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W.P.(MD)NO.1558 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.03.2023

PRONOUNCED ON : 12.05.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.1558 of 2023

Anitha Raja Bai

... Petitioner

Vs.

1. The District Collector,
Kanyakumari District,
Kanyakumari.

2. The Assistant Director,
Department of Geology and Mining,
Collectorate,
Kanyakumari District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 1st respondent bearing Na.Ka.No.715/PMS/2015 dated 02.02.2023 and quash the same and consequently direct the 1st respondent to permit the petitioner to conduct stone quarrying operation in the petitioner's lease hold patta land in S.F.No.483/2 over an extent of 1.41.70 Ha in Mecode Village at Kalkulam Taluk, in Kanyakumari District for a period of 5 years from 13.05.2017 to 12.05.2022 which is non operative by taking into consideration the EC already issued to the petitioner.



(Prayer is amended vide Order dated 03.03.2023 in WMP(MD)
No.2699 of 2023)

For Petitioner : Mr.M.Sricharan Rangarajan,
Senior Counsel,
for Mr.K.Samidurai.

For Respondents : Mr.A.Baskaran,
Additional Government Pleader.

* * *

ORDER

Heard the learned Senior counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the respondents.

2. The writ petitioner is the lease holder for the petition mentioned patta land. He was given permission to quarry rough stone / jelly quarry for a period of five years vide proceedings dated 13.05.2017. The quarry operations had to be stopped in view of the issuance of notice dated 05.04.2019 on the ground that the quarry is situated within 10 kilometers of Kanyakumari Wild Life Sanctuary and that therefore the clearance from the National Board for Wildlife must be obtained. The suspension



order was subsequently lifted and the petitioner was permitted to resume the quarry operations vide proceedings dated 23.10.2020. The revocation order was issued on 23.10.2020. The case of the petitioner is that there was delay in execution of the lease deed and that subsequently the petitioner was also suffering from certain ailments and that therefore even though she was granted permission to quarry for a period of five years, she was not able to make use of the same. In the meanwhile, environmental clearance given by the State Level Environmental Impact Assessment Authority also expired on 05.01.2021. It is in these circumstances, the present writ petition came to be filed for directing the first respondent to permit the petitioner to carry out stone quarry operations in the petition mentioned land for five more years, taking into account the period from 13.05.2017 to 12.05.2022 as non-operative period. The writ petition was filed in January 2023. During the pendency of the writ petition, the impugned order dated 02.02.2023 came to be passed calling upon the writ petitioner to obtain fresh clearance from the State Level Environmental Impact Assessment Authority. The learned Senior counsel reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the order and grant relief as prayed for.



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4. I carefully considered the rival contentions and went through the materials on record.

5. The learned Senior counsel appearing for the petitioner placed reliance on the earlier orders passed by this Court. A learned Judge of this Court vide order dated **26.04.2021** in ***W.P.(MD)No.8618 of 2021 (V.Jebadhas V. The District Collector, Kanyakumari)*** passed the following order:-

“ 7. This Court is of the considered view that when the respondents have got power to grant permission to the petitioner to conduct stone quarrying operation over his land, for the non-operative period, on account of suspension of the mining lease granted in favour of the petitioner for no fault on him, rejection of the request made by the petitioner to conduct stone quarrying operation in his



land for the non-operative period, is not justifiable and therefore, this Court is of the considered view that the respondents ought to have considered the reasonable request of the petitioner, permitting him to conduct stone quarrying operation, on account of suspension of the mining lease granted in favour of him.”

6. I had also taken a similar view vide order dated **23.08.2022** in ***W.P.(MD)No.17181 of 2022 (R.Sankar V. The District Collector, Kanyakumari)***. The relevant clause in the environmental clearance certificate issued by the State Level Environmental Impact Assessment Authority was originally as follows:-

“Validity :

The Environmental Clearance will be coterminous with the mine lease period or limited to a maximum period of 5 years from the date of issue whichever is earlier.”

Subsequently, the phraseology was modified as follows:-

“Validity



This environmental clearance is granted for for the period of 5 years from the date of execution of the mining lease period.“

In the said order, I had held as follows:-

“5.From this modification in the language of the validity clause, one can safely infer that the clause in the writ petitioner's certificate will have to be given a purposive construction. The period of five years cannot be mechanically counted from the date of issuance of certificate. The object and purpose of the certificate was that the certificate should be valid for a maximum period of five years. It should also be coterminous with the mining lease period. Mining leases are given even for a period of ten years or more. The environmental clearance certificate was not meant to run beyond five years. That is why, in order to restrict the validity period to five years, the expression “whichever is earlier” is found. In this case, the petitioner's mining operation came to a standstill sometime in 2019. He was not able to enjoy the fruits of his licence. That is why, for the



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non-operative period, the corresponding extension was given. The authority cannot take advantage of his own wrong. The first respondent had stipulated that the petitioner must obtain environmental clearance certificate. If the quarry operations of the petitioner had not been stopped, things would have run their normal course. If the quarry operations had been conducted in terms of the mining lease, then, the life of the clearance certificate would be five years from the date of issue. Since on account of the action taken by the first respondent, there was interruption of the quarrying operations, it should be deemed that the non-operative period should not be counted. It would be a different matter altogether if the stoppage was on account of any illegality or irregularity committed by the petitioner. That is clearly not the case. Therefore, the environmental clearance certificate will be coterminous with the mining lease period. In order to clear the ambiguity, the third respondent had now restricted the mining lease period to five years from the date of



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execution of the lease deed. I therefore hold that the petitioner need not apply afresh to the third respondent. The environmental clearance certificate issued on 13.10.2015 in favour of the writ petitioner will hold good till for the period covered by the proceedings dated 07.06.2021 r/w. the proceedings dated 07.11.2021. The impugned order is interfered with to this limited extent. The second respondent is directed to issue transport permits to the petitioner for the said period.”

7. But in this case, the authorities cannot be blamed fully. For the period from 05.04.2019 till 23.10.2020, there was a ban on quarry operations. This period alone can be taken as non-operative period. Without applying afresh to the State Level Environmental Impact Assessment Authority, the petitioner can carry out quarry operations only for the aforesaid non-operative period. The second respondent is directed to issue transport permits for the petitioner for the said period. It appears that the petitioner was not able to conduct quarry operations for the entire period of five years. However, the respondents cannot be blamed



therefor. I have clearly indicated that what would be construed as the non-operative period. If the petitioner wants to carry out quarry operations beyond the said period, she will have to necessarily abide by the order impugned in the writ petition. The impugned order is interfered with only to the limited extent mentioned above.

8. This writ petition stands partly allowed. No costs.

12.05.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

1. The District Collector,
Kanyakumari District,
Kanyakumari.
2. The Assistant Director,
Department of Geology and Mining,
Collectorate,
Kanyakumari District.



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G.R.SWAMINATHAN,J.

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