



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.1243 of 2021

and

WMP (MD)No.1059 of 2021

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S.Santhi

... Petitioner

Vs.

- 1.The Member Secretary,
SEIAA, 3rd Floor, Panagal Maligai,
No.1, Jeenis Road, Saidapet,
Chennai - 600 015.
- 2.The Director of Geology and Mines,
Guindy, Chennai - 600 032.
- 3.The District Collector,
Collector Office, Madurai.
- 4.R.Otchammal (died),
Rep.by R.Duraiswamy
S/o.Raju

... Respondents

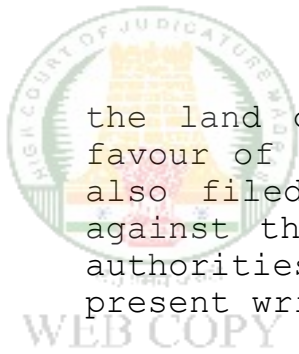
Prayer : Writ petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to issue Environmental Clearance certificate without insisting on fresh consent from the 4th respondent in respect of the (B2 Mining Project) of lime stone mines over an extent of 1.21.5 hectares in S.No.393/8 and 395/1 (part) Uthappakannur Village, Usilampatti Taluk, Madurai District vide proposal of the petitioner in SIA/TN/MIN/6162/2017.

For Petitioner	: Mr.A.Rahul
For Respondents	: Mr.M.Rajarajan, Additional Government Pleader for R1 to R3 Mr.B.Narayanram for R4

ORDER

Heard the learned counsel on either side.

2.The petitioner was granted mining lease by the Government of Tamil Nadu way back in the year 2000. The mining lease that was granted for quarrying lime stone was for a period of twenty years. The petitioner applied to the authorities concerned seeking renewal. The authorities are not processing the petitioner's application since



the land owner has declined to renew the lease deed executed in favour of the petitioner way back on 21.08.1995. The land lord has also filed O.S No.246 of 2020 before the Sub Court, Usilampatti against the petitioner herein seeking certain reliefs. Since the authorities are sitting over the petitioner's application, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner drew my attention to the Rule 22 (3) of Minor Concession Rules, 1960. The said Rule is as under :

"22.Applications for grant of mining leases. -

(1)....

(3)i) Every application for the grant or renewal of a mining lease shall be accompanied by-

(a)a non-refundable fee of two thousand and five hundred rupees;

(d)a valid clearance certificate, in the form prescribed by the State Government on payment of mining dues, such as, royalty or dead rent or surface rent payable under the Act or the rules made thereunder, from that Government or any officer authority authorised by that Government in this behalf:

Provided that in case the applicant is a partnership firm or a private limited company, such certificate shall be furnished by all partners of the partnership firm or, as the case may be, all members of the private limited company:

Provided that where any injunction has been issued by court of law or any other competent authority staying the recovery of any such mining dues or income-tax, non-payment thereof shall not be treated as a disqualification for the purpose of granting or renewing the said mining lease:

Provided that where a person has furnished an affidavit to the satisfaction of the State Government stating that he does not hold and has not held a mining lease, it shall not be necessary for him to produce the said valid clearance certificate:

Provided that a properly sworn affidavit stating that no dues are outstanding shall suffice subject to the condition that the certificate required as above shall be furnished within ninety days of the date of application and the application shall become invalid if the party fails to file the certificate within the said ninety days:

<https://hcservices.ecourts.gov.in/hcservices/> provided further that the grant of clearance



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certificate under sub-clause (d) shall not discharge the holder of such certificate from the liability to pay the mining dues which may subsequently be found to be payable by him under the Act or rules made thereunder;

(f)an affidavit stating that the applicant has—

(i)filed up-to-date income-tax returns;

(ii)paid the income-tax assessed on him; and

(iii)paid the income-tax on the basis of self-assessment as provided in the Income-tax Act, 1961;

(g)an affidavit showing particulars of area mineral-wise in the state, which the applicant or any person jointly with him—

(i)already holds under a mining lease;

(ii)has already applied for but not granted;

(iii)being applied for simultaneously;

(h)a statement in writing that the applicant has, where the land is not owned by him, obtained surface rights over the area or has obtained consent of the owner for starting mining operations:

Provided that no such statement shall be necessary where the land is owned by the Government:

Provided further that no such consent of the owner for starting mining operations in the area or part thereof may be furnished after execution of the lease deed but before entry into the said area:

Provided also that no further consent would be required in the case of renewal where consent has already been obtained during grant of the lease.

