



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P (MD) .No.4838 of 2019
and W.M.P. (MD) .No.3848 of 2019

G.Jeyaraj

.. Petitioner

Vs.

1.The District Collector,
Theni District.

2.The Assistant Director,
(Geology and Mines) Department,
Theni District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating with the order of the 1st respondent made in Na.Ka.No.156/Kanimam/2017, dated 20.02.2019 and quash the same as it is arbitrary and illegal and in consequence to direct the 1st respondent to renew the petitioner's quarry lease for two years or for 448 days, which are lost due to the fault of the respondents in issuing trip sheet, and further directing to issue dispatch slips, for quarrying the remaining 36821 of units of wind sand from the patta land in S.No.191/2A and S.No.191/2F in Rasingapuram Village in Bodinayakkanur Taluk, Theni District.

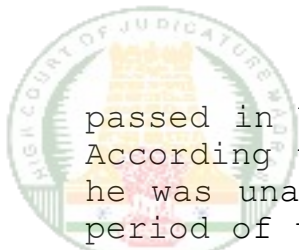
For Petitioner : Mr.R.Surya Narayanan

For Respondents : Mr.C.Ramesh
Special Government Pleader

ORDER

This writ petition has been filed challenging the order dated 20.02.2019 passed by the first respondent rejecting the application for renewal of quarrying licence sought for by the petitioner on the ground that he is not entitled for any renewal, as per Rule 36 (5) (f) of the Tamil Nadu Minor Mineral Concession Rules, 1959.

2.The case of the petitioner is that he has been granted licence to quarry minerals by the first respondent at Rasingapuram Village, Theni District, for the period from 25.01.2016 to 24.01.2019. It is the case of the petitioner that trip sheet was not issued by the respondents and in such circumstances, he had to approach this Court and only after the order dated 24.04.2017,

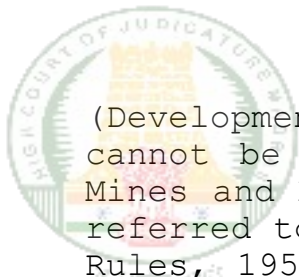


passed in W.P.(MD).No.6915 of 2017, a trip sheet was issued to him. According to the petitioner, due to the non issuance of trip sheet, he was unable to quarry the minerals as per the license for a long period of time. It is also the case of the petitioner that a public interest litigation was filed by an unscrupulous person by name R.P.Rathinam in W.P.(MD).No.12940 of 2017. It is also the case of the petitioner that by order dated 08.10.2018, in the public interest litigation filed by R.P.Rathinam, a Division Bench of this Court disposed of the said writ petition and permitted the petitioner to quarry the minerals as per the license issued to him. It is the case of the petitioner that he was unable to quarry the minerals as per the license granted to him on account of the delayed issuance of trip sheet and on account of the public interest litigation namely W.P.(MD).No.12940 of 2017. Due to the said reason, the petitioner has given a representation on 04.02.2019, seeking for renewal of his quarry license by another period of one year with the first respondent. By the impugned order dated 20.02.2019, the first respondent has rejected the representation of the petitioner dated 04.02.2019, seeking for renewal on the ground that as per Rule 36(5)(f) of Tamil Nadu Minor Mineral Concession Rules, 1959, the petitioner is not entitled for renewal of his lease for a further period. Aggrieved by the same, this writ petition has been filed.

3.A counter affidavit has also been filed by the first respondent, reiterating the contents of the impugned order. The first respondent has also stated in the counter affidavit that as per G.O.Ms.No.191, Industrial Department, dated 08.06.2000, the minimum period for grant of quarrying lease for Earth shall not be less than one year and the maximum period shall not exceed three years. It is also stated that Rule 36(5)(f) mandates that no person is entitled to remove any mineral from any land after the expiry of the period of quarrying permit or quarrying lease granted under the Tamil Nadu Minor Mineral Concession Rules, 1959. According to the first respondent, there is no provision to extend the period of lease granted in terms of Rule 19(1) of the Tamil Nadu Minor Mineral Concession Rules, 1959, beyond three years.

