

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.5967 of 2009
and M.P.No.1 of 2009

R.Suresh

... Petitioner

Vs

1.The State of Tamil Nadu
rep.by its Secretary to Government,
Industries Department,
Fort St.George, Chennai-600 009.

2.The District Collector,
Dharmapuri District,
Dharmapuri.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records in G.O.D.No.224 Industries (MME1) Department dated 11.08.2008 on the file of the 1st respondent herein and quash the same and direct the 1st respondent to grant prospecting licence for two years and quarrying lease for 20 years in favour of the petitioner in respect of Government quarry lands measuring 33.19.5 hectares comprised in S.F.No.938 No.28, Dhoonaguddahalli, Pennagaram Taluk, Dharmapuri District, the subject land in the applications dated 25.01.2006 and 30.03.2007 by considering the petitioner's quarrying lease applications dated 25.01.2006 and 30.03.2007 under the Granite Conservation and Development Rules, 1999, accepting the applications.

For Petitioner : Mr.S.Sadasharam

For Respondents : Mr.J.Ramesh,
Additional Government Pleader

O R D E R

It is stated in the affidavit filed in support of this writ petition that as per Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 ('Act' in short) the State Governments are given power to frame rules in respect of minor minerals. If the Central Government frame rules exercising powers under Section 18 of the Act, the State Government has to

follow the same and cannot make any rules contrary to the Rules of the Central Government. Rule 8-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 ('Rules' in short) deals with granting of leases in respect of granite. Since there is no fixed policy for grant of quarrying license and there are uncertainties in the mineral policies of different States, the All India Granite Quarry Owners and Exporters Association, represented to the Central Government to bring out a common and uniform policy for granting and renewal of granite leases throughout India and based upon such representation, Granite Conservation and Development Rules, 1999 has been framed with effect from 01.06.1999, under Section 18 of the Act. Thereafter, the validity of Rule 8-A of the Rules was challenged before this Court and this Court struck down the said Rule on the ground of repugnancy and inconsistency of the Central Government Rules.

2.The petitioner further states that even though the petitioner applied for quarrying lease in respect of Government quarry lands measuring 33.19.5 hectares comprised in S.F.No.938 No.28, Dhoonaguddahalli, Pennagaram Taluk, Dharmapuri District, by applications dated 25.01.2006 and 30.03.2007 by complying with all the requirements and formalities, the same has not been processed. The petitioner states that even though there is no impediment whatsoever to grant quarrying lease under the Granite Conservation and Development Rules, 1999, the first respondent has not processed the applications as the State Government has not adopted the said Rules till date.

3.With the above background, the petitioner has come up with this writ petition challenging the impugned order rejecting the applications of the petitioner for quarrying lease.

4.A counter affidavit has been filed by the second respondent in which it is stated that on verification of the village records, it has been found that the area applied for prospecting license is a Government Poramboke land classified in revenue records as 'Anatheenam'; that there is no rule provision in Tamil Nadu Minor Mineral Concession Rules, 1959 for grant of prospecting license for granites in Government Poramboke land directly to the private individual; in respect of poramboke lands quarrying lease for granite is being granted only under Tender cum Auction Systems as per Rule 8-A of the Tamil Nadu Minor Mineral Concession Rules, 1959. It is also stated that in the absence of any provision in the Tamil Nadu Minor Mineral Concession Rules, 1959 for grant of prospecting license in respect of Government poramboke, the question of applying the same will not arise and hence the prospecting license application preferred by the petitioner cannot be entertained and hence the application has been forwarded to the Government through the Director of Geology and Mining, for rejection.

5.At this juncture, the learned counsel for the petitioner has submitted that under similar circumstances in respect of similar set of facts, a Division Bench of this Court has passed a judgment in W.A.No.767 of 2013 dated 17.01.2018 and hence the same yardstick may be applied to the present case, for which the learned Additional Govt.Pleader appearing for the respondents has no serious objection.

6.The relevant paragraphs of the judgment of this Court in W.A.No.767 of 2013 dated 17.01.2018 is extracted hereunder:

"7.The Granite Conservation and Development Rules and more particularly, Rule 4 very clearly states that licence would be granted under the said Rule only in case, the applicant satisfies the ingredients of the said provision.

8.The applicant made an application under Rule 9 (1) of the Granite Conservation and Development Rules for Prospecting Licence. The said Rule pre-supposes that the applicant has already got a licence under Rule 8. The appellant is a first time applicant and as such, his case would not come under Rule 9.

9.The District Collector forwarded the application of the appellant to the Government with a recommendation not to grant licence, as according to him, there is no provision under Rule 8-A of the Tamil Nadu Minor Mineral Concessional Rules to issue a Prospecting Licence. The Government simply followed the recommendation and rejected the application filed by the appellant. When the order passed by the Government was put in issue before the Writ Court, the learned single Judge considered the matter on merits and dismissed the writ petition.

10.The Government of Tamil Nadu has not considered the application submitted by the appellant in accordance with the provisions of Granite Conservation and Development Rules, 1999. The Government has to consider the application submitted by the appellant on merits and to take a decision as to whether he is entitled to a Prospecting Licence. No such effort was taken by the Government. The Government simply rejected the application on the ground that Rule 8-A of the Tamil Nadu Minor Mineral Concessional Rules does not permit such issuance of Prospecting Licence. We are therefore of the view that the Government was not correct in rejecting the application on the ground that Rule 8-A of Tamil Nadu Minor Mineral Concessional Rules does not provide for issuance of Prospecting Licence.

11.The order passed by the learned single Judge is liable to be set aside on the ground that the issue was considered on merits without giving opportunity to the Government to consider the matter afresh. In fact, the learned Judge considered Rule 8-A of Tamil Nadu Minor Mineral Concessional Rules and not the provisions of Granite Conservation and Development Rules. We are therefore of the view that the issue requires fresh consideration by the Government.

12.We give liberty to the appellant to make a fresh application under the provisions of Granite Conservation and Development Rules, 1999. In case, any such application is received, the same shall be considered and disposed of on merits and in accordance with law."

7.In view of the above, the writ petition is disposed of giving liberty to the petitioner to make a fresh application under the provisions of Granite Conservation and Development Rules, 1999 within a period of two weeks from the date of receipt of a copy of this order. On receipt of such application, the respondents shall consider and dispose of the same on merits and in accordance with law, in the light of the judgment of this Court in W.A.No.767 of 2013 dated 17.01.2018 within a period of eight weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Secretary to Government,
Government of Tamil Nadu,
Industries Department,
Fort St.George, Chennai-600 009.

2.The District Collector,
Dharmapuri District, Dharmapuri.

+1cc to Mr.S.Sadasharam, Advocate, S.R.No. 4510

+1cc to the Government Pleader, S.R.No. 5076

W.P.No.5967 of 2009
and M.P.No.1 of 2009

GJ II (CO)
GN(07/02/2019)