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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-01-2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.23248 of 2016

And

WMP No.19941 of 2016

Mrs.G.Parameswari

.. Petitioner

vs.

1.The Secretary to Government,
Industries Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Kancheepuram District,
Kancheepuram.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Declaration, declaring that the proportionate lease amount and the proportionate enhanced lease amount totalling to Rs.1,13,05,000/- (Rupees One Crore Thirteen Lakhs and Five Thousand only), withheld by the first respondent, representing the non operated period of two years and ten months pertaining to the stone quarry measuring 5.00.0 Hectares, comprised in S.No.99, Quarry No.12, situated in Keerapakkam Village, (Malai Poromboke), Chengalpat Taluk, Kancheepuram District, as illegal and consequently direct the respondents to refund the said sum of Rs.1,13,05,000/- (Rupees One Crore Thirteen Lakhs and Five Thousand only), together with interest of Rs.2,10,99,210/- (Rupees Two Crores Ten Lakhs Ninety Nine Thousand Two Hundred and Ten only), calculated at 24% per annum calculated from the respective dates of payment till 30.06.2016, totalling to Rs.3,24,10,210 /- (Three Crores Twenty Four Lakhs Ten Thousand Two Hundred and Ten only) and to pay further interest @ 24% per annum on the principal amount of Rs.1,13,05,000/- (Rupees One Crore Thirteen Lakhs and Five Thousand only), from 01.07.2016 to till the date of re-payment.

For Petitioner : Mr.K.Ramakrishna Reddy

For Respondents : Mr.B.Vijay,
Additional Government Pleader.



O R D E R

The writ of declaration is filed to declare that the proportionate lease amount and the proportionate enhanced lease amount totalling to Rs.1,13,05,000/- (Rupees One Crore Thirteen Lakhs and Five Thousand only), withheld by the first respondent, representing the non-operated period of two years and ten months pertaining to the stone quarry measuring 5.00.0 Hectares, comprised in Survey No.99, Quarry No.12, situated in Keerapakkam Village, (Malai Poromboke), Chengalpat Taluk, Kancheepuram District, as illegal and consequently direct the respondents to refund the said amount with interest.

2. The petitioner states that she was the successful bidder in respect of stone quarry measuring 5.00.0 hectares, comprised in Survey No.99, Quarry No.12, situated in Keerapakkam Village, Chenglepet Taluk, Kancheepuram District. The bid amount for the said quarry for a period of five years was Rs.1,33,00,000/- (Rupees One Crore Thirty Three Lakhs only).

3. The lease agreement was executed on 19.02.2003 and was duly registered. Admittedly, the period of lease was for five years commencing from 20.02.2003 to 19.02.2008.

4. The petitioner further states that it was a virgin quarry leased out in favour of the petitioner and therefore, after expiry of the lease period of five years, an extension must be granted to the petitioner.

5. In view of the fact that the respondents declined to extend the lease period, the petitioner approached this Court by filing WP No.3557 of 2008 and an interim order of injunction was granted on condition to deposit 20% in addition over and above the original lease amount determined and the petitioner was permitted to continue the quarry after the expiry of five years of lease period.

6. The respondents have approached this Court for vacating the interim order and the said order was modified stating that the petitioner has to pay 50% in addition to that of the lease amount for the purpose of continuing the quarry. By virtue of the interim order, the petitioner continued the quarrying operations in the subject location.

7. The learned counsel for the petitioner reiterated that the petitioner has paid for the another period of five years from the date of expiry of the original lease i.e., on 19.02.2008. When the petitioner has paid the lease amount for five years, she was not permitted to continue her quarrying operations for a period of two years and ten months. Thus, the



amount deposited must be proportionately refunded with reference to the non-operational period as the deposit was made for five years quarry.

8. The learned counsel for the petitioner reiterated that the refund was not the subject matter in the earlier writ petition. The issue adjudicated in the earlier writ petition was whether it is a virgin quarry or not. No doubt, by virtue of an interim order, the petitioner was allowed to continue the quarry beyond the lease period. However, the petitioner continued the quarrying operation by depositing the amount for a period of five years and thereafter the writ petition was dismissed and thus, the amount is to be refunded proportionately.

9. The learned Additional Government Pleader appearing on behalf of the respondents disputed the contentions raised on behalf of the petitioner by stating that it is not as simple as stated by the petitioner. The fact regarding the lease period of five years is not disputed. The lease period was expired on 19.02.2008. The petitioner during the fag end of the lease period, approached this Court by filing WP No.3557 of 2008 and obtained an interim order on 12.02.2008. The Court permitted the petitioner to continue the quarrying operations subject to the condition that the petitioner should pay 20% in addition over and above the original lease amount.

10. It is contended that the State objected such extension on the ground that the quarry was not a virgin quarry. The interim order was obtained based on the wrong information and therefore, the State was all along agitating the matter before the Court. Finally the writ petition was dismissed on 16.04.2010. The Special Leave Petition filed before the Hon'ble Supreme Court was also dismissed on 21.04.2016 on merits.

11. The learned Additional Government Pleader drew the attention of this Court with reference to the order passed by the Hon'ble Division Bench of this Court on 28.07.2009. While passing an interim order, the Hon'ble Division Bench of this Court passed the following orders:-

"In all these writ petitions, the present quarry operators will be permitted to function. This will be on the lines of paragraph-6 of the order passed on the miscellaneous petitions in W.A.N.669 of 2009 on 25th June 2009. On the lines of the order passed by the Apex Court in similar matters pertaining to quarrying lease, all these petitioners will have to pay 50% of the amount over and above the existing lease amount, in addition to the seigniorage fees. They will deposit the requisite amount with the



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respondent-District Collector within four weeks from the date of this order, in the event, they have not deposited in so far. The respondent-District Collector will receive this amount without prejudice to the rights of the State and their submission, that the petitioners have no right for running the quarrying activity."

