



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.06.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.9114 of 2021

Thavasumani

... Petitioner

Vs.

1.The District Collector,
Kanyakumari District,
Kanyakumari.

2.The Assistant Director,
Department of Geology and Mining,
Collectorate,
Kanyakumari District.

... Respondent

Prayer :Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1st respondent to permit the petitioner to conduct stone quarrying operation in petitioner's Patta land in S.F.No.165(P), over an extent of 1.47 acres in Kalkulam Village at Kalkulam Taluk, in Kanyakumari District, for a period of 2 years and 7 months (non-operative period) for which the petitioner was not permitted to quarry during the lease period accorded vide the proceedings of the respondent in R.C.No.293/G &M/2014, dated 15.02.2017 and consequently, direct the 2nd respondent to issue transport permit to the petitioner for the said period.

For Petitioner : Mr.K.Samidurai

For Respondents : Mr.Veera.Kathiravan,

Senior Standing Counsel

assisted by Mr.P.ThilakKumar,
Standing Counsel for Tamilnadu
Government

ORDER

This Writ Petition has been filed by the petitioner praying to direct the 1st respondent to permit the petitioner to conduct stone quarrying operation in his Patta land, for non-operative period, for which, the petitioner was not permitted to quarry during the lease period, as per the permission granted and consequently, direct the 2nd respondent to issue transport permit to the petitioner for the said period.



2. The learned counsel appearing for the petitioner would submit that the petitioner was granted permission to conduct stone quarrying operation, by the 1st respondent, for their patta land, bearing S.F.No.165(P), over an extent of 1.47 acres in Kalkulam Village at Kalkulam Taluk, in Kanyakumari District, for a period of 2 years and 7 months (non-operative period) for which the petitioner was not permitted to quarry during the lease period accorded vide the proceedings of the respondent in R.C.No.293/G &M/2014, dated 15.02.2017 and consequently, direct the 2nd respondent to issue transport permit to the petitioner for the said period.

3. The learned counsel for the petitioner would further state that as per the permission granted, the petitioner started quarrying operation in his patta land. Before end of the lease period, the 1st respondent had temporarily stopped all the quarry operations on the ground that the quarry is situated within 10 kilometers to Kanyakumari Wildlife Sanctuary, and therefore, 'No Objection Certificate' from the National Wildlife Board is mandated. Thereafter, the Government of India, Ministry of Environment, Forest and Climate Change, vide Notification SC.3236, dated 22.09.2020, revised the stipulated zone of ECO-Sensitive area as 'Zero to Three Kilometers'. Pursuant to that, the respondents lifted the temporary suspension of the petitioner's quarry operation and permitted to continue the quarry operation.

4. It was further contended by the learned counsel for the petitioner that temporary suspension was lifted after a period of around two years. The suspension order was passed by the 1st respondent, suspending the mining operation of the petitioner only on the ground that clearance from the Standing Committee of the National Board of Wild Life was not obtained by the petitioner. Subsequently, the 1st respondent revoked the earlier order of suspension on the ground that as per the Government of India in Ministry of Environment, Forest and Climate Change Notification SC.3236, dated 22.09.2020, the stipulated zone of ECO-Sensitive area had been revised as Zero to 3 kms. The petitioner was allowed to continue his quarry operation. Therefore, the learned counsel prays that the 1st respondent may be directed to permit the petitioner to conduct stone quarrying operation in his Patta land, for non-operative period, for which, the petitioner was not permitted to quarry during the lease period, as per the permission granted and consequently, direct the 2nd respondent to issue transport permit to the petitioner for the said period.

5. Mr.Veera Kathiravan, learned Senior Standing Counsel assisted by Mr.P.Thilak Kumar, learned Standing Counsel appearing for the respondents would submit that it is true, the 2nd respondent, the Assistant Director, Department of Geology and Mining, Kanyakumari District by Notice, stopped the quarry operations, on the ground that the quarry is situated within 10 kilometers to



Kanyakumari Wildlife Sanctuary and latter, the Government of India, Ministry of Environment, Forest and Climate Change, vide Notification SC.3236, dated 22.09.2020, revised the stipulated zone of ECO-Sensitive area as 'Zero to Three Kilometers". Thereafter, the petitioner was permitted to continue the quarry operation.

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6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. This Court is of the considered view that when the respondents have got power to grant permission to the petitioner to conduct stone quarrying operation over his land, for the non-operative period, on account of suspension of the mining lease granted in favour of the petitioner for no fault on him, rejection of the request made by the petitioner to conduct stone quarrying operation in his land for the non-operative period, is not justifiable and therefore, this Court is of the considered view that the respondents ought to have considered the reasonable request of the petitioner, permitting him to conduct stone quarrying operation, on account of suspension of the mining lease granted in favour of him.

8. In fine, the Writ Petition is allowed and the 1st respondent is directed to permit the petitioner to conduct stone quarrying operation in his Patta land, for non-operative period, for which, the petitioner was not permitted to quarry during the lease period, as per the permission granted. Further, the 2nd respondent is directed to issue transport permit to the petitioner for the said period. No costs.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: (i) 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,
Kanyakumari District,
Kanyakumari.



2.The Assistant Director,
Department of Geology and Mining,
Collectorate,
Kanyakumari District.

+1 CC to M/s.SPL GP (SR-18731[F] dated 03/06/2021)

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-18710[F] dated 03/06/2021)

W.P (MD) No. 9114 of 2021
02.06.2021

AS (10.06.2021) 3P 5C