4.Heard Mr.R.Surya Narayanan, learned counsel for the petitioner and Mr.C.Ramesh, learned Special Government Pleader, for the respondents.

5.The learned counsel for the petitioner after referring to the impugned order, would submit that the impugned order has been passed by total non application of mind, as according to him, under Section 20 of the Mines and Minerals (Development and Regulation) Act, 1957, the first respondent is empowered to grant renewal of lease / license. He would submit that the Mines and Minerals (Development and Regulation) Act, 1957, is a Central Legislation and the Tamil Nadu Minor Mineral Concession Rules, 1959, have been



(Development and Regulation) Act, 1957. According to him, the Rules cannot be contradictory to the Provisions of the Act, namely the Mines and Minerals (Development and Regulation) Act, 1957. He also referred to Rule 36(5)(f) of the Tamil Nadu Minor Mineral Concession Rules, 1959 and would submit that it has no applicability for the case on hand. According to him, by total non application of mind, the impugned order has been passed rejecting the request made by the petitioner for renewal of his quarrying license.

6.Per contra, the learned Special Government Pleader, would reiterate the contents of the impugned order and he would submit that the only remedy available to the petitioner, if aggrieved by the impugned order, is to file the statutory appeal under Section 36 - C (2) of the Tamil Nadu Minor Mineral Concession Rules, 1959 and therefore, according to him, this writ petition is not maintainable. He would also reiterate that the Rule 36(5)(f) of the Tamil Nadu Minor Mineral Concession Rules, 1959, does not enable the first respondent to grant renewal of quarrying licence in favour of the petitioner.

7.Section 20 of the Mines and Minerals (Development and Regulation) Act, 1957, reads as follows:

"20.The provisions of this Act and rules made thereunder shall apply in relation to the renewal after the commencement of this Act of any prospecting licence or mining lease granted before such commencement as they apply in relation to the renewal of a prospecting licence or mining lease granted after such commencement."

8.As seen from the aforesaid section, as rightly pointed out by the learned counsel for the petitioner, any license holder can seek for renewal of his quarrying license. As seen from the Mines and Minerals (Development and Regulation) Act, 1957, there is no provision, which prohibits any person from seeking for renewal of quarrying license granted in his favour. In the case on hand, it is an admitted fact that the petitioner was granted mining license for the period from 25.01.2016 to 24.01.2019. It is the case of the petitioner that due to non issuance of trip sheet on time and due to the filing of a public interest litigation, he was unable to exploit his license to the maximum extent possible. He has made a representation on 04.02.2019, seeking for renewal of his license for a further period of one year with the first respondent by stating that due to the delayed issuance of trip sheet and due to the filing of the public interest litigation, he has been unable to exploit his license to the fullest extent possible. The said representation has been rejected by the first respondent under the impugned order dated 20.02.2019, on the ground that the first respondent does not have the power to grant extension as per Rule 36(5)(f) of the Tamil Nadu Minor Mineral Concession Rules, 1959.



9. Rule 36(5)(f) of the Tamil Nadu Minor Mineral Concession Rules, 1959, reads as follows:

"36(5)(f) No person is entitled to remove any mineral from any land after expiry of the period of the quarrying permit or quarrying lease granted under these rules."

