

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2526 of 2012

M.Pradeepa

.. Appellant

Vs.

1.Government of Tamil Nadu
rep. by its Secretary,
Industries Department,
Chennai - 600 009.

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

3.The District Collector,
Theni District, Theni.

.. Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order, dated 10.12.2011, made in W.P.No.24283 of 2010.

PRAYER IN W.P.No.24283 of 2010:

Writ Petition Under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorarified Mandmaus to call for the records from the file of the 3rd respondent in Proceedings Roc. No.102/2001 / Mines dt 22.5.2006, as confirmed by the 2nd respondent in Proceedings Rc. No. 6297/MM5/2006 dt 27.3.2008, as confirmed by the proceedings of the 1st respondent in G.O.(D) No.153, Industries (MMC2) Department, dt 30.8.2010 and quash the same and further direct the respondents herein to pay the amount claimed Rs. 26,48,097/- (proportionate lease amount Rs. 10,98,097/- with 30% interest from 8.4.99 and a sum of Rs. 5,50,000/- towards expenses from the date of lease and Rs. 10,00,000/- towards compensation) in the representation dt 27.4.2006 within a stipulated time fixed by this court.

For Appellant : Mr.N.R.Rajagopalan

For Respondents: Mr.S.R.Rajagopal
(Addl. Advocate General) for
Mr.M.Elumalai, (Govt. Advocate)

JUDGMENT

(Judgment of this Court was made by S.MANIKUMAR, J.)

Being aggrieved by the order, made in W.P.No.24283 of 2010, dated 10.12.2011, dismissing the writ petition, filed for a Writ of Certiorarified Mandamus, to call for the records from the file of the District Collector, Theni District, third respondent herein, proceedings in Roc.No.102/2001/Mines, dated 22.05.2006, as confirmed by the Director of Geology and Mining, Chennai, second respondent herein, proceedings in Rc.No.6297/MM5/2006, dated 27.3.2008, as confirmed by the proceedings of the Secretary, Industries Department, Government of Tamil Nadu, Chennai, first respondent herein, in G.O.(D).No.153, Industries (MMC2) Department, dated 30.08.2010 and to quash the same and for a further direction to the respondents herein, to pay the amount claimed Rs.26,48,097/- (proportionate lease amount Rs.10,98,097/- with 30% interest from 8.4.99 and a sum of Rs.5,50,000/- towards expenses from the date of lease and Rs.10,00,000/- towards compensation) in the representation dated 27.4.2006, within the stipulated time, instant writ appeal is filed.

2. Material on record and the averments in the supporting affidavit disclose that, the appellant was the highest bidder. On 06.04.1999, entire bid amount was paid by the appellant and auction was confirmed on 03.05.1999. Thereafter, the appellant made a representation to the District Collector, Theni District, Theni, pointing out that 0.95.50 hectares of land was shortage and requested the District Collector, Theni District, either to allot alternative land or refund the proportionate amount for the shortage of land.

3. District Collector, Theni District, Theni, passed an order dated 04.04.2000, directing the Assistant Director of Geology and Mining, Madurai, to allot the alternative land to an extent of 0.95.50 hectares and if not possible, execute the lease deed, after deducting 0.95.50 hectares of land. Thereafter, appellant entered into a lease agreement dated 09.11.2000 for a period of five years, for the total extent of 3.16.0 hectares.

4. Material on record discloses that, representation of the appellant has been rejected on 28.06.1999 by the District

Collector, Theni District, Theni, warranting of filing of W.P.No.23837 of 2003, for issuance of a Writ of Certiorarified Mandamus, calling for the records from the file of the 1st respondent in his proceedings No.ROC.No.B/1772/98 dated 28.06.1999 and to quash the same and for a direction the respondents therein, either to add the deficient area of 0.96.50 hectares along with the existing area granted to the petitioner in SF.No.195 (Part) of Melachockanathapuram Village, Bodinaickanur Taluk in pursuance of the notification issued in the District Gazette dated 28.10.1998 or refund the amount calculating the value for the said extent of land with 24% interest.

