IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7879 of 2020
and
W.M.P.Nos.9303 and 9305 of 2020

Tmt.B.Thiraviam ... Petitioner

Vs.

1. State of Tamil Nadu,
   Rep. by its Secretary to Government,
   Department of Industries,
   Fort St.George, Chennai – 600 009.

2. Hill Area Conservation Authority,
   Rep. by its Member Secretary,
   Anna Salai, Chennai – 600 002.

3. The District Collector,
   Madurai. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records leading to the issue of Memo in Proceedings ROC.No.283/2015-Mines Department of Geology and Mining dated 05.02.2018 on the file of the 3rd respondent and quash the same and direct the respondent herein to renew the petitioner's mining lease for mining quarts and feldspar over an extent of 4 hectares in S.F.No.195/1 Kalluthu Village, Usilampatti Taluk, Madurai District for a further period of 20 years from the date of renewal.

For Petitioner : Mr.K.Sridhar

For Respondents : Mr.B.Vijay,
Additional Government Pleader
and Mr.G.Krishna Raja,
Additional Government Pleader

O R D E R

The lis on hand has been instituted questioning the validity of the order dated 05.02.2018 passed by the District Collector, Madurai.

2. The order impugned reveals that liberty to prefer an appeal before the Commissioner of Geology and Mining, Chennai under Section 36-C(3) of the Tamil Nadu Minor Minerals Concession Rules, 1959 and that such an appeal is to be filed within a period of 30 days as per the Rules. Admittedly, the petitioner has not exhausted the alternate remedy contemplated under the Tamil Nadu Minor Minerals Concession Rules, 1959.

3. The petitioner had been granted a mining lease for quarts and feldspar vide G.O Ms.No.631, Department of Industries, dated 06.11.1992,

admittedly for a period of 5 years under Section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "the MMDR Act"). The petitioner had preferred renewal of mining lease on expiry of the said lease period of 5 years. Since, the mining lease falls under the provisions of the G.O Ms. No.44, Planning and Development (TC.II) Department dated 02.04.1990, the petitioner was requested to produce clearance from the Hill Area Conservation Authority (HACA). However, the HACA rejected the application submitted by the writ petitioner on 27.10.2009 to grant clearance. Consequently, the 1st respondent / Government alsohad rejected the renewal application of the petitioner in G.O (D) No.177, Industries (MMA2) Department dated 11.11.2014 as per Section 10(3) of the MMDR Act.

4. The petitioner had filed W.P.No.3660 of 2015 and the said Writ Petition was dismissed. Against which, Writ Appeal in W.A.No.1491 of 2015 was preferred and the Division Bench of this Court allowed the appeal by remitting the matter back to the authorities to reconsider the issues. Pursuant to the directions issued by the Division Bench of this Court in W.A.No.1491

of 2015, the present impugned order dated 05.02.2018 came to be passed by the District Collector, Madurai.

5. The learned counsel for the petitioner, Mr.K.Sridhar would submit that the lease expired is deemed to be renewed in view of the provisions of the MMDR Act. Such deemed renewal cannot be denied and the right of the petitioner in this context was considered by the Division Bench of this Court in W.A.No.1491 of 2015. The learned counsel for the petitioner, Mr.K.Sridhar would solicit the attention of this Court with reference to the findings made by the Division Bench in Paragrapah Nos. 6 to 10 of the judgment in W.A.No.1491 of 2015, which reads as under:-

> *" 6. Insofar as the second ground is concerned, once again, it is undisputed that the Tamil Nadu Pollution Control Board has restricted the quarrying area to 4.75.0 hectares and the petitioner is entitled to quarry that area only in S.No.195/1. The submission of the learned Special Government Pleader is that the*

appellant is required to get the specific area demarcated by the revenue authorities out of 6.00.0 hectares. To our mind, this would be a procedural exercise which could have been easily carried out by the respondent, if it so desires. But obviously, they have acted on the basis as if the petitioner would get the rights for 6.00.0 hectares, while the fact is that all that was required to be done was to restrict the area of lease from 6.00.0 hectares to 4.75 hectares. Thus on this ground also, we find that the order of HACA is erroneous.

