IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/1/2018

C O R A M

The Honourable Mr.Justice S.Manikumar
a n d
The Honourable Mrs.Justice V.Bhavani Subbaroyan

Writ Appeal No.20 of 2018

The Secretary to Government
(Additional)
State of Tamil Nadu
Industries Department
Fort St George
Chennai 600 009. ...Appellant/ Respondent

Vs

Tvl. Evergreen Enterprises
rep. By its Managng Partner
R.Sabapathy
113 B Kailash Nagar
Fairlands
Salem 636 016. ...Respondent/ Petitioner

Prayer Appeal filed under Clause 15 of Letters Patent against the order dated 30/6/2014, made in W.P.No.31469 of 2012.

Writ Petition 31469/2012 : Writ Petition filed Under Act 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus Calling for the records of the respondent in his proceedings in G.O.(D) No.159 Industries (MMA2) dated 5.9.2012 and direct the respondent to grant Renewal of Mining Lease for Magnasite in Petitioners own patta lands in S.F.No.218/4 measuring to an extent of 1.45.0 Hectares situated in Seerapalli Village paramathi Velur Taluk Namakkal District.

For appellant : Mr.J.Ramesh
Additional Government Pleader

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J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

Challenge in this appeal is to an order made in W.P.No.31469 of 2012, dated 3/6/2014, by which the writ Court, directed the Secretary to Government, Industries Department, Chennai, to consider renewal of mining lease, for Magnesite, in the

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respondent's own patta lands, S.F.No.218/4, measuring to an extent of 1.45.0 hectares, situated in Seerapalli Village, Paramathi Vellore Taluk, Namakkal District, within a period of four months, from the date of receipt of a copy of the order in the main writ petition.

2. Facts culled out from the material on record are that the respondent was granted mining lease, to an extent of 1.45.0 hectares, in Seerapalli Village, Paramathi Vellore Taluk, Namakkal District, for a period of four years, vide G.O.Ms.No.45 (Industries Department), dated 23/5/1990. Lease period was extended upto 2/9/2000.

3. On 17/8/1999, respondent applied for renewal of mining lease. As no orders were passed, respondent contended that as per Rule 24-A, of the Mineral Concession Rules, 1960, lease was deemed to have been extended.

4. Renewal application was forwarded to the Government. Vide, G.O.(D) No.46 Industries (MMA.2) Department, dated 20/2/2012, application for renewal was rejected, on the grounds inter lia that the respondent failed to produce the following documents, (i). partnership deed, (ii). Income tax clearance certificate and (iii). No dues certificate.

5. Order of rejection in G.O.(D) No.46, Industries (MMA.2) Department, dated 20/2/2012, has been challenged, in W.P.No.6921 of 2012, with a prayer, for issuance of a writ of certiorarified mandamus, to call for the records of the Secretary to the Government, Industries Department, Chennai, in G.O.(D) No.46 Industries (MMA.2) Department, dated 20/2/2012, and to quash the same. Consequently, the writ petitioner has sought for a direction, to the Secretary to Government, Industries Department, Chennai, to grant renewal of mining lease, in respect of the quarry site.

6. In W.P.No.6921 of 2012, the writ petitioner has submitted that the impugned order therein, cannot be sustained, as a registered partnership deed, along with no due certificate, have already been submitted and also contended that subsequent to the filing of renewal application, I.T clearance certificate, has also been produced. Contention has been made that despite furnishing all the above said documents, no decision has been taken, on the application filed for renewal.

7. Taking note of the above, vide order, made in W.P.No.6921 of 2012, dated 25/4/2012, writ Court, at paragraph No.10, in W.P.No.6921 of 2012, ordered as hereunder:-

"In view of the rebutted submissions of the petitioner, the

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writ petition is disposed of, by directing the first respondent, to take final decision, on the petitioner's application, for renewal of lease, by taking into consideration the partnership deed, income tax clearance certificate and no due certificate submitted by the petitioner.''

