

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE : 11.03.2019

CORAM
THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 34852 OF 2018
AND
W.M.P. NO. 40403 & 40404 OF 2018

P.Subramani

.. Petitioner

- Vs -

1. The District Collector
Krishnagiri District
Krishnagiri.

2. The Deputy Director of Geology & Mining
Department of Geology & Mining
Collectorate, Krishnagiri.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus calling for the records of the 1st respondent District Collector, Krishnagiri, relating to the order in Ref. Roc. No.126/2008/Mines dated 10.11.2018, signed on 18.11.2018, quash the same and direct the respondents to permit 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.

For Petitioner : Mr. V.Sanjeevi

For Respondents: Mr. J.Ramesh, AGP

ORDER

The petitioner was the successful bidder for the stone quarry in the notified land bearing SF No.329 (Part-4) over an extent of 5.00.0 Hectares in Halekottah Village, Hosur Taluk, Krishnagiri District. The lease was for a period of 10 years from 2008. The auction was conducted on 22.02.2008 and the petitioner having participated in the auction, was declared as the successful bidder. Thereafter, the lease agreement was entered into between the petitioner and the respondents for a period of 10 years commencing from 22.05.2008 to 21.05.2018. Thereafter, the petitioner commenced quarrying operation and started transporting stones after getting transport permits from the Deputy/Assistant Director of Geology and Mining,

Krishnagiri, on payment of seigniorage fee.

2. Whiles, it appears that on 30.1.09 the District Forest Officer, instructed the 1st respondent/District Collector, Krishnagiri to cancel the lease granted in respect of SF No.329 in Halekottah Village, Hosur Taluk, Krishnagiri District, stating that the lands, among other lands, is to be declared as Reserve Forest Lands and action has been taken for issuing notification u/s 4 of the Tamil Nadu Forests Act, 1982. In pursuance of the direction by the authorities concerned, the Deputy Director of Geology and Mining, Krishnagiri, directed the petitioner to stop quarrying operation on 6.5.09. Immediately, the quarry operation was stopped by the petitioner.

3. Subsequently, by communication dated 20.2.13, the District forest Officer clarified that the leasehold area bearing SF No.329 in Halekottah Village, Hosur Taluk, Krishnagiri District, among other lands, were exempted from notified lands for declaring it as a reserved forest and directed that there was no objection to the quarrying operation being continued in the said land. At the relevant point of time, according to the petitioner, two stone quarries one in SF No.328 (Part-4) admeasuring 5.00.0 Hectares in Halekottah Village, Hosur Taluk, Krishnagiri District, belonging to the petitioner and another quarry in SF No.329 (Part-5) admeasuring 5.00.0 Hectares in Halekottah Village, Hosur Taluk, Krishnagiri District belonging to one K.A.Gunasekaran. After receipt of the letter of the District Forest Officer dated 20.2.2013, the 2nd respondent permitted the petitioner to continue quarry operations and started issuing transport permits on 9.5.13. according to the petitioner, the quarry operation was inoperative from 6.5.09 to 8.5.13. According to the petitioner, this inoperative period of about 4 years has to be compensated by permitting the petitioner to continue quarry operation after the expiry of the lease period on 21.5.18, since the stopping of the quarry operations during the said period from 6.5.09 to 8.5.13 was not on account of the fault of the petitioner, but on account of the directives of the authorities concerned. Such permission for operating the quarry for four more years even after the expiry of the lease period becomes more necessary in view of the huge sum having being paid by the petitioner towards one time lease amount for a full period of 10 years, but was prevented from using the land for quarrying for the full period of 10 years.

4. In the above circumstances, the petitioner approached the District Collector to permit him to continue quarrying operation for a period of four years even after the expiry of the lease period on 22.5.18 and requested the District Collector issue necessary transport permits. However, vide order dated 10.11.2018, the 1st respondent rejected the request of the

petitioner which rejection is impugned in this writ petition.