5. After considering, the rival submissions of the parties, in particular, reliance and submission of the learned Government Pleader, on Clause 50 of the said notification, which states that the lessee is not entitled to seek for compensation or any cost from the respondents, and that only after inspecting the quarry site, tender form was submitted and hence it was not open to the appellant to claim compensation or refund in respect of the shortage of lands, and that too after the execution of lease agreement, Writ Court, vide order dated 19.04.2006 in W.P.No.23837 of 2003 at paragraphs Nos.8 and 9, ordered as hereunder:-

"8. It is not in dispute that there is a shortage of land to an extent of 0.95.50 hectares by the respondents. The 1st respondent in his letter dated 4.4.2000 admitted the shortage of land to the extent of 0.95.50 hectares and directed the 2nd respondent herein to allot alternative land, abutting the leased land and if not possible, deduct the said extent and execute the lease deed for the remaining extent. In spite of the said order of the 1st respondent, the lease deed was executed for the total extent of 3.16.0 hectares of land. In so far as the reasons assigned by the respondents for not handing over the land to the extent of 0.95.50 hectares are concerned, this Court is of the view that it is beyond the control of the respondents and hence, the reasons assigned are valid. The demand of the petitioner for allotting alternative land is prohibited by the Rule 8(6) of the Tamil Nadu Minor Minerals Concessions Rules, 1959, which reads as under:-

"No lessee is entitled to raise any dispute with reference to survey and demarcation of the area leased out to him after execution of the sale deed."

In view of the said legal position and also in

the light of the decisions of the Apex Court and Division Bench of this Court referred to above, this court is of the considered view that alternative land as sought for by the petitioner cannot be granted. However, the petitioner is entitled to get refund of the proportionate amount of licence or lease fee or compensation for any damage he might have suffered. Hence, the petitioner is permitted to submit a representation to the 1st respondent for refund of the proportionate amount of licence or lease fee or compensation for any damage he might have suffered within a period of two weeks from today and on receipt of the same, the 1st respondent is directed to consider and pass orders, in accordance with law within a period of four weeks thereafter. It is also needless to mention that the petitioner is also entitled to a reasonable rate of interest.

9. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected WPMP is closed."

6. Pursuant to the abovesaid order made in W.P.No.23837 of 2003, dated 19.04.2006, appellant has made a representation, dated 27.04.2006, to the District Collector, Theni.

7. Vide Proceedings, dated 22.05.2006, the District Collector, Theni, third respondent herein, has rejected the said representation, for the following reasons:-

"In view of the above, as the ex-lessee had enjoyed full period of five years from 09.11.2000 to 09.11.2005 over the full extent of 3.16.0 hectares of Government land in S.F.No.195/part of Melachockanathapuram Village, without any disturbance, the question of refund of proportionate lease amount with interest does not arise in this case and the petitioner's request to refund proportionate lease amount with interest and compensation of Rs.26,48,097/- could not be legally accepted. Hence the ex-lessee Selvi.M.Pradeepa representation dated 27.04.2006 seeking refund of the proportionate lease amount with interest and compensation of Rs.26,48,097/- is hereby rejected."

8. Being aggrieved, appellant has filed an appeal before the Director of Geology and Mining, Chennai, second respondent herein.

9. Adverting to the grounds raised, Vide Proceedings, dated 27.03.2008, the Director of Geology and Mining, Chennai, has rejected the appeal.

10. Further appeal preferred by the appellant, before the Secretary to Government, Industries Department, Chennai, has been rejected by issuance of G.O.(D) No.153, Industries (MMC 2) Department, dated 30.08.2010.

11. Being aggrieved by the abovesaid order, appellant has filed W.P.No.24283 of 2010, for the relief stated supra.

12. Though, attention of the Writ Court was invited to the shortage of the lands, to an extent of 0.95.50 hectares, not handed over to the appellant, going by the reasons, contained in paragraph No.8 of the impugned order, and by observing that there was a disputed question of fact and that the appellant has to approach the Appropriate Forum, Writ Court, vide order, dated 10.12.2011 in W.P.No.24283 of 2010, dismissed the same.

13. For brevity, paragraphs Nos.6 and 7 of the impugned order, made in W.P.No.24283 of 2010, dated 10.12.2011, are extracted hereunder:-

"6. In paragraph 8 of the impugned order, rejecting the second appeal filed by the petitioner, the first respondent has stated as follows:-

"The Government have carefully examined the second appeal petition by considering the records and all the facts and circumstances of the case. The appellant has executed the lease deed with the District Collector for full extent of 3.16.0 hectares in S.F.No.195 (Part) of Melachockkanathapuram village and has quarried and transported the material in the above said quarry for the full period of five years and the appellant is not entitled to raise any dispute with reference to survey and demarcation of the area leased out to her after the execution of lease deed and hence the Government have decided to reject the second appeal petition of Selvi M.Pradeepa to grant quarry lease over an extent of 0.96.5 hectares in spite of giving compensation and other accordingly."

7. Since it is a disputed question of fact, it is for the petitioner to approach the appropriate Forum. Whether the land was allotted as per the Notification or not has to be decided only by the competent Court after examining both oral and

documentary evidence. Hence the relief sought for cannot be granted by exercising the jurisdiction under Article 226 of the Constitution of India. The writ petition stands dismissed. Consequently, the connected M.P. is also dismissed. However, there shall be no order as to costs."

