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W.P.Nos.11923 & 11924 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2024

Pronounced on : 19.10.2024

CORAM : JUSTICE N.SESHASAYEE

W.P.Nos.11923 & 11924 of 2007
and M.P.Nos.1 & 1 of 2007

Dalmia Cements (Bharat) Limited
Dalmiapuram - 621 651
Lalgudi Taluk, Tiruchirappalli District
Rep by its Assistant Executive Director (Legal)
Mr.Rajiv Bakshi

...Petitioner in both WPs

Vs

- 1.State of Tamil Nadu
Rep by the Secretary to Government
Industries (MMA-2) Department
Fort St.George
Chennai - 600 009.
- 2.The Commissioner and Director of Geology
and Mining
Industrial Estate
Guindy, Chennai - 600 032.
- 3.The District Collector
Perambalur District
Perambalur.



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4.The Secretary to Government
State of Tamil Nadu
Revenue Department
Fort St.George,
Chennai - 600 009.

... Respondents in both WPs

Prayer in W.P.No.11923 of 2007 : Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus calling for the records of the third respondent comprised in Rc.No.1918/(G&M)/2006 dated 17.03.2007 and quash the same as being wholly arbitrary, illegal and ultra vires the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and the Mineral Concession Rules, 1960 and direct the respondents not to levy any charge in respect of lease rent for grant of mining lease in respect of the lands in S.F.No.103/3 etc., of Aminabad and S.F.No.4458 etc., of Kairlabad Villages, Ariyalur Taluk, Perambalur District.

Prayer in W.P.No.11924 of 2007 : Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Declaration, declaring that the G.O.(Perm.) No.460 datd 4.6.1998 has no application to grant of mining leases to Government poromboke lands and in any event cannot be relied upon by the respondents to exact a levy while granting mining leases of Government poromboke lands as such a levy would be contrary to and ultra vires the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and the Mineral Concession Rules, 1960.

For Petitioner : Mr.Rahul Balaji



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For Respondents : Mr.P.Muthu Kumar
Additional Advocate General - V
Assisted by Mr.T.Arun Kumar
Additional Government Pleader

COMMON ORDER

The petitioner is a company registered under the Companies Act, and is a manufacturer of cement. For purposes associated with manufacture of cement, the petitioner had obtained a lease for mining limestone, which is a major mineral under the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter called as MMDR Act) in respect of two blocks of properties in S.F. No.103/3 of Ameenabad Village and S.F. No.4458 of Kairlabad Village, Ariyalur Taluk, vide G.O.(Ms) No.874 Industries Department dated 15.04.1970. Thereafter, there was a first renewal vide G.O.(Ms).No.2 Industries Department dated 05.01.1993 for a term of 10 years from 03.10.1990. When this lease term expired, the Government renewed the lease for the second time vide G.O.3(D) No.58 Industries (MMA1) Department dated 16.10.2006 for a period of 20 years from 03.10.2000 to 02.10.2020.

2. The petitioner concedes that a holder of the mining lease extracts the mineral, then there is a statutory liability on it to pay the occupier (the lessor



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of the land) surface rent and royalty, and where despite obtaining a mining lease, the lease holder does not mine then the lessee might have to pay what is called 'dead rent'. While surface rent has to be paid at all times irrespective of whether the lessee of a mining lease exploits the lease or not, royalty and the dead rent are payable alternatively, depending on whether the mining lease is worked or not worked. Accordingly, paragraph 4 of G.O.3(D) No.58, dated 16.10.2006, provides for the payment of surface rent plus water rate, and also for payment of royalty on the mineral actually mined and also dead rent in case the petitioner/lessee did not exploit the mining lease obtained by it. The petitioner has no qualms in paying what is required to be paid as stipulated in G.O. 3(D) 58, dated 16.10.2006

3. Be that as it may, the Tamilnadu Panchayat Act came into force on 22.04.1994, about midway through the lease term of the first renewal from 03.10.1990. Sec.167 and Sec.168 of the Panchayat Act provide for the levy of local cess and surcharge on the land revenue payable to the Government. And, Explanation to Sec.167 provided that “*land revenue means public revenue due on land and includes water cess payable to the government..*” It is in this backdrop, the Government came out with G.O.(Perm.) No.460 Revenue (N.M.2) Department, dated 04.06.1998. It reads as below:



“When the Government lands are leased out to private parties, the lease money for the government lands for non-commercial purposes are fixed at 7% of the present land value and when the lands are leased for commercial purposes the lease money is fixed at 14% of the present land value.

