

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.7857 of 2017

D.Prabavathy

..Petitioner

-vs-

1. The District Collector
Kancheepuram District
Kancheepuram
2. The Assistant Director (Geology and Mines)
Office of the District Collector
Kancheepuram District, Kancheepuram
3. The Chairman
Tamil Nadu Pollution Control Board
No.76, Anna Salai
Guindy Industrial Estate
Race View Colony
Guindy, Chennai 600 032
4. The District Environmental Engineer
Tamil Nadu Pollution Control Board
Kancheepuram
5. The Chairman
State Level Environmental Impact
Assessment Authority
3rd Floor, Panagal Maaligai
No.1, Jeenis Road, Saidapet
Chennai 600 015

..Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records in Proceedings No.Rc.No.81/Q2/2017 dated 06.02.2017 passed by the first respondent and to quash the same as illegal and thereby directing the first respondent to grant lease for the non-utilized period of 440 days for quarry no.11 situated in Survey No.99 (part), Keerapakkam Village, Kancheepuram District in favour of the petitioner.

ORDER

2. Learned counsel for the petitioner, assailing the impugned order, submitted that the petitioner was granted lease to quarry rough stone in S.F.No.99 (Part) (quarry No.11) to an extent of 5.00.0 hectares in Keerapakkam Village of Chengalpet Taluk for a period of ten years from 2.5.2007 to 1.5.2017. After complying with all the formalities, the petitioner was carrying on the quarrying operations. Since the Apex Court in I.A.Nos.12-13 of 2011 in Special Leave Petition (C) Nos.19628-29 of 2009 (Deepakkumar etc., v. State of Haryana) by order dated 27.2.2012 has held that the environmental clearance is mandatory for any quarry lease, the petitioner, having obtained the environmental clearance from the State Level Environmental Impact Assessment Authority, Tamil Nadu vide letter No.SEIAA-TN/F.No.4546/EC/I(a)/2909/2015 dated 17.2.2016, for the subject quarry situated in S.F.No.99 (Part) over an extent of 5.00.0 hectares in Keerapakkam Village of Chengalpet Taluk, was prohibited from operating the quarry for the said period of 440 days viz., from 23.12.2010 till 5.3.2012. However, the petitioner was permitted to continue the quarrying operation from 6.3.2012. Therefore, the petitioner submitted an application to the District Collector, Kancheepuram seeking permission to quarry the lease land for the unutilised period of 440 days, that was rejected on the ground that the petitioner cannot be given further permission, since the ten years lease period stood expired on 1.5.2017. The similar reasonings cited by the District Collector, Kancheepuram, it is pleaded, were already considered by a Division Bench of this Court in W.A.Nos.1018, 1019 of 2010 & W.P.No.5734 of 2010 (The District

Collector, Namakkal v. K.Anbarasi and others) and by judgment dated 17.3.2011, the Division Bench has held as follows:-

"27. In the writ petition in W.P.No.5734 of 2010, the petitioner was the highest bidder in a tender conducted by the District Collector, Salem in respect of a stone quarry lease in S.F.No.9, P.N.Patty Village, Mettur Taluk, Salem District. The petitioner paid the lease amount of Rs.2,51,000/- and Security Deposit of Rs.25,100/- and lease deed was executed on 09.07.2005 for a period of five years from 09.07.2005 to 08.07.2010. Based on a complaint received from a third party, official respondents in the writ petition directed the petitioner to stop quarrying operation. Subsequently, test audits were conducted by the Department of Mining Engineering, Anna University, Chennai and the report of the expert appears to have revealed that the allegation in the complaint made by the third party is not tenable. Thereupon, the writ petitioner was permitted to commence quarrying operation and in that process for a period of 18 months and 18 days (i.e.) from 15.12.2006 to 03.07.2008, the writ petitioner was unable to quarry on account of the order of suspension passed by the official respondent. Thus the case of the writ petitioner in W.P.No.5734 of 2010, is also identical to that of the case of the respondents in the writ appeals. The case of T.Paulraj vs. The District Collector, Kanyakumari District @ Nagercoil, referred supra is couched entirely on different set of facts. The petitioner in the said case sought for a direction to extend the period of lease as there was a delay in confirmation of the auction. In such circumstances, this Court following the earlier decisions held that in the absence of any rules, it is not possible to grant any relief to the appellant therein. However, the case before us is different as indicated above. Considering the peculiar facts and circumstances of the case, we may at this stage observe that by permitting the respondent/writ petitioner to quarry for the unutilised period cannot be stated to be rewriting the terms of the lease.

