



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **28.07.2021**

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.11695 of 2021

and

WMP(MD)No.9199 of 2021

WEB COPY

Dhanaraj Mahendran

... Petitioner

Vs.

1.The Principal Secretary to Government,
State of Tamil Nadu,
Industries (MMC.1) Department, Chennai.

2.The Commissioner of Geology and Mining
Guindy, Chennai - 600 032.

3.The District Collector,
Tirunelveli District,
Tirunelveli.

... Respondents

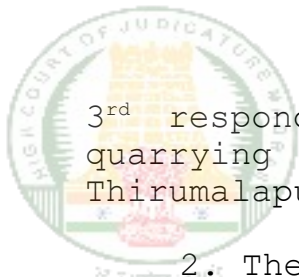
PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned G.O.(D)No.13 Industries (MNC.1) Department, dated 03.02.2020, on the file of the 1st respondent and quash the same and further directing the 3rd respondent to refund the petitioner the unutilized lease amount under Lease deed, dated 27.11.01 between the 3rd respondent and the father of the petitioner in respect of quarrying sand in the lands bearing S.F.No.282, 288/1 and 302/2 Thirumalapuram Village, Sivagiri Taluk, Tirunelveli District.

For Petitioner : Mr.G.Prabhu Rajendran

For Respondents : Mr.P.Thilak Kumar
Govt.Advocate

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned G.O.(D)No.13 Industries (MNC.1) Department, dated 03.02.2020, on the file of the 1st respondent and quash the same and further directing the 3rd respondent to refund the petitioner the unutilized lease amount under Lease deed, dated 27.11.01 between the



3rd respondent and the father of the petitioner in respect of quarrying sand in the lands bearing S.F.No.282, 288/1 and 302/2 Thirumalapuram Village, Sivagiri Taluk, Tirunelveli District.

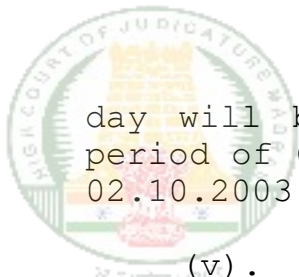
2. The brief facts of the case are as follows:-

(i) The petitioner's father K.Mahendiran in the year 2001 participated in the auction conducted by the 3rd Respondent for the lease of quarrying rights in the sand quarry, situated in S.F.No.282, 288/1 and 302/2 of Thirumalpapuram Village, Sivagiri Taluk, Tirunelveli District, presently Tenkasi District. The petitioner's father was the highest bidder quoting the sum of Rs.1,13,22,000/- and that the quarry lease was granted to him by the proceedings of the 3rd Respondent, dated 20.09.2001. By virtue of the lease deed, dated 27.11.2001, the petitioner's father was granted quarry lease for a period of 3 years and that he commenced the quarry operation immediately thereafter.

(ii) In the year 2002, the Revenue Divisional Officer, Tenkasi, imposed a penalty of Rs.77,115/- to the father of the petitioner by his proceedings, dated 12.11.2002, on the allegation that he removed 159 units of sand in the non lease hold area. Therefore, the petitioner's father filed a Writ Petition in W.P. No.1337 of 2003 before this Court and that the said Writ Petition was dismissed by order dated 09.08.2007, in view of the subsequent development and the availability of alternative remedy.

(iii) In the meanwhile, the Government of Tamil Nadu in G.O.Ms.No.95, Industries, dated 01.10.2003 amended the Tamil Nadu Minor Mineral Concession Rules, 1959, by inserting Rule 38- A, where under all existing leases for quarrying sand in Government land and permissions / leases granted in Royatwari Lands shall cease to be effective and the right to exploit the sand in the State shall vest with the Government to the exclusion of the others. The said Rule further provides that the proportionate lease amount for the unexpired period of lease and the unadjusted seigniorage fee, if any, will be refunded. Several lessees challenged the vires of Rule 38-A, before this Court and this Court, by the Judgment, dated 11.05.2004 reported in **2004 (3) LW 738** upheld the Rule 38-A subject to certain directions contained therein.

(iv) However, the petitioner's father did not challenge the vires of the said Rule and in other words, petitioner's father did not file any Writ Petition questioning the said Rule. Aggrieved against the directions given by this Court insofar as it directs the quarrying operation by the existing lessees, the Government of Tamil Nadu filed a Special Leave Petition, before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court, by Judgment dated 24.03.2006 made in Civil Appeal Nos. 5572-5644 of 2005 disposed of the Civil Appeals and permitted the Petitioners in the Writ Petitions (respondents therein) whose leases were subsisting on 02.10.2003 and whose activities were stopped with effect from that



day will be entitled to carry on the quarrying activities for a period of 6 months or for the actual unexpired period of lease as on 02.10.2003 whichever is less.

