

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2020

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

C.R.P.(PD)Nos.4076 to 4081 of 2012 &
M.P.Nos.1 to 1 of 2012

The Tamil Nadu Minerals Ltd.,
31, Kamarajar Salai,
Chepauk,
Chennai - 600 005.
Rep. by its Managing Director. .. Petitioner in all C.R.Ps'

Vs.

Guru Bhagavan Granites,
Rep.by its Managing Partner,
S.Rajaa,
Maudari - 625 014.

.. Respondent in C.R.P.(PD)No.4076 of 2012

Murugan Enterprises,
Rep. by its Managing Partner,
K.Murugesan,
Melur - 625 106.

.. Respondent in C.R.P.(PD)No.4077 of 2012

Everest Enterprises,
Rep. by its Managing Partner,
S.Pugazhendhi,
Melur - 625 106.

.. Respondent in C.R.P.(PD)No.4078 of 2012

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Southern Rock Associates,
by its Partner, J.Koteeswaran,
No.25-2/2-G-5-2, Gandhi Nagar,
Melur - 625 106,
Madurai District.

.. Respondent in C.R.P.(PD)No.4079 of 2012

SRM Exports,
by Managing Partner, J.Koteeswaran,
Padmalaya Shopping Complex,
Madurai Main Road,
Melur - 625 106.

.. Respondent in C.R.P.(PD)No.4080 of 2012

Maruthi Exports,
by Managing Partner, M.S.Natarajan,
93/D, Kurichi Main Road,
Kulavanigarpuram,
Palayamkottai,
Tirunelveli - 627 002.

.. Respondent in C.R.P.(PD)No.4081 of 2012

PRAYER in all Civil Revision Petitions: Civil Revision Petitions filed under Article 227 of the Constitution of India to strike off and rejection of the plaint in O.S.Nos.3946, 4093, 4094, 4095, 4096 and 4122 of 2012 on the file of learned VII Assistant City Civil Court, Chennai under Order VII Rule 11 of C.P.C.

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For Petitioner in
all Revisions : Mrs.Narmadha Sampath
Additional Advocate General
Assisted by Ms.A.Srijayanthi
Special Government Pleader

For Respondents in
all Revisions : Mr.T.K.S.Gandhi

COMMON ORDER

These Civil Revision Petitions have been preferred under Article 227 of the Constitution of India, to strike off and rejection of plaints pertaining to the Suits in O.S.Nos.3946, 4093, 4094, 4095, 4096 and 4122 of 2012, pending on the file of learned VII Assistant City Civil Court, Chennai.

2. As the issues involved in these Revisions are one and the same, they are disposed of by this common order. The petitioner herein is the The Tamil Nadu Minerals Ltd [in short "TAMIN"] and the respondent in all Revisions [hereinafter referred as "respondents"] are the contractors for Raising-cum-Sale Agency of Granite Quarry at schedule mentioned fields under TAMIN.

3. Brief facts giving rise to these Revisions would run thus:-

The respondents, as plaintiffs, instituted the suits against the defendant-TAMIN in O.S.Nos.3946, 4093, 4094, 4095, 4096 and 4122 of 2012 on the file of learned VII Assistant City Civil Court, Chennai. The respondents in C.R.P.(PD)Nos.4076 to 4081 of 2012 filed suits for (a) declaration that the Order in RC.No.6756/P3/2012, dated 25.06.2012, 26.06.2012 and 05.07.2012 respectively, passed by the petitioner herein is illegal, unlawful, null and void; (b) to declare that the plaintiffs are entitled to be continued as the Contractor for Raising cum Sale Agency of Granite Quarry at Schedule mentioned fields till end of lease period granted by the State Government in favour of the defendant; (c) and for permanent injunction; and (d) for costs. In all the suits, the case of the respondents are identical, except their name, period of contract and place of contract between the petitioner and the respondents respectively.

