

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2018

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.2076 of 2017

M/s.Siva Sakthi Enterprises
By its Sole Proprietor
G.Saralathan
Old No.19, New No.36
Thirumoorthy street
T.Nagar, Chennai. ... Petitioner

Vs

1.The Principal Secretary to Government
Industries (MMB.2) Department
Fort. St. George
(Secretariat)
Chennai.

2.The District Collector
Villupuram.

3.The Commissioner of Geology and Mining
Guindy, Chennai.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Letter No.6701/MMB.2/2016-4 dated 15.11.2016 and quash the same and thereby direct the respondents to grant renewal of quarry lease to the petitioner in respect of the patta lands in Survey Field No.30/1A2-0.81.0 hectares situate at Parayampattu village, Gingee taluk, Villupuram District.

For Petitioner: Mr.Velmurugan for M/s.N.Suresh
For Respondents : Mr.V.Shanmuga Sundar
Special Government Pleader

ORDER

The petitioner has come up with this writ petition challenging the impugned order of the first respondent dated 15.11.2016 and also seeking a direction to the respondents to grant renewal of quarry lease to the petitioner in respect of his patta lands.

2. According to the learned counsel for the petitioner, the petitioner is carrying on business of quarrying black granite in his patta lands situate at Parayampattu village, Gingee taluk, Villupuram District. The second respondent had executed a lease deed dated 01.11.1993 with the petitioner for a period of ten years. However, as the lease was to expire on 31.10.2003, the petitioner had made an application for renewal of the lease on 17.10.2003 to the respondents. Though the petitioner made several reminders to the respondents for renewal of the lease, the respondents had not considered the claim of the petitioner. Therefore, the petitioner left with no other option, filed a writ petition before this Court and this Court directed the respondents to consider the said claim and in its operative portion of the order held that the petitioner is entitled to transport the already quarried materials, but declined to quash the impugned order. Hence, the petitioner preferred W.A.No.477 of 2016. This Court by order dated 18.04.2016 quashed the rejection of renewal with a direction to the respondents to re-examine the application for renewal on merits. But the first respondent without any application of mind, issued the impugned order dated 15.11.2016 rejecting the renewal application of the petitioner again. Hence, the petitioner is before this Court.

3. Heard the learned Special Government Pleader appearing for the respondents.

4. A perusal of the impugned order reveals that the first respondent rejected the application for renewal on three grounds. One among the three grounds is that the application for renewal of lease by the petitioner was not made within 12 months before the date of expiry and the same was submitted beyond the specified time limit and that the petitioner had caused huge delay. The learned counsel for the petitioner in reply submitted that the petitioner had submitted the application on 17.10.2003 and it was kept pending by the respondents for more than 13 years due to various reasons. Therefore, the petitioner had filed writ petition. As this Court held that the petitioner is entitled only to transport the already quarried materials, the petitioner preferred W.A.No.477 of 2016. This Court by order dated 18.04.2016 directed the respondents to re-examine the application. But without any application of mind, the respondents rejected the renewal application of the petitioner.

5.The other grounds raised by the respondents for rejection of renewal application are that the petitioner had failed to submit the approved mining plan and environmental clearance certificate along with the application for renewal. The petitioner has given a reply that the first respondent in his earlier order of rejection dated 25.06.2015 did not specify that the renewal application did not contain the approved mining plan. It is further submitted by the learned counsel for the petitioner that the environmental clearance certificate is not required and it is also not provided under Tamil Nadu Minor Mineral Concession Rules or under the Granite Conservation and Development Rules, 1999.

6.The learned Special Government Pleader for the respondents filed a counter affidavit, wherein in paragraphs 30, 31 and 32, it is submitted as follows:

"30.With regard to the averments made in Ground (C) of the affidavit, it is submitted that though the renewal application was submitted on 17.10.2003, i.e., 15 days prior to the expiry of the lease period, it is pertinent to submit that it is only a belated application as per the provisions contained in sub rule 19(a) of the rule 19-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, which stipulates as follows:

"The application for grant of renewal of lease under this rule shall be made at least twelve months before the expiry of the quarrying lease, already granted".

It is not stated that an application for renewal can be submitted just before the lease period. Thus, it cannot be construed as a flimsy reason for rejection. Since the petitioner did not comply with the same, it was taken as one of the grounds for reflecting the application. The word "shall" contained in sub rule (19) (a) of rule 19-A of the said Rules is only mandatory in nature and not directory as contended by the petitioner.

