



WEB COPY

W.P(MD)No.17949 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.17949 of 2018

and

WMP (MD)No.15827 of 2018

R.Snehalin Sujatha @ Sneha Ajay,

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep.by the Secretary,
Geology and Mining Department,
Fort St.George,
Chennai-09

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

3.The District Collector,
Kanyakumari District,
Office at Nagercoil,
Kanyakumari.

4.The Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.

5.The Tahsildar,
Kalkulam, at Thuckalay,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the 5th respondent from proceeding with its order No.Nil, dated Nil, but signed on 19.06.2013 till the disposal of the statutory appeal filed by the petitioner before the 1st respondent, dated 12.07.2016.

For Petitioner : Mr.M.Gnanagurunathan

For Respondents : Mr.P.Thilak Kumar

Govt.Advocate



O R D E R

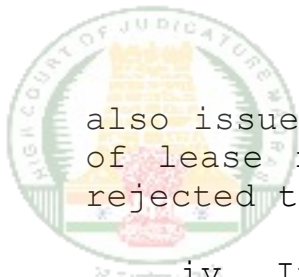
This Writ Petition has been filed praying for issuance of a Writ of Mandamus, forbearing the 5th respondent from proceeding with its order No.Nil, dated Nil, but signed on 19.06.2013 till the disposal of the statutory appeal filed by the petitioner before the 1st respondent, dated 12.07.2016.

2. The Short facts, which leading to filing of the present Writ Petition, are as follows:-

(i) The petitioner's husband Late C.Ajayaraj, was the owner of a patta land, bearing S.No.3/4B in Velimalai Village, Kalkulam Taluk, Kanyakumari District. He had purchased the said property from her father Late Robinson. The said Ajayaraj had applied for grant of licence from the 3rd respondent herein to quarry rubble and jelly from his patta land. The 3rd respondent by his proceedings, dated 09.04.1996, had granted license to said Ajayaraj for quarrying rough stone / jelly in his patta land for a period of 5 years from 09.04.1996 to 08.04.2001, as per Rules 19 and 20 of Tamil Nadu Minor Mineral Concession Rules, 1959.

(ii) Thereafter, the petitioner's husband had approached the 3rd respondent for getting extension of lease for the non-operative period of 982 days. The said application was not considered and therefore, he approached this Court in the year 2006 and obtained an order. Thereafter, the 3rd respondent had granted extension of lease for the said non-operative period of 982 days. In the meantime, the petitioner's husband died on 21.07.2008. After the death of petitioner's husband, the 3rd respondent had transferred the lease from her husband to the name of petitioner, by executing a supplementary lease deed, dated 31.12.2008 and the petitioner was permitted to continue the quarry operation upto 05.07.2010.

(iii) The petitioner could not carry out the quarry operation during the extension time and hence, she filed a Writ Petition in W.P.(MD)No.8162 of 2010, to extend the time by granting lease for a further period of two years. The respondents took a stand that without making any such application before the authorities, the petitioner could not seek relief. Hence, this Court granted time to make application before the Authorities. Pending Writ Petition, the petitioner the sent the application. The 3rd respondent rejected the request of the petitioner. Hence, the petitioner has filed an application for amendment to the said Writ Petition, by challenging the said order of the 3rd respondent, dated 21.07.2011. This Court allowed the said Writ Petition by ~~setting aside~~ the order of the 3rd respondent, dated 21.07.2011 and



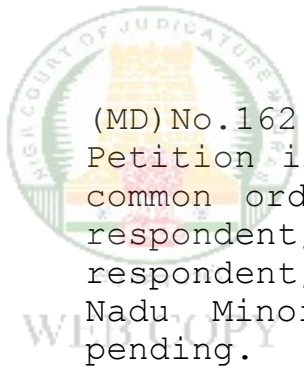
also issued a direction to consider the application for extension of lease for a period of 104 days. But, the 3rd respondent, had rejected the application of the petitioner.

iv. In the meantime, the authorities had resorted to penal action, as if there was an unauthorized quarry in the petitioner's land, after the expiry of lease period, as per Rule 36-A and 36-B. The 4th respondent had issued proceedings, bearing Moo.Mu.A1/5674/12, dated 11.03.2013, by imposing penalty of Rs.98,51,890/-. The 3rd respondent has given approval for the same by his proceedings in Na.ka.No.229/PuMaSu/2013, dated 06/2013, signed on 26.06.2013. The 5th respondent had issued distraint order to the petitioner on 06.12.2013, but signed on 19.06.2013 in Form No.1, under Section 8 of Tamil Nadu Revenue Recovery Act, 1864, to collect penalty amount of Rs.98,51,890, as per the order of the respondents 3 and 4.