14. Assailing the correctness of the order made in W.P.24283 of 2010, dated 10.12.2011, Mr.N.R.Rajagopalan, learned counsel for the appellant, submitted that,

(i) Writ Court in W.P.24283 of 2010, dated 10.12.2011 has failed to consider that the order passed by the respondents 1 to 3 cannot be sustained in law, and the reasons invented by the respondents not accepting the representation is against the directions given by this Hon'ble Court.

(ii) Writ Court has failed to consider that in W.P.No.23837/2003, dated 19-4-2006, a learned Judge of this Court has taken into consideration all the reasons cited by the respondents 1 to 3 and after considering the submissions made on either side, at paragraph No.8 of the order categorically stated that there is a shortage of land to an extent of 0.96.50 hectare and that the 3rd respondent therein in his letter dated 4-4-2000 addressed to the Assistant Director of Mines, Madurai has admitted the shortage and having regard to the submission that no lease can be granted for extending the lease period after execution of the lease deed and Rule 8(6)(f) of Tamil Nadu Minor Mineral Concession Rules 1959 held that the appellant is entitled to get refund of the proportionate amount of license or lease fee or compensation for the proportionate amount of license or lease fee or compensation, he might have suffered.

(iii) Writ Court has failed to consider that the cyclostyle order passed by the respondents 1 to 3 amounts to clear contempt of the orders of this Court and that the appellant reserves her right to take separate contempt proceedings against the respondents therein, acting contrary to the positive directions issued.

(iv) Writ Court has failed to consider that it is not the fault of the appellant, but the Assistant Director of Geology and Mining did not carry out the directions of the 3rd respondent, either to include the said extent of 0.96.50 hectare in the lease deed or deduct the said area and execute the lease deed.

(v) Writ Court has failed to consider that at the time of executing the lease deed to the extent of 3.16.0 hectares in S.F.No.195 of Melachockanathapuram Village, the appellant has raised an objection about the shortage of land to the extent of 0.96.50 hectare of land in the lease agreement and signed in the lease agreement under protest.

(vi) Writ Court has erred in coming to a conclusion that the appellant has enjoyed the entire extent of land measuring 3.16.0 hectares, when admittedly there was shortage, and objection was raised, at the time of execution of lease deed, taken note of in W.P.No.23287 of 2003.

(vii) Writ Court has failed to consider that there was no fault on the appellant who believing the words of the respondent that alternative land would be allotted instead of shortage of the land.

15. Supporting the grounds, attention was also invited to paragraph No.8 of the order made in W.P.No.23837 of 2003, dated 19.04.2006 and the contrary observation of the Writ Court in the subsequent W.P.No.24283 of 2010, dated 10.12.2011.

16. Mr.N.R.Rajagopalan, learned counsel for the appellant, further submitted that when the District Collector, Theni District, respondent No.3, himself admitted the fact of shortage of quarrying lands, the therefore the observation of the Writ Court in the subsequent W.P.No.23837 of 2010, there was a disputed question of law, is erroneous. According to him, shortage has already been admitted and there was no dispute.

17. Mr.S.R.Rajagopal, learned Additional Advocate General, made strenuous arguments to sustain the order impugned, and further reiterated the reasons assigned in paragraph No.8 of the Government order in G.O.(D)No.153, Industries (MMC 2) Department, dated 30.08.2010, the same is extracted hereunder:-

"8. The Government have carefully examined the second appeal petition by considering the records and all the facts and circumstances of the case. The appellant has executed the lease deed with the District Collector for full extent of 3.16.0 hectares in S.F.No.195 (Part) of Melachockkanathapuram Village and has quarried and transported the material in the above said quarry for the full period of five years and the appellant is not entitled to raise any dispute with reference to survey and demarcation of the area leased out to her after the execution of lease deed and hence the Government have decided to reject the second appeal petition of Selvi.M.Pradeepa to grant quarry lease over an extent of 0.95.5 hectares inspite of giving compensation and order accordingly."

18. We are not inclined to accept the said reasons. We are also not inclined to accept the contention of the learned Additional Advocate General, that once lease deed has been executed for the quarrying land, it is not open to the appellant

to seek for compensation or refund of the proportionate lease amount. Fact remains, that there was a shortage of land and that the Government/Collector is not entitled to collect the lease amount for the portion of land, not handed over for the purpose. Appellant is entitled to the proportionate amount and lease fee.