5. One Gunasekaran, who is having a leasehold right for quarrying in the neighbouring lands, had approached this Court by filing W.P. No.13028/13 seeking a direction to the authorities to grant permission to quarry for the non-operative period and this court, by order dated 5.9.2013 held that the petitioner therein was entitled to seek such a direction and directed the respondents therein to grant lease for the non-operative period. Against the said order, the Department had filed writ appeal in W.A. No.918/2014 and the Division Bench of this Court, vide order dated 24.7.2014 dismissed the writ appeal confirming the direction issued by the learned single Judge in respect of the petitioner's neighbour.

6. Mr.Sanjeevi, learned counsel appearing for the petitioner submitted that the petitioner in the present case is identically placed as that of Gunasekaran, the petitioner in W.P. No.13028/13 in favour of whom an order has been passed by the learned single Judge as affirmed by the Division Bench and, therefore, the petitioner herein, being equally placed, is also entitled to similar relief. Learned counsel for the petitioner drew the attention of this Court to the detailed order dated 5.9.13, passed by the learned single Judge in W.P. No.13028/13, wherein, the learned single Judge has observed as under :-

"20. Thus, from the reading of the judgments, stated supra, it is implicit that if for the action of the respondents, quarrying operation is stopped and later on, resumed, for which, the leaseholder is not at fault, directions have been issued to the official respondents to consider the grant of lease, for the non-operative period and it has been made clear that it would not fall under the category of extension of lease, under Rule 8(8)(ii) of the Tamil Nadu Minor Mineral Concession Rules, 1959, as claimed by the respondents. A clear distinction has been made between extension of lease, beyond the lease period and grant of lease, for the non-operative period occasioned, due to the action of the respondents.

21. Reverting back to the case on hand, indisputably, quarrying activity of the petitioner had been stopped by the District Collector from 02.04.2009. Subsequently, vide letter, 20.02.2013, the District Forest Officer, has stated that the abovesaid land has been classified as unassessed waste in Revenue records and that the area over an extent of 10.00.0 Hectares, in which, lease has been granted to quarry rough stone, had been excluded in the

proposal from the area notified in Section 4 of the abovesaid Act. The District Forest Officer, Hosur Forest Division, has also stated that the Forest Department has no objection for quarrying rough stones and hence, the petitioner has been allowed to quarry in the said area, and despatch slips have been issued to the petitioner from 28.02.2013.

22. The petitioner is not at fault. The averments of the District Collector, in the counter affidavit, that the petitioner was allowed to quarry rough stones from 16.09.2008 to 01.04.2009 and that he was also issued transport permits, have not been disputed. As per the lease deed, the petitioner is entitled to quarry for a period of five years from 10.06.2008 to 09.06.2013. Quarrying operation has been suspended from 16.09.2008 to 01.04.2009, by the respondents. Therefore, the petitioner has got a legal right, to insist that he should be allowed to quarry for a full term of five years.

23. The word "right, or in its plural form "rights," is a common term, of broad signification. It is a generic, abstract, and comprehensive term, having a wide scope of meaning in its various legal applications, and it has no satisfactory definition or explanation, except in connection with some concrete conception of thing out of which it grows. It may mean any legal right as the word is normally used, or it may be limited to some specific one of the large class of recognised "rights." It may be a right to do something, to have something, to be something, or even to let alone; it may refer to a right or privilege to use a highway or other public facility, or to utilise one of the great institutions of nature, or, on the other hand, it may refer to personal liberty, security, health, or property.

24. In Wharton's Law Lexicon, the word 'Right' means; 1) is a legally protected interest 2) is an averment of entitlement arising out of legal rules 3) right is an interest recognised and protected by moral or legal rules 4) right, comprehends every right known to the law.

25. In K.J.Aiyar's Judicial Dictionary, the word 'Right' means; 1) a right is a legally protected interest, 2) a right is an interest which is recognised and protected by law.

26. In Stroud's Judicial Dictionary, the word 'Right' means, is where one hath a thing that was taken from another wrongfully, as by disseisin, discontinuance, or putting out, or such like, and the challenge or claime that he hath who should have the thing, is called right.

