



W.P(MD)Nos.448 of 2011, 9481 & 11561 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 29.04.2022

PRONOUNCED ON : 20.02.2023

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) Nos.448 of 2011, 9481 & 11561 of 2015

and

MP(MD) Nos.1 & 2 of 2011 & 1, 1, 2, 2 of 2015

W.P(MD) Nos.448 of 2011:-

M/s.V.V.Minerals,
Keeraikaranthattu,
Tisaiyanvilai,
Tirunelveli District,
Through its
Managing Partner,
S.Vaikundarajan

: Petitioner

Vs.

- 1.The Government of India,
Represented by the Secretary to the Government,
Ministry of Mines,
Shastri Bhawan,
New Delhi.
- 2.The Secretary to
The Government of Tamil Nadu,
Department of Industries,
Secretariat,
Chennai – 600 009.
- 3.The Director of Geology & Mining,
Guindy,
Chennai – 600 032.



W.P(MD)Nos.448 of 2011, 9481 & 11561 of 2015

4.M/s.India Rare Earth Limited,
Manavalakurichi Plant,
Manvalakurichi P.O,
Kanyakumari District – 629 252.

: Respondents

W.P(MD) Nos.9481 of 2015:-

M/s.Indian Rare Earths Limited,
Manavalakurichi Plant,
Manavalakurichi P.O,
Kanyakumari District – 629 252

: Petitioner

Vs.

1.The Government of India,
Represented by its Joint Secretary to the Government,
Tribunal Mines,
Ministry of Mines,
Shastri Bhawan,
New Delhi.

2.The Secretary to Government of Tamil Nadu,
Department of Industries,
Secretariat, Chennai – 600 009.

3.The Director of Geology & Mining,
Guindy,
Chennai – 600 032.

4.The District Collector,
Collectorate,
Nagercoil,
Kanyakumari District – 629 001.

5.M/s. V.V.Minerals,
Keeraikaranthattu,
Tisaiyanvilai,
Tirunelveli District,
Through its Managing Partner,
S.Vaikundarajan

: Respondents



W.P(MD)Nos.448 of 2011, 9481 & 11561 of 2015

W.P(MD) Nos.11561 of 2015:-

M/s.V.V.Mineral,
Keeraikaranthattu,
Tisaiyanvilai,
Tirunelveli District,
Through its
Managing Partner,
S.Vaikundarajan

: Petitioner

Vs.

1.The Government of India,
Represented by the Secretary to the Government,
Ministry of Mines,
Shastri Bhawan,
New Delhi.

2.The Secretary to
The Government of Tamil Nadu,
Department of Industries,
Secretariat,
Chennai – 600 009.

3.The Director of Geology & Mining,
Guindy,
Chennai – 600 032.

4.The District Collector,
Collectorate,
Nagercoil,
Kanyakumari District.

5.M/s.Indian Rare Earth Limited,
Manvalakurichi P.O,
Kanyakumari District – 629 252

: Respondents



PRAYER in W.P(MD) No.448 of 2011: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the First respondent relating to the final order No.649/2010 in Revision Application File No.27(12)/2006 RC II, dated 31.12.2010, passed by the first respondent and quash the same.

PRAYER in W.P(MD) No.9481 of 2015: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the first respondent culminating in the Final Order bearing No.189 of 2015 File No.27/(11)/2006-RC.II, dated 15.05.2015, passed by the first respondent and quash the conclusions arrived at in paragraph No. 7(iii), 9 and 14 of the said order passed by the first respondent and quash the same.

PRAYER in W.P(MD) No.11561 of 2015: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the first respondent, pertaining to the Final Order No. 189/2015, dated 15.05.2015, made in Revision Application No.27/(11)/2006/RC-II, on the file of the first respondent herein, and quash the same.



