

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.32003 of 2017

and

WMP No.35159 of 2017

P.G. Amirthalingam

Represented by his Power Agent

V.Krishnasamy

... Petitioner

Vs

1. The Government of Tamil Nadu

Rep. by its Secretary,
Industries Department,
Fort St. George,
Chennai - 600 009.

2. The District Collector,
Perambalur District.

3. The Assistant Director,
Department of Geology and mining
Perambalur District.

.... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to permit the petitioner to commence the quarrying operations in the leased land situated in S.F. No.485/1B, 492/5A and 493/1A (Part) of Venbavur village, Veppanthattai Taluk, Perambalur District of an extent of 1.01.0 hectares in terms of G.O. (3D) No.32, dated 13.10.2009 issued by the 1st respondent and the lease deed dated 08.12.2009 executed between the petitioner and the 2nd respondent during the subsistence of lease period and consequently permit the petitioner to pay the seigniorage fee or dead rend whichever is higher in respect of the actual quantity of granite removed after the commencement of quarrying operations at the rate prescribed from time to time in Appendix - II of the Tamil Nadu Minor Mineral Concession Rules 1959.

For Petitioner : Mr.R. Abdul Mubeen

For Respondents : Mr.K.Ravikumar
Additional Government Pleader

ORDER

This Writ petition has been filed for a Mandamus seeking for a direction to the respondents to permit the petitioner to commence quarrying operations in the leased land situated in SF No.485/1B, 492/5A and 493/1A(Part) of Venbavur Village, Veppanthattai Taluk, Perumbalur District of an extent of 1.01.0 hectares in terms of G.O. (3D) No.32, dated 13.10.2009 as per the permit issued by the first respondent under the lease deed, dated 08.12.2009 executed between the petitioner and the 2nd respondent.

2.It is the case of the petitioner that he applied for permission to carry out quarrying operations with the second respondent in terms of G.O. Ms. 3D, dated 13.10.2009 issued by the first respondent. According to the petitioner, the application submitted by the petitioner was accepted by the second respondent and thereafter, a lease deed dated 08.12.2009 was entered into between the petitioner and the second respondent. Under the said lease deed, the petitioner was permitted to quarry black granite in the above mentioned lands for a period of 20 years from 08.12.2009 to 07.12.2029. However, according to the petitioner, the respondents, did not allow the petitioner to commence the quarrying operations, despite a valid lease deed dated 08.12.2009 entered into between the petitioner and the second respondent.

3.A counter affidavit has been filed by all the respondents stating that since the Hon'ble Supreme Court by its order dated 27.02.2012 in I.A. Nos.12-13 of 2011 in Special Leave Petitions (C) Nos.19628-19629 of 2009 in the case of Deepak Kumar etc., versus State of Haryana and others etc. and Government of India, Ministry of Environment and Forests office Memorandum No.L.11011/47/2011-1A.II (M), dated 18.05.2012, the Government of Tamil Nadu have amended the Tamil Nadu Minor Mineral Concession Rules, 1959 in G.O.(Ms) No.79, Industries (MMC.1) Department, dated 06.04.2015 by introduction of rules 41 and 42 and thereby the Mining Plan and Environment Clearance for the quarry lease for minor mineral irrespective of their extent have been made mandatory. According to the respondents as per the amended Rules 41 and 42, environmental clearance is mandatory for quarrying of Minor Minerals irrespective of their extent.

Since, the Rules, 1959 viz., Rules No.41 and 42 were amended pursuant to the directions given by the Hon'ble Supreme Court in the order referred to above it is the case of the respondents that without the environmental clearance, the petitioner cannot commence quarrying operations. According to the respondents only in such circumstances, the petitioner was restrained from commencement of quarrying operations.

4.Heard Mr.Abdul Mubeen, learned counsel for the petitioner and Mr.K.Ravikumar, learned Additional Government Pleader for respondents.

5.The learned counsel for the petitioner fairly submitted before this Court on instructions that even now the petitioner is prepared to get an environmental clearance, as stipulated under the amended Rules 41 and 42 of the Rules, 1959. Infact as per G.O.(3D), 32, dated 13.10.2009 issued by the first respondent, there is a specific condition that the Lessee shall strictly adhere to the statutory and safety requirements and there is also a specific condition that the mining plan is approved without prejudice to any other order or direction from any Court of competent jurisdiction. Therefore, the petitioner has himself accepted that he will abide by all the conditions imposed by any competent authority or Court for the purpose of carrying out quarrying operations.

6.Admittedly, only after signing of the lease deed, dated 08.12.2009 Rules 41 and 42 of the Rules, 1959 were amended pursuant to directions given by the Hon'ble Supreme Court referred to supra. Rules 41 and 42 of the amended Rules, 1959 reads as follows :

[41.Mining plan is a pre-requisite to the grant of lease and submission and approval of Mining Plan for Minor Minerals other than Granite-(1) No lease shall be granted or renewed by the District Collector concerned unless there is a mining plan duly approved by the concerned Assistant Director or Deputy Director of Geology and Mining, as the case may be of the district concerned by way of a proceedings under Rule 6, 7, 8, 8-A, 12, 17, 18, 19 and 38-A of these rules.