27. In Mr.'X' Vs. Hospital 'Z' reported in (1998) 8 SCC 296, while considering the right of privacy and the violations of personal rights, the conflict between fundamental right of the parties, at paragraph No.15, the Apex Court explained the word "right" as follows:

"RIGHT" is an interest recognised and protected by moral or legal rules. It is an interest the violation of which would be a legal wrong. Respect for such interest would be a legal duty. That is how Salmond has defined the "Right". In order, therefore, that an interest becomes the subject of a legal right, it has to have not merely legal protection but also legal recognition. The elements of a "LEGAL RIGHT" are that the "right" is vested in a person and is available against a person who is under a corresponding obligation and duty to respect that right and has to act or forbear from acting in a manner so as to prevent the violation of the right. If, therefore, there is a legal right vested in a person, the latter can seek its protection against a person who is bound by a corresponding duty not to violate that right."

28. A prerogative writ, like, a Mandamus cannot be demanded ex debito justitiae, but it can be issued by the court in its discretion, for which, it must be shown that, there is a non discretionary legal duty upon the authority against whom, the relief is sought for and that the person approaching the High Court under Article 226 of the Constitution of India, has to prove that he has a legal right to be enforced against the authority, for the failure of performance of a legal or statutory duty, by the authority against whom, the relief is sought for.

29. On the facts and circumstances of this case and in the light of the decisions, stated supra, the objections of the respondents, placing reliance on Rule 8(8)(ii) of the Tamil Nadu Minor Mineral Concession Rules, 1959, cannot be countenanced. The petitioner is entitled to seek

for a Mandamus, against the respondents, to permit him to carry out quarrying operations, for the non-operative period of three years and ten Months. Hence, there shall be a direction to the respondents to grant lease for the abovesaid period to quarry rough stones.

30. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed."

7. Learned counsel for the petitioner submits that the learned single Judge, has, in extenso, adverted to the various decisions and held that the petitioner therein was entitled to the relief as prayed for. As against the said order, the writ appeal filed in W.A. No.918/14 was dismissed by the learned Division Bench of this Court, wherein the learned Division Bench has held thus :-

"4. We do not find any merit in this appeal. The facts involved in the present case are not in dispute. The respondent was asked to stop the quarrying operation in view of the objection raised by the District Forest Officer, Hosur. Thereafter, the very same District Forest Officer, withdrew his objection. Accordingly, the respondent was permitted to continue the quarrying operation. The respondent only sought for the permission to quarry for the interregnum period during which he was stopped from doing so by the appellants in pursuant to the objection raised by the District Forest Officer, Hosur. Therefore, the respondent was not at fault. The respondent do not have any connection with the District Forest Officer, Hosur.

5. On the contrary, it is the appellants, who made the respondent to stop the quarrying operation, in view of the objection raised by the District Forest Officer, Hosur. The very fact that the objection was withdrawn and thereafter, the respondent was permitted to quarry subsequently itself is a sufficient factor for the respondent to continue for the period during which he was not permitted to do the quarrying operation. Therefore, the learned single Judge by taking into consideration the element of fairness, particularly, when the decision was made by the appellants and the respondent has not committed any error coupled with the fact that he has complied with all the conditions, including the required payment. We do not find any error in the order passed by the leaned single Judge. Accordingly, the writ appeal stands dismissed.

However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed."

8. On behalf of the respondents, Mr. Ramesh, learned Addl. Government Pleader appeared and filed a detailed counter affidavit. Several objections have been raised in the counter affidavit filed on behalf of the respondents.

9. Heard the learned counsel appearing for the petitioner and the learned Addl. Government Pleader appearing for the respondents and perused the materials placed on record as also the decisions relied on by the learned counsel for the petitioner.

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.

13. This writ petition is allowed with the aforesaid observations and directions. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The District Collector
Krishnagiri District
Krishnagiri.
2. The Deputy Director of Geology & Mining
Department of Geology & Mining
Collectorate, Krishnagiri.

+lcc to Mr.V.Sanjeevi, Advocate, S.R.No.22705
+lcc to the Government Pleader, S.R.No.23208

W.P. NO.34852 OF 2018

RK(CO)

rrs 26/03/2019