7. The last aspect is the issue of route to be adopted by the petitioner, being within the prohibited reserve forest area. The stand of the petitioner is that there is an alternative route available and it cannot be required to go through the third party land as it is a cart track. On the other hand, the stand of the respondent is that the cart track also appears to be *going through a private land, for which permission would be required.*

8. The aforesaid aspect also has not been examined by the HACA correctly as if there was an alternative route available and it was felt that there is some consent required qua the third party land. That should have been the reason why the appellant could have been asked to procure the consent, instead of rejecting her request.

9. We are, thus, of the view that the impugned order dated 11.11.2014 as affirmed by the learned Single Judge is liable to be set aside and the HACA would have to examine the matter in the limited scope referred to us as aforesaid.

10. The learned Special Government Pleader seeks to bring to our notice the subsequent event of the notification having been issued on 10.02.2015 by the Ministry of Mines, Government of India in S.O.423(E) in *exercise of the powers conferred by clause (e) of section 3 of the Mines and Minerals (Development and Regulation Act, 1957 declaring both minerals i.e. Quartz and Feldspar as minor minerals, in addition to the minerals already declared by the earlier notification. The result is that these minerals are now no more major minerals, but minor minerals. Naturally, the Statute would have application from the date it came into force, i.e. 10.02.2015. This is, however, a matter of fact and the effect of the issuance of S.O.423(E) has not been set out.”*

6. Relying on the above observations made by the Division Bench while remitting the matter back to the authorities to reconsider the same, Mr.K.Sridhar would contend that the rejection order subsequently passed is running counter to the observations made by the Division Bench in the Writ Appeal and thus, the impugned order is liable to be set aside.

7. It is contended that Rule 72 of the Tamil Nadu Minor Minerals Concession Rules, 1959 was repealed and therefore, relying on the said provision, the actions initiated by the respondents are untenable. It is stated that the petitioner had invested money and their labour and non-renewal would cause prejudice to the interest of the petitioner. The respondents have intentionally not considered the observations and findings made by the Division Bench of this Court in the Writ Appeal order dated 10.12.2015.

8. The learned Additional Government Pleader, Mr.B.Vijay would oppose the contention of the petitioner by stating that due to the repealing of the act on account of an amendment made, the petitioner is not entitled for the relief. The deemed renewal is inapplicable in view of the amendments made and all such leases are to be granted only through public auction and automatic renewal is impermissible under the MMDR Act and under the Tamil Nadu Minor Minerals Concession Rules, 1959.

9. Admittedly, the petitioner availed the original lease period from 05.01.1994 to 04.01.1999 and the application for renewal of mining lease

was submitted on 17.09.1998 under Rule 24(A) of the erstwhile Mineral Concessions Rule, 1960. Under the erstwhile Rule 24(A) of the Mineral Concessions Rule, 1960, the lease area was under deemed extension of mining lease vide Rule 24(A)(6) of the said Rules till the final disposal of the Government in G.O Ms No.177, Industries Department dated 11.11.2014.

10. Section 43 of the Tamil Nadu Minor Minerals Concession Rules, 1959 came into force with effect from 22.04.2016. Due to pendency of the litigation during the relevant point of time, the application was not considered. However, Rule 43 was inserted in G.O Ms.No.70, Industries Department dated 22.04.2016 and thereafter, the lease is to be granted only through public auction.

11. Section 43(4)(i) of the Tamil Nadu Minor Minerals Concession Rules, 1959 enumerates that the procedures laid down in rule 19-A of these rules shall apply for the grant of lease for quarrying of these minor minerals in ryotwari lands. The applications for grant of lease under this rule shall be made in the Form in Appendix – VII-B."