v. The Petitioner was not furnished with Inspection Report. The 3rd respondent, by his order, dated 26.06.2013 had approved the order of the 4th respondent. Hence, as per Sub-Rule 1 of Rule 36-C of Tamil Nadu Minor Mineral Concession Rules, 1959, the petitioner had filed an appeal to the 2nd respondent on 24.07.2013. Further, the petitioner filed a Writ Petition before this Court in W.P.(MD) No.20288 of 2013, questioning the order of the 5th respondent and also to keep abeyance of further actions in furtherance to the proceedings of the 3rd and 4th respondents, pending appeal before the 2nd respondent. This Court granted an order of interim stay of distraint order issued by the 5th respondent in M.P.(MD)No.1 of 2013 in W.P(MD)No.20288 of 2013, dated 16.12.2013 on condition to deposit 20% of the arrears due.

vi. Subsequently, the petitioner filed a petition in M.P.(MD) No.2 of 2014 in W.P(MD)No.20288 of 2013 to modify the said interim order, dated 16.12.2013 to the effect that to accept a sum of Rs.5,00,000/- and for the remaining amount, the petitioner willing to give the property as security. This Court, by order dated 10.01.2014, had directed the petitioner to deposit Rs.5,00,000/- on or before 21.01.2014 and for the balance amount of 20%, a further period of six weeks' time granted. As per the interim order, the petitioner had deposited the said amount of Rs.5,00,000/- on 21.01.2014 and submitted the original receipt before the 5th respondent office. Since the petitioner could not mobilize funds, as she had no source of income, she filed an appeal against the order passed in M.P.(MD)No.1 of 2014 in W.P.(MD)No.20288 of 2013 in W.A(MD)No.162 of 2014.

vii. In the meantime, the 2nd respondent had dismissed the second appeal filed by the petitioner, by his proceedings in Bc.No.5763/MM9/2014, dated 30.05.2016. Hence, Writ Appeal in W.A



(MD)No.162 of 2014 was dismissed as withdrawn and the Writ Petition in W.P(MD)No.20288 of 2013 was closed as infructuous, by common order, dated 24.07.2018. As against the order of the 2nd respondent, the petitioner filed an appeal before the 1st respondent, on 12.07.2016, under Sub-Rule 3 of Rule 36-C of Tamil Nadu Minor Mineral Concession Rules, 1959, and the same is pending.

3. Mr.M.Gnanagurunathan, the learned counsel appearing for the petitioner would submit that when the statutory appeal filed under Sub-Rule 3 of Rule 36-C of Tamil Nadu Minor Mineral Concession Rules, 1959 is pending before the 1st respondent, the 5th respondent is duty bound to await for the final orders from the 1st respondent. The 5th respondent, who is proceeding with the distraint order against the petitioner amounts to arbitrary exercise of power. Hence, the learned counsel for the petitioner prays for allowing this petition.

4. Mr.P.Thilak Kumar, the learned Government Advocate appearing for the respondents would submit that the impugned order, dated 19.06.2013, had been challenged by the petitioner in the earlier round of litigations in W.P(MD)No.20288 of 2013, in which, an interim conditional order has been granted, thereby, directing the petitioner to deposit 20% of arrears due. Subsequently, the petitioner filed a Miscellaneous Petition in M.P (MD)No.2 of 2014, praying for extension of time for such payment. The petitioner was permitted to pay a sum of Rs.5,00,000/- on or before 31.01.2014 and the balance amount within a period of six weeks, thereafter. The said conditional order has not been fully complied with by the petitioner and therefore, the petitioner, now, cannot seek for an interim order of protection and therefore, he prays for dismissal of the writ petition.

5. I have heard the submissions made by the learned counsels appearing on either side and perused the materials available on record.