As seen from the aforesaid Rule, it deals only with cases of expired license and does not talk about renewal of license. In the case on hand, it is an admitted fact that the petitioner's license has got expired. He has only sought for renewal of his license. But the reasons given under the impugned order by relying upon Rule 36(5)(f) of the Tamil Nadu Minor Mineral Concession Rules, 1959, is baseless as the said Rule does not deal with a case, where the license holder seeks for renewal of his license. It is not in doubt that a license holder, on expiry of his license is not entitled to remove any mineral from any land after the expiry of his license. It is also not the case of the respondent that the petitioner is removing the minerals from his property after the expiry of his license. The petitioner has only sought for renewal of his license for a further period of one year on the ground that due to delay in issuance of trip sheet as well as due to the filing of the public interest litigation, he could not exploit his license to the fullest extent possible. This being the case, the reasons for rejection of the request made by the petitioner for grant of renewal of his license for a further period of one year under the impugned order issued by the first respondent is arbitrary and has been passed by total non application of mind to Section 20 of the Mines and Minerals (Development and Regulation) Act, 1957, which enables the first respondent to grant renewal, whenever a genuine case has been made out for renewal by the license holder.

10. Tamil Nadu Minor Mineral Concession Rules, 1959, has been framed by the State Government, pursuant to the power granted to them under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, reads as follows:

Power of State Governments to make rules in respect of minor minerals

15 (1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

(1A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

a. the person by whom and the manner in which, applications for quarry leases, mining leases or



other mineral concessions may be made and the fees to be paid therefor;

b. the time within which, and the form in which, acknowledgement of the receipt of any such applications may be sent;

c. the matters which may be considered where applications in respect of the same land are received within the same day;

d. the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;

e. the procedure for obtaining quarry leases, mining leases or other mineral concessions;

f. the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;

g. the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;

h. the manner in which the rights or third parties may be protected (whether by way of payment or compensation or otherwise) in case where any such party is prejudicially affected by reason of any prospecting or mining operations;

i. the manner in which the rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reasons of any quarrying or mining operations shall be made in the same area or in any other area selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;

j. the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concessions may be transferred;

k. the construction, maintenance and use of roads, power transmission lines, tramways, railways, aerial ropeways, pipelines and the making of passage for water for mining purposes or any land comprised in a quarry or mining lease or other mineral concessions;

l. the form of registers to be maintained under this Act;

m. the reports and statements to be submitted by



holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements shall be submitted;

n. the period within which and the manner in which and the authority to which applications for revision of any order passed by any authority under these rules may be made, the fees to be paid therefore, and the powers of the revisional authority; and

o. any other matter which is to be, or may be prescribed.

(2) Until rules are made under sub-section (1), any rules made by a State Government regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

(3) The holder of a mining lease or any other mineral concession granted under any rule made under subsection (1) shall pay royalty or dead rent, whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals.

Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years.

11.The Rules cannot over ride the Central Legislation namely, Mines and Minerals (Development and Regulation) Act, 1957. Section 20 of the Mines and Minerals (Development and Regulation) Act, 1957, as observed earlier empowers the first respondent to grant renewal of license, whenever a genuine case has been made out by the existing license holder.

12.As observed earlier, there is also no prohibition under the Mines and Minerals (Development and Regulation) Act, 1957, for grant of extension of lease/license. Therefore, the impugned order dated 20.02.2019, passed by the first respondent is arbitrary and not in accordance with law and has been passed by total non application of mind. Since the impugned order has been passed by total non application of mind, the writ petition is maintainable, despite the fact that there is a statutory appellate remedy provided under the Tamil Nadu Minor Mineral Concession Rules, 1959, against the impugned order.



13.For the forgoing reasons, the impugned order dated 20.02.2019, is hereby quashed and the matter is remanded back to the first respondent for fresh consideration. The first respondent shall consider the petitioner's representation dated 04.02.2019, seeking for renewal of license for a further period of one year and pass final orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

14.With the aforesaid direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Theni District.

2.The Assistant Director,
(Geology and Mines) Department,
Theni District.

+1 CC to M/s.GP (SR-22701[F] dated 24/11/2020)

+1 CC to M/s.R. SURIYANARAYANAN, Advocate (SR-22745[F] dated 24/11/2020)

W.P (MD) .No.4838 of 2019
23.11.2020

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