12. Thus, the Hon'ble Division Bench of this Court, while modifying the interim order, made it very clear that the District Collector will receive the amount from the petitioner without prejudice to the rights of the State and their submission, that the petitioners have no right for running the quarrying activity. Therefore, the State was all along fighting on the ground that the petitioners are not entitled for renewal of lease and such renewal was not granted and by virtue of an interim order, the petitioner was continuing the quarry operation for about two years and two months.

13. The Special Leave Petition was also dismissed by passing an elaborate order and the Hon'ble Supreme Court of India also arrived a conclusion that the petitioners have no right to seek any extension of lease period as such extension of lease would affect the revenue of the State.

14. The learned Additional Government Pleader brought to the notice of this Court that the refund of amount now sought for in the writ petition had been raised as a ground before the Hon'ble Supreme Court of India. The petitioners have said before the Hon'ble Supreme Court of India that they have deposited 50% over and above the original lease amount i.e., 150% of the original lease amount for the extended period of five years lease sought for in the writ petition.

15. A specific ground has been raised before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India has not considered the said ground and dismissed the writ petition by making an observation that such extension would be an unfair practice and would cause prejudice to the competing bidders who could have, if they had been told that the area auctioned is not an existing quarry available for five years but a virgin quarry that could be secured for ten years, made a better offer than the one made by the appellant.

16. The Hon'ble Supreme Court has clearly made an observation that the appellant in the auction on the basis of a notification that described the area to be an existing quarry, could not after obtaining the lease turn around and claim that the area is not an existing but a virgin quarry. When in terms and conditions of the tender notice, all the intending bidders



including the appellant were free to visit the area in question and satisfy themselves about the conditions obtaining at the site. That apart all those who had participated in the auction had proceeded on the basic premise that the tender is for an existing quarry. Any change in the nomenclature of the area after the conclusion of the auction, would amount to changing the rules of the game after the game is played.

17. The Hon'ble Apex Court of India unambiguously made an observation that the filing of the writ petition itself was on mala fide intention in order to seek an extension of quarrying period. Knowing the fact that the petitioners have participated and accepted the terms and conditions of the lease and visited the site, conducted the quarrying operations for five years and thereafter turn around and take a decision to file the case for the purpose of seeking extension and in such circumstances, the petitioners are not entitled for any relief at all.

18. Even presuming that the amount deposited is to be claimed, then all such claims ought to have been made in the writ petition, writ appeal and also before the Hon'ble Supreme Court of India.

19. In the present case, the petitioner has raised a specific ground that as per the interim order of the Hon'ble Division Bench of this Court, the petitioner has deposited 50% over and above the original lease amount of the original lease period.

20. This Court is of the considered opinion that a pertinent question arises whether the 150% amount deposited by the petitioner would be equal to that of an amount, if at all an auction had been conducted during the relevant point of time by the State. There cannot be any arithmetic calculation in this regard. When the rights of the parties are decided, trading is not permissible in respect of such nature of cases filed by the litigants one way or the other with an idea of getting extension of lease period for gains.

21. As pointed out by the Hon'ble Supreme Court of India, the facts are made known to the petitioner and they accepted the terms and conditions and thereafter turn around and developed the litigation and therefore, if at all they are entitled, they should have adjudicated the issues before the Hon'ble Division Bench of this Court or before the Hon'ble Supreme Court of India.

22. In the present case, the petitioner has raised a specific ground in this regard and the same was not considered



by the Hon'ble Supreme Court of India. In such circumstances, the State may also raise a ground that if at all no interim order was granted, then the State would have earned much more revenue than that of the 50% additional amount granted by the High Court by way of an interim order. Such a ground is also certainly possible and is to be considered and either of the parties may say so. But however, the fact remains that the petitioner continued the quarrying operations only by virtue of an interim order and by paying 50% additional amount over and above the original lease amount. Therefore, a balancing approach is required. No doubt, the petitioner has paid 50% additional amount over and above the original lease amount and equally in the event of conducting an auction, the State would have gained much more revenue than that of the 50% additional amount deposited by the petitioner. Therefore, the High Court cannot go into an adjudication of such nature of disputes, more-so, in the absence of any specific terms and conditions in this regard.

23. When there is no agreed terms and conditions for refund of additional amount, the Government need not refund the amount and the refund of amount can be made only if there is a clause in the terms and conditions of the agreement but not otherwise.

24. In the present case, the lease period expired on 19.02.2008 and only by virtue of an interim order, the petitioner was allowed to continue the quarrying operations and she deposited 50% over and above the original lease amount and such amount cannot be considered as excess amount than that of the amount in the event of allowing the Government to go for a fresh auction.

25. This being the principles to be followed, this Court do not find any merit in respect of the grounds raised in the present writ petition and consequently, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(Cs-IX)

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Sub Assistant Registrar

Svn

To

1.The Secretary to Government,
Industries Department,
Fort St. George, Chennai - 600 009.



2.The District Collector,
Kancheepuram District,
Kancheepuram.

+1cc to Mr.K.Ramakrishna Reddy, Advocate SR.No.361

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AK II(CO)
GMY (24/01/2022)