6. On perusal of the records, it is seen that in the earlier round of litigation, the petitioner challenged the distraint order, dated 19.06.2013, before this Court in W.P(MD)No.20288 of 2013 and also to keep abeyance of further action in furtherance to the proceedings of the respondents 3 and 4, pending appeal before the 2nd respondent. This Court, by an order, dated 16.12.2013, in M.P.(MD)No.1 of 2013, in W.P(MD)No.20288 of 2013, had granted an order of interim stay of the distraint order, on condition that the petitioner deposits 20% of the arrear dues, within a period of four weeks from the date of receipt of a copy of that order. Subsequently, the petitioner filed a Petition in M.P(MD)No.1 of 2014 in W.P(MD)No.20288 of 2013, for modification of the condition



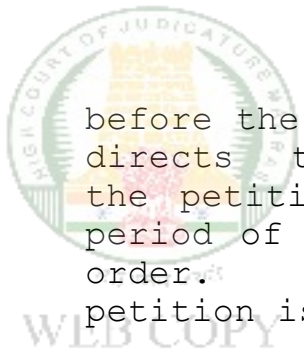
of the order, dated 16.12.2013 in M.P(MD)No.1 of 2013, to the effect that the petitioner deposit Rs.5,00,000/- and give security of immovable property for the balance in the 20% of the assessed amount. The said petition was dismissed by this Court on 10.01.2014. Again, the petitioner filed a Miscellaneous Petition in M.P.(MD)No.2 of 2014 in W.P(MD)No.20288 of 2013, to extend the period for deposit granted in the order, dated 16.12.2013 in M.P (MD)No.1 of 2013. This Court directed the petitioner to deposit Rs.5,00,000/- on or before 21.01.2014 and a further period of six weeks' time granted for payment of the balance amount. It is seen that as per the direction of this Court, the petitioner had deposited Rs.5,00,000/- on 21.01.2014. Thereafter, the petitioner filed a Writ Appeal in W.A(MD)No.162 of 2014 before this Court, as against the order made in M.P(MD)No.1 of 2014 in W.P(MD)No.20288 of 2013.

7. Aggrieved by the orders of the District Collector, Kanyakumari, dated 26.06.2013, confirming the order of the Revenue Divisional Officer, Padmanabhapuram, dated 11.03.2013, the petitioner preferred the 2nd Appeal before the Commissioner of Geology and Mining, to set aside the order of the District Collector, Kanyakumari and drop the case against the appellant / petitioner. The said petition was dismissed on 10.06.2015. Against which, the petitioner preferred an appeal before the 1st respondent Government, which is still pending. While the Writ Appeal was pending, since finality reached in the 2nd Appeal, the Writ Appeal and the Writ Petition were dismissed as infructuous with liberty to the petitioner - appellant to work out her remedy in the manner known to law, before the appropriate forum.

8. Now, the petitioner has come forward with a prayer, forbearing the 5th respondent from proceeding with the order, dated 19.06.2013, till the disposal of the statutory appeal filed by the petitioner, before the 1st respondent, on 12.07.2016. Such a prayer cannot be granted for the simple reason that the order dated 19.06.2013 was challenged in the earlier round of litigations and admittedly, the petitioner did not comply with the conditional orders passed by this Court in W.P.(MD)No.20288 of 2013. Hence, this Court is not inclined to grant the relief sought for by the petitioner in the present writ petition and the writ petition fails and accordingly, the same is dismissed.

9. At this juncture, the learned counsel for the petitioner would submit that the statutory appeal filed by the petitioner before the 1st respondent, may be directed to be disposed of within a reasonable time.

10. Taking note of the submission made by the learned counsel for the petitioner and that the appeal filed by the Petitioner



before the first respondent is pending from 12.07.2015, this Court directs the first respondent to dispose of the appeal filed by the petitioner, on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

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 advocate/litigant concerned.

To

- 1 The Secretary,
The Government of Tamil Nadu,
Geology and Mining Department,
Fort St.George,Chennai.
- 2.The Commissioner of Geology and Mining,
Industrial Estate, Guindy,Chennai - 600 032.
- 3.The District Collector,
Kanyakumari District,
Office at Nagercoil,Kanyakumari.
- 4.The Revenue Divisional Officer,
Padmanabhapuram,Kanyakumari District.
- 5.The Tahsildar,
Kalkulam, at Thuckalay,
Kanyakumari District.

+1cc to SPL GP Sr.No.20570 dated 29.6.2021

W.P(MD)No.17949 of 2018
30.06.2021

CN(13.07.2021) 6P 7C