

(2012) 09 MAD CK 0216

In the Madras High Court

Case No : W.A. No. 1511 of 2012 and M.P. No. 1 of 2012

District Collector, Kanchipuram District and Others

APPELLANT

Vs

R. Chandiraiyan

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Citation : (2013) 2 MLJ 16

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : A. Mr. Jayanthi, Special Government Pleader, for the Appellant; S. Gopinathan, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—Aggrieved by the order dated 23.12.2008 passed by the learned single Judge in W.P. No. 25525 of 2008 wherein and by which the writ petition filed by the respondent seeking to quash the order of the District Collector, dated 20.9.2008, cancelling the bid made for lease for 10 years in terms of virgin quarry and for a consequential direction to execute lease deed in respect of the stone quarry. The facts in brief are as follows:

A Notification in the Kanchipuram District Gazette (Extra ordinary) No. 12, dated 31.8.2006 was published under Rule 8 of Tamil Nadu Mines and Minerals (Concession) Rules, 1959 (in short "the Rules") notifying the grant of stone quarry in tender-cum-public auction for a period of 10 years in respect of virgin quarry and other areas as five years. The sale of stone quarry was brought under tender-cum-auction on 20.9.2006 for lease for a period of five years. The respondent was the successful bidder and remitted 10% of the bid amount and a notice dated 2.11.2006 was issued by the first appellant District Collector directing to remit a sum of Rs. 23,60,000/-, i.e., balance 90% of the bid amount, within 7 days from the date of receipt of the notice. While so, the respondent preferred W.P. No. 39276 of 2006 to direct the appellants to grant lease for 10 years and to defer further action and made a representation to the appellants to

the said effect. However, the representation to defer the matter further was not accepted and the first appellant rejected the same by order dated 23.12.2006 and 10% of the bid amount was forfeited by order dated 28.12.2006 as per Rule 8(5)(b)(vii) of the Rules. The appeal preferred by the respondent before the Commissioner and Director of Geology and Mining was allowed by order dated 2.2.2008 and the matter was once again remitted back to the District Collector for fresh consideration. In the meantime, the writ petition filed by the respondent for increase of lease period was disposed with a direction to the first appellant to pass orders as directed by the appellate authority, namely, the third respondent. After fresh consideration, the first appellant rejected the application of the respondent by proceedings dated 20.9.2008 on the ground that the balance bid amount was not deposited within the time stipulated as per the Rules.

2. The respondent, challenging the aforesaid order dated 20.9.2008, preferred W.P. No. 25525 of 2008. The learned single Judge, considering the contentions raised and after extracting the earlier proceedings of the District Collector as well as the Director of Geology and Mining and also the observations made in the earlier writ petition, remanded the matter once again, for fresh consideration observing that inspite of remand, the District Collector has failed to consider the matter in the light of the observations made by the Director of Geology. Aggrieved by the order of remand, the District Collector, along with the Director of Geology and Deputy Director of Geology and Mining, has come up with the present appeal.

3. Learned Special Government Pleader appearing for the appellants would contend that when the offer of the respondent was cancelled, the respondent has no statutory right or authority to claim the quarry without challenging the same. She would further contend that the bid amount would vary if the area is notified for 10 years and, therefore, direction for grant of lease for ten years stating that the same is virgin quarry, at this stage, would cause great financial hardship to the exchequer. She would also contend that since the respondent has failed to deposit the balance 90% amount within the time stipulated, in accordance with the Rules, the first appellant has rightly rejected the request of the respondent and it cannot be said that the District Collector has not taken into account the subsequent events at the time of reconsideration of the matter and, therefore, the order of the learned single Judge has to be interfered with.