8. Pursuant to the above directions, Government have considered the mining renewal application, and vide G.O.(D) No. 159 Industries (MMA.2) Department, dated 5/9/2012, rejected the renewal application as hereunder:-

"6. With regard to the representation of the petitioner dated 2/8/2012, the District Collector, Namakkal has stated that as per the Hon'ble High Court order dated 25/4/2012, the petitioner has submitted the partnership deed, the Income Tax Clearance Certificate and valid mining dues clearance certificate. The District Collector, Namakkal has stated that though the petitioner submitted the partnership deed with regard to Tvl.Evergreen Enterprises, the firm had not obtained the prior permission of the Government for inducting two partners during November 1998 and they had not informed the retirement of four former partners during December 1998 to the Government in time. Hence, the firm had violated the rule provision of 37 (1) of Mineral Concession Rules, 1960. The District Collector, Namakkal has recommended for rejection of mining lease renewal application for the reason that the firm had violated the Rule provision 37 (1) of Mineral Concession Rules, 1960.

7. The Commissioner of Geology and Mining in his letter sixth read above, has stated that the request of the petitioner/Thiru R.Sabapathy, the Managing Director of Tvl.Evergreen Enterprises, Salem cannot be considered, since Tvl.Evergreen Enterprises, Salem had violated the Rule provisions 37 (1) of Mineral Concession Rules, 1960. The District Collector, Namakkal and the Commissioner of Geology and Mining have recommended to reject the mining lease renewal application of Thiru R.Sabapathy, Managing Partner of Tvl.Evergreen Enterprises 26/8/1999 and his representation dated 2/8/2012.

8. The Government after careful examination of the recommendations of the District Collector, Namakkal and the Commissioner of Geology and Mining, hereby reject the renewal application of Thiru.R.Sabapathy, the Managing Director of Tvl.Evergreen Enterprises, Salem, dated 26/8/1999 and his representation dated 2/8/2012 on the grounds mentioned in paras 3 and 4 above."

9. The said G.O.(D) No.159, Industries (MMA.2) Department, dated 5/9/2012, is challenged, in W.P.No.31469 of 2012, on the grounds inter alia that Rule 37 (1) of the Mineral Concession Rules, has no application to the case on hand and it applies only when the lessee has been transferred or sublet or assigned

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its interest or parted with substantial control to anybody or body of persons and so long as the lessee/partnership remained the same, mere change in the Managing Director or inclusion of two partners or deletion, from the confirmation, would not amount to transfer of lease, assignment or such lessee or mortgaged or any of the above, mentioned in Rule 37 (1) of the Mineral Concession Rules, 1960.

10. To sustain the order under challenge, Additional Secretary to Government, Industries Department, Chennai, has filed counter affidavit, stating that among four partners of the firm, one of the partners, was nominated as the Managing Partner of the firm, at the time of preferring the original mining lease application, granting of lease and the Managing Partner had executed the lease deed, with the District Collector, on behalf of the lessee firm. The then Managing Partner had executed the lease deed, with the District Collector, had retired from the firm. Other partners, have been inducted and in the above said circumstances, present partners of the firm are not entitled to seek, for renewal of lease, as no one had signed the original lease deed. Further contention has been made that change in the constitution of the partnership firm was not informed to the department.

11. Before the writ Court, contention has also been made that once the Managing Director of the partnership firm retires from the partnership, the lease deed has ceased to operate and the firm has no right to apply for renewal by induction of two partners. Upon considering the rival submissions, referring to Rule 37 of the Mineral Concession Rules, 1960, and taking note of a decision of the Gujarat High Court in Additional Commissioner of Income tax, Gujarat Vs. Harjivandas Hathibhai, reported in 1977 (108) ITR - 517 (Guj.), writ Court, vide order made in W.P.No.31469 of 2012, dated 3/6/2014, at paragraph Nos.6 and 7, ordered as hereunder:-

"6.The above provision would show that Rule 37[1] is applicable only when a lease has been transferred or sub-let or assigned its interest or parted with substantial control to anybody or body of persons. In this case, admittedly, the name of the firm has not been changed and the petitioner alone has become the Managing Partner of the above firm. It is the further case of the petitioner that four persons have retired and two persons have been added, which would not make any change in the control of the firm. Moreover, the records would show that even during the filing of the renewal application, the petitioner had enclosed the new Partnership Deed, thereby the respondent was put on notice about that also. In support of his contention that there is only a mere change in the constitution and the same firm continues as before and that would not warrant

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rejection of the renewal application filed by the petitioner, the learned counsel relied on the judgment reported in 1977 [108] ITR 517 [Gujarat]

"....."