W.P(MD)Nos.448 of 2011, 9481 & 11561 of 2015

WP(MD)448/2011:-

For Petitioner	:Mr.K.Chellapandian, Senior Counsel for Mr.R.T.Arivukumar
For R1	:Mr.R.Nandakumar Central Standing Counsel
For R2 & R3	:Mr.Veerakathiravan, Additional Advocate General Assisted by Mr.D.Gandhiraj Special Government Pleader
For R4	:Mr.Krishna Srinivasan for Mr.S.Ramasubramaniam

WP(MD)9481/2015:-

For Petitioner	:Mr.Krishna Srinivasan for Mr.S.Ramasubramaniam
For R1	:Mr.K.R.Laxman Central Standing Counsel
For R2 to R4	:Mr.Veerakathiravan, Additional Advocate General Assisted by Mr.D.Gandhiraj Special Government Pleader
For R5	:Mr.K.Chellapandian, Senior Counsel for Mr.R.T.Arivukumar



W.P(MD)Nos.448 of 2011, 9481 & 11561 of 2015

WP(MD) No.11561 of 2015:-

WEB COPY

For Petitioner	:Mr.K.Chellapandian, Senior Counsel for Mr.R.T.Arivukumar
For R1	:Mr.P.Paulpandi Central Standing Counsel
For R2 to R4	:Mr.Veerakathiravan, Additional Advocate General Assisted by Mr.D.Gandhiraj Special Government Pleader
For R5	:Mr.Krishna Srinivasan for Mr.S.Ramasubramaniam

COMMON ORDER

The petitioner in WP.(MD)No.448 of 2011 and WP.(MD)No.11561 of 2015 is a private firm, engaging in mining activities in the name and style of M/s.V.V.Mineral. They were granted mining lease for Garnet sand, over an extent of 2.42.0 hectares of patta lands in Survey Nos.55/9A, 57/1, 57/5 and 96/3 of Keelmidalam Village, Vilavankode Taluk, Kanyakumari District, by the Government of Tamil Nadu in ROC.No.18933/MM7/2002, dated 31.01.2006. Subsequently, that lease was quashed by the first respondent / Revisionary Authority, based on the application filed by M/s.Indian Rare Earths Limited, Kanyakumari District, vide order No.649/2010, dated 31.12.2010, against which, **the writ petition in WP.(MD)No.448 of 2011 is filed.**



WEB COPY

2.The petitioner in WP.(MD)No.9481 of 2015, namely, M/s.Indian Rare Earths Limited is a Company, an undertaking of the Government of India, incorporated under the provisions of Indian Companies Act, engaged in mining, mineral processing, research and development and production of economic heavy minerals. The Company is carrying several mining operations in Kanyakumari District. They were granted a mining lease to an extent of 29.78.12 Hectares in Midalam, Keezhmidalam Village, Kanyakumari District, for a period of 20 years, vide G.O.Ms.No.1085, Industries Department, dated 21.09.1977. Since the said mining lease expired on 14.10.1999, M/s.Indian Rare Earths Limited filed a renewal application on 16.09.1998, thereby, it is under "deemed extension". The mining lease granted to M/s.Indian Rare Earths Limited was revived by the second respondent vide G.O.Ms.No.62, dated 22.06.2009 and the extent of mining has been reduced from 29.78.12 Hectares to 4.90.5 Hectares, by way of a separate order No.30753/MMD1/2002, dated 20.01.2003.

3.Aggrieved over the same, M/s.Indian Rare Earths Limited filed a revision application on 19.02.2003 before the first respondent. The first respondent, by order dated 25.03.2010, set aside the order passed by the second respondent dated 20.01.2003 and directed the second respondent to consider



and pass orders on the renewal application filed by M/s.Indian Rare Earths Limited, dated 16.09.1998. While this being so, the second respondent granted mining lease to M/s.V.V.Mineral, Tirunelveli, vide proceedings in Roc No. 18933/MM7/2002, dated 31.01.2006, to an extent of 2.42.0 Hectares in Survey Nos.55/9A, 57/1, 57/5 and 96/3 of Keelmidalam Village, Vilavankode Taluk, Kanyakumari District. Apart from this, the second respondent has also granted a mining lease to M/s.V.V.Mineral, Tirunelveli, vide proceedings in Roc No. 18325/MM7/2000, dated 31.01.2006, to an extent of 0.70.0 Hectares.

