



W.A.No.1131 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.A.No.1131 of 2023

1.S.Petchiammal
2.M.Valli
3.S.Sundari
4.M.Seetha
5.K.Sivakami
6.S.Paramasiva Iyyappan

.. Appellants

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

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 24.1.2023 passed in W.P.No.5243 of 2010.

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For the Appellants : Mr.V.Sanjeevi

For the Respondents : Mr.P.Muthukumar
State Government Pleader
assisted by
Mrs.R.Anitha
Spl. Government Pleader
for respondents 1 to 3

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard Mr.V.Sanjeevi, learned counsel for the appellants and, Mr.P.Muthukumar, learned State Government Pleader, assisted by Mrs.R.Anitha, learned Special Government Pleader for respondents 1 to 3.

2. The appellants assail the order of the learned Single Judge dated 24.01.2023 in W.P.No.5243 of 2010 to the extent of granting relief of refund of the licence fee and interest on the said amount only up to 30.04.2004 and not granting it till 26.11.2004.



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3. Learned counsel for the appellants submits that the period of quarrying lease was up to 26.11.2004, however, in view of the operation of Rule 38A of the Tamil Nadu Mines and Mineral Concession Rules, 1959 (for short, "1959 Rules") and the judgment of the Apex Court, the period of licence was restricted for a period of six months or unexpired lease period, whichever was less, and would commence from 1.10.2003.

4. The learned Single Judge, in view of that, directed refund of the licence fee qua the period 02.10.2003 to 30.04.2004. According to learned counsel for the appellants, the same ought to be for the unexpired period of lease i.e. 26.11.2004.

5. Learned Government Pleader submits that, in fact, the writ petitioner would not be entitled to any refund of the amount, inasmuch as the lease was cancelled on or about 20.07.2004 for violation of the terms and conditions. Learned Government Pleader further, in alternate, submits that if at all it is held that the writ petitioner is entitled to refund, then the period of refund cannot be



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more than what has been granted by the learned Single Judge.

6. We have considered the submissions.

7. There is no dispute that as per the terms of lease, the period of lease of the writ petitioner was up to 26.11.2004. During the midst of the said period, Rule 38A of the 1959 Rules was introduced. By virtue of which, the licence granted for quarrying abruptly came to an end. The matter went up to the Apex Court in the case of *State of Tamil Nadu and another v. P.Krishnamurthy and others*, (2006) 4 SCC 517, wherein the following order was passed:

"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



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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.”

8. The Apex Court in the said judgment clarified 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.

9. The six months period as per the judgment of the Apex Court came to an end on 30.04.2004. Even as per the judgment of



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the Apex Court, the State Government could not have cancelled the lease after a lapse of six months.

10. The learned Single Judge has rightly held about the entitlement of the writ petitioner for refund of the amount for the unexpired period, however, has calculated the period up to 30.04.2004.

11. Paragraph 37 of the judgment of the Apex Court in the case of *P.Krishnamurthy*, supra, needs to be considered. The Apex Court observed as under:

"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



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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."

12. The Apex Court specifically observed that the provision in Rule 38A of the 1959 Rules for refund of the proportionate lease amount for the unexpired period of lease and unadjusted seigniorage fee shall remain undisturbed. In view of that, the writ petitioner was entitled to refund of the proportionate lease amount for the unexpired period of lease and unadjusted seigniorage fee. In view of that, we modify the order of the learned Single Judge to the extent as under:

"The appellants, who are the legal heirs of the original writ petitioner, are entitled to refund of



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licence fee qua the period 02.10.2003 to 26.11.2004, less the amount of penalty."

13. The appellants further seek interest on the said amount of refund. On the amount to be recovered by the appellants, the respondent State authority shall pay interest at the rate of 6% per annum (simple interest). The State Government may deduct the amount of penalty with interest as on 26.11.2004 and then pay the amount of refund of the licence fee for the period 02.10.2003 to 26.11.2004 with interest at 6% per annum (simple interest).

14. With these observations, the writ appeal is partly allowed. In case, the State Government has retained the Kisan Vikas Patra (KVP) as security, then the same be returned to the appellants. There will be no order as to costs.

(S.V.G., C.J.)

(P.D.A., J.)

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Index : Yes/No
Neutral Citation : Yes/No
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