

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.37647 of 2015
(heard through VC)

C.Pachaiyappan

... Petitioner

Vs

1. State of Tamil Nadu
rep. by its Secretary to Government,
Industries Department,
Fort St. George,
Chennai-600 009.
2. The Commissioner of Geology & Mining,
Guindy, Chennai-600 032.
3. The Tamil Nadu Minerals Limited,
31, TWAD House, Kamarajar Salai,
Chepauk, Chennai-600 005.
4. The District Collector,
Tiruchirapalli. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the first respondent to consider the representation of the petitioner dated 15.06.2015 and pass order granting the mining lease for mining Quartz and Feldspar in S.F.No.689 (Part) of Kumaravadi Village, Manapparai Taluk, Tiruchirapalli District, for a period of thirty years pursuant to the application of the petitioner dated 20.03.2009.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.Akhil Akbar Ali,
Government Advocate for RR1, 2 & 4
Ms.Sri Jayanthi for R3

O R D E R

This writ petition is heard through Videoconferencing, on account of the COVID-19 pandemic situation.

2. The writ petition has been filed seeking a direction to the first respondent to consider the representation of the petitioner dated 16.05.2015 and pass order granting the mining lease for mining Quartz and Feldspar in S.F.No.689 (Part) of Kumaravadi Village, Manapparai Taluk, Tiruchirapalli District, for a period of thirty years pursuant to his representation dated 20.03.2009.

3. The petitioner had made an application dated 20.03.2009 for grant of mining lease for mining of Quartz and Feldspar for a period of thirty years in respect of Government poramboke land measuring an extent of 5.00.00 hectares in Survey No.689 Part, Kumaravadi Village, Manapparai Taluk, Tiruchirappalli District, along with necessary documents before the fourth respondent. The second respondent by its letter dated 22.03.2005 recommended for grant of mining lease in favour of the third third respondent - The Tamil Nadu Minerals Limited (in short, "TAMIN"). Based on the said recommendation, the second respondent rejected the application of the petitioner and other two persons, who were given the mining applications. TAMIN, which was recommended for grant of mining lease, was requested to furnish approved Mining Plan as per Rule 22(4) of the Mineral Concession Rules, 1960, and Environmental and Forest Clearance obtained from the Ministry of Environment and Forest, New Delhi, as the area applied for mining lease exceeds 5.00.00 hectares.

4. The first respondent, after affording an opportunity to the petitioner by G.O.Ms.No.152, Industries (MMA1) Department, dated 08.08.2012 rejected the application of the other applicants including that of the petitioner and returned the applications to the fourth respondent for necessary action and the third respondent was directed to follow the instructions.

5. The petitioner, aggrieved by the said the order of the first respondent dated 08.08.2012, filed W.P.No.12123 of 2013 before this court seeking to quash the said Government Order and further direct the first respondent to consider the application of the petitioner dated 20.03.2009. While disposing of the said writ petition, this Court had held that as TAMIN has been exclusively given the right of mining operations, the petitioner cannot have any grievance, however, it was further observed that in the event of TAMIN does not carry out the mining operations and in the event of letting the same to third parties, the

petitioner was at liberty to approach the first respondent for the same.

6. According to the petitioner, the TAMIN had not started their mining operations till now and hence, the mining lease may be granted to the petitioner. Though a representation was submitted to the respondent on 15.06.2015, there has been no response. Hence, the instant writ petition has been filed.

7. The third respondent TAMIN has filed a counter in response to the above writ petition stating that the TAMIN, being a leading establishment in the granite field in Tamil Nadu and as well qualified and experienced officials to identify Granite Mining Fields and other major mineral deposits is obtaining lease from the Government of Tamil Nadu as per the relevant rules. While the petitioner had sought for lease only 5.00.00 hectares of land, the third respondent had filed the lease application in respect of Survey No.689 (Part), Kumaravadi Village, Manaparai Taluk, Tiruchirappalli District, over an extent of 24.09.0 hectares and the same was also awarded to the third respondent by G.O.Ms.No.152, dated 08.08.2012 with an instruction to furnish Environmental and Forest Clearance before the execution of the lease deed, as the area for mining lease exceeds five hectares. The third respondent also has initiated action to obtain Environmental Clearance (EC) from the State Level Environmental Impact Assessment Authority (in short, "SEIAA") of Tamil Nadu.

8. It is stated in the counter that the Government had decided to give mining lease to the third respondent to augment the revenue to both the organisation and the Government that too only after giving an opportunity and personal hearing to the petitioner and others. It is also stated that the third respondent also had applied for Environmental and Forest Clearance, which are yet to be received by them.

9. Heard the learned counsel on either side and perused the materials available on record.

10. The learned counsel for the petitioner drew the attention of this court to Rule 27 of the Mineral Concession Rules, 1960. Rule 27 deals with the conditions for granting mineral mining lease. Rule 27(1)(f) is relevant for the purpose of this case and the same is as follows :

"27. Conditions - (1) Every mining lease shall be subject to the following conditions :-

(f) The lessee shall commence mining operations within one year from the date of execution of the lease and shall thereafter conduct such operations in a proper, skillful and workman-like manner."

