comply with the direction of the Hon'ble High Court Order dated 04.10.2002 and 01.04.2003 in review application No 53 of 2002. Pursuant to the District Collector's letter, the petitioner had submitted the letter dated 28.07.2014 requesting issue of challan for the payment of lease amount. Again on 06.09.2014, the petitioner had submitted a representation to the District collector not to permit PWD Authorities to quarry sand in K.Pettai Village comprised in survey no 1. The district collector had issued a memo dated 12.09.2014 directing the petitioner to submit necessary plan for granting permission. Again a legal notice dated 24.10.2014 was issued by the petitioner with no response. Again representations dated 15.07.2015 and 26.12.2015 evoked no response.

7. The petitioner submits that in similar case Thiru Velayudham was granted relief by the Hon'ble Court order dated 20.01.2017 in WP No 5253 of 1998 as confirmed in order dated 06.04.2009 in WA No 132 of 2008. The Government had complied with the order.

8. The respondents strongly resist the averments of the Writ petitioner. They submit that the Petitioner offered the highest bid amount of Rs.34,50,000/- for the grant of the subject quarry lease and the petitioner was directed to remit the bid amount before 5 PM on 13.01.1997 vide notice in Rc.No.D496/1996 dated 28.12.1996. The petitioner neither remitted the bid amount nor filed any representations to the respondents. The petitioner had after a lapse of 4 years had filed a writ petition in WP No 323 of 2000 before the Hon'ble high Court of Madras without success. In the review petition No 53 of 2002, the Hon'ble High Court had vide its order dated 04.10.2002 had directed the respondents to execute lease as per the existing provisions of law by increasing the lease amount to 60 % over and above what the petitioner had



offered for a period of 3 years in the auction held on 20.12.1996. The petitioner had failed to remit the bid amount till date.

9. The respondents submit that the extended relief granted by the Hon'ble Supreme Court was not availed by the petitioner owing to his failure to remit the bid amount of Rs.1,55,38,000/- as fixed by the Hon'ble high Court. The petitioner was asked to comply with the order of the Hon'ble High Court vide Notice in R.C496/mines/96 dated 24.07.2014. They submit that the as per the order of the Hon'ble Supreme Court leases to minor minerals shall be granted by the state government only after getting environmental clearance from MoEF.

10. They submit that since the petitioner had failed to remit the bid amount from 1996 till date including to comply with the directions of the Hon'ble High Court in his own case, the writ petition is liable to be dismissed.

11. I have gone through rival submissions. The petitioner was awarded the bid during 1996 and he was requested to remit the bid amount vide notice Rc.No.D496/1996 dated 28.12.1996. The petitioner failed to pay the bid amount and comply with the notice to execute the lease. No representation whatsoever was made by the petitioner for non compliance. After a period of 4 years of the notice requesting him to pay the bid amount and execute the lease deed, the petitioner had approached this court in WP No 323 of 2000 without success. In the Review Application No 53 of 2002 filed by the petitioner in the above WP, the rationale for arriving at the bid amount was fixed by this Court vide order dated 14.10.2002. The Court ordered execution of the lease on the ground that the quarrying will benefit both the petitioner and the Government. The petitioner did not choose to execute the lease after remitting the bid amount fixed by the Court. In the intervening time, the new Rule 38-A of the TNMMCR, 1959 was introduced that terminated the lease of all subsisting leases from 02.10.2003 and the right of sand quarrying was vested exclusively with the Government.

12. The New Rule was framed on the recommendations of the High Power Committee appointed by the order of this court to curb rampant unscientific quarrying and violations of environment laws by the lessees. The petitioner had challenged this Rule along with other lessees and the resultant appeals culminated in the Order of the Hon'ble Supreme Court dated 24.03.2006 in Civil Appeals No 5572-5644 of 2005. The Hon'ble Supreme Court had recognized the civil consequences of the termination of leases, recognized the contractual rights accrued on lessees and extended relief to a further period of 6 months for the leases that subsisted as on 02.10.2003, including in cases where leases are granted by courts but not executed for some reasons or other. Therefore, in view of the Order dated 24.03.2006 in Civil Appeals No 5572-5644 of 2005



passed by the Hon'ble Supreme Court the petitioner got one more chance to execute lease deed for a period of six months in view of the right of grant of lease accrued on the petitioner vide Order in Review application dated 04.10.2002.

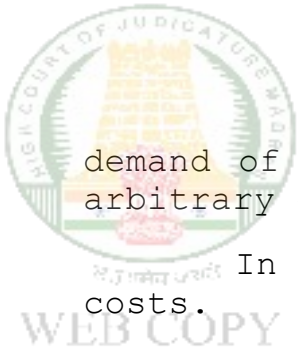
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13. The Order dated 14.10.2002 of this Court in Review Application No 53 of 2002 in the petitioner's own case have become final and therefore without revisiting the above Order, the petitioner is obligated to pay the bid amount decided by this court to execute the lease deed. Needless to mention, the respondents are helpless to execute the lease deed in the absence of payment of the appropriate bid amount payable in terms of the relevant statutes or the Order of this Court during the relevant times.

14. The petitioner had submitted that similar relief prayed in this Writ Petition was granted to another lessee in WA No 132 of 2008. On perusal of the Order in the WA, it is seen that the context and the issue involved is distinguishable from the case of the petitioner. The petitioner here in this Writ Petition is a non starter. Bid amount was never paid and lease deed was never executed and quarry operation never started as against the case dealt in the WA where the dispute was related to the extent of area of lease and the differential bid amount unpaid. Therefore, the ratio of the decision in the Writ Appeal No 132 of 2008 cannot be applied to the case on hand.

15. In his failure to pay the bid amount during the relevant times including under orders of this court in the petitioner's own case that have become final, the repeated representations and the notices issued to the respondents from time to time is rightly not considered. Substantial time have passed since the new Rule 38-A was passed in public interest under the directions of this Court to control rampant unscientific mining in violation of the environmental laws. More than a decade has passed since the contractual rights of subsisting lessees allowed by extending the rights for a period of six months was granted by the Hon'ble Supreme Court in the Civil Appeals challenging Rule 38-A of TNMMCR, 1959. Stringent environmental clearance norms have since been established under the directions of the Hon'ble Supreme Court and the National Green Tribunal that compounds the case of the petitioner.

16. Therefore, I have no hesitation to observe that the purpose of justice will not be served in attempting to restore the rights of the petitioner on account of the grant of lease accrued on them by their successful bidding or the favourable order granted by this court in Review Application No 53 of 2002 in WP No 323 of 2000 in as much as he failed to exercise that right to execute the lease by paying the bid amount at varying stages in the past two decades. Neither is it the petitioner's case that the



demand of the lease amount by the respondents is unreasonable or arbitrary exercise of power.

In view of the above, the Writ Petition is dismissed. No costs.

/True Copy/

Sd/-

Assistant Registrar (P&A)

Sub-Assistant Registrar

To,

1.The Secretary to Government,
Industries Department,
Government of Tamil Nadu,
Chennai-600 009.

2.The Commissioner of Geology and Mining,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai-32.

3.The District Collector,
Karur District, Karur.

4.The Executive Engineer,
Public Works Department (WRD),
R.C.Division, Tiruchirapalli.

+One cc to Mr.P.T.S.Narendravasan, Advocate, SR.No.71514

ssm

RL/6C/6P/KP/SAR1/23/8/2017

W.P (MD) No.4158 of 2016
09.08.2017