

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO.6381 OF 2019

R.Iyyappan

.. Petitioner

- Vs -

1. The District Collector
Nagapattinam District
District Collectorate
Public Office Road
Nagapattinam 611 003.

2. The Assistant Director
Department of Geology & Mining
Collectorate, Nagapattinam 637 001.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondent to extend the lease period for a further period of 16 months in his proceedings R.C. No.397/(G&M)/2016 dated 28.01.2017 based on the petitioner's representation dated 11.2.2019 and reminder dated 18.2.2019.

For Petitioner : Ms. Dakshayani Reddy for
M/s. S.Sithirai Anandam

For Respondents: Mr. J.Ramesh, AGP

ORDER

It is the case of the petitioner that he has purchased the property in survey Nos.451/3A, 451/2 and 451/7A admeasuring 0.57.5 Hectares at Pillaiperumalnallur, Thimaignanam, Tharangambadi Taluk, Nagapattinam District for valid consideration vide registered Document No.1021/12 on the file of the Sub Registrar, Tharangambadi Taluk, Nagapattinam District. On 23.9.2015, the respondents called for applications from the public for licence to quarry. The petitioner applied for grant of licence under the Tamil Nadu Minor Mineral Concession Act to quarry 'Savudu Earth' for two years. On consideration of the application and also after carrying out necessary inspection,

the petitioner was granted quarrying licence to quarry 'Savudu Earth' in Survey Nos.451/3A, 451/2 and 451/7A admeasuring 0.57.5 Hectares at Pillaiperumalnallur, Thimaignanam, Tharangambadi Taluk, Nagapattinam District for a period of two years from 17.2.2017 to 16.2.2019. According to the petitioner, he obtained all necessary licence and clearance certificates, including environmental clearance from the authorities concerned vide proceedings dated 28.1.2017.

2. As the petitioner was about to commence quarrying operations in terms of the lease agreement entered into between him and the respondents, one Rajendran moved this Court by filing a public interest litigation in W.P. No.13053/2017 questioning the lease granted in favour of the petitioner. Due to the pendency of the petition filed by the said Rajendran, the petitioner was prevented from going ahead with the quarrying operations, though lease was granted in his favour by the respondents. According to the petitioner, he was prevented from quarrying in terms of the lease agreement for a period of 16 months due to the pendency of the public interest litigation.

3. This Hon'ble Court, vide order dated 25.6.18, ultimately dismissed the W.P. No.13053/17, filed by the said Rajendran. In the said circumstances, the petitioner approached the 1st respondent by submitting a representation dated 11.2.2019 seeking extension of lease period for a further period of 16 months when the petitioner was prevented from quarrying in view of the pendency of litigation before this Court. However, the representation submitted by the petitioner was not considered despite several reminders addressed to the authorities concerned. Therefore, left with no other alternative, the petitioner has come before this Court seeking for the issuance of a writ of mandamus directing the respondents to extend the period of lease for a further period of 16 months.

4. In response to the writ petition, a counter affidavit has been filed on behalf of the respondents. In para-10 of the counter affidavit, it is admitted by the respondents that the petitioner was prevented from carrying on the quarrying operations, but, the respondents have disputed the non-operative period as claimed by the petitioner stating that the non-operative period was only for 13 months and not 16 months as claimed by the petitioner. Moreover, in para-8 of the counter affidavit, it is submitted that environmental clearance, originally obtained by the petitioner was valid only till 16.2.2019 and, in the absence of a valid environmental clearance, there was no question of grant further extension.

5. To the said contention, learned counsel appearing for the petitioner submitted that without getting into any factual

controversy whether the non-operative period was 16 months or 13 months, the petitioner would be satisfied if extension is granted for a further period of 13 months as admitted by the respondents in their counter.

6. As regards the objection raised on behalf of the respondents about the expiry of the environmental clearance certificate, learned counsel for the petitioner submits that the petitioner was not at fault for not operating the quarry, but was prevented from quarrying due to the pendency of the petition and, therefore, the clearance, which was originally granted is deemed to have been extended for completing the quarry period as leased out to the petitioner. Therefore, the expiry of the environmental clearance cannot be put against the petitioner since it was beyond his control that he could not continue quarrying for the period in question in view of the pendency of the public interest litigation before this Court.

7. Heard the learned counsel appearing for the petitioner and the learned Addl. Government Pleader appearing for the respondents.

8. This Court, in identical circumstances, in W.P. No.34852/2018 passed an order on 11.3.2019 extending the lease period in respect of the petitioner therein. In fact, learned counsel appearing for the petitioner heavily relied on the abovesaid order passed by this Court, which is on the basis of similar direction issued by the Division Bench of this Court. In the said case, this Court, after due consideration, finally held that the petitioner therein was entitled for extension of lease period for which he was prevented from quarrying, which was not due to any fault of his, but due to extraneous circumstances.

