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W.P.No.5243 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2023

CORAM :

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.5243 of 2010

- 1.V.Sankarasubbu (died)
- 2.S.Petchiammal
- 3.M.Valli
- 4.S.Sundari
- 5.M.Seetha
- 6.K.Sivakami
- 7.S.Paramasiva Iyyappan

*(P2 to P7 substituted as LRs of
deceased sole petitioner vide order
dated 06.01.2023 made in
WMP No.34257/22 in WP 5243/10
by ASMJ)*

.. Petitioners

VS

- 1.The Government of Tamil Nadu,
Rep. By its Secretary,
Industries Department,
Fort St.George, Chennai – 600 009.
- 2.The Director of Geology and Mining,
Guindy, Chennai – 600 032.
- 3.The District Collector,
Tirunelveli District,
Tirunelveli.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the first respondent relating to G.O.(D)No.452, Industries (MMC.1) Department, dated 8.12.2009 confirming the order of the second respondent in Rc.No.8857/MM5/2007 dated 2.6.2008 and the order of the 3rd respondent in Roc.M3/94816/03 dated



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20.07.2004, quash the same and direct the 3rd respondent to refund the proportionate lease amount for the unexpired period of lease i.e., one year and two months (from 1.10.2003 to 26.11.2004) with interest from 1.10.2003, and return the Security deposit furnished in the form of KVP in respect of the leasehold area of the petitioner in S.F.No.115 (Part-II) of Kansapuram Village, Palayamkottai Taluk, Tirunelveli District.

For Petitioner(s) : Mr.V.Sanjeevi
For Respondents : Mr.B.Vijay
Additional Government Pleader

ORDER

1. The petitioner is deceased as on date and is represented by his legal heirs who have been impleaded pending writ petition. The petitioner is a successful applicant to the tender application for grant of lease for quarrying of land. He had been allocated land ad-measuring 10.00.0 hectares in S.F.Nos.115 (Part-II) in Kansapuram Village, Palayamkottai Taluk, Tirunelveli District for a period of three years. The period of licence is 27.11.2001 to 26.11.2004.

2. During the tenure of lease, Rule 38A came to be inserted as part of Tamil Nadu Minor Mineral Concession Rules, 1959 (in short, '1959 Rules'). This Rule, recognizing the damage caused to the environment by virtue of unbridled, unfettered and uncontrolled quarrying of sand, directed that the permission / lease granted in ryotwari land for quarrying of sand shall cease to be



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effective on and from the date of coming into force of the Rule. To be noted, the effective date was 3.10.2003. The Rule further stipulates that the proportionate lease amount for unexpired period of lease and unadjusted seigniorage fee, if any, shall be refunded to the lease holder.

3. The Rule was subject-matter of challenge before a learned Single Judge, who had granted an interim direction in favour of the lease holders. As against the interim direction, the State of Tamil Nadu filed Writ Appeals, at which juncture, the First Bench of this Court called to its file the writ petitions that were pending on this score as well.

4. A consolidated order was passed in the case of *State of TamilNadu and another v P.Krishnamoorthy and ors* (2004-3- LW 738) upholding the constitutionality of the Rule. Since the lis in this case relates to the prayer of refunding the licence fee for the unexpired period of lease, the relevant observations of the Division Bench on this count are extracted below:-

"3.The respective District Collectors shall issue notices to the petitioners with regard to the mining leases where there is an allegation of infraction of environmental laws and if there is a contest, then hold an enquiry by affording opportunity to them and then pass orders



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basing on the material on record. The above exercise shall be made by the District Collector within a period of two months from the date of receipt of a copy of this order and until then, the status quo with regard to mining operations as obtained on this day, shall be maintained."

5. To be noted that, the State had filed further appeals before the Hon'ble Supreme Court and in the case of *State of Tamil Nadu and another v P.Krishnamurthy and others* (2006) 4 SCC 517, the decision of the Division Bench was modified marginally. Paragraphs 36 and 37 of the judgment of the Supreme relevant and extracted below:-

"36. In regard to mining leases subsisting as on 2.10.2003, we have read down Rule 38-A 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 (the 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 of six months or for the actual unexpired period of the lease (as on 2.10.2003), whichever is less. This benefit will be available to even those who have orders of the court for grant of mining leases, but where mining leases were not executed for one reason or the other. It is, however, made clear that the State Government is at liberty to prematurely terminate the leases for any of the causes mentioned in Section 4-A(2), by giving a notice and hearing under Section 4-A(3), if they want to terminate any lease within the said period of six months.