4.According to M/s.Indian Rare Earths Limited, the above extent of lands were fully covered under the original mining lease granted to them, for which, their renewal application dated 16.09.1998 is still pending with the second respondent. Hence, a revision application dated 28.11.2006 was filed by M/s.Indian Rare Earths Limited, before the Revisionary Authority and the Revisionary Authority has passed an order, dated 08.12.2011, directing the second respondent to take action as per the directions of this Court with regard to Rule 22(D)(b) of MCR, 1960. Challenging the order passed by the Revisionary Authority, M/s.Indian Rare Earths Limited filed a writ petition in WP.(MD)No.10726 of 2012, wherein, the order of the Revisionary Authority, dated 08.12.2011 has been quashed and the matter was remitted back to the Revisionary Authority to decide the revision application filed by M/s.Indian



W.P(MD)Nos.448 of 2011, 9481 & 11561 of 2015

Rare Earths Limited, dated 28.11.2006 afresh. Accordingly, the revision application filed by M/s.Indian Rare Earths Limited was once again heard by the Revisionary Authority and by order No.189/2005, dated 15.05.2015, the order of the second respondent, in Roc.No.18325/MM7/2000, dated 31.01.2006, granting mining lease to M/s.V.V.Mineral was quashed and the matter was remanded to the second respondent for taking action as per the provisions of law.

5.As against this order dated 15.05.2015 passed by the Revisionary Authority quashing the lease granted to M/s.V.V.Mineral by the second respondent in proceedings dated 31.01.2006, **the writ petition in WP.(MD)No. 11561 of 2015 is filed** by M/s.V.V.Mineral.

6.In the meantime, with regard to the claim of M/s.Indian Rare Earths Limited for renewal of mining lease, the Revisionary Authority has held that provisions of Rule 22(3)(h) of MCR, 1960, makes it compulsory for an applicant of a mining lease (including its renewal) to produce proof of surface rights over the area or a consent from the landowners for starting mining operations and the revisionist, ie., M/s.Indian Rare Earths Limited failed to obtain such consent from the landowners over area in question. Even the landowners made it clear about their unwillingness to furnish any such consent



W.P(MD)Nos.448 of 2011, 9481 & 11561 of 2015

in future also. Therefore, the Revisionary Authority was of the view that M/s.Indian Rare Earths Limited cannot claim any right for renewal of Mining Lease over the area, where it has not obtained the surface rights or consent, as required under the provisions of Rule 22(3)(h) of MCR, 1960. Aggrieved over the same, **the writ petition in WP.(MD)No.9481 of 2015 is filed.**

7.Since the issue involved in all these three writ petitions is pertaining to the grant of mining lease and the issue is also between M/s.Indian Rare Earths Limited and M/s.V.V.Mineral, these writ petitions are taken up together and disposed of by way of this common order. For easy reference, the parties are referred in the respective company's names.

8.Learned Senior Counsel appearing for M/s.V.V.Mineral submitted that they are the owners of lands in Survey Nos.55/9A, 57/1, 57/5 and 96/3 at Keelmidalam Village, Vilavangode Taluk and they also obtained a decree in O.S.No.83 of 2005, from the Principal Sub Court, Tirunelveli, restraining the Government from processing of any mining lease in favour of any third party. The Secretary to Government, Department of Industries, has granted mining lease to them for the above said survey numbers at Keelmidalam Village, Kanyakumari District, thereby, M/s.V.V.Mineral is entitled to conduct quarry operation in the above lands. However, this order of mining lease granted in



favour of M/s.V.V.Mineral was set aside and quashed by the first respondent /

Revisionary Authority in the revision filed by M/s.Indian Rare Earths Limited.

According to the learned Senior Counsel, the subsequent development of amendment passed by the Government of India will not be applicable for grant of lease in this case.

9.Learned Senior Counsel appearing for M/s.Indian Rare Earths Limited and the learned Additional Advocate General appearing for the official respondents submitted that in view of the amendment made in Atomic Mineral Concession Rules, 2016, dated 20.02.2019, there cannot be any mining lease for Beach Sand Minerals to any private person / company and therefore, the writ petitions filed by M/s.V.V.Mineral have now become infructuous.

10.This Court considered the rival submissions made by the respective parties and also perused the materials placed on record.

