



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)Nos.15184, 15213 and 15937 of 2021

&

M.P. (MD)Nos.12115, 12146 and 12874 of 2021

WEB COPY

R.Amsaveni ... Petitioner in
WP (MD) No.15184 of 2021

P.Rajkumar ... Petitioner in
WP (MD) No.15213 of 2021

G.Muniyasami ... Petitioner in
WP (MD) No.15937 of 2021

-Vs-

1.The District Collector,
Madurai District,
Madurai.

2.The Deputy Director,
Geology and Mines Department,
Madurai.

3.State Level Environment Impact Assessment
Authority of Tamil Nadu,
3rd Floor, Panagal Maaligai,
No.1, Jeenis Road, Saidapet,
Chennai - 600 015.

4.The Secretary to Government,
Micro, Small and Medium Enterprises Department,
Government of Tamil Nadu,
Fort St.George,
Chennai.

... Respondents in
all WP(MD) Nos.15184 and 15213/2014

(R4 is impleaded *suo motu* vide Court order,
dated 25.08.2021 in WP(MD)Nos.15184 and 15213
of 2021)

5.The Principal Secretary Msme Department,
Government of Tamilnadu, Secretariat,
Chennai - 600 009.

6.The District Collector,
Madurai District, Madurai.



7.The Deputy Director Geology and Mines Dept.,
Madurai.

8.State Level Environment Impact
Assessment Authority of Tamilnadu,
3rd Floor, Panagal Maaligai, No.1,
Jeenis Road, Saidapet, Chennai - 15.

... Respondents in
WP No.15937/2021

Prayer in W.P.(MD)No.15184 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents from preventing the petitioner from quarrying jelly/rough stones in the land bearing S.No.26 (Part) measuring 2.00.0 hectares situated at Ponnangamangalam Village, Thirumangalam Taluk, Madurai District till the expiry of the license i.e., on 29.12.2021 as per the proceedings of the 1st respondent in Na.Ka.No.1634/2015 Mineral, dated 28.11.2016.

Prayer in W.P.(MD)No.15213 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents from preventing the petitioner from quarrying jelly/rough stones in the land bearing S.No.83 (P-1B) measuring 0.81.0 hectares situated at Kondayanpatti Village, Vadapatti Taluk, Madurai District till the expiry of the license i.e., on 10.05.2022 as per the proceedings of the 1st respondent in Na.Ka.No.1631/2015 Mineral dated 28.11.2016.

Prayer in W.P.(MD)No.15937 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents from preventing the petitioner from quarrying jelly/rough stones in the land bearing S.No.1673 (Part-4) measuring 1.00.0 hectares situated at Katchaikatti Village, Vadipatti Taluk, Madurai District till the expiry of the license i.e., on 29.12.2021 as per the proceedings of the 2nd respondent in Na.Ka.No.1629/2015 Mineral dated 28.11.2016.

In all writ petitions:

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents 1,2 & 4 : Mr.D.Gandhiraj
in WP(MD)No.15184 and Government Advocate
WP(MD)No.15213/2021 and
For Respondents 1 to 3
in WP(MD)No.15213/2021

For Respondent No.3 : Mr.N.Dilipkumar
in WP(MD)No.15184 and Standing Counsel
WP(MD)No.15213/2021 and
For Respondent No.4
in WP(MD)No.15937/2021



COMMON ORDER

Since the issue raised in all these writ petitions is either similar or one and the same, with the consent of the learned counsel appearing for the parties, all the three writ petitions were heard together and have been disposed of by this common order.

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2. Since the facts are similar, for the purpose of disposal of these writ petitions, the facts relates to W.P(MD).No.15184 of 2021 are traversed hereunder.