12. Section 8-A of the Tamil Nadu Minor Minerals Concession Rules, 1959 provides lease of quarries to private persons in respect of granite. Exhaustive procedures are contemplated for grant of lease. All such leases are to be granted through public auction under Rule 43 and admittedly, the minerals viz., quartz and feldspar were classified as minor minerals and consequently, the Tamil Nadu Minor Minerals Concession Rules, 1959 would be applicable for the purpose of grant of lease and to deal with issues connected thereon.

13. The learned Additional Government Pleader would further contend that the petitioner cannot seek deemed renewal of lease in view of Section 10(A) of the MMDR Act, which was inserted by the Act 10 of 2015 with effect from 12.01.2015. Therefore, the deemed renewal of lease would not arise at all in the case of the petitioner and all the renewal applications became ineligible. Subsequent to insertion of Section 10(A) in the MMDR Act, the Government of Tamil Nadu issued G.O Ms.No.70, Industries dated 22.04.2016, inserting Rule 43 in the Tamil Nadu Minor Minerals Concession

Rules, 1959, so as to ensure that all leases are granted only through public auction and more so, considering the amendment effected under the Central Act, declaring the renewal applications as ineligible. Therefore, Rule 43 of the Tamil Nadu Minor Mineral Concession Rules is a consequential action taken by the Government of Tamil Nadu in view of the amendment made to the Central Act by inserting Section 10(A) of the MMDR Act. Thus, the right of deemed renewal of lease would not arise at all.

14. The learned Additional Government Pleader relied on the judgment of the learned Single Judge of this Court in the case of ***the State of Tamil Nadu, Industries Department -vs- Dalmia Cemets (Bharath) Ltd., and another*** reported in **(2019) SCC Online Madras 9158.** Wherein the scope of these provisions where elaborately considered by the learned Single Judge in Paragraph No.22, 24 and 28, which reads as under:-

> *22.Heard the counsel on either side and perused the materials placed on record. Having considered the rival submission, the question which arise for consideration in these writ*

petitions is as to whether the Government is empowered to collect and levy annual compensation for surface right in respect of the Government Porombomke lands from the occupier of the lands. For the purpose of deciding the aforesaid question, it is inevitable to refer to certain relevant provisions of the Act and Rules and they are re-produced hereunder:-

The Mines and Minerals (Development and Regulation) Act, 1957:

13. ***Power of Central Government to make rules in respect of minerals.****-(1) The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of (reconnaissance permits, prospecting licences and mining leases] in respect of minerals and for purposes connected therewith.*

(2) In particular, and without prejudice to the

generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(i) the fixing and collection of fees for 3 [reconaaissance permits, prospecting licences or mining leases] surface rent, security deposit, fines, other fees or charges and the time within which and the manner in which the dead rent or royalty shall be payable;

(j) the manner in which rights of third parties may be protected (whether by payment of compensation or otherwise) in cases where any such party may be prejudicially affected by reason of any [reconnaissance, prospecting or mining operations];

24A. ***Rights and liabilities of a holder of prospecting licence or mining lease.****-(1) On the* *issue of a [reconnaissance permit, prospecting licence or mining lease] under this Act and the rules made thereunder, it shall be lawful for the [holder of such permit, licence or lease], his agents or his servants or workmen to enter the lands over which [such permit, lease or licence had been granted] at all times during its currency and carry out all such [reconnaissance, prospecting or mining operations] as may be prescribed:*

Provided that no person shall enter into any building or upon an enclosed court or garden attached to a dwelling-house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

(2) The holder of a [reconnaissance permit, prospecting licence or mining lease] referred to in

sub-section (1) shall be liable to pay compensation in such manner as may be prescribed to the occupier of the surface of the land granted under [such permit, licence or lease] for any loss or damage which is likely to arise or has arisen from or in consequence of the 9 [reconnaissance, mining or prospecting operations]

(3) The amount of compensation payable under sub-section (2) shall be determined by the State Government in the manner prescribed.]

