IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. Nos. 6357 & 6618 of 2012
and
MP.Nos. 1,1,2 & 2 of 2012
and
WMP.No.325 of 2017

The India Cements Limited
Reb.by Vice President (Legal affairs),
Mr.Rajan Ramani
having Corporate Office at
"Coromandel Towers"
No:93, Santhome High Road,
Karpagam Avenue,
R.A.Puram, Chennai - 600 028 ...Petitioner in WP 6357/2012

The India Cements Limited
Reb.by its Sr.President (Operations),
Mr.PL.Subramanian
having Corporate Office at
"Coromandel Towers"
No:93, Santhome High Road,
Karpagam Avenue,
R.A.Puram, Chennai - 600 028 ...Petitioner in WP 6618/2012

Versus

1. State of Tamilnadu
Rep. by its Secretary to Government
Revenue Department
Fort St. George,
Chennai.

2. Commissioner of Geology and Mining
Government of Tamil Nadu
Industrial Estate
Guindy, Chennai.

3. The District Collector
Namakkal District
Namakkal.

4. The Assistant Director
Department of Geology and Mining
Namakkal.

5. The Tahsildar,
Taluk Office,
Tiruchengode Taluk,
Tiruchengode. ... Respondents in WP.No.6357/2012

1. State of Tamilnadu
Rep. by its Secretary to Government
Revenue Department
Fort St. George,
Chennai.

2. The District Collector
Salem District
Salem.

3. The Director,
Department of Geology and Mining,
Chennai. ... Respondents in WP. No. 6618 /2012

WP.No.6357 of 2012: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration declaring that the orders of the third respondent in its proceedings in Na.Ka.No.218/2010/Mines dated 13.8.2011 and demanding compensation for use of Government Lands for the purpose of mining are all illegal and ultra vires the provisions of the Minerals (Development and Regulations) Act, 1957 and the Mineral Concession Rules, 1960.

WP.No.6618 of 2012: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration declaring that the orders of the second respondent in its proceedings in Na.Ka.No.930/2009/Mines dated 29.02.2012 demanding compensation for use of Government Lands for the purpose of mining are all illegal and ultra vires the provisions of the Minerals (Development and Regulations) Act, 1957 and the Mineral Concession Rules, 1960.

For Petitioner : Mr. K. Harishankar
in both the Writ Petitions

For Respondents : Mr. Stalin Abhimanyu
Government Counsel
in both the Writ Petitions

COMMON ORDER

Challenging the proceedings dated 13.08.2011 of the District Collector, Namakkal and an identical proceedings dated 29.02.2012 passed by the District Collector, Salem demanding compensation from the petitioners towards annual revenue loss due to the lease granted in the Government Poromboke lands, these two writ petitions are filed by the petitioners.

2. The Petitioner is a multi-divisional company engaged in cement manufacturing. The Government of Tamil Nadu has granted mining lease in favour of the petitioners in respect of various Government Poromboke Lands situated in Salem as well as Namakkal District. It is claimed that the petitioner is paying surface rent annually for using the land as prescribed under Minor Mineral Concession Rules apart from paying royalty and seniorage fees. While so, the District Collectors of Namakkal as well as Salem have passed the orders, which are impugned in these writ petitions, demanding payment of compensation for the annual revenue loss due to the lease granted in the Government Poromboke lands.

3. The learned counsel for the petitioners would contend that the respondents cannot determine and demand compensation for use of poromboke lands that have been leased out to the petitioner. It is further contended that the respondents have not issued a notice before passing the orders demanding compensation. Even assuming without admitting that the State can claim compensation over the land leased out to the petitioner as per Rule 72 of The Mineral Concession Rules, 1960, it has to be worked out on the basis of the annual net income derived from the cultivation of similar lands for the previous three years as per Rule 72 (2) of the Rules. Such a course has not been adopted by the respondents in this case before demanding the annual loss of revenue. In any event, the sum of Rs.2,00,000/- per acre fixed per annum is without any arithmetic or scientific basis and

therefore, he prayed for setting aside the orders which are impugned in these writ petitions.

4. The learned Government Counsel appearing for the respondents would contend that identical submissions have been raised before this Court in a batch of Writ Petitions in WP No. 4373 of 2000 etc., batch and by order dated 20.11.2019, this Court negatived the plea of the persons similarly placed like the petitioners therein. Therefore, the learned Government Counsel prayed for dismissal of these writ petitions.