28. The learned senior counsel appearing for the petitioner would submit that the action of the appellant in not extending the

benefit to the respondent/writ petitioner is discriminatory and violation of Article 14 of the Constitution of India, as the appellant has implemented the direction issued by this Court in W.P.No.27912 of 2008, and the petitioner therein is also a similarly placed person as that of the respondents/writ petitioner. The petitioner in W.P.No.27912 of 2008, challenged an order passed by the District Collector, Salem and sought for a direction upon him to grant permission to carry on quarrying operation in the stone quarry for a period of 16 months during which the quarry was suspended. The Government resisted the prayer in the writ petition by raising certain grounds which have been raised by the appellant herein in these appeals. The learned Single Judge by relying on the decision of the Hon'ble Supreme Court in Beg Raj Singh, and considering the facts of the case allowed the writ petition and directed the District Collector, Salem to grant permission to quarry for a period of 16 months. The said order and direction issued in the said writ petition being W.P.No.27912 of 2008, was implemented by the District Collector, Salem by his proceedings dated 19.06.2009, and the petitioner therein was permitted to quarry for a period of 16 months. Therefore, the Government cannot adopt different yardstick in respect of two cases, where the facts and circumstances are substantially similar."

3. Heard the learned Additional Government Pleader for the respondents 1 & 2 and the learned standing counsel for the respondents 3 & 4.

4. In the light of the judgment passed by the Division Bench in the aforementioned case, the reasoning given by the District Collector, Kancheepuram for rejecting the request of the petitioner to do the quarrying operation for the unutilised period of 440 days is unjustified and unacceptable to the Court. The reason being, when the petitioner has paid the highest price of Rs.1,02,75,000/- by way of challan on 23.1.2003 for 10 years lease and a registered lease deed was also entered into between the District Collector, Kancheepuram and the petitioner on 2.5.2007 before the Sub Registrar's office, Guduvancherry for a period of 10 years, the petitioner should be allowed to quarry for the unutilised period of 440 days. As her quarrying operation was stopped only by the respondents due to the

intervening condition imposed by the Supreme Court vide order dated 27.2.2012 passed in SLP (C) Nos.19628-29 of 2009 holding that environmental clearance certificate is also necessary, the petitioner cannot be penalised for no fault on her part. Therefore, the petitioner is directed to make a fresh representation along with a copy of this order to the District Collector, Kancheepuram within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation from the petitioner, the District Collector, Kancheepuram is further directed to recommend the case of the petitioner for issuance of the environmental clearance certificate by the fifth respondent for the purpose of carrying out the quarrying operation for the aforementioned period of 440 days, within a period of four weeks thereafter. On receipt of such proposal from the District Collector, Kancheepuram, the fifth respondent shall consider the same and issue the environmental clearance certificate for the said period within a further period of four weeks therefrom. With this direction, the writ petition is disposed of accordingly. Consequently, W.M.P.Nos.8694 & 8695 of 2017 are closed. No costs.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

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To

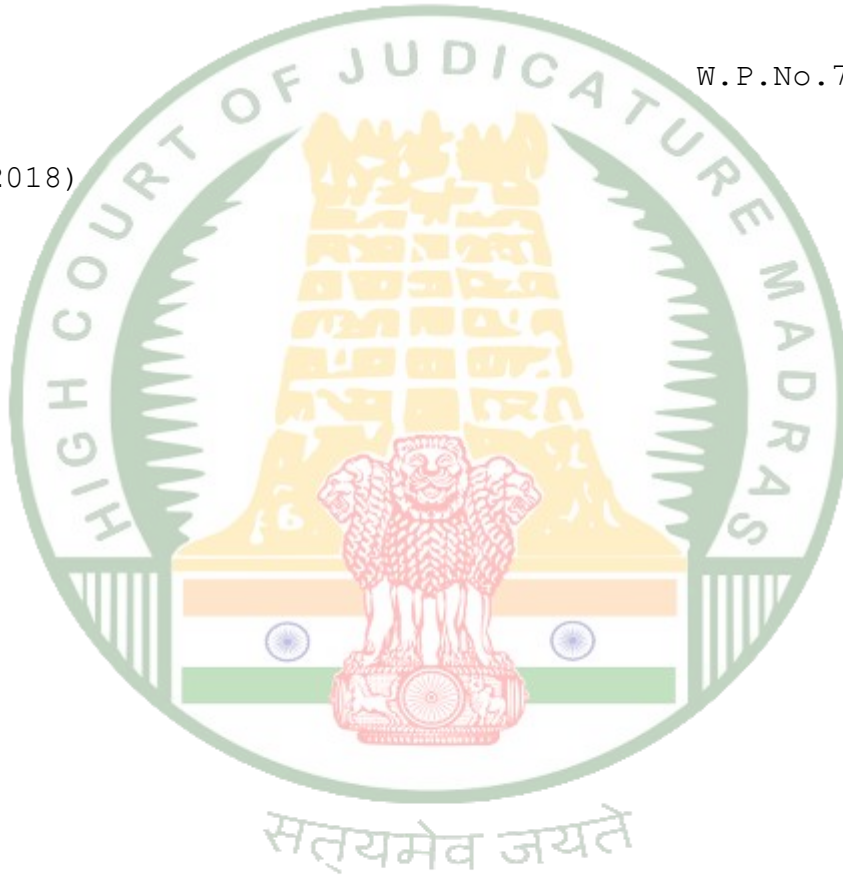
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+1 CC to Mr.M. Nandakumar, Advocate sr 52178.
+1 CC to Rita Chandrasekar, Advocate sr 52220.
+1 CC to Govt. Pleader sr 52871.

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SP(16/08/2018)



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