



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P(MD)No.2117 of 2020

V.Velmurugan

.. Petitioner

Vs.

1.The State of Tamil Nadu
rep.by its Secretary,
Industries Department,
Secretariat,
Chennai - 600 009.

2.The District Collector,
Perambalur District,
Perambalur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the 1st respondent to execute a lease deed in favour of the petitioner for quarrying limestone in S.F.415/1 of Olaipadi (west) Village, Kunnam Taluk, Perambalur District as per the G.O(3D) No.39 dated 10.6.2005.

For Petitioner : Mr.Lakshmi Narayanan
for M/s.Kingsly Solomon J

For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

This writ petition is filed seeking for issuance of a Writ of Mandamus directing the 1st respondent to execute a lease deed in favour of the petitioner for quarrying limestone in S.F.415/1 of Olaipadi (west) Village, Kunnam Taluk, Perambalur District as per G.O(3D) No.39 dated 10.06.2005.

2.The brief facts and circumstances necessitating filing of the present writ petition, are stated hereunder:

(i)One Subramaniam and the petitioner herein had applied for quarrying limestone in S.F.Nos.412/1, 415/1 and 415/3 of Olaipadi (west) Village, Kunnam Taluk, Perambalur District under Section 10 of the Mines and Minerals (Development and Regulation) Act, 1957 [hereinafter referred to as 'MMDR Act, 1957] on 23.02.1996. Apart from these two applications, two other persons viz., K.R.Kandasamy and Yesarex had also filed applications for such grants. The said applications were considered and the Director of Geology and Mining recommended the mining lease applications of the petitioner and the said Subramaniam in S.F.415/1.



(ii)The said applications, along with the reports of the District Collector as well as Director of Geology and Mining were sent to the Government for consideration. The Government, after obtaining necessary opinion, approved the application of the petitioner on certain terms.

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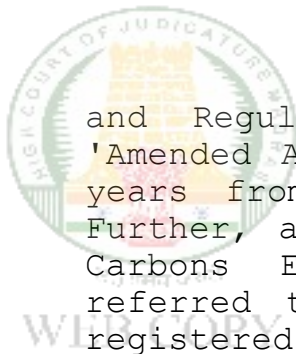
(iii)While the matter stood thus, an injunction suit in O.S.No.324 of 2005 came to be filed by one Pagotharivu, in which, the District Collector, the Revenue Divisional Officer, Perambalur and Tahsildar, Kunnam and the petitioner herein were made as parties. Due to pendency of the said suit, the second respondent has not executed lease deed in favour of the petitioner for quarrying limestone. Thereafter, the suit came to be dismissed on 14.03.2013.

(iv)After obtaining the judgment and decree in the said suit, the petitioner made a representation to the second respondent to execute the lease deed. Even after receipt of such representation, no action was taken. Thereafter, the petitioner sent several representations, but, no fruitful action is forthcoming.

(v)As per the MMDR Act, 1957, the power to regulate the mineral vests with the Central Government and the power to grant prospecting, reconnaissance and mining with respect to minor mineral has been granted to the State Government. The District Collector has only the role of Ministerial act to execute and register the lease deed. According to the petitioner, the mineral, which is sought to be quarried in this petition, is a major mineral and the formalities of getting approval from the Central and State Governments were already completed by the order of the first respondent vide G.O.(3D) No.39, dated 10.06.2005. The Petitioner has also complied with all the requirements as mandated under the Mineral Concession Rules, 1960. When the State and Central Governments have already cleared all the formalities, the Second respondent cannot keep execution of the lease deed pending in favour of the petitioner. Therefore, the petitioner is before this Court seeking for the aforementioned relief.

3.The second respondent filed counter affidavit stating that this writ petition is filed after a lapse of 15 years to enforce the Government Order in G.O.(3D)No.39, dated 10.06.2005 for execution of lease deed, which is not maintainable and the same is liable to be dismissed on laches. As per Rule 31(1) of the Mineral Concession Rules, 1960, the lease deed for mining activities has to be executed within a period of six months from the date of the order for grant of lease.

4.Further it is stated in the counter affidavit that the Central Government brought major amendments in the MMDR Act, 1957 and the amended Act came into effect from 12.01.2015. As per the



and Regulation) Amendment Act, 2015 [hereinafter referred to 'Amended Act, 2015'], lease ought to have been executed within 2 years from the date of commencement of the Amended Act, 2015. Further, as per Rule 8(4) of Mineral (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 [hereinafter referred to as 'MCR Rules'] mining lease shall be executed and registered on or before 11.01.2017, failing which, the right of the applicant under Section 10A(2)(c) of the amended Act, 2015 shall be forfeited. In the case on hand, the petitioner has not made any representation from 12.01.2015 to 11.01.2017. Therefore, the lease deed cannot be executed in view of the limitation as stated above. As the lease deed was not executed and not registered before 11.01.2017 as required under the MCR Rules, the mining areas sought to be granted in the subject area become void. Further, Section 3(i) Clause (ea) of the amended Act, 2015 specifies the notified minerals, such as, limestone, iron ore etc. As per Section 10B of the Amended Act, 2015, grant of mining leases in respect of notified minerals are only through auction. Therefore, the relief sought in the writ petition has become redundant and devoid of any merit.