3. That the petitioner applied for quarry license to quarry the rough stones in the Government land through auction, which was held on 10.12.2015. The petitioner was declared to be the highest bidder for a sum of Rs.66,01,000/- for a total period of five years. He paid the said sum on 10.12.2015 and 16.12.2015. Pursuant to the same, the first respondent, vide his letter, dated 02.01.2016, expressed his intention to grant the license with an instruction to submit the mining plan within three months.

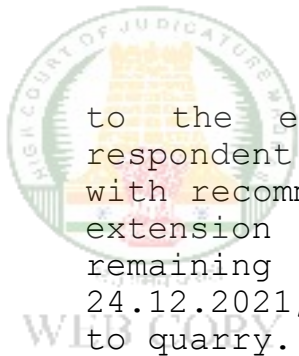
4. The petitioner, after obtaining the mining plan and the Environment Clearance from the third respondent, dated 25.07.2016, as well as the consent letter from the Tamil Nadu Pollution Control Board, dated 06.08.2016, produced those documents to the first respondent.

5. After having receipt of those documents, the quarry license was issued on 28.11.2016 by the first respondent, and pursuant to which a lease agreement has been entered into between the first respondent and the petitioner on 26.12.2016.

6. In the said lease agreement executed between the petitioner and the first respondent, it has been noted that, the Environment Clearance Certificate issued by the third respondent is dated 25.07.2016, wherein, it has been specified that such Environment Clearance Certificate issued shall be valid for five years lease period or for the period of five years from the date of issuance, whichever expires early.

7. Therefore, the Environment Clearance Certificate issued by the third respondent, dated 25.07.2016, would come to an end by 24.07.2021, as the said five years period would be over earlier than the lease period, which would end only on 25.12.2016.

8. Therefore, forecasting this aspect in the order, dated 28.11.2016, that is, order of license issued by the first respondent, he has stated that, since the Environment Clearance Certificate would come to an end by 24.07.2021, for the remaining period, that is, till the expiry of the lease period, the extension of such certificate should be obtained from the third respondent and be produced and for the said purpose, within thirty days prior



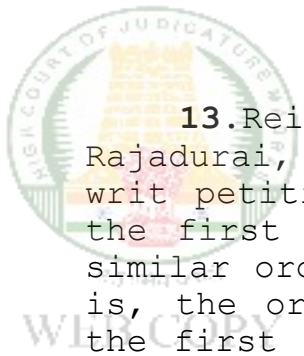
to the expiry, application shall be filed before the first respondent by the petitioner, which, in turn, would be forwarded with recommendation to the third respondent, based on which, if such extension is given by the third respondent, then only, for the remaining period of the lease, that is, beyond 24.07.2021 till 24.12.2021, the petitioner would be entitled to quarry or continue to quarry.

9.This is the agreement between the parties and with the arrangement made with this understanding, the petitioner started quarrying and such quarry work went on for more than, 4 ½ years peacefully.

10.When that being so, due to COVID-19 first wave followed by the second wave, since there has been continuous lock down for several periods, the petitioner could not concentrate on quarry work and quarry work in fact, for certain period not conducted, with the result, before the 30 days period of expiry of the Environment Clearance Certificate, that is, dated 24.07.2021, the necessary application had not been filed by the petitioner to the first respondent, District Collector, therefore, he had no occasion to forward the same with his recommendation to the third respondent for extension of such Environment Clearance.

11.With the result, by expiry of the five years period, that is, on 24.07.2021, the petitioner has been placed in a position not to continue the quarry and therefore, at this juncture, after making the necessary application to this regard, of course, belatedly, not before 30 days of expiry, only on 18.08.2021, since the same has not been forwarded by the first respondent, District Collector, because it was made belatedly, the petitioner, apprehending that the petitioner would be prevented from continue to quarry, has filed this writ petition with aforesaid prayer seeking for a writ of mandamus, forbearing the respondents from preventing the petitioner from quarrying, jelly or rough stones, as per the proceedings of the first respondent, dated 28.11.2016.