9. This Court is in agreement with the submissions made by the learned counsel for the petitioner. The operative portion of the order passed by this Court in W.P. No.34852/18, more specifically paras 10 to 12, are extracted hereunder for reference :-

"10. Although several objections have been raised contending that no such right is available to the petitioner for seeking extension of lease period and also in view of the provisions of the Forest Act, this Court finds that the said objections, which were raised earlier in respect of the aforementioned proceedings before the learned single Judge and also before the Division

Bench had been dealt with and the said objections were discountenanced by this court. Such being the case, this Court finds that such objections cannot be pressed into service once over in respect of the present case in view of the admitted position that the petitioner was prevented from carrying on with quarrying for a period of four years. As rightly held by the learned single Judge, which has been affirmed by the learned Division Bench of this Court, the non-operative period was purely on account of the action initiated by the respondents and the petitioner was prevented from quarrying the land for about four years. When the petitioner had paid the entire lease amount for quarrying for a period of 10 years, it is quite natural that the petitioner would expect that he would continue quarrying operation for a period of 10 years and preventing the petitioner from quarrying for almost a period of four years would definitely result in causing severe loss and hardship to the petitioner.

11. In the said circumstances, in all fairness, the District Collector or the concerned authority, ought to have granted permission to the petitioner to continue quarry operation for a period of about four years. Unfortunately, the 1st respondent refused to grant permission vide impugned order dated 10.11.2018, which has prompted the petitioner to move this Court seeking the relief as stated supra.

12. For the reasons aforesaid, this Court has no hesitation in following the earlier order passed by this Court in W.P. No.13028/13, as has been affirmed by the Division Bench in W.A. No.918/14, as the petitioner is identically circumstanced to that of the petitioner in W.P. No.13028/13. There cannot be a different treatment to the petitioner on the subject matter of the present writ petition. Therefore, this writ petition is allowed and the impugned order dated 10.11.2018, passed by the 1st respondent/District Collector, Krishnagiri, in Roc. No.126/2008/Mines is hereby set aside and the respondents are directed to grant permission to the petitioner to quarry and transport the stones from the leasehold land bearing S.F. No.329 (Part-4), admeasuring 5.00.0 Hectares in

Halekottah Village, Hosur Taluk, Krishnagiri District for a period of four years from the date of issue of transport permit. The respondents are directed to pass orders within a period of two weeks from the date of receipt of a copy of this order granting necessary permission to the petitioner."

10. It is the admitted case that the petitioner was prevented from quarrying 'Savudu Earth' as per the lease agreement, dated 21.8.2016, entered into between the petitioner and the respondents for a period of 16 months or 13 months, as the case may be, for which the petitioner cannot be faulted with in the circumstances of the case as detailed supra. Moreover, the petitioner had paid the entire lease amount for the period of operation from 17.2.2017 to 16.2.2019 and, therefore, it is unfair and unreasonable on the part of the respondents to deny extension of lease for the non-operative period in favour of the petitioner. Once the State has entered into a lease agreement with the citizen, in all fairness, it has to honour the agreement, which is granted in favour of the citizen and it cannot take any technical objection for denying the benefit of lease to the citizen concerned.

11. In this case, the petitioner having entered into lease agreement validly with the respondents cannot be denied the right to quarry for the non-operative period of 16 months or 13 months as the case may be. The non-operative period has to be compensated by the respondents by extending the lease period. In fact, this Court, has, in extenso, referred to the decision of the Division Bench of this Court in granting a similar direction in favour of the quarry operator, in the said case and, therefore, this Court is of the considered view that the same benefit should also be conferred on the petitioner herein. It is the admitted case that due to the pendency of the petition alone, the petitioner was prevented from proceeding with his quarrying operation and, therefore, in all fairness and reasonableness, the respondents are to pass orders granting extension of lease period by 13 months, as admitted by them in the counter affidavit, in favour of the petitioner.

12. For the reason aforesaid, this Court has no hesitation in allowing the writ petition. In the circumstances of the case, there shall be a direction to the respondents to permit the petitioner to quarry 'Savudu Earth' as per the proceedings in R.C. No.397/(G&M)/2016 dated 28.1.2017 in terms of the lease agreement dated 21.8.2016 for a period of 13 months commencing from 1st May, 2019, without insisting on any other requirement from the petitioner towards clearance certificates.

13. This writ petition is allowed with the aforesaid observations and directions. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

GLN

To

1. The District Collector
Nagapattinam District
District Collectorate, Public Office Road
Nagapattinam 611 003.
2. The Assistant Director
Department of Geology & Mining
Collectorate, Nagapattinam 637 001.

+1cc to Mr.S.Sithirai Anandam, Advocate SR.No.28742

+1cc to Government Pleader SR.No.29766

W.P. NO.6381 OF 2019

KK (CO)
GMY (09/04/2019)

सत्यमेव जयते
WEB COPY