



W.P(MD)No.29912 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.29912 of 2023

and

W.M.P.(MD)No.5802 of 2024

J.Senthilkumar

... Petitioner

Vs.

1.The District Collector,
O/o. District Collector,
Theni District,
Theni.

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

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the impugned order of the first respondent dated 05.02.2021 in R.C.No. 144/Mines/2020 and quash the same and subsequently, directing the respondents to extend the quarry lease for the non-operation period of 13 months and 19 days in respect of rough stone quarry to the extent of 2.00 hectares in Government Poramboke land in S.F.No.32/2(Part-1), Kodangipatty Village of Bodinayakkanur Taluk of Theni District.



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For Petitioner : Mr.Sricharan Rangarajan
Senior Counsel
for Mr.S.Ramsundarvijayraj

For Respondents : Mr.R.Baskaran
Additional Advocate General
assisted by Mr.M.Lingadurai
Special Government Pleader

ORDER

Heard the learned senior counsel appearing for the petitioner and the learned Additional Advocate General assisted by the learned Special Government Pleader appearing for the respondents.

2. The petitioner was granted quarry license on 25.01.2019. It was for a period of five years. The petitioner had quarried outside the licensed area. He was therefore visited with penalty. Challenging the same, the petitioner filed W.P.(MD)No.3075 of 2020. The order imposing penalty was set aside on the ground of violation of the principles of natural justice and the matter was remanded to the file of the Revenue Divisional Officer, Uthamapalayam for fresh consideration. The RDO, Uthamapalayam reduced the amount to a sum of Rs.1,64,12,856/-. This included penalty as well as the cost of mineral. The petitioner paid the said amount without any demur. During the intervening period for about 13 months and 19 days, the petitioner was not allowed to



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operate the licensed quarry. The District Collector, Theni passed the order dated 05.02.2021 reviving and restoring the petitioner's lease subject to certain terms and conditions. The condition imposed by the respondents was that the petitioner should not claim extension for the lapsed period of lease. The petitioner also executed an affidavit in compliance with the said condition. The question that calls for consideration is whether the petitioner can seek corresponding extension of the quarry lease for non-operative period of 13 months and 19 days.

3. The learned senior counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He relied heavily on the decision of the Hon'ble Division Bench reported in **(2011) 4 MLJ 643 (The District Collector, Namakkal Vs. K.Anbarasi)**. He called upon this Court to grant relief as prayed for.

4. The respondents have filed counter affidavit. The learned Additional Advocate General took me through its contents. His argument is that the statutory scheme does not provide for any extension of the lease period. If at all, the petitioner's quarry operations were unjustifiably stopped, the petitioner at best can seek proportionate refund or damages. His further contention is that in this case, the stoppage of the quarry operations was on account of the



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petitioner's misconduct. The petitioner had quarried in the non-leased area.

That the petitioner was at fault is evident from the fact that he had remitted the penalty amount earlier. Therefore, the petitioner is not entitled to any discretionary relief at the hands of this Court. He also would point out that the petitioner is estopped from maintaining the writ prayer. Having taken the benefit under the proceedings dated 05.02.2021 and having executed the affidavit, it is not open to the petitioner to do U turn and challenge the condition. He called upon this Court to dismiss the writ petition. Since there is no legal right inhering in the petitioner, he cannot maintain this petition for a writ of mandamus.

5. I carefully considered the rival contentions and went through the materials on record. The basic facts are not in dispute. The petitioner was granted lease with effect from 25.01.2019. It was a five year lease. The petitioner could not operate the lease from 18.12.2019 till 07.02.2021. I wanted to know if the respondents had issued any formal order stopping the quarrying operations or suspending the petitioner's lease. I called upon the respondents to produce the copy of the proceedings, if any.



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6. Today when the matter was taken up for hearing, the respondents could not produce any such suspension order or stoppage order. I therefore have to conclude that the petitioner was not allowed to operate the quarry operation. The petitioner is not having any private arrangement with the department or the authorities. The relationship is purely contractual and official. Therefore, if the respondents wanted the petitioner to halt his operations, they ought to have issued a formal communication in that regard. No such communication was issued. The petitioner was thus prevented from quarrying by the respondents.

