



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD)No.19173 of 2020

and

WMP(MD)No.16033 of 2020

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M.Ayyakannu

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Revenue Divisional Officer,
Usilampatti, Madurai District.

3.The Tahsildar,
Peraiyur, Madurai District.

4.The Assistant Director,
Department of Mines and Geology,
Madurai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th respondent in his proceedings Roc.No.604/2020-Mines, dated 07.12.2020 and quash the same as illegal, arbitrary and consequently, directing the respondents 1 and 4 to grant permission to continue quarrying operations at SF.Nos.2/2A2,3,4,9A,9B admeasuring 1.68.50 Hectares Kadaneri Village, Peraiyur Taluk, Madurai District to the petitioner for 106 days to compensate the loss suffered by the petitioner on account of illegal locking and sealing of the petitioner's quarry for the period between 29.05.2020 and 11.09.2020.

For Petitioner	: Mr.B.Saravanan
For Respondents	: Mrs.Narmadha Sampath Additional Advocate General assisted by Mrs.S.Srimathy, Special Government Pleader

ORDER

Heard Mr.B.Saravanan, the learned counsel for the petitioner and Mrs.Narmadha Sampath, the learned Additional Advocate General assisted by Mrs.S.Srimathy, the learned Special Government Pleader

<https://hccs.certh.rs.gov.in/pos/index>

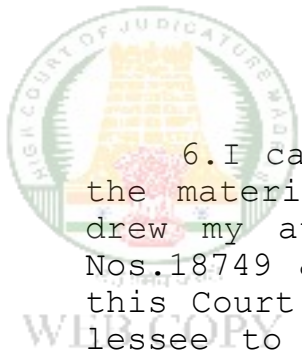


2.The petitioner was granted lease to quarry the petition mentioned lands vide proceedings dated 12.03.2015. A supplementary lease deed dated 10.05.2018 was also entered into. As per the terms of the lease, the petitioner was permitted to operate the quarry for the period commencing from 05.12.2015 to 04.12.2020. By the proceedings of the District Collector, dated 17.11.2015, the petitioner was allowed to quarry rough stone for 37,210 cubic meters at the allotted site. Later, by the proceedings of the District Collector, dated 12.03.2018, the petitioner was permitted to quarry 2,00,078 cubic meters of rough stone and 22,528 cubic meters of gravel in addition to the earlier permitted quantity of rough stone namely, 37,210 cubic meters.

3.The petitioner was visited with the order dated 28.05.2020 levying penalty of Rs.50,03,951/- on the ground that there was illicit quarrying. In the said order, it has been mentioned that so far 2,94,995 cubic meters of rough stone has been already quarried and that this is in excess of the permitted limit to the tune of 84,389 cubic meters. This order was put to challenge in WP (MD)No.9141 of 2020. Vide order dated 28.08.2020, I had set aside the same and allowed the writ petition on the ground that the petitioner was not given fair opportunity to project his contention. The matter was remitted to the file of the authority concerned. In the meanwhile, the petitioner's lease period expired. The petitioner wanted extension of the lease period. The petitioner's specific case was that on account of the passing of the impugned order dated 28.05.2020, he was not allowed to quarry for a period of 106 days. As already pointed out, this order had been set aside in WP(MD)No.9141 of 2020. But no fresh order has been passed by the date when the lease period expired. During lease period, on account of the act of the respondents the petitioner was not able to operate the quarry for 106 days. The petitioner wanted the respondents to permit him to operate the quarry for this unutilized period of 106 days. The petitioner's request was rejected by the respondents in the impugned order dated 07.12.2020. The same is under challenge in this writ petition.

4.The respondents have filed a detailed counter affidavit seeking to sustain the impugned order. The learned Additional Advocate General for the respondents took me through the contents of the impugned order as well as the averments set out in the counter affidavit and wanted this Court to dismiss the writ petition.

5.Her core contention is that when a ceiling limit had been prescribed in the lease deed itself and when the said limit had already been breached, it is not open to the petitioner to seek extension of the lease period. The learned Additional Advocate General would contend that the Tamil Nadu Minor Mineral Concession Rules, 1959 do not contemplate extension of lease period for



6.I carefully considered the rival contentions and went through the materials on record. The learned counsel for the petitioner drew my attention to the order dated 18.12.2020 made in WP(MD) Nos.18749 & 18751 of 2020. In the said order, a learned Judge of this Court had held that lease period can be extended to permit the lessee to quarry for the unutilised lease period. In fact, the learned Judge has referred to the order of the Hon'ble Division Bench passed on 24.07.2011 in WA No.918 of 2014 and WA Nos.1018 & 1019 of 2020, dated 17.03.2011. If non-utilisation is only due to default committed by the petitioner, then, he cannot ask for extension. But if the petitioner has been prevented from running the quarry, certainly, the petitioner will have the right to ask for extension. In fact, it cannot be called as extension of the lease period at all. On the other hand, it is only more in the nature of reparation, because the lessee for no fault of his was not permitted to run the quarry.

7.Therefore, the reason set out in the impugned order cannot be accepted. It is a fact that only because of the order dated 28.05.2020 and consequential sealing of the petitioner's quarry, he was prevented from running the quarry. The said order has been set aside by me vide order dated 20.08.2020. Therefore, the adverse consequence which befell the petitioner on account of the order will have to be set right. Therefore, to this extent, I am in full agreement with the contention of the petitioner's counsel.

8.But then, I have to sustain the contention of the learned Additional Advocate General that the ceiling limit set out in the lease deeds ought not to be breached. I am of the view that whether the ceiling limit set out in the lease deeds was breached or not is a matter for factual determination by the competent authority. Therefore, the Revenue Divisional Officer, Usilampatti is mandated to hold an enquiry and conclude the same within a period of four weeks from the date of receipt of copy of this order. He would of course associate the petitioner fully in the process. If as a result of the said enquiry, the authority comes to the conclusion that the ceiling limit prescribed in the lease deeds as regards the quantity has not been breached **(37,210 cubic meters at the allotted site and later, by the proceedings of the District Collector, dated 12.03.2018, the petitioner was additionally permitted to quarry 2,00,078 cubic meters of rough stone and 22,528 cubic meters of gravel)**, the petitioner will be permitted to run the quarry for the unutilised period of 106 days. If the result of the enquiry to be conducted by the RDO is that the ceiling limit has already been breached, obviously, the question of granting permission to the petitioner will not arise at all.



9.This writ petition is disposed of on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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/ /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.

To

- 1.The District Collector, Madurai District, Madurai.
- 2.The Revenue Divisional Officer,
Usilampatti, Madurai District.
- 3.The Tahsildar, Peraiyur, Madurai District.
- 4.The Assistant Director, Department of Mines and Geology,
Madurai District.

+1CC to Mr.B.Saravanan,SR.No.11266 dated 16.03.2021

+1CC to SPL GP,SR.No.11625 dated 16/03/2021

W.P (MD)No.19173 of 2020
and
WMP (MD)No.16033 of 2020
15.03.2021

SSS(CO)

KB(07.04.2021) 4P 7C