(v). The petitioner's father did not challenge the said amended Rule 38-A and he is not a party to the Judgments of this Court and the Hon'ble Supreme Court. After 01.10.2003, the petitioner's father was not allowed to quarry sand from the above said land and as such, his father is *entitled to get refund of the proportionate lease amount for the unexpired period of lease*, as per the said Rule 38-A but however, the Respondents delayed the refund of the said amount under the guise of pendency of the penalty proceedings against his father.

(vi) The petitioner's father made a representation dated 20/07/04 for the refund of the proportionate leases amount in respect of the unexpired lease period of 422 days. However, the 3rd Respondent, by order dated 20.07.2004 unilaterally terminated the lease. Such termination is a huge blow as that the lease came to an end one year earlier on 01.10.2003 by the operation of law. Besides the said order was passed without following the Principles of natural justice.

(vii) The petitioner's father filed a Writ Petition in W.P.(MD) No.1464 of 2004 before this Court and that this Court, by order dated 09.06.2007, directed to prepare an appeal before the Commissioner of Geology and Mining. As such, his father preferred an appeal and that the said appeal was dismissed by the Order dated 07.05.2010. Thereafter, his father preferred a further appeal to the 1st Respondent and pending the said appeal, petitioner's father expired on 13.07.2013, leaving behind petitioner's grandmother, mother, petitioner and the petitioner's brother Kuppuraj, as his legal heirs. Subsequently, the petitioner's grandmother also expired on 18.03.2019. As such, petitioner, his mother and his brother are the only persons, who are entitled to the estate of his father.

3. The learned counsel appearing for the petitioner would submit that after petitioner's father's death, the office of the 1st respondent issued notice in the name of petitioner's father, for attending the enquiry before the 1st respondent on 30.09.2019 and only on receiving the same, petitioner came to know about the above proceedings. Subsequently, the petitioner submitted a representation in person to the 1st Respondent on 03.09.2019, requesting the 1st Respondent for the copies of the proceedings of the said Second Appeal, as the petitioner did not have any copies. However, the 1st Respondent proceeded to hear the Second Appeal and by order vide G.O. (D) No.13 Industries (MNC.1) Department dated 03.02.2020 dismissed the Appeal, without assigning any reason. The Order of the 1st Respondent is illegal, arbitrary and suffers from non application of mind. Hence, the petitioner is before this Court with the aforesaid relief.



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

5. Perusal of the impugned order shows that in order to dispose the second appeal, the appellant, who is the petitioner's father, has been afforded an opportunity of personal hearing on 03.09.2019. However, the communication has been returned to the Government citing that the individual has deceased. Thiru Dhanaraj Mahendran, the present petitioner, who is none other than the son of K.Mahendran, has stated that his father expired on 13.07.2013 and that he is not having any knowledge about the appeal and hence, he has requested to furnish a copy of the second appeal, dated 28.05.2010 filed by his father, relevant documents and Government proceedings.

6. It is not in dispute that the subject matter involving money and therefore, this Court is of the considered opinion that the petitioner is entitled to receive the relevant documents, Government Proceedings and personal hearing so as to pursue the matter. The stand of the respondent that since the petitioner is the legal heir, the Tamil Nadu Minor Mineral Concession Rules, 1959, does not contemplate any provisions to deal with the Legal Representatives, cannot withstand the legal scrutiny and therefore, the impugned order passed by the 1st respondent in G.O.(D)No.13, Industries (MNC.1) Department, dated 03.02.2020, is set aside and the respondents are directed to furnish relevant documents, Government Proceedings, as requested by the petitioner and allowing him to agitate in the appeal, in the manner known to law and the final call may be taken within a period of four months from the date of receipt of a copy of this order.

7. With the above directions, the Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

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Sub Assistant Registrar(CS)

MPK

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 concerned.

<https://hcservicescentre.gov.in/hcservices>



To

1.The Principal Secretary to Government,
State of Tamil Ndu,
Industries (MMC.1) Department, Chennai.

2.The Commissioner of Geology and Mining
Guindy, Chennai - 600 032.

3.The District Collector,
Tirunelveli District,
Tirunelveli.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-
24358[F] dated 29/07/2021)

+1 CC to M/s.SPL GP (SR-24394[F] dated
29/07/2021)

**W.P (MD) No.11695 of 2021
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MGJ(09.08.2021) 5P 6C