4. Learned counsel appearing for the respondent would contend that though the order of the District Collector, dated 28.12.2006, canceling the bid offer was set aside by the appellate authority and the matter was remitted back for fresh consideration, the first appellant, without considering the question as to whether the quarry was a virgin or not and without taking into consideration the subsequent events, has reiterated his earlier order. Further, by placing reliance upon a Full Bench decision of this Court C. Muthukrishnan Vs. District Collector, Tirunelveli District, Tirunelveli and Another, he would further contend that Rule 8(8) of the Tamil Nadu Minor Minerals Concession Rules, which mandates the

period of virgin quarry as ten years, is applicable to the facts of the case and the period of lease has to be extended to 10 years instead of 5 years. Taking into consideration all these facts, according to the learned counsel, the learned single Judge has rightly remitted back the matter to the first appellant for fresh consideration and it does not call for any interference.

5. Heard the learned Special Government Pleader representing the appellants and the learned counsel for the respondent and perused the records.

6. It is not in dispute that the sale of stone quarry in respect of SF. No. 10/2(P) over an extent of 1.78.0 hectares at Veeralur village of Madurantagam Taluk along with other 11 stone quarries, was notified by Notification dated 31.8.2006 and the respondent, who participated in such auction, was the successful bidder. The dispute is with regard to the period of lease. According to the appellants, the area which was subjected to quarrying, was already opened for quarrying and brought for sale and they are not virgin quarries and, therefore, the period was for 5 years. As per the respondent, when the respondent decided to participate in the bid, he has brought to the notice of the authorities about the flaw relating to period of lease and requested them to cancel the impugned notification and issue fresh one after complying the mandatory requirement. However, the fact remains that the respondent participated and he was successful bidder and though he had deposited 10% of the bid amount besides caution deposit in acceptance of the same, he has not deposited the balance 90% of the amount stipulated by the first appellant. On the other hand, he had preferred W.P. No. 39276 of 2006 for compliance of Rule 8(8) in respect of Virgin stone quarry. During pendency of the aforesaid writ petition, due to non-payment of balance amount as contemplated under Rule 8(5)(b)(vii), the first appellant proceeded to cancel the bid and forfeited the amount deposited by the respondent.

7. The appeal preferred before the Director of Geology and Mining was allowed and the matter was remitted back to the first appellant by observing as under:

1. During the argument the counsel of the appellant has stated that the stone quarry located Veeralur in SF. No. 10/2 over an extent of 1.78.0 of Government land was a virgin quarry and not auctioned earlier in similar case, the Hon'ble High Court has passed favourable orders in respect of the stone quarry located in Vilankadu village already notified in the Gazette No. 12 dated 31.8.2006 and this also was sanctioned along with the subject stone quarry.

2. To ascertain the genuinity of the points put forth by the counsel of the appellant, a report was called for from the District Office, Kanchipuram. From the above report, it is ascertained that the quarry situated in SF. No. 10/2 (part) of Veeralur village in Madhuranthagam taluk no quarry lease was granted earlier as per the office records.

8. From a reading of the aforesaid order, it is pertinent to note that the appellate authority, without considering the claim of the respondent, called for a report from the District Collector and the District Collector, in his order dated

28.12.2006, categorically mentioned about the facts and circumstances of the case. Nowhere it is stated that it is a virgin quarry and the respondent is entitled for grant of lease for 10 years as per Rule 8(8). By observing that no quarry lease was granted earlier, the third appellant has set aside and remitted back the matter to the first appellant for reconsideration. The learned Judge, after extracting the order of the District Collector rejecting the claim of the respondent after remittance by the appellate authority, once again, as he is not interested to direct the respondent to file the appeal before the third respondent against the present impugned order of the first appellant dated 20.9.2008 as the first appellant has not considered the order of the appellate authority in its proper perspective and the orders passed by this Court and passed the very same order, which he had passed on the earlier occasion, i.e., on 28.12.2006, remitted the matter back to the first appellant for passing orders in the light of the order passed by the third respondent dated 2.2.2008. The first appellant by the order impugned i.e., 20.9.2008, has confirmed his earlier order of rejection.

