

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21-01-2019
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 15633 of 2005 and
W.P.M.P.No. 17060 of 2005

- 1.K.R.Arunachala Perumal (Deceased)
 2. S.Subbu lakshmi
 3. A.S.Suganya
 4. A.S.Subanesh
 5. A.S.Suganesh
- ... Petitioners

P2 to P5 are substituted in the place of deceased petitioner as per order dated 18/08/2014 in W.P.M.P.No.179/2014 in W.P.No.15633/2005.

Vs

1. State of Tamil Nadu rep. By its Secretary to Government (Industries MMC-I) Department Fort St.George Secretariat Chennai- 600 009.
 2. The Collector of Kanniyakumari District Nagercoil.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari or any other appropriate Writ, order or direction in the nature of a Writ calling for the records of the second respondent pertaining to the impugned order passed in Na.Ka.No.488/G&M/2004 dated 24.03.2005 and quash the same.

For Petitioners	:	Mr.R.Ramanlaal
For Respondents	:	Ms.R.Janaki
		AGP for R1 and R2.

O R D E R

The demand notice issued by the respondents in proceeding dated 24.03.2005 directing the writ petitioner to pay the interest amount of Rs.1,13,330/- for the belated payments of principal amount in the Government accounts is under challenge in the present Writ Petition.

2. The learned counsel for the writ petitioner states that the writ petitioner was a lessee and permission to quarry stone and jelly was granted to the writ petitioner, Mr.K.R.Arunachala Perumal, who died during the pendency of the Writ Petition. The lease period was from 01.08.1995 to 31.03.2000. The period of lease expired long back and the original writ petitioner stopped the quarrying operations as per the conditions of the lease.

3. The grievances of the writ petitioner is that, he deposited the lease amount as per the terms and conditions in time. However, without taking note of these facts, the demand notice has been issued claiming the interest for the belated payments. No opportunity was given to the writ petitioner even to submit his explanations in this regard. Thus, the writ petitioner is constrained to move the present Writ petition.

4. The learned Additional Government Pleader submitted that the copy of the instructions provided by the District Collector, Kanniyakumari District in proceeding dated 04.01.2009, states that a quarry lease for quarrying stone and jelly was granted to Thiru.K.Arunachala Perumal over an extent of 4.00.0 Hectares in R.S.No.720 Block III of Marungoor Village, Agastheeswaram Taluk through tender cum Action system for a period of 10 years in proceeding dated 29.09.2004.

5. The lessee admittedly had paid the lease amount in 11 instalments. The lease deed was executed by the lessee on 14.02.2005 and the lease period was valid from 14.02.2005 to 13.02.2015.

6. The learned counsel for the petitioner disputed the lease period by referring the document of lease deed dated 09.10.1995 which is enclosed in page 1 of the type set of papers filed along with the writ petition. As per the said lease agreement, the period of lease is from 01.08.1995 to 31.03.2000 and the quarrying operations are permitted in Iraviputhoor Village, Kanniyakumari District. It is pertinent to note that even the instructions provided to the Additional Government Pleader by the District Collector, Kanniyakumari District seems to be incorrect. Even the lease period and the place of quarry lease granted has not been stated properly.

7. This Court is of an opinion that the writ petition is pending before the Madras High Court for the past 13 years. The respondents have failed to file the counter affidavit in the writ petition. When this Court listed the matter for final hearing, adjournment is sought for and the adjournment was given to get instructions and file counter affidavit. However, instructions are secured and produced before this Court by the learned Additional Government Pleader, which was signed by the District Collector Mr.Prashant M.Wadnere, I.A.S.,.

8. On a perusal of the instructions, the facts and the details are not given in entirety and the way in which the instructions are provided and not filing the counter in the writ petition for the past 13 years deserves to be viewed seriously. The District Collector, Kanniyakumari District is directed to initiate disciplinary action against all the officials, who have not filed counter affidavit in the present writ petition for the past 13 years. The disciplinary proceedings are to be initiated without any leniency and the officials are to be fixed in this regard for their negligible or dereliction of duty.

