

(1985) 10 MAD CK 0008
In the Madras High Court
Case No : Writ Petition No. 2385 of 1985

Haricnandran

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 03-10-1985

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15
Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 10, 38

Citation : AIR 1986 Mad 129

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Advocate : S. Sivasubramaniam, for the Appellant; J. Kanakaraj, Addl. Govt. Pleader and V. Santhanam, for the Respondent

Judgement

1. In this writ petition, the petitioner has prayed for the issue of a writ of certiorarified mandamus to quash the order of the second respondent in

Mu. Mu. No. 1244/84 dt. 4-9-1984, rejecting the application put in by the petitioner for the grant of a mining lease to quarry grey granite under

the provisions of the Tamil Nadu Minor Mineral Concession Rules 1959 and to direct respondents 1 and 2 to grant such a lease to the petitioner in

relation to an extent of about 8 acres in Survey No. 121, Modikkuppam village, Krishnagiri taluk Dharmapuri district. The petitioner claims to be a

repatriate from Ceylon. With a view to rehabilitate himself and also to support his family, the petitioner is stated to have applied on 16-5-1984 for

the grant of a mining lease for quarrying, grey granite. The application so put in by the petitioner was rejected by the second respondent by the

impugned order relying upon G.O. Ms. No. 960 Industries, dt. 16-8-1984, under which the State Government has reserved the whole of

Dharmapuri district for the exploitation of multi-coloured Gneissic granite commercially known as grey granite by the Tamil Nadu Minerals Ltd. the

third respondent herein in the exercise of powers conferred under R. 38 of the Tamil Nadu Minor Mineral Concession Rules 1959 (hereinafter

referred to as the Rules).

2. In the affidavit filed in support of the writ petition, several grounds have been set out including the invalidity of R. 38 of the Rules. However, the

learned counsel for the petitioner raised only two points in support of this writ petition on the basis that R. 38 of the Rules is valid. The first

contention of the learned counsel for the petitioner is that the reservation of the area comprised in the entire district of Dharmapuri for exclusive

exploitation of grey granite therein by the Government or a Corporation established by a Central or State Government Act or a Government

company is not bona fide and was also arbitrary and unreasonable and was only intended to shut out others from exploiting the same. In this

connection it was also pointed out by the learned counsel that the pockets in Dharmapuri - district reserved for such exploitation had not been

exploited at all and at this state of affairs, the reservation of the entire area comprised in Dharmapuri district was unreasonable and arbitrary. On

the other hand, the learned Additional Government Pleader appearing for respondents 1 and 2 and the learned counsel for the third respondent

submitted that on the basis that R. 38 of the Rules is valid, no exception could be taken to the reservation of any area for exploitation by the

Government or a Corporation established by any Central or State Act or a Government Company and that under G.O. Ms No. 118 Industries, dt.

12-1984 the Government had reserved for exploitation of grey granite by the Government or a Corporation established by any Central or State

Act or a Government Company, 15 villages and in those villages, the minerals were being exploited and in view of the circumstances that the lands

in question belonged to the State, it had the exclusive right to all the minerals therein as well as no exception can therefore be taken to the

reservation of the entire district for exclusive exploitation of grey granite by the State or by a Corporation established by any Central or State Act

or a Government Company, as the third respondent herein.

