
(1997) 06 MAD CK 0054

In the Madras High Court

Case No : Writ Appeal No. 360 of 1992 and CMP No. 4409 of 1992

Director of Geology and Mining and Another

APPELLANT

Vs

G. Johnslly Moses

RESPONDENT

Date of Decision : 16-06-1997

Acts Referred:

Tamil Nadu Minor Mineral Concession Rules, 1929 — Rule 8, 8A, 8A(1), 9

Citation : AIR 1998 Mad 53

Hon'ble Judges : S.M. Abdul Wahab, J;Kanakaraj, J

Bench : Division Bench

Advocate : K.P. Sivasubramanian, Govt. Pleader, for the Appellant; V.K. Muthuswamy, for the Respondent

Final Decision : Allowed

Judgement

Kanakaraj, J.—The respondent applied for the grant of quarry lease for the purpose of quarrying blue metal over an extent of 10 acres in R.S. No. 190 of Theroor village in Agasteeswaram Taluk, Kanyakumari District. He was granted a lease for a period of five years from 1-4-1985 and the lease was to expire on 31-3-1990. He filed an application for the renewal of the lease on 26-12-1989 exercising the power under Clause 4 of the lease deed. The said renewal application was returned by a memo dated 26-2-1990, stating that as per the amended Rules brought in by G.O.Ms. No. 608, Industries Department dated 2-9-1989, leases could be granted only by public auction. The respondent came up with W.P. No. 12554 of 1991 a writ for certiorarified Mandamus to quash the proceedings dated 8-8-1991 and also to direct the 2nd respondent to renew the lease for a further period. Govindaswamy, J. by judgment dated 9-1-1992, held that the impugned orders were not sustainable. Accordingly the learned Judge quashed the impugned orders and directed that the application of the respondent should be considered in accordance with Rule 9 of the Tamil Nadu Minor Mineral Concession Rules, 1929, within six weeks from the date of receipt of the order. The Director of Geology and Mining and the Collector of Kanyakumari District

have filed this writ appeal against the said judgment of the learned single Judge.

2. According to learned Government Pleader, any application for the grant of lease should be considered in accordance with law, which is applicable on the date of disposal of the application for the grant of the renewal. In support of this proposition, reliance is placed on the following passage in *State of Tamil Nadu Vs. Hind Stone and Others*, :

In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application.

Therefore, learned Government Pleader argues that on the date of disposal of the application for renewal, G.O.Ms. No. 608 dated 2-9-1989 had come into force and, therefore, there was no question of any renewal.

3. Percontra, Mr. V.K. Muthuswamy, learned Senior Counsel argues that the said G.O.Ms. No. 608 dated 2-9-1989 will not apply to the leases of quarries relating to blue metal.

4. Having considered the arguments of both sides and having perused the relevant rules, we are of the opinion that if G.O.Ms. No. 608 dated 2-9-1989 does not apply, the renewal application has to be considered in accordance with Rules 8 and 9 of the Tamil Nadu Mines and Minerals Concession Rules. On the other hand, if G.O.Ms. No. 608 dated 2-9-1989 applies, the question of considering the application for renewal under Rule 9 will not arise. This is because, the Notification issued under the said amendment as, per G.O.Ms. No. 608, starts by saying that notwithstanding anything contained in Rules 8 and 9, the procedure for grant of lease will be in accordance with the amended Rule 8A. Thus, it can be seen that the applicability of G.O.Ms. No. 608, which amended Rule 8-A, is the bone of contention between the parties. Though the learned Judge has not given a finding on that aspect of the case in judgment appealed against, learned Counsel for the respondent says that in a connected case, the learned Judge has given a finding that G.O. Ms. No. 608 will not at all apply to quarries of blue metal. We are not inclined to accept the said view of the learned Judge because the question of applicability of the amended Rule 8-A will depend upon the facts of each case. The amended Rule 8-A(1)(a) is as follows:

8-A. Lease of quarries to private persons in respect of black, red, pink, grey, green and other coloured granites and any other rock suitable for use as ornamental and decorative stones.- (1)(a) Notwithstanding anything contained in Rules 8 and 9 of these rules, the procedure for the grant of lease in respect of black, red, pink, grey, green and other coloured granites and any other rock suitable for use as ornamental and decorative stones shall be as follows:

The argument that in respect of quarries relating to blue metal, the amended Rule 8-A will not apply, on the face of it, because only "rock suitable for use as

ornamental and decorative stones" could be covered by the said amended Rule 8-A, cannot be straightway accepted. We have seen cases where even a quarry relating to blue metal being converted into a quarry for quarrying black stones for ornamental and decorative purposes. Therefore, one cannot assume that all quarries relating to blue metal could not be covered by the amended Rule 8-A. The Statutory Authority has to look into the terms of the lease and the purpose for which the lease uses the demised land, before coming to the conclusion. Whether the amended Rule 8-A applies to the lease in question or not. In this view of the matter, we are of the opinion that, it would be improper to give any finding on the question whether the lease in question is covered by the amended Rule 8-A or not. In our opinion, this question has to be decided by the Authority, who decides the renewal application. Once he comes to the conclusion one way or the other, thereafter the Authority has to apply the judgment of the Supreme Court first quoted by us in the matter of disposal of the renewal application. Making this position clear, we set aside the judgment of the learned single Judge and issue the following directions:

The renewal application shall be considered by the 2nd appellant after giving a finding whether the quarry in question is covered by the amended Rule 8-A or not. Thereafter, the 2nd appellant should decide whether the renewal should be granted in accordance with law on the date of disposal of the application. This is so in view of the judgment of the Supreme Court quoted above. The 2nd appellant should dispose the application within eight weeks from the date of receipt of this order. The writ appeal is allowed in the above terms. There will be no order as to costs. Consequently, C.M.P. No. 4409 of 1992 is dismissed.