

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P.No. 5363 of 2010

and M.P.No.2 of 2010

1. A.P.Thangamuthu (died)
2. T.Padma
3. T.Navaraja
4. Periya Gounder
5. Marayammal

P2 to P5 - substituted in the place  
of deceased Petitioner as per  
order dated 16.09.2011 in  
M.P. 1 of 2010

... Petitioners

Vs

1. The State of Tamil Nadu,  
rep. by Principal Secretary to Govt.,  
Industries (MMCI) Department,  
Secretariat, Fort St. George,  
Chennai-9.
2. The Commissioner of  
Geology and Mines,  
Guindy, Chennai-600 032.
3. The District Collector,  
Erode District, Erode-11.
4. The Revenue Divisional Officer,  
Gobichettipalayam,  
Erode District.
5. The Assistant Director,  
Geology and Mines,  
Erode-11, Erode Dt.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the  
Constitution of India, praying to issue a Writ of Certiorarified  
Mandamus, calling for the records pertaining to the impugned  
orders dated 04.08.2009 made in G.O. (D) No.265, passed by the  
1<sup>st</sup> respondent confirming the order dated 02.03.2004 made in

Na.Ka.No.9402/MM5/2001 passed by the 2<sup>nd</sup> respondent confirming the order dated 22.05.2001 made in Na.Ka.No.5839/X2/Mines/2000 passed by the 3<sup>rd</sup> respondent, quash the same and consequently, direct the 3<sup>rd</sup> respondent to extend the lease period for 1 year 10 months and 16 days from the date to be fixed by this Hon'ble Court on the basis of the report dated 22.04.2000 in Mo.Mo.16008/99 A3 filed by the 4<sup>th</sup> respondent and to deal with the security deposit suitably.

For Petitioner : Mr.N.Manokaran  
For Respondents : Mr.J.Ramesh,  
Addl. Govt. Pleader

### ORDER

The petitioner has filed the Writ Petition challenging the impugned order of the 1<sup>st</sup> respondent dated 04.08.2009 and confirming the order dated 02.03.2004 passed by the 2<sup>nd</sup> respondent and quash the same and consequently directing the 3<sup>rd</sup> respondent to extend the lease period for 1 year 10 months and 16 days from the date to be fixed by this Court on the basis of the report dated 22.04.2000 made by the 4<sup>th</sup> respondent and to deal with the security deposit suitably.

2. Since the petitioner died on 07.04.2011, his legal heirs viz., wife, son, father and mother have filed a petition for substituted service and the same was allowed by this Court by its order dated 16.09.2011.

3. The case of the 1<sup>st</sup> petitioner husband is that the husband of 1<sup>st</sup> petitioner was granted lease for quarrying sand on 06.10.1998 in respect of an extent of 1.67.0 located in 5 areas comprised in S.No.285/Part, Oricheri Village, Bhavani Taluk, Erode District for a period of 3 years between 06.10.1998 and 05.10.2001 on payment of lease amount of Rs.3,01,000/-. Accordingly, the District Collector has executed a lease deed in favour of 1<sup>st</sup> petitioner's husband vide registered document No. 2578/1999. After the lease, the 1<sup>st</sup> petitioner's husband was carrying on the sand quarry operation strictly in compliance with the conditions enumerated in the lease agreement dated 06.10.1998.

4. While being so, the 1<sup>st</sup> petitioner's husband received a show cause notice dated 14.01.2000 issued by the 4<sup>th</sup> respondent asking him to submit as to why the action should not be taken against him under Sec.36 (A) (6) of the Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter called as "Rules"). The show cause notice further reveal that the District Collector has stated that during the course of inspection by the Assistant