11. The petitioner submitted that though G.O.Ms.No.152, was issued on 08.08.2012 recommending the third respondent for the purpose of mining, the mining activity has not commenced till today for want of Environmental Clearance from the SEIAA. Rule 22 deals with the grant of mining lease in respect of land in which the minerals vest in the Government. As mentioned earlier, the third respondent was given 24.09.0 hectares for the purpose of mining and the Government Order to that effect was also passed. According to the petitioner, he had applied for 5.00.00 hectares of land, for which, Environmental Clearance is not required, as it is required if the area for mining lease exceeds 5.00.00 hectares of land. When the State of Tamilnadu had decided to give the mining lease to the third respondent only for the purpose of augmenting the revenue to both the organisation and the Government as early as on 08.08.2012, the third respondent has not yet commenced the mining operations. The reason for the delay is the requirement of the Environmental Clearance, whereas, if it is allotted to the petitioner, whose request is for less than 5.00.00 hectares, he does not require to obtain the environmental clearance certificate from the SEIAA.

12. The learned counsel for the petitioner also drew the attention of this Court to Section 4-A(4) of the Mines and Minerals (Development and Regulation) Act, 1957, (in short, "the 1957 Act") which reads as follows :

"4-A. Termination of prospecting licenses or mining leases :-

(4) where the holder of a mining lease fails to undertake mining operations for a period of two years after the date of execution of the lease or, having commenced mining operations, has discontinued the same for a period of two years, the lease shall lapse on the expiry of the period of two years from the date of execution of the lease or, as the case may be, discontinuance of the mining operations."

13. Under G.O.Ms.No.152, dated 08.08.2012, the Government had decided to grant mining lease to the third respondent to an extent of 24.09.0 hectares and the entire mining should be done only directly by the third respondent itself and not by the Raising Agent and Raising Agent and Sale Agent methods, only for the purpose of augmenting the revenue to both the organisation and the Government and directed the third respondent to furnish Environmental and Forest Clearance before the execution of the

lease deed as the area applied for mining lease exceeds 5.00.0 hectares.

14. The third respondent in its counter also has stated that had applied for the environmental clearance from the SEIAA vide letter No.5672/ML1/2001, dated 02.06.2010 and Terms of Reference (ToR) was issued by the SEIAA in letter No.SEAC/F/No.353/M-XX/ToR-70/2010, dated 19.11.2010. The validity of Terms of Reference was up to 18.11.2012. The third respondent has stated further that due to administrative reasons, it could not conduct the public hearing before the validity of the Term of Reference and therefore, submitted the Form-1 and Pre-Feasibility Report to SEIAA on 29.12.2015 to obtain Environmental Clearance as such it is pending before the SEIAA. Only after production of the said certificate, the mining lease will be executed in favour of the third respondent.

15. As referred to under Section 4-A(4) of the 1957 Act, the termination of mining lease will come into effect only when the holder of the mining lease failed to undertake mining operations for a period of two years. Similarly, Rule 27(f) of the Mineral Concession Rules, 1960, also says that the every mining lease is subject to the condition that the lessee shall commence mining operations within one year from the date of execution of the lease and shall thereafter conduct such operations in a proper, skillful and workman-like manner.

16. In the case on hand, admittedly, G.O.Ms.No.152, dated 08.08.2012, recommended the third respondent for the purpose of granting mining lease. However, the grant of lease is only as per the conditions prescribed under the Mineral Concession Rules, 1960, and also on production of the Environmental and Forest Clearance Certificates. The third respondent is yet to obtain the said certificates from the SEIAA. Therefore, the lease is not yet granted in favour of the third respondent. The conditions prescribed under Rule 27(f) of the Mineral Concession Rules, 1960 and under Section 4-A(4) of the 1957 Act will be made applicable only, when the lease is granted and mining operation is not commenced. Therefore, the petitioner cannot allege that the third respondent is not entitled for the grant of lease, in view of the above referred provisions of law. In other words, it is premature for the petitioner to approach this court for cancelling or terminating the licence of the third respondent.

17. The petitioner has filed the instant writ petition emboldened by the order passed in its earlier writ petition in W.P.No.12123 of 2013, wherein, it is stated that in the event TAMIN does not carry out mining operations and in the event of letting the same to third parties, the petitioner is at liberty

to approach the first respondent. As the mining lease itself is yet to be granted in favour of the third respondent TAMIN, the petitioner cannot have any indulgence from this court seeking award of the lease in its favour on the ground that the TAMIN has not started its mining operations.

18. In view of the foregoing discussion, the writ petition has no merits and the same is liable to be dismissed and accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Principal Secretary,
Industries Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
2. The Commissioner of Geology & Mining,
Guindy, Chennai-600 032.
3. The Tamil Nadu Minerals Limited,
31, TWAD House, Kamarajar Salai,
Chepauk, Chennai-600 005.
4. The District Collector,
Tiruchirapalli.

+1cc to Mr.Muthappan, Advocate, sr no.28746

+1cc to M/s.A.Srijayanthi, Advocate, sr no.28572

+1cc to The Government Pleader, sr no.28663

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W.P.No.37647 of 2017

PP(CO)

RMP(15/09/2020)