

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.26914 of 2010

M/s. Eastern Minerals and Trading
Agency, represented by its
General Manager,
No.10/17, G.S.T.Road,
St. Thomas Mount,
Chennai.

...Petitioner

Vs.

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

2.The District Collector,
Salem District,
Salem.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records of the 1st respondent in his proceedings in G.O.(2D) No.24 Industries (MMB2) Department, dated 25.06.2010 and quash the same and consequently direct the 1st respondent to refund the Deposit amount of Rs.6,39,915/- and a sum of Rs.58,225/- paid to the Forest Department along with interest at the rate of 24% per annum in respect of the Black Granite Quarry situated in S.No.35-A and S.No.35/1/C2 in Government Poramboke lands in Malliakarai Village, Aattur Taluk, Salem District.

For Petitioner : Mr.K.R.Krishnan

For Respondents : Mr.J.Ramesh, AGP

O R D E R

The petitioner has filed this writ petition seeking for the following relief:

'To issue a writ of Certiorari to call for the records of the 1st respondent in his proceedings in G.O.(2D) No.24 Industries (MMB2) Department, dated 25.06.2010 and quash the same and consequently direct the 1st respondent to refund the Deposit amount of Rs.6,39,915/- and a sum of Rs.58,225/- paid to the Forest Department along with interest at the rate of 24% per annum in respect of the Black Granite Quarry situated in S.No.35-A and S.No.35/1/C2 in Government Poramboke lands in Malliakarai Village, Aattur Taluk, Salem District.'

2.The case of the petitioner is that the petitioner had participated in the tender for quarrying Black Granite in S.No.35/1C2 measuring to an extent of 3.03.0 hectares and in S.No.35-1A measuring an extent of 5.55.0 hectares situated in Mallikarai Village, Attur Taluk, Salem District. The petitioner has paid the tender amount of Rs.2,13,400/- and security deposit of Rs.21,340/- in respect of quarry in S.No.35/1C2 and the tender amount of Rs.3,68,350/- and security deposit of Rs.36,835/- in respect of the quarry in S.No.35-1A. Since the amount quoted by the petitioner Company was the highest, the tender was confirmed in favour of the petitioner. As per the policy of the State Government existing at the relevant point of time, the State Government has issued a letter of commitment dated 24.07.1990 and confirmed the lease in favour of the petitioner's company. Further, the State Government has also informed the petitioner that the petitioner Company has to establish granite cutting and polishing industry in the State of Tamil Nadu before granting of lease and the petitioner company has spent huge amount in purchasing land in S.No.129/1B at Mambakkam Village, Chenglepet Taluk and had established a Granite Cutting and Polishing Industry in the above said land and intimated the same to the State Government.

3.The learned counsel for the petitioner would submit that suddenly the Forest Department by a letter dated 23.04.1991, stated that the land in which quarrying lease has been granted falls under the Forest Department and that being a social forestry, Karuvelam trees have been planted in the above area and has stated that no work should be done without the permission of the Forest Department. After much correspondence between the petitioner and the Forest Department and after the intervention of the State Government, the Divisional Forest Officer, by letter dated 03.10.1991, has stated that the petitioner has to pay a sum of Rs.48,225/- as compensatory charges and another sum of Rs.10,000/- as security deposit and

the petitioner was made to pay a sum of Rs.58,225/- to the Forest Department and then only the Forest Department will permit the petitioner's Company to commence the work in the above area. The State Government noticed the above area without ascertaining the fact that there is a social forestry belonging to the Forest in the above area and that the petitioner with difficulty was able to obtain permission from the Forest Department for commencing the work.

4.The learned counsel would further submit that after permission was granted by the District Collector, the petitioner commenced the pre-mining operation from 19.08.1992. Thereafter, the State Government issued G.O.Ms.(3D) No.106 and 107 (Industries (MMBII) Department dated 19.10.1993 granting lease to the petitioner for 10 years for doing quarrying work and directed the District Collector to execute the lease deed in favour of the petitioner Company. After passing of one year, the District Collector executed a lease deed in favour of the petitioner Company for a period of ten years commencing from 08.08.1994 to 07.08.2004 and the same was duly registered and the petitioner's Company was allowed to commence quarrying operations.