5. Heard the learned counsel for the petitioners and the learned Government Counsel for the respondents. The issues involved in this writ petition has already been decided by this Court in the order dated 20.11.2019 passed in WP No. 4373 of 2000 etc., batch. Useful reference can be made to the order dated 20.11.2019, as under:-

> " 24. It is evident that Section 13 of The Act empowers the Central Government may to make rules for regulating the grant of permits, prospecting licences and mining leases in respect of minerals and for purposes connected therewith. Section 13 lays down several procedural aspects with respect to grant of mining lease, the person to whom such lease shall be granted, the period to which licence or lease shall be granted, fixing and collection of fee for such lease, including surface rent, security deposit, fines, other fees or charges etc., These conditions are largely intended to protect the ecology from being damaged and in the event of damage caused by the lessee, they are required to compensate the extent to which such damage has been caused during the mining operation. Under the Act, while Section 13 empowers the Government to impose certain conditions with a view to regulate the mining operation, it also provides certain rights and liabilities to the lessees under Section 24A of the Act. Section 24A deals with the right of the lessee to enter into the mining lease to carry out the mining operations. The proviso to Section 24A specifies that the lessee, in whose favour mining lease has been granted, shall enter into the lease hold premises with the consent of the occupier. If,

under any circumstances the lessee enters into the lease hold premises without the consent of the occupier, such consent shall be obtained by giving a notice in writing about the lease granted in his favour. Sub-section (2) of Section 24 further provides that a mining lease holder shall be liable to pay compensation to the occupier of the surface of the land for any loss or damage which is likely to arise or has arisen as a consequence of mining operation. It is to be emphatically stated here that there is no reference made to, or any classification prescribed, among the lessees of private land or government poromboke lands. The intention of the legislature in requiring the lease holder to pay compensation is for the damage that is caused to the land. It is needless to mention that during mining operation, both in respect of private land as well as patta land, damage will be caused to the leased land as also to the ecology and that is the reason why the legislators have intended to collect annual compensation for the damage. Therefore, for the purpose of collection of annual compensation, there cannot be any classification or rather distinction made between the private land or government poromboke land. Even Rule 72 of The Mineral Concession Rules is silent with respect to the private land held by Pattadhar or the lands which are classified as Poromboke lands. Similarly, Rule 9-A, which deals with dead rent to be paid by the lessee. Rule 9-B relates to constitution of District Mineral Foundation to which the compensation paid by the lessee towards royalty in terms of the Second Schedule of the Act are remitted. Rule 9-C of the relates to establishment of National Mining Exploration Trust to which the royalty paid by the lessee in terms of Second Schedule of the Act is remitted. Even in Rule 9A to 9C, the word 'occupier' is never used or there is no classification of the lands from which compensation is required to be received for the damage caused to the ecology. Therefore, a harmonious interpretation is required which would ensure that the object with which the Act and Rules have been framed are achieved with. It is well settled that a Court of law would interpret a provision which would help in sustaining the validity of law by applying the doctrine of reasonable construction than resorting to an interpretation which would lead to a situation where the provision would be rendered unsustainable and ultravires the construction. Thus, construction of Rule or procedure, which would promote justice has to be preferred as against the one that would result in miscarriage of justice. Therefore, if the Rule of harmonious construction is applied, I am of the view that in the absence of the word 'occupier' occurring in the Act or the Rules, it has to be construed that the compensation payable by the lessee cannot be restricted or limited to the private lands, but it also include the lands owned by the Government.

25. It is also required to be observed that in cases of this nature, where the natural resources are exploited by private individuals for gain, the entire pecuniary benefits arising thereof must be allotted to the State exchequer for being utilised for the welfare and well being of the State through the Trust established under Rule 9-B and 9-C of the Rules.

26. Further, as admitted by the writ petitioners/lessees the term occupier is not mentioned anywhere in the Act and Rules with reference to the holder of a mining lease, whether in respect of patta lands or government poromboke lands. Howeve,r it is vehemently contended by the petitioners that the moment the lease is granted in their favour, they enter into the lease hold lands and become the occupier of those lands, therefore, they need not pay the annual compensation payable to the occupier of the land, because they themselves become the occupier of the land and they need not pay compensation for themselves. This submission made on behalf of the petitioners cannot be countenanced. The payment of annual compensation is intended to compensate the nature and extent of damage caused to the lands to which mining operation is permitted by the Government. The damage that is likely to be caused to the private land as well as the land

classified as Government Poromboke land is certain. Furthermore, in respect of the Government Poromboke land, the Government is the paramount title holder of the lands and therefore, as a owner of such land, the Government is entitled for receipt of compensation for the proportionate damage that the mining operation may result in. Therefore, as per Rule 72 of the Mineral Mineral Concession Rules, the holders of mining lease are liable to remit annual compensation for surface rights in respect of mining leases granted in government poromboke lands.