12.Similar prayer had been sought for in other two writ petitions also by the respective petitioners, where insofar as W.P. (MD).No.15937 of 2021 is concerned, his quarry lease also expires on 29.12.2021 as that of the first writ petition, however, in W.P(MD). No.15213 of 2021 is concerned, the lease period will be over by 10.05.2022. Those two writ petitioners also respectively made belated applications to the District Collector, first respondent on 31.08.2021 and 18.08.2021 respectively, and accordingly, they also on the same apprehension moved these writ petitions with the respective prayers. That is how all these writ petitions have come up before this Court for consideration.

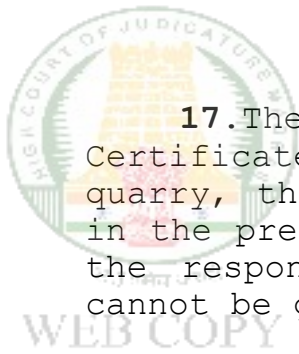


13.Reiterating the aforesaid factual matrix Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner in all these writ petitions, have submitted that, it is in the order passed by the first respondent, District Collector, dated 28.11.2016 or the similar orders passed in respect of other writ petitions also, that is, the order of license, having noted the aforesaid difficulty, the first respondent, District Collector had in fact, indicated in the said order that, before 30 days of the expiry of the Environment Clearance Certificate, application should be made to the first respondent, who, in turn, would forward the same to the third respondent for necessary action. However, due to the severe COVID-19 situation, especially, due to the second wave of COVID-19 situation, all these petitioners could not make such applications before the 30 days of expiry of the certificate issued by the third respondent, however, in the month of August 2021, that is, on 18.08.2021 and 31.08.2021 and 18.08.2021 respectively, all the three writ petitioners have made applications to the first respondent, District Collector. However, those applications seems to have not been forwarded to the third respondent for the obvious reasons that those applications were made belatedly.

14.Therefore, the learned counsel for the petitioners would seek indulgence of this Court to give a direction to the first respondent District Collector to forward the applications with his recommendation to the third respondent, who, on receipt of the same, may be directed to pass orders extending the period of Environment Clearance Certificate till the expiry of the lease period and that kind of action, if they take, within a quickest possible time to be stipulated by this Court, the petitioners would be in a position to continue to have the quarry operation till the expiry of the lease period and therefore, it become incumbent on the part of the petitioners, to seek for this relief instead of the relief sought for originally in these writ petitions, therefore, it can be accordingly moulded, he submitted.

15.Per contra, Mr.D.Ghandiraj, learned Government Advocate appearing for the respondents 1, 2 and newly impleaded respondent No.4, on instructions, would submit that, in the license order itself, the first respondent has made it clear that, before 30 days of expiry of Environment Clearance Certificate, applications should be made to the first respondent. As such applications had been made by the petitioners before 30 days of expiry, those applications would have been forwarded by the first respondent to the third respondent for necessary action, however, admittedly, no such applications had been filed in time.

16.Since they have not filed applications in time and the Environment Clearance Certificate given by the third respondent expired on the five years period, beyond which, normally, the petitioners would not be entitled to continue the quarry operations.



17.Therefore, as of now, without the Environment Clearance Certificate, since the petitioners are not entitled to continue the quarry, they cannot seek for any prohibitory orders, as sought for in the present writ petitions by way of writ of mandamus forbearing the respondents, cannot be sought for and such kind of prayers cannot be granted.

18.The learned Government Advocate would also submit that, though now the learned counsel for the petitioner on behalf of the petitioners have taken a stand that, belatedly applications have been filed only in the month of August, 2021, and those applications can be directed to be forwarded to the third respondent, and accordingly, the relief can be moulded, insofar as the said plea raised by the petitioners is concerned, it is not as a matter of right they can compel the first respondent to forward the applications, admittedly filed belatedly, therefore, whether such prayer itself, even as sought for by the petitioners by way of moulding the relief, can be granted or not is the question to be answered and this aspect can be dealt with by this Court.