5.The learned counsel for the petitioner further submitted that when the petitioner Company went to the quarrying site to commence the quarrying operations, there was 30 encroachers and unauthorized occupants were in the area and they prevented the petitioner from commencing the quarrying operations. Due to the act of unauthorized occupants, the petitioner made a representation dated 04.10.1999, to the District Collector, Salem, stating that there is failure on the part of the authorities in notifying the area for tender to quarry without removing the encroachments and in spite of paying the lease amount and spending lakhs of rupees, the authorities were not in a position to make the area fit for quarrying operations. The petitioner Company, having suffered heavy financial crisis for the last nine years, was not in a position to commence the quarrying operations and prayed for either the refund the lease amount and security deposit amounting to Rs.6,39,915/- along with interest at 24% p.a. or allot an alternate site to enable the petitioner to carry on quarrying operations. It is further stated that a joint inspection was done on 17.04.2006 at 11.00 a.m. in the quarrying site as per the directions of the District Collector by the representative of the petitioner Company, the Assistant Director of Geology Mining, the Revenue Inspector and the Village Administrative Officer and other officials. It is further stated that the Committee has recommended for refund of the lease amount, since the Government has failed to remove the

unauthorized occupants to commence the quarrying operations. Though the petitioner made several representations dated 07.03.1997, 15.09.1999, 04.10.1999 and 13.03.2000 and had also sent a lawyer notice dated 10.04.2002, for refund, no orders have been passed till date. Therefore, the petitioner has no other option except to file the present writ petition.

6.The learned Additional Government Pleader for the respondents would fairly concede that the matter may be remanded back to the authorities for fresh consideration.

7.In the impugned order in G.O.(2D) No.24, dated 25.06.2010, it has been stated that there is no provision available to refund the deposit amount with interest in the Tamil Nadu Minor Mineral Concession Rules, 1959. Both the request made by the petitioner for alternative site or for refund of the deposit amount with interest were rejected by the respondents on the sole ground that there is no provision available in the Tamil Nadu Minor Mineral Concession Rules, 1959. It is seen that even after spending huge amount, the petitioner Company is not in a position to commence the quarrying operations nearly more than 6 years, which fact has also been admitted by the respondents.

8.Considering the facts and circumstances of the case, this Court is inclined to set aside the impugned order and remanded the matter back to the respondents for fresh consideration. The respondents are directed to consider the representation of the petitioner as expeditiously as possible.

9.With the above observation, this writ petition is disposed of. No costs.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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To

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

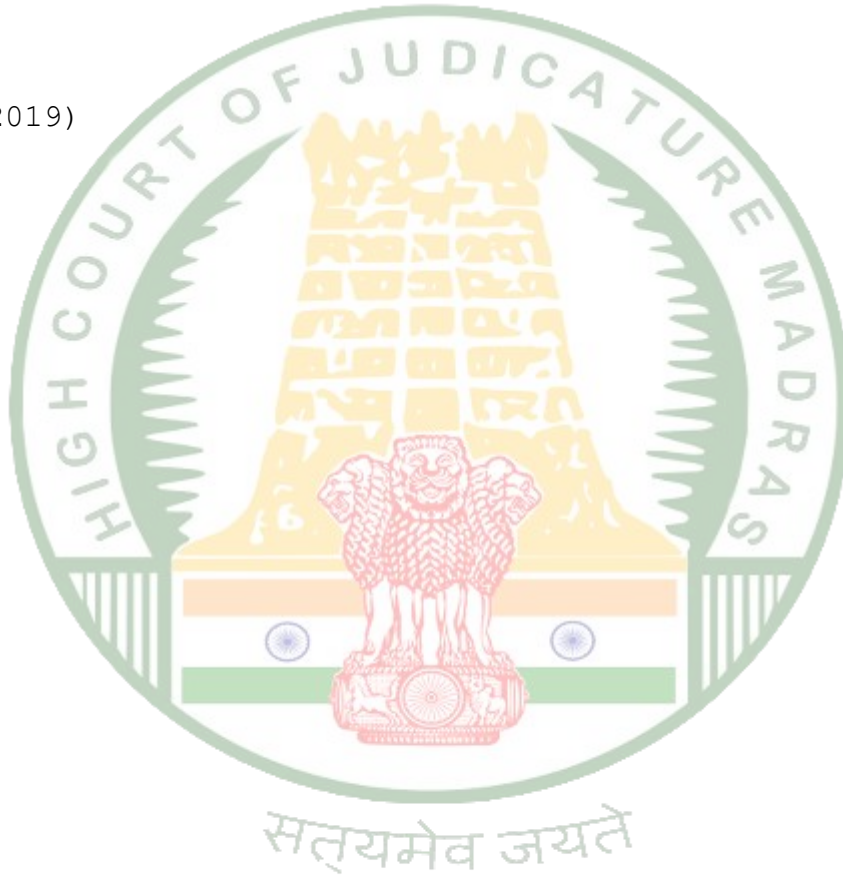
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2.The District Collector,
Salem District,
Salem.

+1 CC to Mr.K.R.Krishnan, Advocate sr 67062.
+1 CC to Govt. Pleader sr 67117.

W.P.No.26914 of 2010

AD(CO)
SP(21/08/2019)



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