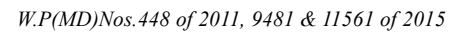
11.These writ petitions are filed as against the orders of the Revisionary Authority / the first respondent, on the grant of lease of Garnet in certain survey numbers in Keelmidalam Village, Kanyakumari District. M/s.Indian Rare Earths Limited, a Public Sector Company, who was granted with a lease with regard to the subject survey numbers vide G.O.Ms.No.1085, Industries Department, dated



21.09.1997, has also applied for renewal of the lease and the same is pending.

Pending the renewal application, M/s.V.V.Mineral Limited has purchased the subject lands and also applied for grant of mining lease in favour of their company. The second respondent has granted the lease in favour of M/s. V.V.Mineral and the same was challenged before the first respondent / Revisionary Authority. The Revisionary Authority by his final order, dated 15.05.2015, quashed the orders passed by the second respondent and remitted the matter back to the second respondent for taking action as per the provisions of law.

12.The Revisionary Authority has set aside the lease granted by the second respondent holding that the lease was granted without any notification, without prescribing the area available for grant and without any approval. Therefore, the impugned order is illegal in terms under Section 11(4) of the Mines and Minerals Development Regulation Act r/w Section 59A of Mines and Concession Rules, 1960. The Revisionary Authority has also found that the State Government has granted the lease without obtaining the prior approval under Section 5(1) of the MMDR Act. Aggrieved over the observations of the Revisionary authority in paragraphs 7(iii), 9 and 14 of the impugned order, M/s.Indian Rare Earths Limited has filed the writ petition in WP(MD) No.9481 of 2015 that they are conducting quarry operation in the subject survey numbers



13. The minerals sought to be quarried is Garnet, which is a major mineral, prescribed under the Second Schedule of Mines and Minerals (Development and Regulation) Act, 1957. As per the proviso to clause (b) of sub-section (1) of Section 5 of the Mines and Minerals (Development and Regulation) Act, 1957, in respect of any mineral specified in Part A and Part B of the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Government of India.

14. The Government of India, in the year 2016, framed Atomic Minerals Concession Rules, which came into force with effect from 11.07.2016. As per Rule 2(1)(c) of Atomic Minerals Concession Rules, 2016, “Beach Sand



Minerals” means economic heavy minerals found in the Teri or Beach Sands, which include Ilmenite, Rutile, Leucoxene, Garnet, Monazite, Zircon and Sillimanite. The minerals which comprises of Ilmenite, Rutile, Zircon, Monazite, Sillimanite, Leucoxene and Garnet are also defined as 'total heavy minerals', as per Rule 2(1)(n) of the Atomic Mineral Concession Rules, 2016. The Department governing these minerals is defined in Rule 2(e) as Department of Atomic Energy in the Government of India and the Atomic Minerals Directorate (AMD) for Exploration and Research under the Department, as per Rule 2(f). Rule 2(n) defines the threshold value as the grade of atomic mineral, specified as percentage of weight of the prescribed substances.

15.Schedule 'A' of the Atomic Minerals Concession Rules, 2016, prescribes the particulars of threshold value for atomic minerals and the threshold value is also defined under Rule 2(1)(m) of AMCR as the grade of atomic mineral, specified as percentage of weight of the prescribed substances contained in the ore, to be specified and notified by the Department from time to time under Schedule A. The threshold value for a particular atomic mineral occurring as such or in association with one or more minerals. Previously, the threshold value was prescribed as 0.75% Monozite in Total Heavy Minerals, Beach Sand Minerals in association with Monozite.



WEB COPY

16.The threshold value of atomic minerals has been substituted as 0.000% by the second amendment to the AMCR Rules 2016, by the notification of the Central Government in G.S.R 134 (E), dated 20.02.2019. As per this amendment, the threshold value is 0.000% Monozite in total heavy minerals.

17.In view of this amendment made in Schedule A of Atomic Mineral Concession Rules, 2016, mining lease for Beach Sand Minerals including Garnet shall be granted to a Government Company or Corporation owned or controlled by the Government under the provisions of Rules 3(1), (4), (5)(b) and 6 of AMCR, 2016. In view of the above amendment that the mining lease for Beach Sand Minerals could not be granted to any private person / firm / company, the writ petitions filed by M/s.V.V.Mineral in W.P.(MD)No.448 of 2011 and WP(MD) No.11561 of 2015 are liable to be dismissed as infructuous.