5. The question that arise for consideration is whether the petitioner is entitled for the execution of lease deed in his favour for quarrying lime stone by the 1st respondent as per G.O(3D) No.39 dated 10.06.2005.

6. The undisputed facts are as follows :

(i) The application for grant of lease of lime stone was made by the petitioner on 23.02.1996.

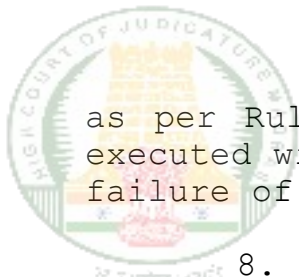
(ii) The 2nd respondent approved the same and forwarded it to the Director of Mines and Geology on 25.03.1996.

(iii) The Director of Mines and Geology approved the grant of lease for the petitioner and forwarded the same to the State Government on 28.06.1996.

(iv) The State Government had forwarded the papers to the Central Government for its approval and Central Government had approved the same and sent it back to the State Government.

(v) The State Government was under the impression that the amendment to Rule 22D of MCR Rules, applies to the petitioner as the lease was to the extent of less than 4 hectares. Therefore it was sent for the opinion of the Government Pleader.

(vi) As the Government Pleader opined that Rule 22D of MCR Rules does not apply, the State Government had taken up the file for consideration and finally lease was granted on 10.06.2005. However before executing the lease deed O.S No. 324/2005 was filed by the one Pagotharivu for the relief of permanent injunction not to execute the lease deed. The said Suit came to be dismissed on 14.03.2012. Thereafter, the petitioner made a representation to execute a lease deed as there was no impediment for the execution of the same.



as per Rule 31(1) of MCR, 1960 the lease deed ought to have been executed within six months from the date of order of granting lease, failure of which, the approval granted will automatically lapse.

8. The learned counsel for the petitioner submitted that the petitioner had complied with all the procedures for obtaining a lease deed. It was the pendency of above said O.S.No.324 of 2005, that was cited for not executing the lease deed which is also admitted by the second respondent. Hence Rule 31(1) cannot be put against the petitioner. Besides, unless it could be shown that the above said delay was attributed to the petitioner, the period provided under Rule 31(1) could not run against the petitioner. Hence, the objection raised by the respondents that after the issuance of grant of mining lease on 10.06.2005 the lease deed was not executed within 6 months is unsustainable.

9. In the meanwhile, there were major amendments in the MMDR Act 1957 by virtue of the MMDR Amendment Act 2015. Section 10 prescribes the procedure for obtaining prospecting licenses and mining leases in respect of land in which the minerals are vested with the Government. Therefore, the question that arise for consideration is whether the introduction of Section 10 is applicable to the case on hand. As stated supra, there were several stages before grant of the lease like getting approval from State Government and Central Government etc. in this regard Section 10A is relevant.

"Section 10A - (1) All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible.

(2) Without prejudice to sub-section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015:-

(a) applications received under section 11A of this Act;

(b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the licensee, as the case may be,-

(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be



prescribed by the Central Government;

(ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(iii) has not become ineligible under the provisions of this Act; and

(iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by the State Government;

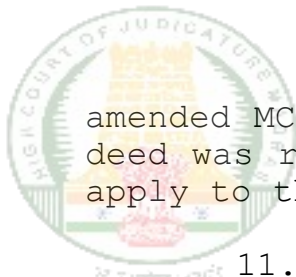
(c) where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfilment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

Insertion of new sections 10A, 10B, and 10C. Rights of existing concession holders and applicants.

National Mineral Exploration Trust.

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this subsection except with the previous approval of the Central Government".

10. A reading of the above provision makes it clear that if an application made for grant of lease has not been processed further, the same shall become ineligible. Whereas, if the application is already processed and supported by a recommendation of the Central Government or if the State Government had given the letter of intent (by whatever name it is called), then the mining lease shall be granted subject to the fulfilment of the conditions of the previous approval or the letter of intent within a period of 2 years from the date of commencement of the said Act. In short, Section 10A is applicable only for those cases where all the stages have not been cleared and the necessary approvals and the lease has not been granted. In the present case, the approvals of the State Government and the Central Government were obtained even as early as in 1998. It was withheld by the State Government due to the amendment to the Rule 22D. However, the lease was approved on 10.06.2005 itself and as the lease has already been granted, Section 10A has no application. As the lease has already been granted, the



amended MCR Rules will not apply. It is only the execution of lease deed was remaining to be done, the objection that section 10A would apply to the said case is rejected.