4.The case of the respondents/plaintiffs is that they are doing business in quarrying and marketing of Granites and they are the leading granite quarry operators, having scientific quarrying knowledge and equipments and also having skilled labour. The petitioner/defendant granted Raising Cum Sale Agency for raising-cum-selling the Granite Blocks

over the defendant's leasehold Granite Quarries in favour of the respondents/plaintiffs for large scale development, production and purchase of random blocks initially for three years. The respondents / plaintiffs had remitted security deposit with the petitioner/defendant, as mentioned in the respective agreements and there are various conditions under the Agreement. The quarrying should be done exclusively under scientific method using special machinery, hence, the respondents/plaintiffs had to invest huge amount and to engage highly paid skilled labours. Initially, the respondents/plaintiffs took up large scale development by purchasing adjoining lands solely for this purpose. On knowing such huge investment, the petitioner/defendant assured to extend the contract, till entire quarrying operation is completed, by periodically. The respondents/plaintiffs were under the fond hope to get renewal for further terms and based on assurance alone, the respondents/plaintiffs have invested very huge amount in developing the quarry field.

5. It is further alleged in the plaint that the petitioner/defendant took steps to terminate the contract, even prior to expiry of extended contract period and hence, the respondents/plaintiffs submitted representations to extend contract period till expiry of entire lease period. As the petitioner/defendant did not heed to the justified request of the

respondents/plaintiffs and took steps to go for fresh tender, the respondents/plaintiffs filed Writ Petitions for issuance of Writ of Mandamus, to extend the contract till entire lease period. This Court, by a common order dated 20.02.2012, directed the petitioner/defendant to give opportunity to all the writ petitioners, hold enquiry and consider their respective representations according to law. Thereafter, the respondents/plaintiffs made one more representations to the petitioner/defendant and subsequently, the petitioner/defendant conducted an enquiry and passed orders in RC.No.6756/P3/2012, dated 25.06.2012, 26.06.2012 and 05.07.2012 respectively. It is contended in the said order that the respondents/plaintiffs did not achieve the target properly and thereby caused loss to the petitioner/defendant. According to the respondents/plaintiffs, in spite of interim order, the officials of the respondent/Defendant interfered with the plaintiffs/respondents quarrying operations on intermittent occasions whereby the plaintiffs/respondents could not operate the work during such periods. According to the respondents / plaintiffs, they had spent huge amount and took pains to develop the field and the adjacent lands, but the petitioner/defendant contends it is the part of work of contract holding that only due to the same, the investment was done to develop and improve the field.

6. It is further averred in the plaint that the respondents/plaintiffs are ready to carry out the operations in the same lines, and to re-fix the target and the price after negotiation, the petitioner/defendant cannot have impediment to grant the contract in favour of the respondents/plaintiffs till the expiry of the lease period, including renewal of lease. The representations made by the respondents/plaintiffs were rejected by the petitioner/defendant and by way of the above said proceedings, the respondents/plaintiffs were directed to vacate the quarry site within 7 days, by removing all their machinery/tools from the date of said order. Since the petitioner/defendant has decided to terminate the contract and the respondents/plaintiffs were directed to vacate the quarry site by the abovesaid proceedings, without considering the points raised by the respondents/plaintiffs in a proper perspective manner, they instituted the suits for declaration to declare the orders are null and void and for other reliefs. The respondents/plaintiffs also filed Interlocutory Applications in the respective suits under Order 39 Rules 1 and 2, restraining the petitioner/defendant its subordinates, officials, representatives, men or anybody for /on behalf of the defendant from interfering with the plaintiffs operating the Raising-cum-sale of Granites at Schedule mentioned lands till disposal of the suits and the trial Court and the Court below after hearing the plaintiffs/respondents on the I.A. granted ad interim injunction against

the petitioner / defendant herein. Though the petitioner/defendant has not challenged the said interim orders, they filed the present Revisions for rejection of plaints under Order VII Rule 11.