2. Presently, as per the Tamil Nadu Panchayat Act, 1994, the lease money is being levied with local cess at 100% of the lease money and the local cess surcharge at 500% of the lease money. As per this, for the government promoboke lands leased for commercial purposes, the lessee are subjected to pay 98% of the land value per years (i.e.14% lease money + 14% locall cess + 500% local cess surcharge). When the government poromboke lands are leased for non-commercial purposes, the lessee are subjected to pay lease money at 49% of the present land value per year (i.e.7% - lease money + 7% local cess +35% local cess surcharge). This leads to non-collection of not only local cess and local cess surcharge as well as non collection of lease money.

3. The Commissioner of Land Administration has requested in his letter that either not to collect local cess and local cess surcharge on the lease money for Government poromboke lands and to amend the Tamil Nadu Panchayat Act accordingly or tot reduce the lease money to 1% or 2%. however, the Director of Panchayat Development has stated in his letter that either collecting the reduced lease money or non imposition of local cess and local cess surcharge will lead to considerable loss of revenue to the local bodies.



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4. *After careful consideration, the Government has issued orders that the lease money, local cess and local surcharge to be levied as detailed below, wherever the Government poromboke lands are leased:*

<i>Purpose</i>	<i>Lease Money</i>	<i>Local cess</i>	<i>Local cess surcharge</i>	<i>Total</i>
<i>Commercial Purposes</i>	2%	2%	10%	14%
<i>Non Commercial Purposes</i>	1%	1%	5%	7%

Sec.167 and Sec.168, however, came to be omitted vide T.N. Panchayat (Fourth Amendment) Act, 2009, (Act 12/2009) with effect from 06.08.2009

4. It is before Sec.167 and Sec.168 of the Panchayat Act were dropped from the statute, as stated earlier the lease of the petitioner came to be renewed for a second time vide G.O. 3(D) No.58, dated 16.10.2006. What has happened in the present case is that after the passing of necessary G.O. granting the second renewal of the lease in favour of the petitioner, the District Collector, Perambalur had passed a proceedings, dated 17.03.2007, fixing what he claims as the fair rent payable on the land leased out to the petitioner, and raised a demand for Rs.98,91,090/- for the entire lease period. This proceedings justifies the fixation of fair rent based on G.O.460, 04.06.1998



(extracted above). And the fair rent is fixed based on the valuation report of the Tahasildar, who for the purpose of his report has placed reliance on the prevailing market rate based on certain sale deeds. On the same day vide a separate proceedings, the District Collector, has also determined the annual compensation payable by the lessee under Sec.72(2) to 72(4) of the Mineral Concession rules, 1960.

5. The petitioner challenges both the above referred to proceedings of the District Collector, dated 17.03.2007, and also seeks a declaration that G.O.460 which formed the basis for the said proceedings, will have no application to the mining lease in this batch of two cases. Its contentions are:

- a) That G.O.460 has application only where Government poromboke lands are leased out for commercial or non-commercial purposes, and mining is a *sui generis* class of activity and it cannot be bottled under any of these heads.
- b) Secondly, any levy payable by the lessee under a mining lease must be only those which are leviable under the Mines & Mineral (Development and Regulation) Act, 1957 (hereinafter MMRD Act), and the Mineral Concession Rules, 1960 (henceforth MCR). As per the scheme of Rule 27 of the Mineral Concession Rules, only three



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category of levies are permissible: (i) dead rent; (ii) royalty; and (iii) surface rent and water rate.

- c) The District Collector has overly confused himself. He seemingly has drawn authority for fixing fair rent from G.O.460, which is meant to be applied on the land revenue for the benefit of the Panchayats in terms of Sec.167 and Sec. 168 of the Panchayat Act, when he is merely required to assess the surface rent in terms of Rule 27. In determining the surface rent, provisions of the Panchayat Act cannot be telescoped into the MCR. A State Act cannot interfere with the domain of application of the Central Act which MMRD Act is.
- d) This apart, surface compensation cannot be imposed under Rule 72 of the MCR where the leased lands are poromboke lands.

Reliance was placed on the ratio in, ***D.K.Trivedi and sons v. State of Gujarat*** [1986 (supp) SCC 20]; ***Orissa Cement Ltd. v. State of Orissa*** [1991 Supp (1) SCC 430]; and ***India Cement and others v. State of Tamil Nadu and others*** [(1990) 1 SCC 12].