The Mineral Concession Rules

22. Applications for grant of mining leases :- *(1) An application for the grant of a mining lease in respect of land in which the minerals vest in the Government shall be made to the State*

Government in Form I through such officer or authority as the State Government may specify in this behalf.

(d) A valid clearance certificate in the form prescribed by the State Government, of payment of mining dues, such as royalty or dead rent and surface rent payable under the Act or the rules made thereunder, from that Government or any officer or authority authorised by that Government in this behalf :

(4B) The Central Government or the State Government shall dispose of the application for approval of the mining plan within a period of ninety days from the date of receiving of such application:

Provided that the aforesaid period of ninety days shall be applicable only if the mining plan is complete in all respects, and in case of any *modifications subsequently suggested by the Central Government or the State Government, as the case may be, after the initial submission of the mining plan for approval, the said period shall be applicable from the date on which such modifications are carried out and submitted afresh to the Central Government or the State Government, as the case may be.] q(5) The Mining Plan shall incorporate:-*

(i) the plan of the lease hold area showing the nature and extent of the mineral body, spot or spots where the mining operations are proposed to be based on the prospecting data gathered by the applicant or any other person];

(ii) details of the geology and lithology of the area including mineral reserves of the area;

(iii) the extent of manual mining or mining by the use of machinery and mechanical devices;

27. Conditions :- (1) Every mining lease shall be subject to the following conditions:- *(d) the lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent and water rate at such rate, not exceeding the land revenue, water and cesses assessable on the land, as may be specified by the state Government in the lease;*

(t) the lessee shall pay to the occupier of the surface of the land such compensation as may become payable under these rules;

(2)(a) the time-limit, mode and place of payment of rents and royalties;

CHAPTER X

Rule 72. Payment of compensation to owner of surface rights etc:- *(1) The holder of a reconnaissance permit or prospecting licence or* *mining lease shall be liable to pay to the occupier of the surface of the land over which he holds the reconnaissance permit or prospecting licence or mining lease, as the case may be, such annual compensation as may be determined by an officer appointed by the State Government by notification in this behalf in the manner provided in subrules (2) to (4).*

(2) In the case of agricultural land, the amount of annual compensation shall be worked out on the basis of the average annual net income from the cultivation of similar land for the previous three years.

(3) In the case of non-agricultural land, the amount of annual compensation shall be worked out on the basis of average annual letting value of similar land for the previous three years.

(4) The annual compensation referred to in sub-

rule (1) shall be payable on or before such date as may be specified by the State Government in this behalf.

Rule 73. Assessment of compensation for damage:- *(1) After the termination of a reconnaissance permit or a prospecting licence or a mining lease, the State Government shall assess the damage, if any, done to the land by the reconnaissance or prospecting or mining operations and shall determine the amount of compensation payable by the permit holder or licensee or the lessee as the case may be, to the occupier of the surface land.*

(2) Every such assessment shall be made within a period of one year from the date of termination of the [reconnaissance permit or prospecting licence or mining lease] and shall be carried out by an officer appointed by the State Government by

notification in this behalf.

....