7. Mrs.Narmadha Sampath, learned Additional Advocate General appearing for the petitioner would submit that the contract entered between the petitioner and the respondents are only specific period and the parties shall abide the terms of contract and they are not entitled to go beyond the terms of the contract. The learned Additional Advocate General would further submit that the Pollution Control Board has not given "No Objection Certificate" and unless the Pollution Board is given "No Objection Certificate", the granite operation cannot go on. She would further submit that if the respondents/plaintiffs were put to any loss as alleged by them, they can file a suit for damages and cannot straight away challenge the order of non-consideration of representations made by them in the suit for declaration. It is further contended that the respondents/plaintiffs can very well participate in the new tender and there is no impediment for them to participate in the new tender. It is further submitted that endlessly license cannot be granted, after the termination of the contract and the petitioner is entitled to start with new tender and the petitioner has rightly considered the representation made by all the writ petitioners and rejected

the representations. Further, even in the order itself, the extension of time sought for by the respondents were rejected. The termination is made as per the conditions stipulated in the contract, therefore, the suits are not maintainable and the trial Court without considering the same, granted orders of interim injunctions and therefore, prayed for rejection of plaints. The learned Additional Advocate General in support of her contentions has relied upon the following decisions:-

(i) ***Union of India and others Vs. Tania Construction Private Limited*** [(2011) 5 SCC 697]

(ii) ***Punjab Urban Planning and Development Authority and others Vs. Raghu Nath Gupta and others*** [(2012) 8 SCC 197]

(iii) ***Rajasthan State Industrial Development and Investment Corporation and another Vs. Diamond & Gem Development Corporation Limited and another*** [(2013) 5 SCC 470]

8. The learned counsel for the respondents would submit that the respondents are doing business in quarrying and marketing of granites. The respondents are leading granite quarry operators and they have entered into agreement with the petitioner/defendant. The learned counsel would further submit that they had spent huge money and also engaged skilled labours and therefore, till the quarrying operations are completed, the

extension of time should be given periodically. Based on the assurance given by the petitioner/defendant only, the respondents have invested the huge amount and engaged skilled labours, and without any reason, the petitioner/defendant has terminated and threatened the respondents/plaintiffs to vacate the quarry site. The petitioner/defendant ought to have filed the Applications for rejection of plaints before the trial Court and they cannot straight away file the Revisions before this Court for rejection of plaints under Order VII Rule 11. It is further submitted that if the suits filed by the respondents are abuse of process of law, the High Court can exercise the jurisdiction of Article 227 for rejection of plaint, but in this case there is no abuse of process of law and not against public policy. The representations of the respondents/plaintiffs have not been properly considered and based on assurance given by the petitioner/defendant, the respondents/plaintiffs invested huge money and also purchased nearby properties and also engaged several skilled labours and the matters have to be agitated before the trial Court, and therefore, prays for dismissal of the Revisions.

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9. Heard both sides and perused the materials available on record.

10. It is the submission of the learned Additional Advocate General that the Pollution Control Board has not given any Clearance Certificate and without getting the Clearance Certificate, no quarry operation can be conducted and the respondents/plaintiffs are not entitled to get clearance certificate after completion of period of the contract. However, a careful rereading of the entire materials and also the orders passed by the petitioner/defendant in RC.No.6756/P3/2012, dated 25.06.2012, 26.06.2012 and 05.07.2012 respectively, it could be seen that the petitioner / defendant has not rejected the respondents' representation on the ground of non-issuance of clearance certificate by the Pollution Control Board and prohibited to enter into contract with the respondents/plaintiffs. However, it is duty of the petitioner/defendant to get Certificate from the Pollution Control Board and then only they can enter into the agreement. Whereas, in this case, the rejection is not based on that and therefore, the submission of the learned Additional Advocate General is not sustainable. However, all the respondents have challenged the order passed by the petitioner/defendant before the trial Court and obtained orders of interim injunctions.