9. It is, no doubt, true that as per the decision of the Full Bench cited supra, the amended Rule 8(8) is applicable to the case on hand as the lease, if could have been granted, would be after coming into existence of Rule 8(8). The Full Bench does not stop to the extent that rule 8(8) is applicable in all the cases. It would be relevant to quote paragraph 27 of the Full Bench decision:

27. This being the substantive law, the effect of the amended rule is prospective in nature. Therefore, the necessary consequence will be that in respect of leases granted before the amendment came into existence, the amended Rule 8(8) is not applicable in respect of the period of lease. However, in respect of the lease granted based on the notification issued by the District Collector after the amended rule has come into existence, the amended rule no doubt confers a right of 10 years period, but subject to the period of lease mentioned in the lease deed. Even though the participant has got a right to claim the period of 10 years, such right was available to him at the time of the notification issued by the District Collector under Rule 8(1) of the Rules and having failed to raise his objections with eyes wide open to the terms of the notification which restricted the period of lease to five years even after the amendment, if a person participates in the tender process and being a highest bidder executes voluntarily a lease deed for a lesser period, he cannot, as a matter of right, claim extension of lease upto the period of 10 years. Such fixation of period, in our view, even though the amended rule confers a right on the lessee in respect of virgin quarry, when once the District Collector fixes lesser period which depends upon various circumstances and factors and the same is accepted by a party entering into a lease agreement, the terms of the lease agreement are binding.

10. As laid down by the Full Bench, the respondent has raised objections with respect to restriction of the period of lease to five years even after the amendment. But, after making such objection, he had participated in the tender process and he was the successful bidder. Once he had become the highest

bidder and deposited 10% of the amount of the highest bid, he cannot question the period of lease as has been laid down by the Full Bench. Moreover, the respondent has not challenged the period of restriction further and has kept quiet and chose to participate in the tender auction accepting the tender conditions. Making a formal objection and leaving the matter as it is and thereafter, participating in the tender process does not make the respondent to presume that he is entitled for a lease period often years. Once the District Collector has fixed a lesser period and the same is accepted by the respondent by participating and becoming the highest bidder and becoming entitled to enter into lease agreement, he cannot now turn around and state that he is entitled for 10 years of lease and the terms and conditions of the tender would not be applicable to him as he had raised an objection earlier. As already seen, if any person, who wants to participate in the auction, considers that subject matter of the mine is a virgin mine, it is for him to assail the correctness of the Notification without participating in the auction. In the present case, though he has raised the issue but has not stick to his objection. On the other hand, he had participated and became successful and also deposited 10% of the bid amount. Subsequently, at the time of depositing the balance 90% amount, once again, raising the issue of virginity is barred by the principles of res judicata. The notification issued by the District Collector, viz., the first appellant, had not been challenged and it has become final. Moreover, as per the Rules, the respondent has deposited 10% amount and failed to deposit 90% amount as required under Rule 8(5)(b)(vii). The appellate authority, without understanding the order passed by the District Collector, has blindly set aside the order. As we have already seen, there is not even a whisper to show that it is a virgin quarry. On the other hand, it is specifically mentioned in the Collector's order that the claim of the respondent to treat the mine as virgin was rejected. Twisting the language of the District Collector and to show some favouritism towards the writ petitioner, the appellate authority has proceeded to set aside the said order. Further, when it was brought to the notice of the learned single Judge that the auction was cancelled for not depositing the bid amount within the stipulated period as per the terms and conditions of the Notification, the only course open to the learned Judge is to direct the respondent to work out his remedy with regard to the cancellation of the auction. So long as the order of cancellation of auction is in existence, there is no remedy available to the respondent. Once the bid offered was cancelled due to non-payment of necessary amount as required under the Rules, the learned Judge ought not to have remitted the matter once again to the first appellant to consider the matter afresh in the light of the earlier order of this Court and the order of the appellate authority. Therefore, we are unable to appreciate the order passed by both the appellate authority and the learned single Judge which are liable to be set aside and the Writ Petition fails.

In the result, the writ appeal stands allowed and the order of the learned single Judge is quashed. However, there will be no order as to cost. Consequently, connected Miscellaneous Petition is closed.