7. The question that calls for consideration is whether the petitioner can seek corresponding extension for the leased period. Of-course, as rightly pointed out by the learned Additional Advocate General, the statutory rules do not provide for any such extension. But then, if that be so, the respondents need not have incorporated Condition No.14(1) in the proceedings dated 05.02.2021. I fail to understand even the need for issuing the proceedings dated 05.02.2021. Admittedly, the petitioner's lease issued in January 2019 was not cancelled or suspended. Therefore, the question of reviving and restoring the lease does not arise at all. This only indicates that the respondents wanted to ensure that the petitioner would not demand extension of the lease period. Otherwise, there was no need for issuing such proceedings or incorporating



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such a condition. The fact that such condition was incorporated itself would show that the respondents were not sure what stand to take. The learned senior counsel appearing for the petitioner draws my attention to the order of the Hon'ble Division Bench reported in (2011) 4 MLJ 643. In the said case also, the question that arose before the Hon'ble First Bench was whether the lease extension can be given in such cases. Paragraph Nos.25 & 26 of the order reads as follows:-

“25. In the preceding paragraph of this judgment, we have extensively indicated the law laid down by the Hon'ble Supreme Court and this Court in various decisions in the matter of extension of lease. One common feature in all those cases are that the Hon'ble Supreme Court as well as this Court analyzed the facts and circumstances of each case and granted relief or declined to grant relief. No doubt the settled legal position is that the period of lease cannot be extended as there is no rule providing for such extension. Yet, there has been some departure from the said rule in the decisions referred to supra.

26. As noticed in the case of Beg Raj Singh Vs State of U.P. & Ors. (2003 (1) SCC 726), the Hon'ble Supreme Court granted the relief in favour of the lessee by observing that the sand mine could not be operated as it has been stopped because of the order of the State Government and such order having been unsustainable in accordance with stipulations contained in the mining lease, the Supreme Court granted the benefit to the lessee therein. The Supreme Court also took note of the fact that in the interregnum, no third party interest has been created. In the case of the respondents also, the quarry could not be operated for a period of 283 days on account of the order of suspension. As noticed above, this Court by order 26.10.2005 in W.P.Nos.34567 & 34568 of 2005, directed the appellant to pass final orders on the show cause notice issued to the respondents. Despite direction issued, no final orders were passed, which compelled the respondents to approach this Court once again by way of the two writ petitions in W.P.Nos.1207 & 1208 of 2006, challenging the order of suspension dated 11.07.2005, and in the said writ petition, an order of interim injunction was also granted. Therefore, it is clear that the appellant did not avail the opportunity granted by this Court in its



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order dated 26.10.2005 and chose to remain dormant in the matter. Thus, as in the case of Bag Raj Singh, referred supra, the respondent herein cannot be blamed for the period during which the quarry could not be operated.”

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In that case, the petitioner was not guilty of any wrong doing as far as the lease area is concerned. He had obviously and admittedly indulged in illicit quarrying in non-leased area. For the said fault, the petitioner had also paid the penalty as well as the cost of mineral. Therefore, for the sin committed by the petitioner elsewhere, his lease need not be visited with consequences. In any event, he had by paying penalty and the cost of mineral in a sense exonerated himself of all liability arising out of such illicit quarrying.

8. The next question is whether the execution of the affidavit should come in the way. When the parties are evenly balanced, the principle of estoppel can definitely be pressed into service. In any event, the principle of estoppel can be invoked only if the other party had altered their position based on the assurance or promise given by the person concerned. The authorities had not altered their position at all. On the other hand, after stalling the quarry-operations, they made the petitioner to relinquish his claim for extension. Hence, they cannot plead estoppel as a defence. A party to a wrong cannot invoke equitable principles. The petitioner was left with no other option. For a substantial period, he had been prevented from quarrying the operations. He was also made to pay for the illicit acts committed elsewhere.



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9. The petitioner was placed in difficult situation. He virtually had no choice. He had to sign on the dotted lines. Therefore, the execution of the affidavit in such circumstances would not come in the way of the petitioner from asserting his right when sky became clear. Of-course, the petitioner will have to obtain environmental clearance from SEIAA. The impugned condition set out in the proceedings dated 05.02.2021 is set aside. The petitioner will be entitled to corresponding extension of the lease period. But then, it is for the petitioner to approach the SEIAA and get environmental clearance. The period of 13 months and 19 days will start running from 24.01.2024. As and when the petitioner submits an application for obtaining environmental clearance, it shall be disposed of by SEIAA as expeditiously as possible. The fact that the petitioner was visited with penalty shall not come in the way.

10. The Writ Petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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 - 2.The Assistant Director,
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