11. The Court below has granted ad interim injunction against the petitioner / defendant and notice has been issued in compliance of the

provisions contained under Order 39 Rule 3 of the Code of Civil Procedure. Against the aforesaid order of interim injunction two statutory remedies are available to the petitioner / defendant viz., firstly they can challenge the said order by filing an appeal under Order 43 Rule 1 of the C.P.C. and secondly, the petitioner / defendant herein on receipt of notice may appear in the suit and oppose the ad interim injunction granted by the court. If such objection or application to vacate the ad-interim injunction is filed by the petitioner/defendant opposing the grant of ad interim injunction, then the Court below is bound to decide and dispose of such application within 30 days from the date on which the exparte injunction was granted.

12. Apart from that, the petitioner/defendant has other statutory alternative remedies available under the Code of Civil Procedure. The petitioner / defendant may also move the Court below by filing an application for rejection of the plaint under Order VII Rule 11 of the C.P.C., which reads as under:-

"11.Rejection of plaint:- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the*

valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is property valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supply of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

13. It is, therefore, manifest that the respondents/petitioners herein instead of availing the remedies provided under the Code of Civil Procedure have erroneously invoked the jurisdiction of this Court under [Article 227](#) of the Constitution of India.

14. The supervisory jurisdiction of this Court could be invoked only when the trial Court has committed any error. There is no impediment or embargo for the petitioner/defendant to put forth his contentions before the trial court to strike off the complaints at the threshold. As this Court is relegating the petitioner/defendant to go before the trial Court for the relief, the Court has restrained itself from going into the facts of the case, as any observation made by this Court would have a bearing on the suit, which is pending before the trial court. Of course, the petitioner/defendant is also having an effective remedy in the Code of Civil Procedure itself to have the suit struck off and they could very well avail the said remedy. On the above said reasoning, I am not inclined to grant the relief as prayed for in the revisions.

15. If the petitioner/defendant is of the view that they are having a good case to have the complaint rejected, they would very well place the materials before the trial Court itself and seek for the required relief in their favour by placing the materials on which reliance has been placed before this Court. As observed above, the defendant, who is the petitioner herein instead of appearing in the suit have filed this petition under [Article 227](#) of the Constitution of India seeking a prayer to strike off the complaints. In the light of the above facts, in my considered opinion, the decisions relied

on by the learned Additional Advocate General for the petitioner/defendant do not support the case of the petitioner as they are distinguishable on facts.

16. For the reasons stated in the foregoing paragraphs, this Court is of the view that this is not a fit case for this Court to invoke the jurisdiction of this Court under [Article 227](#) of the Constitution of India. The trial Court is directed to dispose the suits in O.S.Nos.3946, 4093, 4094, 4095, 4096 and 4122 of 2012 on merits in accordance with law, within a period of three months from the date of receipt of a copy of this order, without in any way being influenced by anything said in this order.

17. In fine, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

04.09.2020

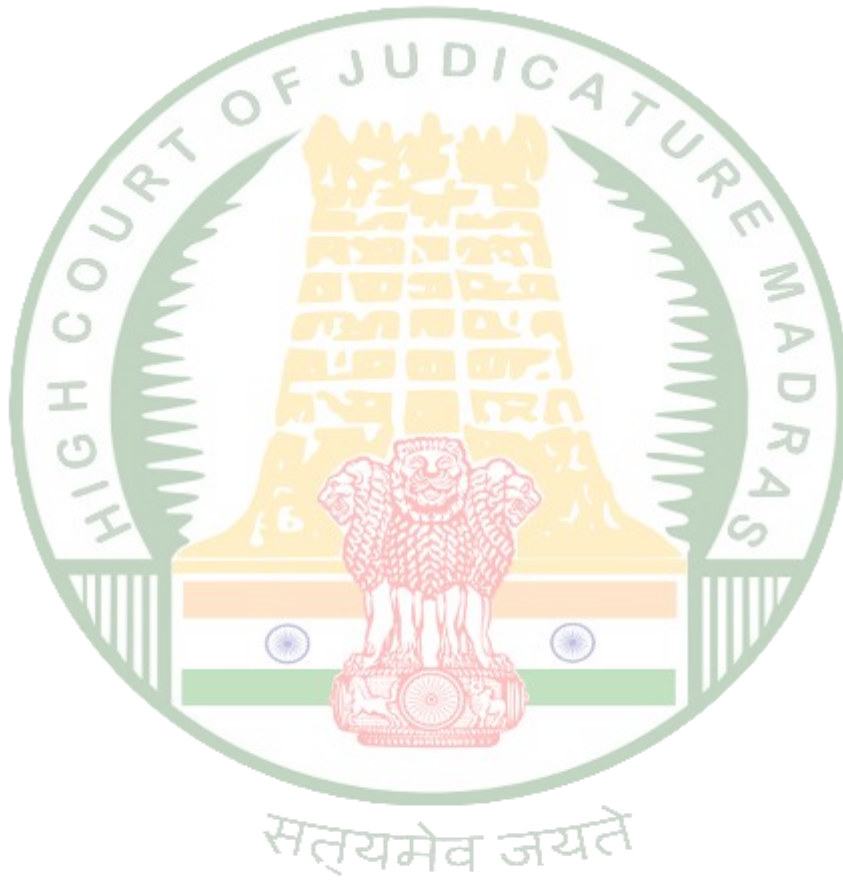
Index : Yes/No
speaking order/non speaking order.