Director (Mines), Erode on 02.11.1999, he found that one diesel mechanical machine was laid, which was used for removal of sand from S.F.No.285, Bhavani River Poramboke in Orichery Village, which was the leasehold area of 1<sup>st</sup> petitioner's husband. That action has caused great financial loss to the Government and the same is in contravention of Rules. The petitioner has submitted a reply dated 27.01.2000, inter alia disputing the allegation of using machine to remove sand from the leasehold area and the 1<sup>st</sup> petitioner's husband denied the recovery of the machine from the area covered under the lease and also strongly disputed the working condition of the machine recovered from the river poramboke. However, the enquiry was conducted and it was concluded against the petitioner by imposing the penalty of sum of Rs.1,50,930/-. Aggrieved by the said order, the petitioner has filed an appeal before the 2<sup>nd</sup> respondent and the 2<sup>nd</sup> respondent has set aside the order and remanded the matter back to the authority for fresh consideration. Again, the original authority, the 3<sup>rd</sup> respondent herein had passed the very same order. As against which, the 1<sup>st</sup> petitioner's husband has preferred an appeal before the 1<sup>st</sup> respondent/appellate authority and the appellate authority has also confirmed the order passed by the original authority. Against which, the present Writ Petition has been filed by the petitioner.

5. Mr. N.Manokaran, learned counsel appearing for the petitioners would submit that though the 1<sup>st</sup> petitioner's husband disputed the allegations made against him, in short, the respondents official findings itself sufficient to disprove the allegation levelled against the petitioner. The learned counsel has drawn the attention of this Court on the report of Revenue Divisional Officer dated 22.04.2000, in which the Revenue Divisional Officer has categorically stated that the seizure machine was not in working condition and no conveyor belt or bucket was recovered from the leasehold area and that report was not properly considered by both the authorities and the authorities have substituted their own reasons and arrived a conclusion as if the petitioner has committed a violation in contravention of the said Rules, which is unsustainable one.

6. Further, the learned counsel appearing for the petitioners would submit that the entire inspection and recovery was videographed by the authority itself, however, the videograph was not played before the original authority as well as the appellate authority. For not playing the video at the time of inspection would itself vitiate the entire proceedings and if the video is played before the adjudicating authority, the video will reveal the fact whether the machine was in

working condition or not. Accordingly, he prayed for allowing the Writ Petition.

7. Mr.J.Ramesh, learned Addl. Government Pleader appearing for the respondents would submit that the Assistant Director of Geology and Mining has inspected the leasehold area and found that the machinery was used for lifting the sand from the leasehold area illegally and during the surprise inspection, the alleged machine was found in the leasehold area. Hence, original authority as well as the appellate authority have categorically arrived a conclusion that the 1<sup>st</sup> petitioner's husband has illicitly removed the sand from the leasehold area by using sand removing machine. Therefore, his quarry lease had been cancelled and he had been levied penalty of Rs.1,50,930/-. Without valid quarrying lease, the question of issuing transport permit and fascimiled despatch slip to the 1<sup>st</sup> petitioner's husband does not arise. Accordingly, he prayed for dismissal of the Writ Petition.

8. On perusal of records, the undisputed fact is that the 1<sup>st</sup> petitioner's husband was granted lease for quarrying sand on 06.10.1998 for a period of 3 years between 06.10.1998 and 05.10.2001 and the District Collector has also executed a lease deed in favour of 1<sup>st</sup> petitioner's husband vide registered document No. 2578/1999. After the execution of lease agreement, the 1<sup>st</sup> petitioner's husband was carrying on the sand quarry operation strictly in compliance with the conditions enumerated in the lease agreement. Thereafter, the 1<sup>st</sup> petitioner's husband received a show cause notice dated 14.01.2000 issued by the 4<sup>th</sup> respondent asking him to submit as to why the action should not be taken against him under Sec.36 (A) (6) of the Rules. Admittedly, the Assistant director of Geology and Mining has inspected the leasehold area and found that the machine was laid in the river belt and immediately after the recovery of the said river belt, he has initiated proceedings against the petitioner. Thereafter, the District Collector cancelled the quarry license and issued a notice under Sec.36(A) (6) of the Rules calling upon the petitioner to submit his explanation for his illicit sand quarry. However, the petitioner has subjected himself for enquiry and after completion of enquiry, the original authority had passed an order against the 1<sup>st</sup> petitioner's husband as if the 1<sup>st</sup> petitioner's husband has violated the leased condition by lifting the sand quarry with the help of machine, for which, there was a huge loss to the State exchequer.