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37. We, accordingly, allow these appeals in part. In place of the conditions stipulated by the Division Bench while upholding the validity of Rule 38-A, we hold and direct as follows:

(i) That part of Rule 38-A which vests the exclusive right to quarry sand, in the State Government, is upheld.

(ii) That part of Rule 38-A which purports to terminate quarrying leases / permissions forthwith (from 2.10.2003) is read down in terms of para 26 above.

(iii) The provision in Rule 38-A for refund of proportionate lease amount for the unexpired period of lease and unadjusted seigniorage fee, shall remain undisturbed.

(iv) It is made clear that except to the limited relief as a consequence of reading down as per para 26 above, the respondents will not be entitled to any other reliefs which have been granted by the High Court.

(v) Parties to bear their respective costs."

6. Qua the lis, what is relevant to note is that while the Rule stipulated that the licence holder would be entitled to a refund of the licence fee for the entirety of the unexpired lease period, the Hon'ble Supreme Court reduced the period to six months. Thus, the entitlement of licence holders to refund of lease rent for the period of six months or unexpired lease period, whichever was less, would commence from 01.10.2003. In this case, the lease expires on 26.11.2004 and thus the period would be six months, spanning till 30.04.2004. With the achievement of the aforesaid date, i.e., 30.04.2004, I am of the considered view that the transaction of



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lease qua the petitioner and the State would stand determined by operation of statute and this chapter closed, once and for all.

7. The petitioner does not appear to have made any request for refund of the licence fee for the unexpired period proximate to the determination of lease. While this is so, proceedings came to be initiated by the respondents commencing from July, 2000 and thereafter, and culminating in order dated 20.07.2004 terminating the lease agreements executed and on 22.12.2006 levying penalty for excess quarrying in the said land.

8. Though a tentative attempt is made to state that the levy of penalty had commenced even earlier, this Court is not persuaded to accept that submission, seeing as the initiative in this regard transpired only after April 2004, and actively only from June 2006 onwards, qua the levy of penalty. The petitioner has suffered an order of imposition of penalty and has not challenged the same by way of appeal. It is the categoric statement of the petitioners that they have acceded to the levy of penalty and now seek only refund of licence fee after debiting the penalty imposed.



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9. The question that arises is of the entitlement of the petitioner for refund of the fee. The argument of the State is that no refund is contemplated in a situation where the activity carried on by the licence holder is in violation of licence conditions. However, the fact remains that the State has woken to the violations committed by the petitioner long past the determination of lease by operation of Rule 38A.

10. Had there been any move by the State to initiate and conclude the proceedings for levy of penalty, prior to 30.04.2004, the respondents could well have maintained their case that the petitioner is not entitled to the refund as sought for. In this connection, useful reference may be made to the observations of the Division Bench and the Hon'ble Supreme Court as extracted earlier. This is clear from the last line of paragraph 36 of the Judgment being *'It is, however, made clear that the State Government is at liberty to prematurely terminate the leases for any of the causes mentioned in Section 4-A(2), by giving a notice and hearing under Section 4-A(3), if they want to terminate any lease within the said period of six months.'*



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11. Thus, it is clear that, if at all, the licence holders were suspected to be defaulters, such defaults were to be enquired into and order passed deciding such issues, within a period of six months from 01.10.2003. In the present case, though the order levying penalty refers in the reference column to certain proceedings in 2002, the State has neither put forth the argument that such proceedings are germane nor has produced a copy thereof. Admittedly, and in any event, nothing was done in this regard till 2006 which is long past the effective date of 30.04.2004. In light of the discussion as aforesaid, I am of the view that, the petitioner is entitled to refund of licence fee qua the period 02.10.2003 to 30.04.2004, less the amount of penalty.

12. This writ petition is allowed to the extent as indicated hereinabove. The amount as indicated in paragraph 8 above shall be quantified and paid over to petitioner within a period of four weeks from the date of receipt of a copy of this order.

13. At this stage, learned counsel for the petitioner stakes his claim for interest in regard to the amount of refund sought for, and ordered above, relying upon the decision in re *M.Shanmughasundaram v The District Collector and others*



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(W.P.(MD) No.11164 of 2016 dated 21.09.2017) which is factually distinguishable from the present case. Likewise, learned counsel for the respondents stakes his claim for interest on the demand or penalty under order dated 22.11.2006. On balance, I would conclude that neither party is entitled to interest. No costs.

24.01.2023

Index:Yes
Neutral Citation:Yes
ssm

To

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Guindy, Chennai – 600 032.
- 3.The District Collector,
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DR. ANITA SUMANTH,J.

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