

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.34447 of 2004

and

W.P.M.P. Nos.41585 of 2004 and 987 of 2005

Arun Kumar Rai

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Industries Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner
of Geology and Mining,
Guindy,
Chennai - 600 032.
3. The District Collector,
Dharmapuri District,
Dharmapuri.
4. The District Collector,
Krishnagiri District,
Krishnagiri.
5. The Assistant Director,
Department of Mines and Geology,
Dharmapuri.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorari to call for records of the 4th respondent in proceedings in Na.Ka.595/2002 (A. Minerals), dated 15.10.2004 imposing a penalty of Rs.3,99,99,861/- under Section 36(a) of the Tamil Nadu Mines and Minerals Concession Rules, 1959 in relation to the quarry lease deed dated 25.02.1998 in Survey No.510/1 and 511/1 in Agalakottai Village, Denkanikottai Taluk, Dharmapuri District executed by the Government of Tamil Nadu and quash the same.

For Petitioner : Ms.C. Uma
For Respondents : Mr.K. Rajendra Prasad
Additional Government Pleader

O R D E R

By an order dated 03.04.2002, the third respondent herein had imposed a penalty of Rs.2,69,19,296/- on the petitioner for unauthorised mines of Granite. In continuation of the order of the third respondent, the 4th respondent herein had passed an order dated 15.10.2004, whereby, he had ordered for recovery of the penalty imposed by the 3rd respondent in revenue recovery proceedings. This order of the 4th respondent dated 15.10.2004 is under challenge in this writ petition.

2. Today, when the matter is called, the learned counsel for the petitioner produced an order of this Court, dated 08.04.2011 in W.P. Nos.29741 of 2010 and 25168 of 2009, in which, the proceedings of the 3rd respondent, dated 03.04.2002 came to be quashed. The relevant portion of the order reads as follows :-

Prayer in W.P.No.29741 of 2010: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the respondents relating to the order dated 03.04.2002 bearing No.595 of 2002 (Mines) passed by the 1st respondent as confirmed by the 2nd respondent in his proceedings R.C.No.7283/MM5/2002, dated 20.08.2002 and further confirmed by the 3rd respondent in his proceedings G.O.(D) No.125, dated 23.07.2010 and quash the same as unconstitutional and void and pass such further orders.

11. Further, one another aspect needs consideration is, when the impugned order passed merging with the report of the Surveyors and the Assistant Geologist of the respondent department, who on their inspections found that the quarrying works were carried out in the leased out area and one poclain machine and a dipper lorry were engaged in quarrying activities and further they found that the petitioner had quarried 284.8 CBM of black granite in the leased out area, but the said quantity quarried by the petitioner was not found available at the quarry site during the

time of inspection, the 1st respondent should have given a copy of this report to the petitioner along with the show cause notice and should have invited an explanation on the basis of the report of the inspecting officials. Without disclosing the report of the inspecting officials, the District Collector, Dharmapuri / the 1st respondent herein has come to the conclusion that the petitioner had quarried a huge volume of 284.8 CBM of black granite, though he is entitled to quarry the black granite from his own patta land in view of the lease deed executed by the 1st respondent. But when he came to the conclusion that the said quantity of granite, after being quarried, were found missing, he has concluded that the black granite were transported without transport permit. Therefore, that allegations should have been part of the show cause notice. Without disclosing that allegations to the party, it is not legally permissible for the 1st respondent to come to a conclusion and impose a huge fine. In other words, before passing impugned order, if the relevant materials disclosed to the petitioner and for which, if there is any explanation submitted by the petitioner, then it is not possible for this Court to find fault with the impugned order. But, that procedure has not been followed. Therefore, when the 1st respondent has passed the impugned order imposing a penalty, I am of the opinion that no proper hearing was given to the petitioner before passing the impugned order and this fact was not even considered by the respondents 2 and 3, while confirming the order passed by the 1st respondent. Therefore, the impugned orders passed by the respondents are required to be interfered with and accordingly, they are set aside. However, the 1st respondent is at liberty to proceed fresh against the petitioner by giving fresh show cause notice mentioning clearly the allegations against the petitioner and decide the issue in accordance with law.

12. In respect of writ petition in W.P.No.25168 of 2009, it is useful to refer to a Rule 8-C(6a) of the Tamil Nadu Minor Mineral Concession Rules, 1959, which states that the lease granted under this Rule may be renewed for a period not exceeding twenty years:

Provided that renewal of lease shall be subject to satisfactory performance of the lessee in the past in fulfilling the conditions of lease.

(b) The application for renewal shall be made atleast twelve months before the expiry of the lease in the Form specified in Appendix VII to these Rules to the District Collector concerned accompanied with non-refundable application fee of Rs.5000/- and with documents specified in clause (b) of sub-rule (2) and in the application form.

(c) The lessee shall submit along with the application for renewal of quarrying lease, an approved mining plan/scheme valid at the time of filing the renewal application.

(d) The conditions and the procedures under this Rule for grant of lease shall mutatis mutandis apply for renewal of a lease under this Rule.

Therefore, if the petitioner fulfils the conditions for renewal of lease, it is open for the respondents to consider his case for renewal of lease in accordance with law as mentioned in the Tamil Nadu Minor Mineral Concession Rules, 1959 and pass necessary orders in accordance with law.

13. In the result, W.P.No.29741 of 2010 is allowed and W.P.No.25168 of 2009 is disposed of with the above direction/observation. No Costs. Consequently, connected miscellaneous petitions are closed.

3. Since, the original order dated 03.04.2002 passed by the 3rd respondent, prior to the impugned order has already been quashed by this Court, the present prayer in the writ petition requires no further consideration, since it has become infructuous.

4. Accordingly, this writ petition stands closed. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Industries Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner
of Geology and Mining,
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Chennai - 600 032.
3. The District Collector,
Dharmapuri District,
Dharmapuri.
4. The District Collector,
Krishnagiri District,
Krishnagiri.
5. The Assistant Director,
Department of Mines and Geology,
Dharmapuri.

+1cc to MS.C.Uma, Advocate sr.no.12697

W.P.No.34447 of 2004

nr 19/03/2019