



W.P.(MD)No.22297 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **28.01.2025**

CORAM:

THE HONOURABLE MR JUSTICE G.K. ILANTHIRAIYAN

W.P.(MD)No.22297 of 2018

M/s. Gem Granites,

Rep by its Partner Mr.S.R.Asaithambi,

No.78, Cathedral Road,

Chennai-600086.

... Petitioner

/Vs./

1. State of Tamil Nadu

Rep. by Principal Secretary to Government

Industries (Mmb.1) Department, Secretariat,

Fort St. George, Chennai.

2. The District Collector,

Madurai District,

Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus by directing the respondents to handover the lease hold area of 4.00.0 hectare in S.F.No.80(Part-B) in Idayapatti Village, Madurai North, Madurai District, as per their under taking given before the Honourable Apex Court in SLP No.13814 of 2008 to the petitioner with necessary statutory permissions in a minable condition



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with all NOCs and certificates from concerned authorities within a time frame.

For Petitioner : Mr. K.K.Senthil

For Respondents : Mr.Veera Kathiravan

Additional Advocate General

Assisted by Mr.D.Gandhi Taj

Special Government Pleader

ORDER

This Writ Petition has been filed for a direction directing the respondents to handover the lease hold area of 4.00.0 hectare in S.F.No. 80(Part-B) in Idayapatti Village, Madurai North , Madurai District, as per their undertaking given before the Honourable Apex Court in S.L.P. No.13814 of 2008 to the petitioner with necessary statutory permissions in a minable condition with all NOCs and certificates from concerned authorities

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



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3. The petitioner is a quarry operator. While being so, the second respondent issued a notification under Rule 8(A) of Minor Mineral Concession Rules, 1959, thereby invited tender for leasing out 15 different areas for quarrying colour granite including 4 Hectares in S.No. 80 (part) situated at Idayapatti village, Madurai District. Accordingly, the petitioner submitted its bid. After inspecting the property and participated in the tender communication, on 06.01.1998, the petitioner was being highest bidder, it was declared by the second respondent and recommended for grant of lease. The first respondent granted quarrying permission to the petitioner for a sum of Rupees Two Crores Fifty One Lakhs by its G.O.3(D)No.38 dated 20.04.1998. Thereafter, the petitioner was called upon to pay the balance bid amount along with the security deposit. The said amount was also paid by the petitioner on 16.07.1998 by depositing a sum of Rupees Two Crores Seventy Five Lakhs and Thirty Eight Thousand only. The petitioner requested the second respondent to demarcate the subject land, which was leased out in favour of the petitioner. Accordingly, the concerned Tahsildar demarcated the land and submitted its report dated 27.10.1998. Even prior to the receipt



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of the said report, the lease deed was executed by the petitioner dated 07.10.1998 with the second respondent. However, the sketch of the subject property annexed along with the lease deed did not correspond with the area demarcated by the Tahsildar. It was duly pointed out and the requested enclosure of proper sketch with the lease deed. While being so, the land which was allotted in favour of the petitioner was objected by the general public on the ground that the subject land is a "pond". They also filed a Public Interest Litigation in W.P.No.16876 of 2000 before the Hon'ble Division Bench of this Court on the ground that the land ad-measuring 4.00.0 Hectres comprised in 80/part, situated at Idaiyapatti Village, Madurai District, is a pond. The petitioner also filed a Writ Petition before this Court in W.P.No.7467 of 2001 for direction, directing the respondents to refund the amount, which was deposited by the petitioner or to hand over the possession of the proper land, which was inspected by the petitioner. However, in the Public Interest Litigation petition, this Court directed the Government to refund the deposit of the petitioner with interest or to hand over the land, which was already inspected by the petitioner for lease and the writ petition filed by the petitioner in W.P.No.7467 of 2001 was dismissed on 05.02.2003.



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Thereafter, the Hon'ble Supreme Court held that in the Public Interest Litigation writ petition, no amount can be ordered to refund and allowed the ***Civil Appeal No.13814 of 2008 (Secretary to Government V. S.Bose)***, filed by the Government. The relevant portion of the order is as follows:

“We have heard Mr.R.Balasubramanian, learned Senior Counsel appearing on behalf of the petitioner. We are not inclined to interfere with the impugned order dated 20.02.2008 passed by the High Court of Madras in W.A.No.1203 of 2003, affirming the order dated 05.02.2003 passed by the learned Single Judge of the High Court in W.P.No.7467 of 2001, in exercise of our jurisdiction under Article 136 of the Constitution of India, However, learned counsel representing the respondents reiterates the stand taken by them before the learned Single Judge that “they are prepared to hand over the site which was originally inspected by the writ petitioner prior to the submission of the bid which site was shown in the sketch annexed to the lease agreement signed by the parties on 07.10.1998.” The petitioner is given liberty to avail the said offer within eight weeks from today, failing which the said offer shall stand forfeited. The petitioner, it so advised, may take recourse to any other remedy available to it in law.



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*With the aforesaid directions, the Special Leave Petition
is dismissed accordingly. ”*

4. Accordingly, the petitioner was given liberty to avail the offer within a period of eight weeks. Accordingly, the petitioner submitted representation on 15.05.2013. However, it was not considered so far.

5. The respondents filed a counter affidavit and on the submissions made by the learned Additional Advocate General, it revealed that the subject land, which was intended to lease out in favour of the petitioner, has been now utilized for the purpose of ITP Quarters. Therefore, the direction sought for to hand over the lease hold area could not be possible. However, they intended to refund the amount, which was deposited by the petitioner. That apart the petitioner is in due of several Crores and the petitioner is also served with the show cause notice and the adjudication is pending. Therefore, whatever the amount is entitled by the petitioner for refund, it can be adjusted towards the amount due from the petitioner.



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6. The learned counsel for the petitioner would submit that the amount, which was already deposited by the petitioner, had no lien over other dues payable by the petitioner. That apart the petitioner is only served with show cause notice and the adjudication is pending. Therefore, at any cost, the amount payable by the respondents in favour of the petitioner cannot be adjusted towards the amount due from the petitioner as per the show cause notice.

7. Further, the land which was originally inspected by the petitioner was not leased out in favour of the petitioner. In fact, at the time of entering into the lease agreement, the petitioner raised objections to allot the land, which was already inspected for quarrying. However, it was not considered and the property comprised in S.No.80/part situated at Idayapatti Village, Madurai District, was leased out in favour of the petitioner, which is classified as pond. Therefore, the general public filed a Public Interest Litigation writ petition, thereby, raised objection to quarry the land, which was classified as pond.



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8. Therefore, only on the fault committed by the respondents, the land could not be quarried by the petitioner. Therefore, the respondents are liable to refund the amount, which was already deposited by the petitioner, with applicable interest. Insofar as the adjustment is concerned, it is not possible, since the alleged due from the petitioner is under adjudication.

9. In view of the above, the respondents are directed to refund a sum of Rs.2,75,38,000/- with interest at the rate of 6% per annum from the date of deposit within a period of the twelve weeks from the date of receipt of copy of this order, to the petitioner, without adjusting the same, for any alleged due from the petitioner.

10. With the above direction, this Writ Petition stands disposed of.

No costs.

Index : Yes / No
NCC : Yes / No
LS

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TO:-

1. The Principal Secretary to Government
Industries (Mmb.1) Department, Secretariat,
Fort St. George, Chennai.

2. The District Collector,
Madurai District,
Madurai.



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G.K. ILANTHIRAIYAN, J.

LS

Order made in
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