5. Appearing for the respondents, the learned Additional Advocate General made the following submissions:

- The District Collector has two independent and different roles to



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perform under two different enactments, one under MMDR Act, where he is the authority to grant mining licence and the other under the Village Panchayats Act. The present dispute is over the power of the District Collector to raise the demand for lease rent based on G.O. No.460 dated 04.06.1998, which was not under the MMDR Act but under the Village Panchayats Act.

- Section 167(1) of the Tamil Nadu Panchayats Act, 1994, enables levy of local cess at the rate of one rupee on every rupee of land revenue payable to the Government in every Panchayat Development Block. What constitutes land revenue is also provided in the Explanation to Section 167(1). This section underwent few amendments and vide Act 30 of 1999, Section 167(4) and (5) were replaced by Section 167(4). This amendment in essence only provides how to credit the cess collected under Section 167(1). Only vide Tamil Nadu Act 34 of 2008, the right of the Panchayat to collect cess under Section 167(1) was deleted in entirety.
- In this setting the petitioner was granted mining licence on 03.10.1970 for a period of 20 years, and this expired on 02.10.1990. There was first renewal for 10 years, and it was between 03.10.1990 to 02.10.2000. It is true, when the lease was granted and was renewed as stated above,



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only the Madras Panchayat Act, 1958, was in force. The Tamil Nadu Panchayats Act, 1994, came into force only during the first renewal period between 1990 and 2000.

- So far as the ratio in ***India Cement and others v. State of Tamil Nadu and others*** [(1990) 1 SCC 12], it was delivered under the Madras Panchayat Act, 1958 and not under the 1994 Act, and that in paragraph 41 thereof, the Hon'ble Supreme Court has drawn a distinction between a royalty payable on the mines and minerals, and the tax payable on the land. This distinction gets more pronounced under the Tamil Nadu Panchayats Act, 1994 where Section 167(1) expressly authorised the village panchayats to levy cess on land revenue.
- Set in the context, the power to levy lease rent and cess in terms of G.O. No.460 dated 04.06.1998 is traceable to the power, the legislature has granted to the village panchayat under Section 167(1), and the proceedings of the District Collector now under challenge is relatable to G.O. No.460 dated 04.06.1998. The power of the State Legislature to legislate for empowering the village Panchayats to impose cess on land revenue is governed by List II, items 18 and 45, and the constitutionality of Sec.167(1) of the Panchayat Act has not been challenged so far.



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6. Responding to the same, the learned counsel for the petitioner submitted:

(a) that the arguments founded on the premise that the lease rent now sought to be levied is covered by Section 167 of the Tamil Nadu Panchayats Act, 1994, is misconceived. Section 167 is in *pari materia* with Section 155 of the Panchayats Act, 1958, and the Hon'ble Supreme Court in *India Cements case* has already dealt with the same, and has held that there is not right in the Panchayats to levy any lease rent or any tax on the lands, where the lands are covered by Mines and Minerals (Regulation and Development) Act, 1957.

(b) The very lease for mining is statutory in character, and it takes care of various levies payable by a lessee such as mining lease rent, surface lease rent, and also the compensation as could be seen in Part-IV of the statutory lease deed in Form-K of the Mineral Concession Rules, 1960.

Discussion & Decision

7. There are two issues here: (a) Whether G.O.460, dated 04.06.1998 has any application to mining leases?; and (b) Whether the two proceedings of the



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district Collector, dated 17.03.2007 are sustainable? It should be underscored that inasmuch as the district Collector has purported to have passed the two proceedings on the footing of G.O.460, the answer to question (a) will have greater significance.

8. The unassailable facts are that G.O.460 concerns with levying local cess and surcharge in terms of Sec.167 and Sec.168 of the Panchayat Act, but the issue is whether it is applicable to mining lease. Sec.167 as it was then reads:

167. Local Cess.-

(1) There shall be levied in every Panchayat Development block, a Local Cess at the rate of 1 [two rupees] on every rupee of land revenue payable to the Government in respect of any land for every Fasli.

Explanation.- In this section and in Section 168, 'land revenue' means public revenue due on land and includes water cess payable to the Government for water supplied or used for the irrigation of lands, royalty, lease amount or other sum payable to the Government in respect of land held direct from the Government on lease or licence, but does not include any other cess or the surcharge payable under Section 168:

Provided that land revenue remitted shall not be deemed to be land revenue payable for the purpose



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of this Section.

(2) The Local Cess payable under sub-section (1) shall be deemed to be public revenue due on all the lands in respect of which a person is liable to pay Local Cess and all the 81 said lands, the buildings upon the said lands and their products shall be regarded as security for the Local Cess.