(ia)The State Government may, for reasons to be recorded in writing, relax the provisions of sub-clause (d) of clause (i)

(ii)Every application for the grant of a mining lease shall in addition to those specified in clause (i) be accompanied by a deposit of [one thousand rupees] for meeting the preliminary expenses in connection with the grant of the mining lease:

Provided that the applicant shall deposit such further deposit as may be asked for by the State Government, within one month from the date of demand of such deposit."

The learned counsel for the petitioner laid emphasis on the third proviso to Rule 22 (3) (i) (h) which states that no further consent will be required in the case of renewal where consent has already been obtained during grant of the lease. According to him, the petitioner



continues to enjoy the lease as a lessee holding over the lease and he would also point out that even in the original lease deed, there is a provision for automatic renewal for a period of 25 years. The petitioner has also exercised the option.

4.The fourth respondent has filed a detailed counter affidavit and the learned counsel for the fourth respondent took me through the contents set out therein.

5.The stand of the fourth respondent is that the applicant seeking renewal of mining lease from the Government will have to obtain fresh consent from the land owner.

6.I have carefully considered the rival contentions and went through the materials on record. In my view, the third proviso to Rule 22 (3) (i) (h) of the Minor Concession Rules, 1960 provides a complete answer to the contention of the learned counsel for the fourth respondent. Of course, there is still some ambiguity in the statutory position and the same has been highlighted by the Hon'ble Division Bench of the Andhra Pradesh High Court in the decision reported in **AIR 2004 AP 179 (Sri Raja Veligoti Venkata Sesha vs. The Union Of India (Uoi))**. Para 26 of the said decision reads as under :

"26.Rule 24-A of the Rules deals with renewal of mining lease and it provides that an application for the renewal of a mining lease shall be made to the State Government in Form-J, at least twelve months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf. Thus, Form-J is required to be read along with Rule 24-A of the Rules. Forms 'I' and 'J' have been substituted by GSR 86 (E) dated 10-2-1987. Clause (X-A) (a) and (b) of Form-J requires the applicant to state whether he continues to have surface rights over the area of the land for which he requires renewal of the mining lease. If not, has he obtained the consent of the owner and occupier for undertaking mining operations; If so, the consent of the owner and occupier of the land obtained in writing be filed. If these clauses are to be read in isolation ignoring the third proviso to Rule 22 (3) (i) (h) the requirement of obtaining the consent of the owner or occupier for undertaking mining operations is a must. Rule 22 (3) (i) (h) together with all its provisos has been substituted with effect from 20-2-1991 whereas Clause (X-A) (a) and (b) has been inserted by GSR 86 (E) dated 10-2-1987. For whatever reason, the Rule making authority appears to have not made the necessary changes or amendments to the said clauses in Form-J so as to be in conformity with the third proviso to Rule 22 (3) (i) (h), which in clear terms provides that no further consent would be required



in the case of renewal where consent has already been obtained "during grant of the lease". That expression "during grant of the lease" is somewhat inartistic and perhaps in order to avoid absurdity the same may have to be read as "at the time of grant of the lease" instead of "during grant of the lease".

7. The learned counsel for the fourth respondent laid emphasis on the same. However, I must point out that after referring to the statutory ambiguity, the Hon'ble Division Bench of the Andhra Pradesh High Court, went on to hold that in the case of renewal where consent has already been obtained at the time of grant of lease, no further consent would require to be obtained.

8. Respectfully following the said decision, I direct the first respondent to consider the petitioner's request for issuance of environmental clearance certificate without insisting on any further consent from the fourth respondent. Of course, the first respondent will be careful enough to note if all the other formalities stand fulfilled in the instant case. The only relief granted in the writ petition is that a fresh consent from the land owner shall not be insisted upon. All other issues are left open. In the interest of justice, I direct the Sub Judge, Usilampatti to dispose of O.S No.249 of 2020 filed by the fourth respondent against the petitioner on merits and in accordance with law within a period of eight months from the date of receipt of copy of this order. I make it clear that the contentions of both the parties in the said suit are left open.

9. With this direction, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.

Skm

To

1. The Member Secretary,

SEIAA, 3rd Floor, Panagal Maligai,

https://hcsen Madras, 100, Gopuram Road, Saidapet,



Chennai - 600 015.

2.The Director of Geology and Mines,
Guindy, Chennai - 600 032.

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3.The District Collector,
Collector Office, Madurai.

4.The Sub Judge, Usilampatti.

+1 CC to M/s.SPL GP (SR-12966[F] dated 23/03/2021)

+1 CC to M/s.K.R.KRISHNAN, Advocate (SR-12856[F] dated 22/03/2021)

+1 CC to M/s.B.NARAYAN RAM, Advocate (SR-13039[F] dated
23/03/2021)

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GS (05.05.2021) 6P 8C