18.Insofar as the writ petition in W.P(MD) Nos.9481 of 2015 is concerned, M/s.Indian Rare Earths Limited has established that they were granted a mining lease in the year 1977 itself, for a period of 20 years, vide G.O.Ms.No.1085, Industries Department, dated 21.09.1977, to an extent of 29.78.12 Hectares in Midalam Village and Kilmidalam Village in Kanyakumari District and they have also filed a renewal application on 16.09.1988, well



W.P(MD)Nos.448 of 2011, 9481 & 11561 of 2015

before the expiry of the lease period, which is still pending. The second respondent has reduced the extent to 4.90.5 Hectares, vide order No. 30753/MMD1/2002, dated 20.01.2003.

19.This order was challenged by M/s.Indian Rare Earths Limited before the first respondent and the first respondent set aside the G.O.Ms.No.62, dated 22.06.2009 and directed the State Government to consider the renewal application submitted by M/s.Indian Rare Earths Limited and to pass orders in accordance with law. It appears that without processing the renewal application of M/s.Indian Rare Earths Limited, the second respondent proceeded with the application submitted by M/s.V.V.Mineral and passed orders, which were set aside by the Revisionary Authority / first respondent, followed by which, the subsequent writ petitions in WP.(MD)No.448 of 2011 and WP.(MD)No.11561 of 2015 came to be filed.

20.In view of the present amendment made in Schedule A of Atomic Mineral Concession Rules, 2016, M/s.V.V.Mineral is not entitled for grant of any mining lease for Beach Sand Minerals. Accordingly, the writ petitions filed by M/s.V.V.Mineral in **WP.(MD)No.448 of 2011 and WP.(MD)No.11561 of 2015 are dismissed as infructuous.**



21.Since the application for renewal of mining lease of M/s.Indian Rare Earths Limited is pending from the year 1988, the writ petition filed by M/s.Indian Rare Earths Limited in **WP.(MD)No.9481 of 2015 is disposed of** with a direction to the second respondent to consider the renewal application filed by M/s.Indian Rare Earths Limited within a period of three months from the date of receipt of a copy of this order, in accordance with law and in the light of the amendment made in Schedule A of Atomic Mineral Concession Rules, 2016.

22.The Government is granting lease / license to quarry minerals like Garnet, Monazite, etc, which are found in the Beach Sands. The Government is also collecting the eligible seigniorage fee equivalent to the quantum of mineral quarried. Apart from the mineral Garnet, Beach Sands also comprise of minerals like Ilmenite, Rutile, Leucoxene, Zircon, Sillimanite, etc. While extracting the mineral Garnet or Monazite from the Beach Sands, it is not known as to whether the lessees or the license holders are leaving the remaining extracted minerals back. Therefore, this Court feels that the Government should ensure that the lessees or the license holders are extracting the minerals for which they were given permission and are leaving back the remaining minerals after the extraction **or** should collect appropriate seigniorage fee for all the minerals which were found in the Beach Sands.



W.P(MD)Nos.448 of 2011, 9481 & 11561 of 2015

WEB COPY

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Internet : Yes
Index : Yes / No
NCC : Yes / No

20.02.2023

vrn/gk

To

- 1.The Secretary to Government,
Government of India,
Ministry of Mines,
Shastri Bhawan,
New Delhi.
- 2.The Secretary to Government of Tamil Nadu,
Department of Industries,
Secretariat, Chennai – 600 009.
- 3.The Director of Geology & Mining,
Guindy,
Chennai – 600 032.
- 4.The Joint Secretary to the Government,
Government of India,
Tribunal Mines,
Ministry of Mines,
Shastri Bhawan,
New Delhi.
- 5.The District Collector,
Collectorate,
Nagercoil,
Kanyakumari District – 629 001.



WEB COPY



W.P(MD)Nos.448 of 2011, 9481 & 11561 of 2015

B.PUGALENDHI, J

vrn

Pre-delivery Common Order made in
W.P(MD) Nos.448 of 2011, 9481 & 11561 of 2015
and
MP(MD) Nos.1 & 2 of 2011 & 1,1,2,2 of 2015

20.02.2023