(3) The provisions of the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864), shall apply to the payment and recovery of the Local Cess payable under this Act just as they apply to the payment and recovery of the revenue due upon the lands in respect of which the Local Cess under this Act is payable.

The aforesaid provision enables imposition of local surcharge by the Panchayat on the land revenue due on land. And by fiction, the expression land revenue is given a wider meaning to include all public revenue due on land and it *inter alia* includes lease amount and royalty.

9. The power to levy local cess and surcharge was not a new introduction under the Panchayat Act, 1994, but was in vogue even under its predecessor enactment, the Tamil Nadu Panchayat Act. Secs.115 and 116 of the 1958 Act correspond to Secs.167 and 168 of the 1994 Act. The Explanation to Sec.115 of the Panchayat Act, 1958 is worded *in pari materia* to the Explanation to



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Sec.167 of the 1994 Act. In ***India Cements Ltd. & Others Vs State of***

Tamil Nadu & Others [(1990) 1 SCC 12], a Constitutional bench (Seven

Judges) of the Hon'ble Supreme Court was required to examine the sustainability of imposing cess on royalty money payable on mining leases.

The Hon'ble Supreme Court has held that royalty is a tax and by including royalty within the meaning of land revenue, the legislature has exceeded its legislative competence and hence imposition of cess on royalty is incompetent. However, the Supreme Court has later held that royalty is not a tax and that it is a payment made to recompense the lessor of the mining land for the depletion in the mineral due to mining operations. See: the judgement of the Constitutional bench (nine judges) of the Supreme Court in ***Mineral Area Development Authority & another Vs Steel Authority of India & another*** [2024 SCC OnLine SC 1796].

10. In this background, if G.O.460 is perused, Government has sought to impose cess and surcharge neither as a percentage of surface rent or royalty, but as a component of land value. Under Sec.105 of the Transfer of Property Act, a lease is but a transfer of right of enjoyment of an immovable property for a rent. Enjoyment in the context of a lease is relatable to the purpose which a immovable property could support. For instance, if the property



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leased is a building, then the right of enjoyment which is transferred under the lease is such purposes to which the building could be put to. Accordingly, a mining lease involves transfer of right to such enjoyments, implying thereby mining of mineral, which alone is the nature of enjoyment which the property leased could be subjected to. What is payable for lease is rent and not the land value. Only where a land is conveyed absolutely then there is a need for arriving at the land value. And, Explanation to Sec.167 of Panchayat Act, 1994 (Sec.115 under the old Act) does not permit imposition of cess and surcharge on the value of land but only on the lease amount.

11. Now, does G.O.460, dated 04.06.1998 apply to mining leases? It cannot as it provides for the imposition of cess and surcharge on the land value and not on the rent amount. The petitioner's contention has been that G.O.460 will apply to commercial and non-commercial leases and not to mining leases, as mining leases are *sui generis* class of leases which will not fall in either of these classes. The word 'commercial' is a word of wider connotation, and a mining operation can be termed commercial if the extraction of the mineral aims at commercial exploitation of the extracted mineral. However, inasmuch as this Court has held that no cess or surcharge can be levied in terms of Sec.167 and 168 of the Panchayat Act, 1994, on the land value as has been



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purported to be done as per G.O. (Perm) 460 Revenue (NM2) Department, dated 04.06.1998, the said G.O. has no application to mining leases.

12.1 Moving to the second leg of this case, it relates to the validity of the proceedings of the District Collector dated 17.03.2007. There are indeed two proceedings bearing the same date which the District Collector has passed. The first one relates to imposition of cess and surcharge at 14% on the land value based on G.O.460, dated 04.06.1998. Under the second proceedings, the District Collector has determined the surface compensation payable in terms of Rule 72 of the MCR.

12.2 Turning to the first proceedings, inasmuch as this Court has held that G.O.460 does not apply to mining leases since its foundation is land value which is incongruent to leases, anything based on G.O.460 has to necessarily fail. So far as the second proceedings involving determination of surface compensation payable in terms of Rule 72 of MCR is concerned, in terms of Rule 73, the same might have to be paid, if required to be paid, only after the termination *inter alia* of a mining lease and not before its commencement. Hence the second proceedings of the District Collector also fails.



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13. In conclusion both the writ-petitions are allowed but without costs in the manner indicated below:

- a) That G.O.(Perm.) No.460 Revenue (N.M.2) Department, dated 04.06.1998, does not apply to mining leases;
- b) That two proceedings of the District Collector, dated 17.03.2007, are set aside as either incompetent or pre-mature.

Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Neutral Citation : Yes / No

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Pre-delivery order in
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