

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.Nos.757, 758 and 1326 of 2011
and M.P.Nos.1 of 2011 and 2 of 2011

W.A.Nos.757 and 758 of 2011

The District Collector
Erode District, Erode. ... Appellant in both appeals

-vs-

M/s.S.S.Enterprises,
Rep. by its Proprietrix, S.Sumathi,
Through her Power Agent,
R.Sivaramakrishnan. ... Respondent in WA.757/11

R.Panneer Selvam,
Managing Director,
Minrocks International Pvt. Ltd. ... Respondent in WA.758/11

W.A.No.1326 of 2011

R.Panneer Selvam
Managing Director,
Minrocks International Pvt. Ltd. ... Appellant

-vs-

The District Collector
Erode District, Erode. ... Respondent

Appeals filed under Clause 15 of the Letters Patent against
the common order dated 15.11.2010 made in W.P.Nos.15949 of 2010
and 18193 of 2010 on the file of this Court.

W.P.Nos.15949/2010 & W.P.No.18193/2010:

Writ Petitions filed under Article 226 of the Constitution
of India praying to issue writs of Certiorari calling for the
records of the respondent relating to the order passed in
Ref.No.34814/2007/X.2 dated 11.7.2010 and quash the same in so
far as it relates to the petitioners.

For Appellant in : Mr.R.Udayakumar
WA.757 & 758/2011 Addl.G.P.
and Respondent in
WA.1326/2011

For Respondent in : No appearance
WA.757/2011

For Respondent in : Mr.AR.Karthik Lakshmanan
WA.758/2011 and for M/s.AL.Ganthimathi
For Appellant in
WA.1326/11

COMMON JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned Additional Government Pleader appearing for the appellant/State in W.A.Nos.757 and 758 of 2011 and learned counsel for the respondent/sub-lessee in W.A.Nos.757 and 758 of 2011 and appellant in W.A.No.1326 of 2011.

2.The appeals question the correctness of the impugned common judgment dated 15.11.2010, whereby the learned Single Judge has allowed the writ petitions of the respondents, M/s.S.S.Enterprises, the lessee and R.Panneer Selvam, the sub-lessee, holding that the exercise undertaken by the appellant/State to cancel the quarrying lease vide order dated 11.07.2010 was not in accordance with the provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959 and in particular, the provisions of Rule 36 (5) (h) would not be attracted, inasmuch as the action had been taken after the period of expiry of the lease.

3.The learned Single Judge further held that sofar as the sub-lessees or agents were concerned, it was open to the appellants/State to take action against them in terms of Rule 36-A (5) of the 1959 Rules. The aforesaid two provisions, namely, Rule 36 (5) (h) and Rule 36-A(5) are extracted hereunder for ready reference:

"36. General restrictions in respect of quarrying operations :-

....

(5) (h) In case of breach by the quarrying permit-holder or quarrying lease holder or his transferee or assignee of any of these rules or of the conditions of the lease, the Director of Geology and Mining or the Chief Conservator of Forests, as the case may be, or the District Collector or the District Forest Officer as the

case may be without prejudice to any other penalty which may be imposed in respect of such breach, may cancel the lease after granting an opportunity of hearing to the said person.

36-A. Penalties. -

(5) Whenever any person contravenes any provisions, other than sub-rule (1) of rule 10 of these rules or conditions of a quarrying permit or quarrying lease granted under these rules the Director of Geology and Mining or the Chief Conservator of Forests, as the case may be, or the District Collector or the District Forest Officer as the case may be, shall after giving notice, charge that person and recover from him enhanced seigniorage fee up to a maximum of fifteen times the normal rate subject to a minimum of 4 [twenty five thousand rupees]4 or in the 1 Deleted vide G.O.Ms.no.49 Industries dated 28.2.1995 2 Substituted vide G.O.Ms.no.49 Industries dated 28.2.1995 3 Inserted vide G.O.Ms.No.3 Industries dated 2.1.1998 4 Substituted vide G.O.Ms.No.253 Industries dated 26.6.2000 55 alternative he shall be liable to be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both and in the case of continuing contravention with additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.] 2[Provided that in respect of minor minerals namely, building and road construction stones including gravel, ordinary sand, earth and turf, ordinary clay including silt, brick and tile clay the powers and duties exercisable and dischargeable by the District Collectors under this subrule shall be exercisable and dischargeable by the Revenue Divisional Officer concerned within their respective jurisdiction.”

(emphasis supplied)

4.The learned Single Judge concluded that the period of lease was between 15.06.1998 and 14.06.2008, whereas the proceedings that have been initiated commenced long after the expiry of the said period and therefore, the action taken against the respondents/lessee and sub-lessee is not contemplated in law.

5.Learned counsel for the appellant State contends that the aforesaid conclusion drawn by the learned Single Judge was passed on an erroneous assumption of fact as well as of law, inasmuch as even though the period of lease was from 15.06.1998 to 14.06.2008, yet, the respondent/lessee was the beneficiary of an order of the High Court on being approached by the respondent/lessee himself for renewal of the lease, where the High Court issued directions that he shall be allowed to continue with his quarrying lease till the renewal application is disposed of by the competent authority. It is in this background that during the pendency of the said continuation of the lease itself that the impugned actions by issuing notice to the respondent and to his sub-lessee was undertaken, whereafter the order cancelling the lease dated 11.07.2010 was passed.