(2)The Assistant Director or Deputy Director of Geology and Mining, as the case may be of district is vested with the powers to approve the mining plan for the precise area communicated by the District Collector for the grant of lease for Minor Minerals except granite.

(3)Mining Plan to be prepared by a recognised person:-(i)No mining plan shall be approved unless it

is prepared by a qualified person recognised in this behalf by the State Government or by a qualified person recognised by the Indian Bureau of Mines;

(ii) No person shall be granted recognition for the purpose of clause (1) by the State Government or by the Indian Bureau of Mines in respect of Minor Minerals unless he holds:-

(a) a degree in Mining Engineering or a Post-Graduate Degree in Geology granted by a University established or incorporated by or under a Central Act (or) State Act or any Institution recognised by the University Grants Commission established under Section 4 of the University Grants Commission Act, 1956 (Central Act 3 of 1956) or any any qualification equivalent thereto; and

(b) professional experience of three year of working in a supervisory capacity in the field of Mining or Mineral administration after obtaining a degree or qualification prescribed under clause (a).

(4) Approval and submission of mining plan:- On submission of application for grant of quarry lease under these rules, the District Collector shall take a decision on the grant of lease and communicate the precise area to the applicant if the application is in order in all respects and the area is available for grant of mining lease.

(5) On receipt of the precise area communication from the District Collector, the applicant shall submit the draft mining plan for approval to the Assistant Director or Deputy Director of Geology and Mining as the case may be of the District within a period of ninety days. The draft mining plan submitted by the applicant shall be scrutinised and accorded approval or returned to the applicant for modification and resubmission within a period of ninety days from the date of receipt of the draft mining plan.

(6) If no decision is conveyed to the applicant within the stipulated period, the draft mining plan or the modified draft mining plan furnished by the applicant shall be deemed to have been provisionally approved and such approval shall be subject to the final decision whenever communicated.

(7) While considering the approval of mining plan, the Assistant Director or Deputy Director of Geology and Mining as the case may be of the district concerned has to consider the (i) level of production, (ii) level of mechanisation (iii) type of machinery used in the mining of Minor Mineral, (iv) quantity of diesel consumption, (v) number of trees uprooted due to mining operation, (vi) export and import of the minor mineral and (vii) storage of mine waste or dump etc.

(8) The draft mining plan should contain the following details, namely:-

(i) The plan of the precise area showing the nature and extent of the minor minerals;

(ii) Spot or spots where the excavation is to be done in the first five year plan period and its extent;

(iii) A tentative scheme of mining for the first five years of the lease;

(iv) Details of the geology and lithology of the precise area including mineral reserves of the minor mineral;

(v) The extent of manual mining or mining by the use of machinery and mechanical devices on the precise area. The plan of the precise area showing natural water courses, limits of reserved and other forest areas and density of trees, if any, assessment of impact of mining activity on forest land surface and environment including air and water pollution; details of scheme for restoration of the area by afforestation, land reclamation, use of pollution control devices and of such other measures;

(vi) Annual programme and plan for excavation on the precise area from year to year for five years;

(vii) Environmental clearance for cluster of minor mineral leases from the core area of mining for 5 kilometers radius having area less than 50 hectares must be obtained from the State Environmental Impact Assessment Authority; and

(viii) Any other conditions which are necessary to be imposed by the State Government and the same should be incorporated in the mining plan.

(9) Review of mining plan:- (i) Every mining plan duly approved under these rules shall be valid for a period of five years. The lessee shall review the

mining plan and submit the scheme of mining for the next five years of the lease, if any, for approval wherever mining/quarrying lease is required beyond 5 years.

(ii) If the approved mining plan requires modifications within the lease period, the lessee shall carry out such modifications and re-submit the modified mining plan to the Assistant Director or Deputy Director of Geology and Mining, as the case may be of the district concerned for approval.

(iii) The Assistant Director or Deputy Director of Geology and Mining as the case may be of the district concerned shall, within a period of ninety days from the date of receipt of the modified mining plan, convey his approval or disapproval to the lessee and in case of disapproval, he shall also convey the reasons for disapproving the said modified mining plan.

(iv) If no decision is conveyed on modified mining plan within the period stipulated, it shall be deemed to have been provisionally approved and such approval shall be subject to the final decision whenever communicated.

(10) Quarrying operations to be in accordance with mining plan:-

(i) Every holder of a lease shall carry out the quarrying operation for minor mineral in accordance with the approved mining plan.

(ii) If the mining operations are not carried out in accordance with the mining plan, the District Collector may order suspension of all quarrying operations and permit continuance of quarrying operations, by way of rectification to restore the conditions as may be necessary in the quarry as envisaged under the said mining plan.

(iii) Where quarrying operations for minor minerals other than granites have been undertaken before the commencement of these rules without approved mining plan, such existing holder of minor mineral leases shall submit the draft mining plan to the Assistant Director or Deputy Director of Geology and Mining, as case may be of the district concerned within ¹[one hundred and eighty days] from the date of commencement of these rules.