24. It is evident that Section 13 of The Act empowers the Central Government may to make rules for regulating the grant of permits, prospecting licences and mining leases in respect of minerals and for purposes connected therewith. Section 13 lays down several procedural aspects with respect to grant of mining lease, the person to whom such lease shall be granted, the period to which licence or lease shall be granted, fixing and collection of fee for such lease, including surface rent, security deposit, fines, other fees or charges etc., These conditions are largely intended to protect the ecology from being damaged and in the event of damage caused by the lessee, they are required to compensate the extent to which such damage has been caused during the mining *operation. Under the Act, while Section 13 empowers the Government to impose certain conditions with a view to regulate the mining operation, it also provides certain rights and liabilities to the lessees under Section 24A of the Act. Section 24A deals with the right of the lessee to enter into the mining lease to carry out the mining operations. The proviso to Section 24A specifies that the lessee, in whose favour mining lease has been granted, shall enter into the lease hold premises with the consent of the occupier. If, under any circumstances the lessee enters into the lease hold premises without the consent of the occupier, such consent shall be obtained by giving a notice in writing about the lease granted in his favour. Sub-section (2) of Section 24 further provides that a mining lease holder shall be liable to pay compensation to the occupier of the surface of the land for any loss or damage which is likely to arise or* *has arisen as a consequence of mining operation. It is to be emphatically stated here that there is no reference made to, or any classification prescribed, among the lessees of private land or government poromboke lands. The intention of the legislature in requiring the lease holder to pay compensation is for the damage that is caused to the land. It is needless to mention that during mining operation, both in respect of private land as well as patta land, damage will be caused to the leased land as also to the ecology and that is the reason why the legislators have intended to collect annual compensation for the damage. Therefore, for the purpose of collection of annual compensation, there cannot be any classification or rather distinction made between the private land or government poromboke land. Even Rule 72 of The Mineral Concession Rules is silent with respect to the private land held by Pattadhar or* *the lands which are classified as Poromboke lands. Similarly, Rule 9-A, which deals with dead rent to be paid by the lessee. Rule 9-B relates to constitution of District Mineral Foundation to which the compensation paid by the lessee towards royalty in terms of the Second Schedule of the Act are remitted. Rule 9-C of the relates to establishment of National Mining Exploration Trust to which the royalty paid by the lessee in terms of Second Schedule of the Act is remitted. Even in Rule 9A to 9C, the word 'occupier' is never used or there is no classification of the lands from which compensation is required to be received for the damage caused to the ecology. Therefore, a harmonious interpretation is required which would ensure that the object with which the Act and Rules have been framed are achieved with. It is well settled that a Court of law would interpret a provision which would help in sustaining the validity of law by* *applying the doctrine of reasonable construction than resorting to an interpretation which would lead to a situation where the provision would be rendered unsustainable and ultravires the construction. Thus, construction of Rule or procedure, which would promote justice has to be preferred as against the one that would result in miscarriage of justice. Therefore, if the Rule of harmonious construction is applied, I am of the view that in the absence of the word 'occupier' occurring in the Act or the Rules, it has to be construed that the compensation payable by the lessee cannot be restricted or limited to the private lands, but it also include the lands owned by the Government.*

...

28. It is also to be noted that the lease deed entered into between the lessees and the Government contains certain clause, which *includes payment of compensation as contemplated under Rule 72 in respect of Government poromboke lands. When the the lessees have signed the lease deed with their eyes wide open, they are estopped from questioning the contents of the lease deed after it's execution. The lessees have subjected themselves to the conditions incorporated in the lease deed, while so, they cannot turn around and contend that the conditions incorporated under the lease deed are beyond the statutory provisions of the Act and Rule or it is inconsistent with the Act and Rules. In some cases, admittedly, the lessees have also paid the compensation amount without prejudice to their right to prosecute the present writ petitions. Be that as it may, it is well settled that after entering into the arena, the rules of the games cannot be changed. This principle will* *apply to the facts of the present case. The petitioners have got the lease deed executed containing the clause for payment of compensation in respect of government poromboke lands. However, after commencing the mining operation, the lessees cannot be heard to contend that such compensation is payable only to the private lands owned by individuals and not in respect of government poromboke lands as they are the occupier of such lands. It is needless to mention that the Government is the paramount title holder of the government poromboke lands and for the damage that may be caused to such lands during the mining operation or damage to the ecology, the Government is always has a vested right to seek to collect such compensation, as an owner and as an occupier from the lessees. Above all, Rule 27 (1) (d) empowers the State to*

> *collect surface rent and water rate for the surface areas used for mining operation. Rule 27 (1) (t) specifies the compensation to be paid by the mining leaseholder to the occupier towards the surface of the land. Here again, there is no reference made to the lands of the private individuals and the one classified as Government poromboke lands to which mining lease are granted. In the absence of the same, a purposive interpretation of the Act and Rules must be to hold that the State Government is entitled to levy and collect annual compensation from the lessees towards the damages caused to the surface of the Government poromboke lands."*

The similar view was followed by another learned Single Judge of this Court in the case of ***the India Cements Limited -vs- the State of Tamil Nadu*** dated 24.08.2021 in W.P.Nos.6357 and 6618 of 2012.