19.The learned Government Advocate would further submit that, under Rule 36(5)(f), the petitioner cannot seek for any extension of quarry lease once it expires, but here in the case in hand, all the petitioners, though the lease period has not expressly expired but the effect is that in view of the expiry of Environment Clearance Certificate the period of lease come to an end, therefore, beyond which they have no right to quarry, he contended.

20.The learned Government Advocate also submits that, though it was heavily relied upon by the petitioners' side that G.O.Ms.No.33, Micro, Small and Medium Enterprises(F) Department, dated 01.06.2021 can be taken into aid for the petitioners, where the period of limitation in respect of extending the period of approval of licenses have been extended upto 31.12.2021, the said Government Order would not be made applicable to the case of mine leases and this position has been clarified by the letter issued by the fourth respondent in letter No.8013, dated 21.09.2021 where the fourth respondent has stated the following:

"I am to invite attention to the reference first cited, wherein the Hon'ble Madurai Bench of Madras High Court in its Order dated 25.08.2021 in WP(MD) Nos.15184 and 15213 of 2021 made the orders that "Mr.D.Ghandiraj, learned Government Advocate takes notice for the newly impleaded respondent as he needs two weeks time to get written instructions, as to whether the benefit under G.O.Ms.No.33, MSME Department, dated 01.06.2021 will also be made applicable to the quarry and mining licenses like the petitioner's case and to file such report during the next hearing date"



In this regard, I am to inform that in G.O.(Ms). 33, MS&ME (F) Department, dated 01.06.2021, the Government issued orders exempting the manufacturing, trading and service establishments from going through the process of renewal of 15 categories of statutory licenses required for their functioning. It is clarified that quarrying and mining has not come under "Manufacturing". Hence the request of the petitioner cannot be considered under the above G.O. I therefore request you that the Hon'ble Court may be informed to deny the request of the petitioner."

21.On the other hand, Mr.N.Dilip Kumar, learned Standing Counsel appearing for the third respondent, on instructions, would submit that, insofar as the plea raised by the petitioners that, if the belated applications filed by them to the first respondent are forwarded now by the first respondent with his recommendation to the third respondent, whether that cannot be considered and decided is concerned, if such applications belatedly filed is forwarded by the first respondent, certainly, that would be considered, but a reasonable time of eight weeks is required for the third respondent to decide the same on merits.

22.I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

23.The said plea raised by the petitioner counsel that the import of G.O.Ms.No.33 referred to above and its benefit can be extended to the petitioners also, cannot be countenanced, because of the stand taken by the fourth respondent, which has been made clear through his letter, dated 21.09.2021. Be that as it may, even otherwise, the issue raised in the writ petition can be decided on its own merits for the other reasons.

24.In all the three cases, the respective petitioners have been granted quarry license by the orders passed by the first respondent, District Collector, some time in 2016. The lease period is for five years. As per the procedure in vogue, after giving the license the license holder has to fulfill certain conditions like the production of Environment Clearance Certificate obtained from the third respondent and other aspects, then only, after considering the same, a lease agreement would be executed by the first respondent District Collector, accordingly, lease agreements had been executed only on 29.12.2016, 29.12.2016 and 10.05.2017 respectively, accordingly, the five years lease period would come to an end on 29.12.2021, 29.12.2021 and 10.05.2022 respectively.

25.However, all these petitioners obtained Environment Clearance Certificate from the third respondent at an early date



like the one that we mentioned in the first case where such a clearance was given on 21.07.2016. Therefore, the five years period of Environment Clearance Certificate would come to an end on 24.07.2021 beyond which, there is no Environment Clearance Certificate validly available with the petitioners and therefore for the remaining period, they should take the extension from the third respondent.

26.Anticipating this precarious situation, the first respondent himself has indicated in the license orders issued as referred to above that, before 30 days of expiry of Environment Clearance Certificate, the respective petitioners should make an application to the first respondent.