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Note: The Registry is directed to communicate this order forthwith to the learned VII Assistant City Civil Court, Chennai

To

The VII Assistant City Civil Court,
Chennai.

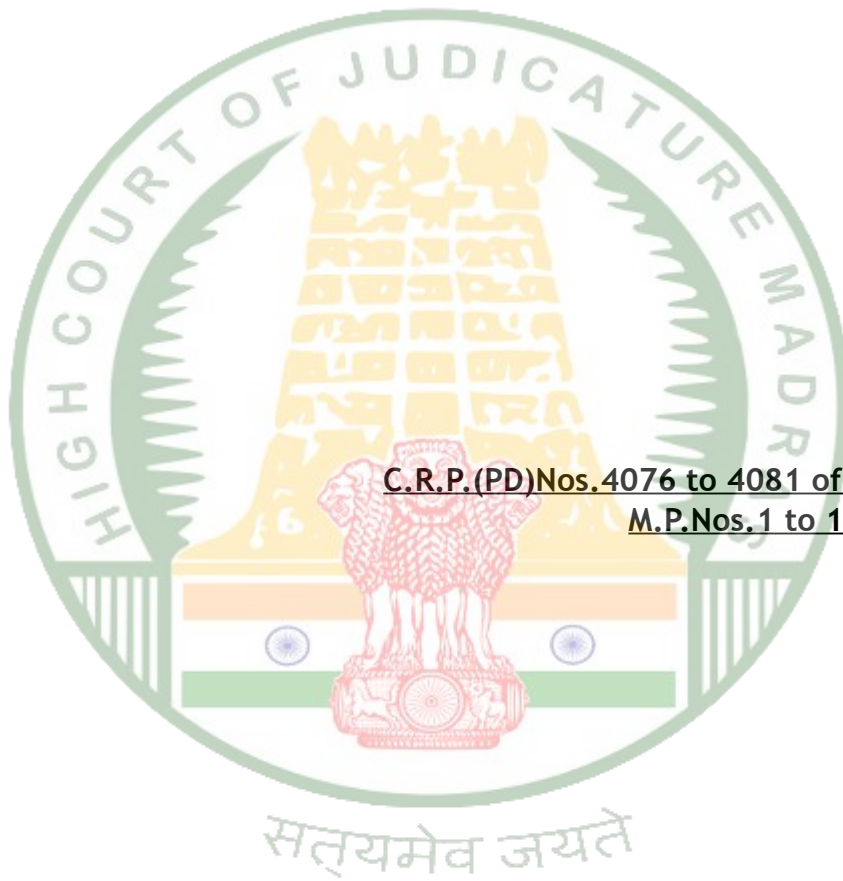


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C.R.P.(PD)Nos.4076 to 4081 of 2012

P. VELMURUGAN, J.

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