9. As far as the merits of the case is concerned, this Court is of an opinion that the demand notice was issued based on the audit objection raised by the audit party. Undoubtedly, if an audit objection is raised, the authorities competent is empowered to issue notice to the persons concerned only after receiving explanations/objections if any, the decision shall be taken and the order shall be passed in accordance with law and on merits. In the present case on hand, no such opportunity was provided to the present writ petitioner enabling him to submit his explanations.

10. In this view of the matter, the impugned demand notice issued by the second respondent proceeding Na.Ka.No.488/G&M/2004 dated 24.03.2005 is quashed. The second respondent is directed to issue a fresh notice to the legal heirs of the writ petitioner within a period of four weeks from the date of receipt of a copy of this order. On receipt of the notice, the legal heirs of the original writ petitioner are directed to submit their explanations/objections along with documents, if any, within a period of 2 weeks from the date of receipt of a copy of the notice and the second respondent shall consider the case on merits and pass orders in accordance with law within a period of 8 weeks thereafter.

With these directions, Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/--

Assistant Registrar(CS)

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Sub Assistant Registrar

ssb/mrn
To

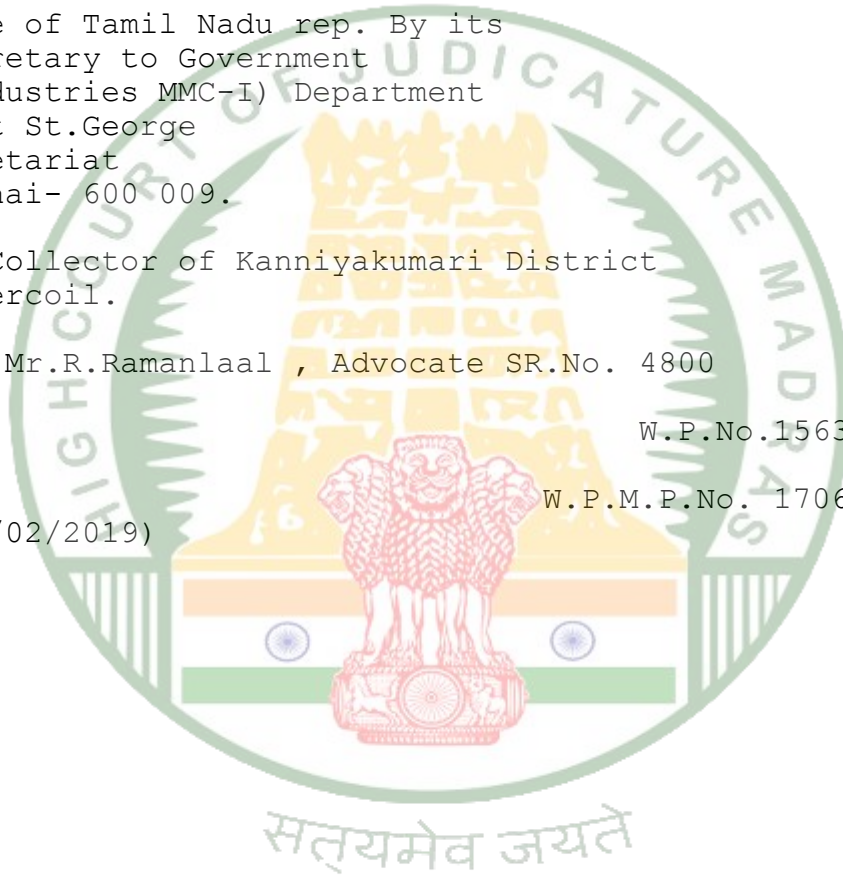
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2. The Collector of Kanniyakumari District
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+1cc to Mr.R.Ramanlaal , Advocate SR.No. 4800

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A.SK(22/02/2019)



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