
(2005) 02 MAD CK 0103

In the Madras High Court

Case No : Writ Petition No. 24336 of 2003

Gran Rock Tiles (P) Ltd.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 2 MLJ 332

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : V. Sanjeevi, for the Appellant; R. Chandrasekaran, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—In exercise of powers under Rule 8-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter referred

to as ""the Rules""), the Government in G.O.(3D) No.32 Industries (MMB.1) Department dated 21.2.95, granted lease to the petitioner for a period

of ten years to quarry black granite in S.No.77/3 over an extent of 0.43.5 hectares in Kilnatchipattu Village, Tiruvannamalai Taluk. Pursuant to the

grant the petitioner executed a lease deed on 5.4.95 and the petitioner also commenced the quarrying operation. In terms of Rule 11 of the Rules,

the lease deeds are compulsorily registerable u/s 107 of the Transfer of Property Act, 1882 and the lease deeds shall be got registered at the

expenses of the lessees. Section 23 of the Registration Act, 1908 prescribes a period of four months for presenting the document for registration.

It imposes a restriction on the registering authority to accept the document for registration only if it is presented within a period of four months from

the date of its execution. There is an exception as to the said time limit in case the matters are pending before Courts. u/s 25 of the Registration

Act, if, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented

for registration till after the expiration of the time, the Registrar may direct the registration on payment of a fine by condoning the delay in

presentation by a further period of four months. As per Section 23 read with Section 25, a maximum period of eight months is alone prescribed for

presenting a document for registration.

2. As the petitioner did not register the document under Rule 11 of the Rules within the above specified period, he applied to the Government

through the District Collector, Tiruvannamalai in his letter dated 14.5.99 to execute a fresh lease deed. By the impugned order dated 27.8.2002,

the Government rejected the said request. Hence, the petitioner is before this Court.

3. I have heard Mr. V. Sanjeevi, learned counsel for the petitioner and Mr. R. Chandrasekaran, learned Government Advocate for the

respondents.

4. In exercise of powers under Rule 8-A of the Rules, the State Government may grant lease to persons to quarry granite subject to conditions and

the procedure prescribed thereunder. Once the grant is ordered, in terms of Rule 8-A(8)(c) the lessee shall execute the lease deed with the District

Collector concerned within one month from the date of receipt of the order of the State Government and within such further period not exceeding a

period of thirty days as the District Collector may allow in this behalf. Factually, the petitioner has executed the lease deed on 5.4.95. The said

lease deed shall be compulsorily registerable in terms of Rule 11 of the Rules. For such compliance the petitioner ought to have presented the lease

deed for registration within a period of four months as contemplated u/s 23 of the Registration Act or within a further period of four months u/s 25

of the Act. In the absence of power for the registering authority to condone the delay in presenting the document beyond a maximum period of

eight months, no lessee could present the document for registration. In the circumstances, the request of the petitioner for execution of a fresh lease

deed should be considered.

5. In terms of the Government Order granting lease, the District Collector is empowered to execute the lease deed in the prescribed form. Mr. V.

Sanjeevi, learned counsel for the petitioner took me extensively through the contents of the lease deed and submitted that as per clause 5, the

lessee shall pay during the said term the area assessment, the cess and seigniorage or dead rent whichever is higher on the minerals mined which

may be imposed by the Government from time to time. The said clause governs the entire period of the lease. The lessee shall also pay and

discharge all existing and future rates, taxes, assessment, duties, etc., as per clause 6(2). The grant was given duly taking into note of the fact that

the petitioner had set up a cutting and polishing industry by investing huge amount. The lease, though is terminable as per clause 6(11), has not

been so far cancelled. Hence, there cannot be any impediment for the respondents to execute a fresh lease deed. He would submit that the

sanctioning of the lease itself amounts to the granting of the lease and the execution of the formal lease is only compliance with the legal

requirements to make the grant legally enforceable. In the circumstances, the request of the petitioner for execution of a fresh lease deed ought to

have been considered. He would further submit that the request of the petitioner is not for any extended period of lease, but only for the period the

lease was granted and on the same conditions of the grant.

6. On the other hand, placing reliance on the counter affidavit, Mr. R. Chandrasekaran, the learned Government Advocate submitted that inasmuch

as the lease deed is compulsorily registerable under Rule 11, the absence of registration would result in cancellation of the grant as per Rule 8-A(8)

(d) of the Rules. Hence the petitioner cannot seek as a matter of right to execute a fresh lease deed. He would further submit that there is no

satisfactory reason for not registering the lease deed for over a period of four years.

7. There is no dispute that the grant issued to the petitioner is currently valid. However, the right of the petitioner to carry on the quarrying

operation vests only from the date of execution of the lease deed and as per the conditions of the lease deed. Though the learned counsel for

petitioner drew my attention to the various conditions relating to the power of the State Government to terminate the lease by six months notice in

case of breach of conditions of the lease as well the power to modify, delete or additional alteration as ordered by the Government to be included

in the lease hold, none of the clauses enable the respondents to execute a fresh lease deed. The parties are governed by the terms and conditions

of the lease deed. As the said lease deed is executed by virtue of the grant ordered by the Government and in terms of Rule 8-A(8)(c), how far the

petitioner would be justified in law to seek for execution of a fresh lease deed, that too, after a period of nearly four years. There is no difficulty in

holding that the execution of the lease deed is only to give a formal shape to the grant and it amounts to only compliance with the legal requirements

to make the grant legally enforceable, as held by the Supreme Court in "" Gujarat Pottery Works Vs. B.P. Sood, Controller of Mining Leases for

India and Others, "". But, whether this Court could direct the respondents to perform something which is not governed either by the terms and

conditions of the lease deed or under any of the provisions of the Rules. It is well settled in law that the parties are governed by the terms and

conditions of the lease and, except by a Government Order, no modification, deletion or additional alteration can be made in the lease deed. In the

absence of any Government Order modifying or altering the conditions of the lease deed enabling the District Collector to extend the period of

lease or to execute a fresh lease deed, this Court cannot import any new conditions in the lease deed and order execution of a fresh lease deed.

Even in a case of right of claim is made on the basis of the terms of contract, such claim cannot be entertained as a contract of lease cannot be

enforced in an application under Article 226 of The Constitution of India.

8. There is one more hurdle for the petitioner. Rule 8-A(8)(c) prescribes a period of one month for the applicant to execute the lease deed with the

District Collector from the date of receipt of the order of the State Government with a further period of thirty days, if allowed by the District

Collector. The District Collector is empowered to execute the lease deed only within a period of one month or an extended further period of thirty

days and not beyond the said period. The Court cannot by its fiat direct the District Collector to execute the lease deed, as such direction would

amount to conferring a power on the District Collector which in turn has not been conferred by the Rules.

9. Though the impugned order refers to the fact that the lease deed was executed on 5.4.95 beyond the period prescribed under Rule 8-A(8)(c),

in effect, the Government has taken note of the fact that the petitioner had not registered the lease deed as contemplated under Rule 11 of the

Rules. The lease deed provides for cancellation of the lease not only for breach of conditions of the lease but also for violation of the Rules.

Admittedly, the petitioner has breached Rule 11 which requires compulsory registration of the lease deed. Of course, the State Government is

empowered to cancel the grant itself, but factually that has not been done and the grant is still in force. Merely because the grant is still in force, in

the absence of a valid and enforceable clause in the lease deed, the petitioner cannot as a matter of right seek for execution of a fresh lease deed.

In that view of the matter, I find no infirmity or error in the impugned order warranting interference by this Court. Accordingly, the writ petition fails

and the same is dismissed. No costs.