27. I also wish to observe that it is possible to obtain mining lease even in respect of private land, without the consent of the real owner of such land, however, before carrying out mining operation or entering into the land or occupying the leased hold land, the consent of the land owner is imperative and mandatory as per the proviso to Rule 24-A. On the basis of such consent by the land owner, the State Government will confer mining lease over the private land. The reason being the owner of the land must be aware of the perils and/or damage that may be occasioned to his lands due to the mining operation. The same yardstick has to be applied even in the case of government poromboke lands. It is needless to mention that the damage that may be caused to the land owned by private individual due to mining operation will be the same in case of government poromboke lands. Therefore, apart from collecting royalty, surface rent or other statutory charges, the government, in my opinion, is wholly justified in demanding and levying annual compensation payable by the lessee.

28. It is also to be noted that the lease deed entered into between the lessees and the Government contains certain clause, which includes payment of compensation as contemplated under Rule 72 in respect of Government poromboke lands. When the the lessees have signed the lease deed with their eyes wide open, they are estopped from questioning the contents of the lease deed after it's execution. The lessees have subjected themselves to the conditions incorporated in the lease deed, while so,

they cannot turn around and contend that the conditions incorporated under the lease deed are beyond the statutory provisions of the Act and Rule or it is inconsistent with the Act and Rules. In some cases, admittedly, the lessees have also paid the compensation amount without prejudice to their right to prosecute the present writ petitions. Be that as it may, it is well settled that after entering into the arena, the rules of the games cannot be changed. This principle will apply to the facts of the present case. The petitioners have got the lease deed executed containing the clause for payment of compensation in respect of government poromboke lands. However, after commencing the mining operation, the lessees cannot be heard to contend that such compensation is payable only to the private lands owned by individuals and not in respect of government poromboke lands as they are the occupier of such lands. It is needless to mention that the Government is the paramount title holder of the government poromboke lands and for the damage that may be caused to such lands during the mining operation or damage to the ecology, the Government is always has a vested right to seek to collect such compensation, as an owner and as an occupier from the lessees. Above all, Rule 27 (1) (d) empowers the State to collect surface rent and water rate for the surface areas used for mining operation. Rule 27 (1) (t) specifies the compensation to be paid by the mining leaseholder to the occupier towards the surface of the land. Here again, there is no reference made to the lands of the private individuals and the one classified as Government poromboke lands to which mining lease are granted. In the absence of the same, a purposive interpretation of the Act and Rules must be to hold that the State Government is entitled to levy and collect annual compensation from the lessees towards the damages caused to the surface of the Government poromboke lands.

29. The Revisional Authority, whose order is questioned in some of the writ petitions, has concluded that what is sought to be protected by

framing the Rules is the surface right of a private land holder has to be compensated as such land owner might be deprived of putting such land for any other alternative purpose. I am unable to accept such a conclusion arrived at by the Revisional Authority. When the private land of an individual, which was leased out, will be subjected to damage warranting payment of compensation for depriving the land owner to put it to any other alternative use, the same yardstick has to be equally applied to the lands which are classified as government poromboke lands. Equally, the Government also will be deprived of using the land for any other alternative use due to intense mining of the land. Therefore, reasoning assigned by the revisional authority that by reason of damage caused to the surface of the government poromboke land, no third party will be prejudically affected cannot be sustained. Therefore, the order passed by the Revisional Authority, which are impugned in the writ petitions filed by the State are not sustainable and they are liable to be set aside.

30. In the light of the above, the WP No. 4373 of 2000, WP Nos. 7896, 7897, 7898, 7899, 7900 and 7901 of 2001 as well as WP Nos. 6958 and 6959 of 2002 filed by the State Government are allowed. The other writ petitions filed by the lessees Writ Petition Nos. 6487, 6488, 6489 and 6490 of 2005, Writ Petition Nos. 4442 and 4443 of 2010 and WP (MD) No. 7057 of 2017 are dismissed. No costs. Consequently, all the connected miscellaneous petitions are closed.

6. Therefore, in the light of the order dated 20.11.2019 passed by this Court in W.P. No. 4373 of 2000 etc., batch, the relief sought for in these writ petitions cannot be granted. The writ petitions are dismissed. No costs. Consequently, all the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

dhk/av/rsh

To

1. The Secretary to Government,
   State of Tamilnadu
   Revenue Department
   Fort St. George, Chennai

2. Commissioner of Geology and Mining
   Government of Tamil Nadu
   Industrial Estate
   Guindy, Chennai

3. The District Collector
   Namakkal District
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4. The Assistant Director,
   Department of Geology and Mining,
   Namakkal

5. The Tahsildar,
   Taluk Office,
   Tiruchengode Taluk,
   Tiruchengode

6. The District Collector,
   Salem District,
   Salem.

7. The Director,
   Department of Geology and Mining,
   Chennai.

+2cc to M/s.K.Hari Shankar, Advocate, S.R.No.42251,42249
+1cc to the Government Pleader, S.R.No.42659
+1cc to M/s.K.Hari Shankar, Advocate, S.R.No.42249 (28/10/2021)

WP Nos. 6357 & 6618/2012

PCH(CO)
SB(06/10/2021)