9. Further, this Court had perused the entire records and found that the original authority as well as appellate authority have arrived a conclusion precisely that the engine of the

machine was removed and kept in the office of the Assistant Director of Geology and Mining. As the engine was not there during Revenue Divisional Officer inspection, he has reported that the machine was not in working condition. However, the original authority as well as appellate authority have disbelieved that the diesel engine was washed away during floods. Further, there is no report from the District Collector as there was a huge flood at the relevant point of time. The original authority as well as the appellate authority have also concluded that during surprise inspection, normally, the workers do not come forward to admit the illegalities, in view of fear towards the quarry owner. Moreover, the inspection officials cannot get statement from workers by force. Further, all the evidence to the charged individual is proved by the inspection officials, thereby, the original authority as well as the appellate authority have arrived a conclusion and imposed a penalty against the petitioner.

10. Based on the District Collector's letter dated nil.12.1999 and the Assistant Director's order dated 28.02.2000, the Revenue Divisional Officer has conducted the adjudication and in the said adjudication, the 1<sup>st</sup> petitioner's husband and other persons have participated along with officials, including the 1<sup>st</sup> petitioner's husband, the Revenue Divisional Officer has inspected the machinery, which was seized by the authority and on inspection, the Revenue Divisional officer has sent a report that the seized machinery was not in working condition and the conveyor belt and bucket was not available along with the machinery. Accordingly, he has sent a report stating that there is no violation under Sec.36(A)(6) of the Rules and recommended for granting sand mining in favour of 1<sup>st</sup> petitioner's husband. But, the said report was not properly considered by the original authority as well as the appellate authority. If the authorities have arrived a conclusion that Revenue Divisional Officer's report is in favour of the 1<sup>st</sup> petitioner's husband, they have to take action against the said Revenue Divisional Officer. Undoubtedly, the report of the Revenue Divisional Officer was not considered by the original authority and the appellate authority and in fact, the recorded videograph was not played in the presence of 1<sup>st</sup> petitioner's husband at the time of adjudication. Even the authorities have also not perused the video, which was recorded at the time of inspection. So, all the above errors forced this Court to take a decision as against the respondents. Accordingly, I am inclined to interfere with the orders passed by the 1<sup>st</sup> respondent in G.O.(D) No.265 dated 04.08.2009 confirming the order dated 02.03.2004 made in Na.Ka.No.9402/MM5/2001 passed by the 2<sup>nd</sup> respondent confirming the order dated 22.05.2001 made in Na.Ka.No.5839/X2/Mines/2000

passed by the 3<sup>rd</sup> respondent and the same are set aside. However, whatever the amount deposited may be refunded in favour of the petitioner within a period of eight weeks without any interest from the date of receipt of the copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Govt.,  
State of Tamil Nadu,  
Industries (MMCI) Department,  
Secretariat,  
Fort St. George,  
Chennai-9.
2. The Commissioner of  
Geology and Mines,  
Guindy,  
Chennai-600 032.
3. The District Collector,  
Erode District,  
Erode-11.
4. The Revenue Divisional Officer,  
Gobichettipalayam,  
Erode District.
5. The Assistant Director,  
Geology and Mines,  
Erode-11,  
Erode District.

+1 cc to M/s. N.Manokaran, Advocate Sr.No. 67827  
+1 cc to The Government Pleader SR.No.68066

AKM/30.10.19/6P- 8C /

W.P.No.5363 of 2010  
and  
M.P.No.2 of 2010