11. The Learned Counsel for the petitioner urged that the execution of lease deed is only a ministerial act as already the approval of lease deed is granted and placed his reliance on **AIR 1967 SC 964 (M/S. Gujarat Pottery Works Pvt.Ltd. V. B.P.Sood and Others)** as follows:

"7. The granting of a lease is different from the formal execution of the lease deed. The Mineral Concession Rules, 1949, made under s. 5 of the 1948 Act and hereinafter referred to as the 1949 rules, deal with the procedure for the grant of mining leases in respect of land in which the minerals belong to Government, under Chapter IV. Rule 27 deals with applications for mining leases. Rule 28A provides that when a mining lease is granted the formal lease shall be executed within six months of the order sanctioning the lease and if no such lease is executed within the aforesaid period, the order sanctioning the lease shall be deemed to have been revoked. It is really the sanctioning of the lease which amounts to the granting of the lease. Execution of the formal lease is only compliance with the legal requirements to make the grant legally enforceable.

9. Thus the deed of agreement really granted the lease to Jagmal. It was the mere execution of the proper lease which was put off and the proper formal lease was to be executed later.

11. We are, therefore of opinion that the lease in favour of Jagmal was really granted in December 1939 and that the execution of the lease in November 1951 was only to give a formal shape to the lease granted much earlier, The lease in suit therefore is a lease which comes within the expression 'existing mining lease' within r. 2(c) of the 1956 rules".

12. The attention of court was also adverted to the decision in **Bhushan Power and Steel Ltd. V. S.L.Seal** reported in **2017 (2) SCC 125**, wherein, the Hon'ble Supreme Court had an occasion to interpret the Section 11A in the following manner :

"21. Newly inserted provisions of the Amendment Act, 2015 are to be examined and interpreted keeping in view the aforesaid method of allocation of mineral resources through auctioning, that has been introduced by the



Amendment Act, 2015. Amended Section 11 now makes it clear that the mining leases are to be granted by auction. It is for this reason that sub-section (1) of Section 10A mandates that all applications received prior to January 12, 2015 shall become ineligible. Notwithstanding, sub-section (2) thereof carves out exceptions by saving certain categories of applications even filed before the Amendment Act, 2015 came into operation. Three kinds of applications are saved.

First, applications received under Section 11A of the Act. Section 11A, under new avatar is an exception to Section 11 which mandates grant of prospecting license combining lease through auction in respect of minerals, other than notified minerals. Section 11A empowers the Central Government to select certain kinds of companies mentioned in the said Section, through auction by competitive bidding on such terms and conditions, as may be prescribed, for the purpose of granting reconnaissance permit, prospecting license or mining lease in respect of any area containing coal or lignite. Unamended provision was also of similar nature except that the companies which can be selected now for this purpose under the new provision are different from the companies which were mentioned in the old provision. It is for this reason, if applications were received even under unamended Section 11A, they are saved and protected, which means that these applications can be processed under Section 11A of the Act.

Second category of applications, which are kept eligible under the new provision, are those where the reconnaissance, permit or prospecting license had been granted and the permit holder or the licensee, as the case may be, had undertaken reconnaissance operations or prospecting operations. The reason for protecting this class of applicants, it appears, is that such applicants, with hope to get the license, had altered their position by spending lot of money on reconnaissance operations or prospecting operations. This category, therefore, respects the principle of legitimate expectation.



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22. Third category is that category of applicants where the Central Government had already communicated previous approval under Section 5(1) of the Act for grant of mining lease or the State Government had issued Letter of Intent to grant a mining lease before coming into force of the Amendment Act, 2015. Here again, the *raison d'etre* is that certain right had accrued to these applicants inasmuch as all the necessary procedures and formalities were complied with under the unamended provisions and only formal lease deed remained to be executed.

It would, thus, be seen that in all the three cases, some kind of right, in law, came to be vested in these categories of cases which led the Parliament to make such a provision saving those rights, and understandably so"

13. If the said principle enunciated in the aforesaid judgment is applied to the case on hand, undoubtedly, the petitioner is entitled to have the lease deed executed in his favour.

14. As discussed above after the disposal of suit on 14.03.2012, it was intimated by the petitioner to the first respondent on 30.06.2014 followed by remainder 01.07.2014, which was also responded by the State on 23.07.2014. There was a further communication from the first respondent on 25.07.2014. Once again the petitioner had given remainders on 18.05.2017, 13.06.2017 and 04.09.2017. Despite the above remainders, the first respondent did not come forward to execute the lease deed. In view of the fact that Section 10 A does not apply to petitioner, there is no impediment to direct the first respondent to execute the lease deed.

15. Accordingly, this writ petition is allowed and the second respondent is directed to execute the lease deed in favour of the petitioner for quarrying lime stone in S.F.415/1 of Olaipai (West), Kunnam Taluk, Perambalur District as per the G.O(3D) No. 39 dated 10.06.2005, in accordance with law. The above said exercise has to be completed in expedition, however, on or before 30.04.2020. No costs.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)



mj/gg

To

1.The Secretary,
State of Tamil Nadu
Industries Department,
Secretariat,
Chennai - 600 009.

2.The District Collector,
Perambalur District,
Perambalur.

+1 CC to M/s.KINGSLY SOLOMON, Advocate (SR-9499[F] dated 02/03/2020)

+1 CC to M/s.SPL.GP (SR-9641[F] dated 02/03/2020)

W.P (MD) No.2117 of 2020
28.02.2020

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