3. There is no dispute that the lands in respect of which the petitioner made an

application for the grant of the lease to him for quarrying grey granite belonged to the Government. That this mineral therein also belonged to the Government is not in doubt. The exploitation of the grey granite minerals in the lands belonging to the State can be done either by the State or by the State granting leases in favour of other persons. Till recently, the exploitation of such minerals even in Government lands was being done by granting leases for such exploitation and mineral development in favour of private persons, companies etc. Later after the coming into existence of the third respondent Corporation, which is full owned by the State Government, and whose 100% share holding is also held by the Government of Tamil Nadu for the purpose of exploitation of minerals and mineral development by employing modern methods and technique including the use of machines, it was felt necessary to curtail private exploitation of minerals belonging to the Government and to make available larger extents or areas for more methodical exploitation of the minerals therein by the State owned Corporation viz., the third respondent. It was only with a view to make available larger areas for such exploitation, R 38 of the Rules for the reservation of. Any area for the exploitation by the Government or a Corporation established by any Central or State Act or a Government company was made. This was in G.O. Ms. No. 1080 Industries dt 2-9-1983. Prima facie, therefore the reservation made of areas for exploitation of grey granite by the Government or by Government Companies cannot be taken exception to. However, what the petitioner urges in this case is that despite the earlier reservation of small pockets in Dharmapuri district for such exploitation by the Government or Government Corporation. That had not been done and in that context, the further, reservation of a larger area comprising the whole district would be arbitrary and unreasonable. This was countered by the learned counsel for the third respondent on the ground that the grey granite mineral wealth of the 15 villages reserved under G.O. Ms. No. 118 Industries. dt 1-2-1984, is being exploited subject to the completion of formalities in that regard and it cannot therefore be stated that even without exploiting the areas of grey granite already reserved, the other areas comprised in the whole district have been further reserved amounting to unreasonable or arbitrary reservation.

4. A perusal of the affidavit filed in support of the writ petition has not specifically or clearly adverted to this aspect of the matter. No particulars have been given in the affidavit as to where, out of the areas already reserved for exclusive exploitation of grey granite by the State it had not started operating. Even so it does not appear that the reservation of the entire area comprised in Dharmapuri district for exclusive exploitation of grey granite by the State or State owned Corporation is in any manner unreasonable. So long as R. 38 of the Rules stands it is open to the State to reserve any area for exploitation by the Government or by a Corporation established by the Central or State Act or Government Company. This would include the power to reserve fresh or new areas in addition to areas already notified for such exclusive exploitation of grey granite by the Government Corporation established by any Central or State Act or a Government company. Merely because in a district some parts or pockets have already been reserved for the exclusive exploitation of the minerals therein by the State Government, it does not mean that the other areas in the same district or areas comprised in any other, district cannot be by notification reserved for the exclusive exploitation of grey granite by the Government or by a Corporation established by any Central or State Act or a Government Company. The exploitation by the Government even in the 15 villages reserved in G.O. Ms. No. 118 Industries, dt. 1-2-1984 is under way, according to the learned counsel for the third respondent. The learned counsel for the petitioner was unable to dispute this by establishing that it is not so. Therefore it cannot be assumed that pockets already reserved for exclusive exploitation of the minerals therein by the Government or a Corporation established by any Central or State Act or a Government Company had not been exploited in that manner Even assuming that the exploitation had not been commenced in the 45 villages already reserved that would not in any manner affect the power of the Government to reserve further areas for exploitation of grey granite by the Government in the exercise of its powers under R. 38 of the Rules. There is nothing unreasonable or arbitrary in the reservation of the entire district, for exclusive exploitation of grey granite by the Government, so long as the Government has the power to do so under R. 38 of the Rules. There is, therefore, no substance in this contention of the learned counsel for the petitioner.

5. The learned counsel for the petitioner next contended that the introduction of R. 38 by G.O. Ms. No. 1080 Industries dt. 2-9-1983, does not in

any manner take away the preferential consideration of the applications for the grant of leases to repatriate from Ceylon set out in R. 10 of the

Rules. On the other hand, the learned Additional Government Pleader and the counsel for the third respondent submitted that by reason of the

reservation of the entire district for the exploitation of a particular variety of mineral exclusively by the Government or a Corporation established by

any Central or State Act or a Government Company, any area in that district is unavailable for exploitation by others by reason of such reservation

and therefore, there is no question of granting a lease at all in favour of any private person and consequently, there is no question of preferential

consideration at all amongst those who competed for such leases. Strong reliance in this connection was also placed upon the decisions of the

Supreme Court in *Amritlal Nathubhai Shah and Others Vs. Union Government of India and Another*, and *State of Tamil Nadu Vs. Hind Stone and*

Others, .