6.It is this order dated 11.07.2010 that came to be assailed before the learned Single Judge where the aforesaid conclusions have been drawn. It is urged that the order passed by the Collector in cancelling the lease on the grounds referred to therein were well within the powers exercisable under Section 36 (5) (h) of the 1959 Rules, more so, when the High Court granted the extension of the same lease and had restrained the appellant State from interfering with the quarrying by the respondent/lessee. In the background aforesaid, there was no termination of the quarrying activity being carried out under the terms of the lease that stood extended by virtue of the orders passed by the High Court. It is submitted that inspite of having noticed the aforesaid fact, the learned Single Judge misconstrued the period of lease to have come to an end in 2008 itself and therefore, this erroneous assumption of fact led to an incorrect appreciation of law, hence, the impugned judgment deserves to be set aside.

7.It is further submitted by the learned Additional Government Pleader that the terms of the lease had been clearly violated by the respondent petitioner by sub-letting it, which fact stood admitted during the enquiry proceedings when the sub-lessees themselves came up intimating the competent authority about they having entered into an agreement with the respondent/lessee in 2003 itself. Their contention, however, is that they have no liabilities and it is only the original lessee who can be held liable for any penalty or any action taken in respect of the cancellation of the lease.

8.The aforesaid stand of the sub-lessee has been controverted by the learned counsel for the appellant State contending that the terminology used in the provisions aforesaid makes any person liable including who is in unlawful occupation and therefore, the sub-lessee cannot escape from any such

liability. It is, therefore, submitted that the order dated 11.07.2010 making the respondent/lessee liable along with the sub-lessee is a justified order and is clearly saved under the provisions of the 1959 Rules. In support of his contentions, the learned Additional Government Pleader relied on the decision in the case of Provash Chandra Dalui and Another vs. Biswanath Banerjee and Another, reported in 1989 Supp (1) SCC 487. We have also come across the decision in the case of Beg Raj Singh vs. State of U.P. and Others, reported in (2003) 1 SCC 726.

9.No one has appeared on behalf of the respondent/lessee, M/s.S.S.Enterprises. We have, however, heard Sri.Karthik Lakshmanan for the sub-lessee, who has filed Writ Appeal No.1326 of 2011 and who is the respondent in W.A.Nos.758 of 2011.

10.The contention of Sri.Lakshmanan is that the sub-lessees are not at all liable inasmuch as any alleged contravention is the sole responsibility and liability of the original lessee and that the sub-lessees or agents of the original lessee cannot be in any way held responsible for realisation of fine or penalty by recording a finding that they are jointly and severally liable. He, however, submits that the respondent/sub-lessee is only aggrieved by the operative part of the direction issued by the learned Single Judge whereby proceedings under Rule 36-A(5) have been left open to be undertaken against the sub-lessee.

11.Having gone through the pleadings and having considered the submissions raised, we are of the considered opinion that the High Court, in exercise of jurisdiction under Article 226 of the Constitution of India may not extend any lease which has expired, but the admitted fact is that the lease stood extended by virtue of the orders of the High Court for a period of two years even after its expiry on 14.06.2008. It is during this extended period that the entire enquiry was held and the orders were passed on 11.07.2010. In the background of the facts of the present case, the respondent/lessee stood benefited by the extension of lease by the order of High Court itself and consequently, any violation as alleged was clearly relatable to the terms and conditions of the lease which will be deemed to be continuing as he had been undisputedly permitted by the High Court to continue to quarry mining lease. The respondent/lessee, therefore, cannot be heard to say that he will only enjoy the benefits and would not be responsible for any liabilities under the terms of the lease.

12.Consequently, in view of what has been stated above, we find that the learned Single Judge fell in error in treating the lease to have expired and orders to have been passed after the expiry of the period of lease. The action taken by the

appellants, in our opinion, was clearly saved by Rule 36(5)(h) of the 1959 Rules.

13. Coming to the issue of joint and several liability as narrated in the order dated 11.07.2010, a perusal of the provisions quoted hereinabove leaves no room for doubt that it is not only the lease holder, but rather any transferee, assignee or any person involved in mining including one who is in unlawful occupation, who can be held liable jointly along with the original lessee. We find no such error in the conclusion drawn by the authority in the order dated 11.07.2010, which, in our opinion, ought not to have been interfered with by the learned Single Judge.

14. For all the reasons stated hereinabove, we, accordingly, allow the appeals in W.A.No.757 and 758 of 2011 and set aside the impugned judgment dated 15.11.2010 and uphold the order passed by the authority dated 11.07.2010.

In view of what has been stated hereinabove, W.A.No.1326 of 2011 filed by the Sub-lessee stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

sra
To

The District Collector
Erode District, Erode.

+2 CCS to M/s.A.L. Gandhimathi, advocate sr 101919, 101920

W.A.Nos.757, 758 and 1326 of 2011

MP(CO)
SP(10/01/2020)

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