31.With regard to the averments made in Ground (D) of the affidavit, it is submitted that sub rule (19) (b) of rule 19-A of the said Rules, stipulates that the applicant shall submit an approved mining plan/scheme along with the application for renewal which is valid at the time of filing the application for renewal. Hence, it is mandatory on the part of the petitioner to have

submitted that Mining Plan on the date of application (i.e.) submitted post the Granite Conservation and Development Rules, 1999, was enforced. However, the belated renewal application was not accompanied with a valid approved mining plan. Hence the averment of the petitioner seeking waiver to the submission and fresh mining plan/scheme of mining along with the renewal application is not acceptable.

32. With regard to the averments made in Grounds (E) of the affidavit, it is submitted that rules 41 and 42 of the said Rules amended vide G.O. (Ms) No.79, Industries (MMC.1) Department, dated 06.04.2015, stipulates as follows:

"Rule 41: Mining Plan is a pre-requisite to the grant of lease and submission and approval of mining plan for minor minerals other than granite"

Rule 42: Submission of environment Clearance for the grant of quarry lease for minor minerals included granite"

Hence, production of Environmental Clearance is mandatory on the part of the petitioner and all the averments made by the petitioner in the affidavit are devoid of merits. "

Hence, he pleaded to dismiss the writ petition.

7. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court upon perusal of the entire materials is of the considered view that the impugned order shall be kept in abeyance and the petitioner is to be given an opportunity to produce the required documents before the authorities for fresh consideration. Hence, the petitioner is directed to produce the same, within a period of two weeks from the date of receipt of a copy of this order and on such production, the respondents are directed to consider the claim of the petitioner and pass appropriate orders on merits and in accordance with law, after affording due opportunity of hearing to the petitioner as well as any of the interested parties, within a period of four weeks thereafter. If the petitioner fails to produce the same as directed, the impugned order shall stand restored.

8.With the above direction, this Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj

To

1.The Principal Secretary to Government
Industries (MMB.2) Department
Fort. St. George
(Secretariat)
Chennai.

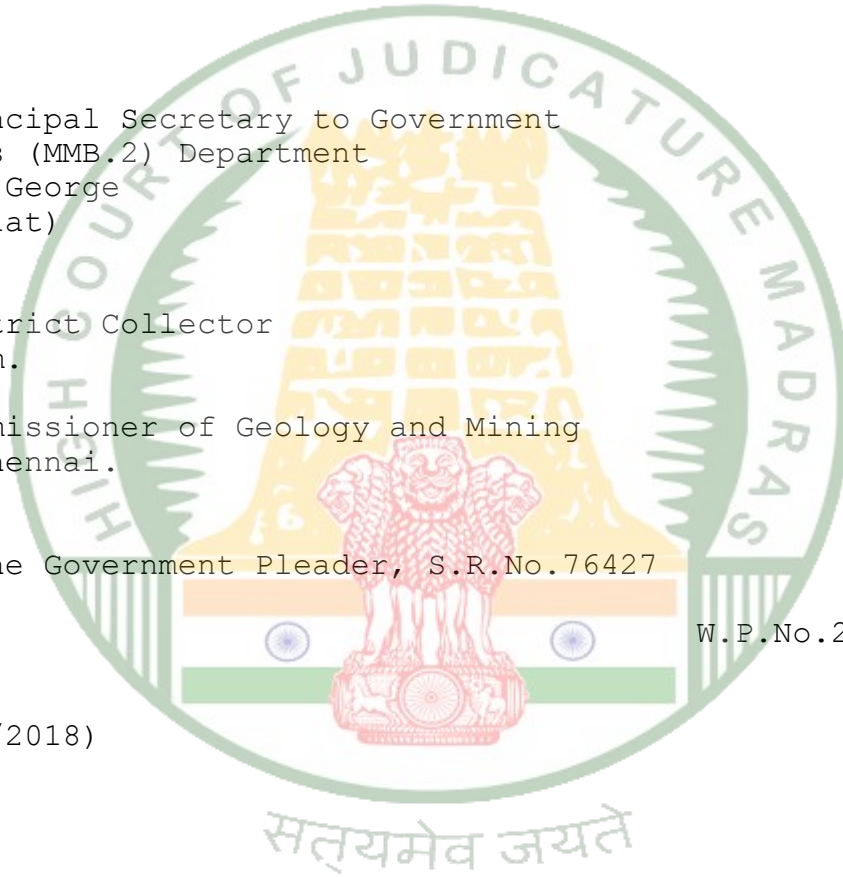
2.The District Collector
Villupuram.

3.The Commissioner of Geology and Mining
Guindy, Chennai.

+1cc to the Government Pleader, S.R.No.76427

W.P.No.2076 of 2017

RK (CO)
GSP (06/12/2018)



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