(iv) The draft mining plan submitted by the applicant shall be scrutinised and accorded approval or returned to the applicant for modification and resubmission within a period of ninety days from the date of receipt of the mining plan.

(v) If no decision is conveyed to the applicant within the stipulated period, the draft mining plan or the modified draft mining plan furnished by the applicant shall be deemed to have been provisionally approved and such approval shall be subject to the final decision whenever communicated.

(vi) When the existing holders of minor mineral leases other than granite failed to submit the approved mining plan within the stipulated period, the District Collector shall cancel the minor mineral leases after giving an opportunity of personal hearing.

42. Submission of environment clearance for the grant of quarry lease for minor minerals including Granite.-(i) The approved mining plan shall be forwarded to the applicant for obtaining environment clearance from the State Level Environment Impact Assessment Authority or the Ministry of Environment and Forests, as the case may be.

(ii) On submission of approved mining plan and environment clearance from the said authorities, the Government or the District Collector, as the case may be, shall grant the quarry lease.

(iii) Where quarrying operations for Minor Minerals including granites have been undertaken before the commencement of these rules without environment clearance, such holder of minor mineral including granite leases shall submit the environment clearance within ¹[six hundred and thirty days] from the date of commencement of these rules.

(iv) When the existing holders of Minor Mineral leases including granite failed, to submit the environment clearance within the stipulated period, the District Collector or the Government, as the case may be shall cancel the lease after giving an opportunity of ¹[Personal hearing].

7.This being the case it has now become mandatory for the petitioner to obtain environmental clearance for the purpose of doing quarrying operations, as per lease deed dated 08.12.2009. As seen from the counter affidavit filed by the respondents, the only objection raised by the respondents is that without the environmental clearance, the petitioner cannot commence quarrying operations. As fairly conceded by the learned counsel for the petitioner on instructions, this Court is inclined to issue a direction to the respondents to permit the petitioner to commence quarrying operations in SF No.485/1B, 492/5A and 493/1A (Part) of Venbavur Village, Veppanthattai Taluk, Perumbalur District of an extent of 1.01.0 hectares, subject to the condition that he obtains environmental clearance from the competent authority within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that only on receipt of the environmental clearance, the respondents shall permit the petitioner to commence the quarrying operations as per lease deed dated 08.12.2009.

8.With the above directions, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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

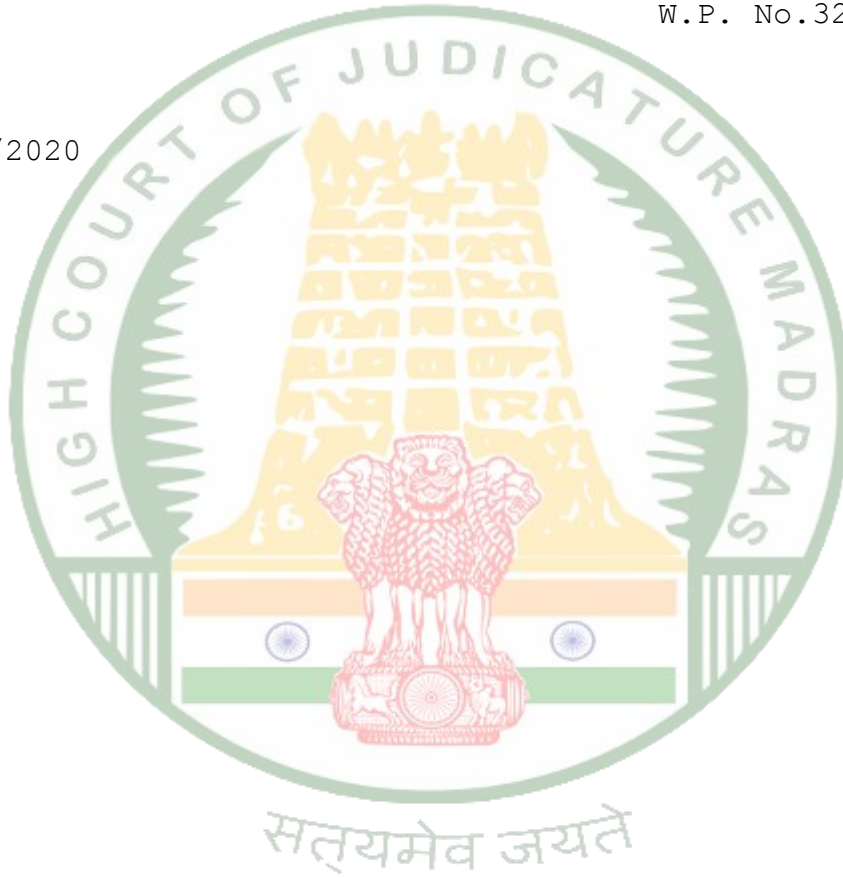
2. The District Collector,
Perambalur District.

3. The Assistant Director,
Department of Geology and mining
Perambalur District.

+1cc to Mr.M.AbdulMubeen, Advocate Sr.100881
+1cc to the Government Pleader Sr.101178

W.P. No.32003 of 2017

mr[co]
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