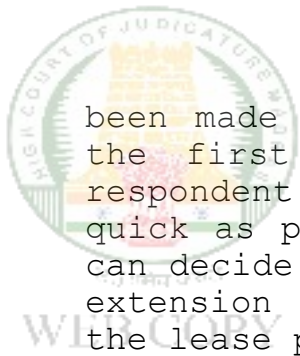
27.In all these cases, before 30 days of expiry of Environment Clearance Certificate admittedly none of the petitioners have made applications to the first respondent, however, belatedly they made applications on 18.08.2021, 31.08.2021 and 18.08.2021 respectively, therefore, according to the learned Government Advocate appearing for the respondents 1, 2 and 4, the first respondent is not under obligation to forward the application with his recommendation to the third respondent.

28.Unless and until, the application is routed through the first respondent, the third respondent would not consider it and decide the same as to whether the extension as sought for has to be granted or not.

29.Here in the case in hand, instead of filing application some time in June, 2021, the applications have been filed to the first respondent in August, 2021, where there has been a delay of about two months or of 60 days. Such a delay is caused due to the unforeseen reason of second wave of COVID-19 situation. Therefore, this kind of unforeseen reason cannot be expected by the petitioners or anyone, and therefore, during the second wave of COVID-19 period, it cannot be expected that, all normal works would have been undertaken within the time limit.

30.In this context, this Court wants to remind that, the Courts have taken the view that, insofar as the limitation is concerned, which expires during the lock down period or COVID-19 first wave or second wave period, all such limitation periods have been extended, and in this regard judicial orders have been passed uniformly by the highest Court of the land as well as the various High Courts including this Court.

31.When that being so, for filing an application before 30 days of expiry of Environment Clearance Certificate, a strict rule of limitation cannot be expected to be implemented in view of the COVID-19 situation, therefore, the present applications now have



been made by the petitioners in August, 2021, as stated above, to the first respondent can very well be forwarded by the first respondent with his recommendation to the the third respondent, as quick as possible and on receipt of the same, the third respondent can decide with regard to the plea of the respective petitioners for extension of Environment Clearance Certificate till the expiry of the lease period, which has been quoted hereinabove.

32.In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

"that there shall be a direction to the first respondent, District Collector to forward the applications submitted by the respective petitioners on 18.08.2021, 31.08.2021 and 18.08.2021, with his recommendation to the third respondent within a period of one week from the date of receipt of a copy of this order and on receipt of the same, the third respondent shall examine the same and pass orders, with regard to the extension of the Environment Clearance Certificate already been issued in this regard to the petitioners, till the expiry of the respective lease period, within a period of two weeks thereafter and communicate the orders forthwith to the petitioners so that the remaining period of the lease can be utilised effectively by the petitioners."

33.It is made clear in this regard that, the shortest time schedule has been given by this Court, because, if this time schedule is not strictly adhered to, even thereafter if any positive orders comes from the third respondent extending the Environment Clearance Certificate that will be a case of fact accompli as by the time, the lease period will be over therefore, the strict time compliance of shortest possible time schedule has been indicated by this Court in this order which should be strictly complied with by the respondents.

34.With all these directions, these writ petitions are disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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



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.

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To

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Deputy Director,
Geology and Mines Department,
Madurai.
- 3.State Level Environment Impact Assessment
Authority of Tamil Nadu,
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Fort St.George,
Chennai.
- 5.The Principal Secretary Msme Department,
Government of Tamilnadu, Secretariat,
Chennai - 600 009.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-30248[F]
dated 24/09/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-30407[F] dated 27/09/2021)

+1 CC to M/s.SPL.GP (SR-30317, 30322 AND 30323[F] dated 27/09/2021)

Order made in

**W.P. (MD) Nos.15184,
15213 and 15937 of 2021**

Dated:

24.09.2021

GC (28.09.2021) 10P 9C