14.Even apart from the decision of the learned Judges of the Allahabad High Court in the Full Bench decision referred to above, it is obvious on general principles that unless the words of the Income-Tax Act compel us to do so, it would not be correct to depart from the well-known principles of partnership law. The partnership law contemplates retirement of a partner and even though a partner retires, the firm continues as before. What is meant by a change in the constitution of the firm is coming in of a new partner with the consent of all the existing partners or by the retirement of a partner with the consent of all the partners ; in such cases there is a mere change in the constitution of the firm and nothing more. The same firm continues as before. The question of dissolution of a firm either by operation of law or by act of parties is a different thing altogether. When a firm is dissolved, the old relationship comes to an end and a new relationship comes into existence and if the succeeding partnership firm continues the old business, then there is succession of one firm by another as contemplated by section 188, sub-section [2] of section 187 merely specifies two kinds of changes one or more of thte partners ceasing to be partners or one or more new partners being admitted. It deals with cases of retirement of partners and introduction of new partner but the firm under the Indian Partnership Act would continue in such a case. Therefore all that sub-section [2] of section 187 points out is that with the retirement of one or more of the partners, so long as one of the old partners continues and with the introduction of new partners so long as one of the old partner continues, there is a mere change in the constitution of the firm. Again under clause [b] of sub-section [2] of section 187, by a mere variation in the respective shares of the partners or shares of some of the partners, there is not change in the firm itself. The old firm still continues and that is emphasized by sub-section [2] of section 187. It is therefore, not correct to say that a special provision of law has been introduced by the interpretation clause in such section [2] of section 187. We are, therefore, unable to accept the first contention urged on behalf of the revenue by Mr.Kaji. In our opinion, section 187 of the Income Tax Act, 1961 does not introduce any change in the relationship between the parties and does not introduce a change from the general law of partnership as laid down by the Indian Partnership Act. We therefore, reject the first contention urged on behalf of the revenue by Mr.Kaji."

7.Therefore, in the light of the above settled principle and

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the clear provision of law, the rejection of renewal application filed by the petitioner, invoking Rule 37[1] of the Mineral Concession Rules, 1960 cannot be sustained both in law and on facts. Excepting induction of new partners and removal of four old partners, there is absolutely no change in the name of the partnership firm and the firm continues. It is nothing but a mere change in the constitution of the firm and old firm still continues. Therefore, while allowing the above writ petition, by setting aside the impugned order dated 05.09.2012 made in G.O. [D] No. 159, Industries Department, this Court directs the respondent herein to grant renewal of Mining Lease for Magnesite in petitioner's own patta lands in SF No.218/4 measuring an extent of 1.45.0 hectares, in Paramathi Vellore Taluk, Namakkal District within a period of four months from the date of receipt of a copy of this order."

12. Assailing the correctness of the order made in W.P.No.31469 of 2012, dated 3/6/2014, instant writ appeal has been filed on the following grounds:-

a. On 26/8/1999, the respondent preferred an application, for grant of renewal of mining lease which was extended for six years, vide G.O.Ms.No.238 Industries Department, dated 5/10/1995, but continued mining operation upto 20/2/2012 under the deemed extension provision, as per Rule 24 (A) (6) of the Mineral Concession Rules, 1960.

b. As soon as the Managing Partner retired from the partnership firm of the subject lease in the year 1998, the original lease granted in favour of the firm itself deserves termination, in terms of the provision contained in sub-rule(1) of Rule 37 of the Mineral Concession Rules, 1960.

c. As per the order dated 25/4/2012, made in W.P.No.6921 of 2012, the respondent submitted the partnership deed, Income tax

clearance certificate and mining dues clearance certificate. But the respondent/writ petitioner did not obtain the prior permission of the Government, for including two partners during November 1998 and they also not informed the retirement of four partners during December 1998 to the Government.

d. Request of the respondent cannot be considered for the reason that the respondent has violated Rule 37 (1) of the Mineral Concession Rules, 1960.

e. Based on the recommendation of the District Collector, Namakkal and the Commissioner of Geology and Mining, the mining lease renewal application on the subject area was rejected by the appellant, vide, G.O.(D) No.159, Industries (MMA2) Department, dated 5/9/2012.

f. The respondent has not done the mining operation according to the approved mining plan. It is a clear violation

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of Rule 22-A(1) of the Mineral Concession Rules, 1960 and Rule 13 of the Mineral Conservation and Development Rules, 1988.

g. The respondent has not submitted any modified mining plan or scheme of mining for the subsequent period of every five years of mining operation and hence it is a clear violation of Rules 10 & 12 of the Mineral Conservation and Development Rules, 1988.