15. The learned counsel for the petitioner, Mr.K.Sridhar would submit that a Writ Appeal was filed against the order passed in the case of Dalmia Cements. However, the learned Additional Government Pleader would oppose by stating that though interim stay of the order has been granted and therefore, the said may be considered for the purpose of the interpretation of the Rules, as considered by the learned Single Judge of this Court.

16.Beyond the reliance placed regarding the judgment cited supra, the amendment made under the Tamil Nadu Minor Minerals Concession Rules, 1959 would indicate that all leases are to mandatorily granted by conducting public auction. In the event of deemed renewal of lease in respect of the expired leases, the very policy of granting lease to public auction will be defeated. The Government changed its policy to develop transparency in the matter of grant of lease of minor minerals across the state of Tamil Nadu. Such policy came into effect with effect from 22.04.2016.

17. Section 10(A) of the MMDR Act says that all applications or renewal become ineligible and based on Section 10(A) of the MMDR Act, the State also has inserted Rule 43 in Tamil Nadu Minor Minerals Concession Rules, 1959, so as to ensure that the leases of minor minerals are granted only through public auctions and such policy decisions are made in the interest of public is to be implemented forthwith. More so, in the present case, the deemed renewal became lapsed in view of Section 10(A) of the MMDR Act.

18. Factually, the lease in the case of the present petitioner lapsed on 04.01.1999 and thereafter, the petitioner approached the authorities for renewal of lease, which was also rejected on the ground that the petitioner has to produce clearance from HACA. The HACA also rejected the application submitted by the writ petitioner. Thereafter, a Writ Petition was filed in the year 2015, which was dismissed and Writ Appeal No.1491 of 2015 was filed. The Division Bench remitted the matter back to the authorities. Once the Courts have remitted the matter back to the authorities for fresh consideration, the authority competent is empowered to decide the case on its

own merits and based on the statutes and rules applicable. High Court has not granted positive relief in favour of the writ petitioner. Since, it is brought to the knowledge of the Division Bench that amendments were made subsequently, the proposed amendments were made in the year 2015 itself, the Division Bench thought fit and remitted the matter. Therefore, relying on the Division Bench, the petitioner cannot seek any relief in the present Writ Petition. When the issues were left open for adjudication on the hands of the authorities, the Court cannot fix any limitation and more so, in the present case, the Government has amended the Rules and introduced a new policy to grant lease only through public auction.

19. Pertinently, the lease expired in the year 1999 and almost 24 years lapsed. At this length of time, grant of deemed renewal would not arise in view of the subsequent developments and the amendments made under the MMDR Act and in the Tamil Nadu Minor Minerals Concession Rules, 1959.

20. If at all the petitioner is willing to get lease of minor minerals, he has participate in the process of the open auction, if any, notified by the

Government by taking an administrative decision to lease the subject property for quarrying purposes.

21. In view of the fact that the claim of the petitioner for deemed renewal is unacceptable and impermissible in view of the subsequent developments made and insertion of Rule 43 of the Tamil Nadu Minor Minerals Concession Rules, 1959, the relief, as such sought for in the present Writ Petition cannot be granted and consequently, the Writ Petition stands dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

30.01.2024
1/2

skr
Index : Yes
Speaking order
Neutral Citation : Yes

To

1. State of Tamil Nadu,
   Rep. by its Secretary to Government,
   Department of Industries,
   Fort St.George, Chennai – 600 009.

2. Hill Area Conservation Authority,
   Rep. by its Member Secretary,
   Anna Salai, Chennai – 600 002.

3. The District Collector,
   Madurai.

S.M.SUBRAMANIAM, J.

skr

W.P.No.7879 of 2020

30.01.2024
1/2