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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. No.9687 of 2022

V.Balasubramanian

...Petitioner

Vs.

1. The Director of
Geology and Mining,
Guindy,
Chennai - 600 032.

2. The District Collector,
Thiruchirapalli,
Thiruchirapalli District.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to expedite the appeal dated 13.08.2021 pending before the 1st respondent consequently direct the 1st respondent to decide the appeal on merits without taking note of the delay.

For Petitioner : Mr.B.Manimaran

For Respondents : Mr.B.Vijay

Additional Government Pleader

O R D E R

Mr.B.Vijay, learned Additional Government Pleader accepts notice for the respondents arrayed in this writ petition and is in full possession of factual as well as legal considerations to enable a final disposal of this matter at the stage of admission.

2.The petitioner was granted a sand quarry area at an extent of 10 hectares in Government Poramboke land in S.F.No.540/2 (bit-I) in Ayyampalayam Village, Musiri Taluk. He was carrying on such activity till such time Rule 38-A came to be inserted in the Tamil Nadu Mines and Mineral Concession Rules, 1959 with



38-A.Quarrying of sand by the State Government.- Notwithstanding anything contained in these rules, or any order made or action taken hereunder or any judgment or decree or order of any Court, all existing leases for quarrying sand in Government lands and permissions/leases granted in ryotwari lands shall cease to be effective on and from the date of coming into force of this rule and the right to exploit sand in the State shall vest with the State Government to the exclusion of others. The proportionate lease amount for the unexpired period of the lease and the unadjusted seigniorage fee, if any, will be refunded.

4.A challenge to Rule 38-A was decided in favour of the lessees by a Division Bench of this Court but stood reversed in State of Tamil Nadu and Others Vs. P.Krishnamurthy and Other [AIR (2006) SC 1622] by the Hon'ble Supreme, holding the matter in favor of the State and Rule 38A to be valid. However, the interests of lessees was also considered by the Supreme Court that proceeded to read down Rule 38A to the extent that, the termination of quarry licenses that was immediate, that is, from the date of insertion of the Rule being in 2003, was read down to grant a breathing space of six months to the lessees.

26. In regard to mining leases subsisting as on 2.10.2003, we have read down Rule 38A as terminating such leases in terms of the contract (lease deeds) by six months, without assigning cause and without any liability to pay compensation. Such of those writ petitioners (Respondents herein) whose leases were subsisting on 2.10.2003 (and whose activities were stopped with effect from that day) will be entitled to carry on the quarrying activities for a period six months or for the actual unexpired period of the lease (as on 2.10.2003), which is less. This benefit will be available to even those who have orders of court for grant of mining leases, but where mining leases were not executed for one reason



12. I say belatedly, since Rule 36, that provides for appeal and second appeal, very categorically sets out a time limit of 30 days only for availing of the appellate remedies. 36 (c) (1) which is relevant in this regard, is extracted below:-

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36-C. Appeal and second appeal.- (1) Any person aggrieved by any order of the Joint Director, Deputy Director or Assistant Director (Geology and Mining) or any authority subordinate to him in the district office of the Department of Geology and Mining or Revenue Divisional Officer or Tahsildar or Deputy Tahsildar in the Revenue Department or Commissioner of Municipalities and Corporations, Executive Officers of Town Panchayats and Townships and Presidents of Village Panchayats made in exercise of the powers conferred on him by these rules or in exercise of any of the powers delegated to him under the provisions of these rules may within 30 days from the date of receipt of the order, prefer appeal to the District Collector concerned against such order. In case, the aggrieved person is not satisfied with the decision of the District Collector he may prefer a second appeal to the Director of Geology and Mining within 30 days from the date of receipt of the order of the District Collector.

13. There is no provision under 36-C to enable the authority to condone delay in approaching it. Admittedly, there are situations where this Court has intervened under Article 226 of the Constitution to condone delay even in the cases where statute does not expressly provide for such condonation. However, those instance are based on sufficient reasons expressed by the petitioner to justify such condonation.

14. In the present case the petitioner has approached the appellate authority after a period of 14 years i.e., 5152 days. In the affidavit filed in support of the belated appeal the petitioner merely says that the demise of his parents on 27.01.2011 and 27.02.2017 had rendered him unable to proceed with the formalities in connection with the appeal.

15. In my view this reason is unacceptable, seeing as there was sufficient time between 01.06.2007 and 27.01.2011 to have enabled the petitioner to approach the appellate authority. The cause made out by the petitioner is, in my view, woefully inadequate and does not persuade me to accept his case.

16. In light of the discussion aforesaid, mandamus as sought for is not liable to be issued. Appeal dated 13.08.2021, sent by



post is held to be not maintainable and this writ petition is dismissed. No Costs.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of
Geology and Mining,
Guindy, Chennai - 600 032.
2. The District Collector,
Thiruchirapalli,
Thiruchirapalli District.

+1cc to the Government Pleader, S.R.No.27527

W.P. No.9687 of 2022

SSD(CO)
RGA(24/05/2022)