13. Heard Mr.J.Ramesh, learned Additional Government Pleader for the appellant and perused the materials available on record.

14. In exercise of powers conferred by Section 13 of the Mines and Minerals (Development and Regulation) Act, 1957, Central Government have made the Mineral Concession Rules, 1960. According to the Secretary to Government, Industries Department, Chennai, appellant herein, there is a violation of Rule 37 (1) and that therefore, Tvl. Evergreen Enterprises, a partnership firm, is not entitled for renewal of mining lease, in Seerapalli Village, Paramathi Vellore Taluk, Namakkal District, measuring an extent of 1.45.0 hectares.

15. Rule 37 of the Mineral Concession Rules, 1960, deals with "Transfer of lease." As per Rule 37 (1) of the Mineral Concession Rules, 1960, the lessee shall not without the previous concern in writing of the State Government and in case of Mining lease in respect of any mineral specified in A or B of the First Schedule to the Act, without the previous approval of the Central Government

(a) assign, sub-let, mortgaged or in any other manner, transfer the mining lease, or any right, title or interest therein or

(b). enter into or make any (bona fide) arrangement, contract or understanding whereby the lessee will or may be directly or indirectly financed to a substantial extent by, or under which the lessee's operations or undertakings will or may be substantially controlled by, any person or body of persons other than the lessee:"

16. Rule 37 speaks about assignment, subletting, mortgage, or in any other manner, transfer the mining lease, or of any right, title or interest therein. In the case on hand, lessee is Tvl. Evergreen Enterprises.

17. As rightly observed by the writ Court, except induction of new partners, removal of old partners and retirement of the then Managing Director, the firm remained as the lessee. Rule 37 (1) of the Mineral Concession Rules, 1960, can be made

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applicable, if there is any assignment, sub-letting, mortgage or in any other manner, mining lease or any right, title interest therein, by the lessee, i.e., the firm, to any other person, other than the lessee. Mere change in the constitution of the firm would not amount to assignment, sub-letting, mortgage, or transfer of mining lease or any right, title or interest therein, to an other person.

18. In light of the decision stated supra, and discussion, we are of the view that Rule 37 (1) of the Mineral Concession Rules, 1960 is inopposite to the case on hand. Grounds alleging violation of Rule 22-A(1) of the Mineral Concession Rules and 13 of the Mineral Conservation and Development Rules, 1988, do not form part of the order, in G.O. (D) No.159, Industries (MMA.2) Department, dated 5/9/2012. It is well settled that an impugned order has to succeed or fail, for the reasons contained therein, and it is not open to the authorities to add new grounds in the form of affidavits. Reliance can be made to a decision of the Hon'ble Apex Court in Mohinder Singh Gill v. Chief Election Commr., reported in 1978 (1) SCC 405, wherein at paragraph 8, the Apex Court held as follows:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, it validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Commr., of Police, Bombay v. Gordhandas Bhanji, reported in AIR 1952 SC 16:
"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by pubklic authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.""

19. The above position of law has been restated in Hindustan Petroleum Corpn. Ltd., v. Darius Shapur Chenai reported in 2005 (7) SCC 627, and at Paragraph 24 of the judgment, the Supreme Court held as follows:

"When an order is passed by a statutory authority, the same must be supported either on the reasons stated therein or on the

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grounds available therefor in the record. A statutory authority cannot be permitted to support its order relying on or on the basis of the statements made in the affidavit dehors the order or for that matter dehors the records."

20. In view of the above, order made by the writ Court does not call for any interference. Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

21. Secretary to Government, Industries Department, is directed to grant renewal of mining lease, to the respondent, for Magnesite, within a period of one month, from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

mvs

To,
The Secretary to Govt.(Addl),
State of Tamil Nadu,
Industries Department,
Fort ST.George, Chennai.

+1cc to Mr.K.R.Krishnan, Advocate, S.R.No.6064,

+1cc to Govt Pleader, S.R.No.6589

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