19. As per the proceedings in Roc.No.B/1772/98, dated 03.05.1999, by which District Collector, Theni District, granted lease for quarrying, the highest bid was Rs.5,77,000/- for the extent of 3.16.0 hectares. In the representation dated 17.05.1999, addressed to the District Collector, Theni District, appellant has stated that, he has remitted the following amount for the quarry site:-

1	Lease Amount	Rs.5,77,000/-
2	Area Assessment	Rs. 790/-
3	Security Deposit (NSC)	Rs. 58,000/-
4	Non-Judicial Stamp Papers for Execution of lease deed	Rs. 25,420/-
	Total	Rs.6,61,210/-

20. Whereas, in the representation dated 27.4.2006, referred in G.O.(D).No.153, Industries (MMC2) Department, dated 30.08.2010, appellant seems to have contended that the District Collector, Theni District, has to pay a sum of Rs.10,98,097/- towards proportionate lease amount with 30% interest amount and further sum of Rs.5,50,000/- as expenses incurred till the date of representation and further sum of Rs.10,00,000/- as compensation towards physical sufferings and mental agony, from the date of execution of lease deed. Thus, the appellant had requested the District Collector, Theni District, to refund a sum of Rs.26,48,097/-. Request of the appellant is to refund a huge amount more than lease amount paid for the extent of 3.16.0 hectares. We make it clear that the appellant is entitled to get refund of the proportionate amount only.-

21. For the reasons stated, we set aside the order of the Writ Court, made in W.P.No.24283 of 2010, dated 10.12.2011. Appellant is permitted to place materials, before the District Collector, Theni District, for compensation if any to be paid, within a fifteen days from the date of receipt of a copy of this order. The District Collector, Theni District, is directed to pass a speaking order, for refund of proportionate lease amount and compensation if any, within a period of six weeks, thereafter.

22. Accordingly, Writ Appeal is allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dm

To

1.Government of Tamil Nadu
rep. by its Secretary,
Industries Department,
Chennai - 600 009.

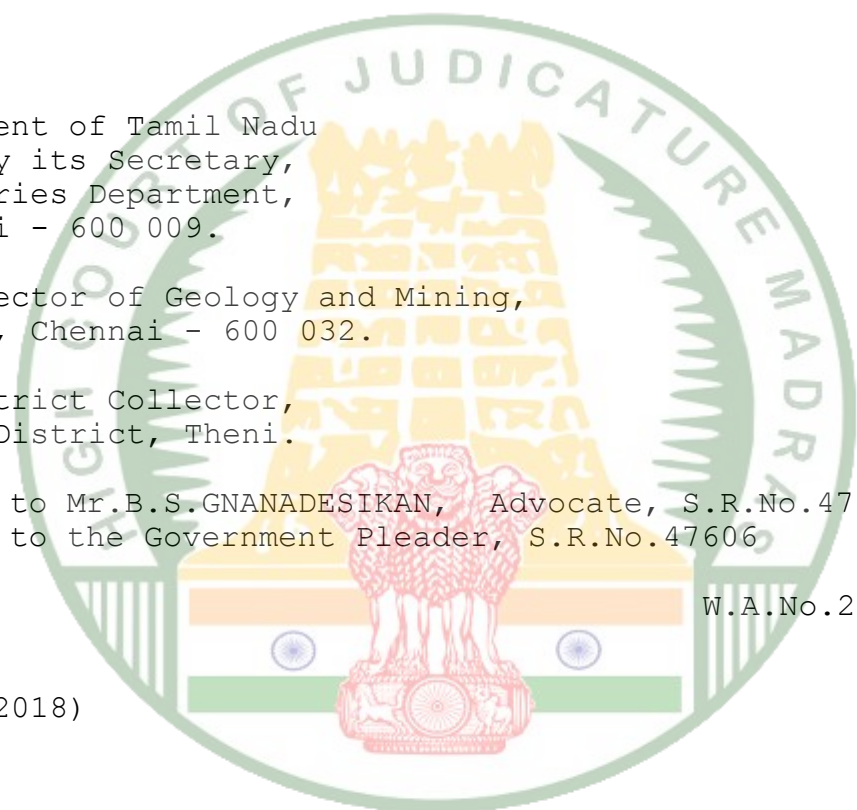
2.The Director of Geology and Mining,
Guindy, Chennai - 600 032.

3.The District Collector,
Theni District, Theni.

+1cc to Mr.B.S.GNANADESIKAN, Advocate, S.R.No.47138
+1cc to the Government Pleader, S.R.No.47606

W.A.No.2526 of 2012

SSV(CO)
TR(09/08/2018)

The seal of the Tamil Nadu High Court is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red elephant capital. The entire emblem is set against a background of horizontal stripes in orange, white, and green. The words 'TAMIL NADU HIGH COURT' are written in a circular border around the emblem. Below the emblem, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

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