6. Under R. 38 of the Rules, the State Government is enabled to reserve any area for the exploitation by the Government or a Corporation

established by any Central or State Act or a Government Company. There is no dispute in this case that under G.O. Ms. No. 960 Industries, dt.

16-8-1984, the State Government has reserved the whole of Dharmapuri district for the exploitation of multi-coloured gneissic granite known as

grey granite by the Tamil Nadu Minerals Ltd. the third respondent herein. The effect of reservation of the area comprised in Dharmapuri district for

such exclusive exploitation of grey granite by the third respondent is to make that area unavailable for exploitation by others. In that event, there is

no question of application by others for the grant of a lease for quarrying grey granite being made, considered and granted. Only where, it is

possible to grant leases to others for exploitation of this mineral, though belonging to the Government, the question of considering rival claims as

well as preferential claims would arise. Where the right to exploit grey granite is exclusively reserved in respect of a district in favour of the State or

a Corporation established by any Central or State Act or a Government Company, there is no question of entertaining applications from others and

considering them on their merits. It is in this connection that the following observations of the Supreme Court in *Amritlal Nathubhai Shah and*

Others Vs. Union Government of India and Another, are relevant -

..... But there is nothing in the Act or the Rules to require that the restrictions imposed by Chapter II, III or IV of the Rules would be applicable

even if the State Government itself wanted to exploit a mineral for, as has been stated, it was its own property. There is therefore no reason why

the State Government could not, if it so desired "reserve" any land for itself, for any purpose, and such reserved land would then not be available

for the grant of a prospecting licence or a mining lease to any person.

The authority to order reservation of any area for exclusive exploitation of minerals therein by the State or State owned companies vests in the

State and when it is so reserved, there is no need at all to consider applications for the grant of lease to others, as the area is not available for the

grant of a mining lease. Similarly, in *State of Tamil Nadu Vs. Hind Stone and Others*, , while considering the validity of R. 8C of the Rules relating

to the reservation of black granite for exclusive exploitation by the State or State owned Corporations etc. it was pointed out that to permit

exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent and

discriminating exploitation of minerals and if the idea is to conserve for the future, then there must be a prohibition in the present and therefore, the

prohibition of leases would be part of the Regulation. Contemplated by S. 15 of the Mines and Minerals (Regulation and Development) Act 1957.

If the reservation of any area for exclusive exploitation of the minerals therein by the State Government resulting in the prohibition of leases could

be sustained as a regulatory measure contemplated under the provisions of the Mines and Minerals (Regulation and Development) Act 1957, then,

it is difficult to conceive of the availability of leases for being granted to private persons, like the petitioner in the instant case. The reservation of any

area for exclusive exploitation of minerals therein by the State or State owned Company implies the non-availability of the area for being given to

others for such exploitation under leases for quarrying purposes, Under those circumstances, there is no question of the preference indicated in R.

10 applying in the face of the exclusive reservation for exploitation in the

exercise of powers under R, 18 of the Rules.

7. Viewing this aspect differently, it is seen that R. 10 of the Rules was in existence even at the time when the Rules were framed, while R. 38 came

into being by G.O. Ms. No. 1080, Industries, - dt. 2-9-1983. At the time of the introduction of R. 38, being fully aware of the existence of R. 10

in the Rules already, no attempt has been made to include R. 38 in the non obstante clause in R. 10. That would also indicate that it was never

contemplated that despite the reservation of any area for exclusive exploitation of the minerals therein by the State in the exercise of its powers

under R. 38 of the Rules, such area was also intended to be made available for being leased out to others, as an unreserved area or ordinary area.

It is therefore difficult to accept the contention of the learned counsel for the petitioner that despite R. 38, the preference indicated under R. 10 in

the matter of considering the application for lease would continue to operate.

8. It is necessary at this stage to notice a minor submission made by the learned counsel for the petitioner encouraged by a statement made by the

learned counsel for the third respondent, while meeting the argument of the learned counsel for the petitioner, that already reserved pockets in

Dharmapuri district are being exploited in accordance with the leases granted in favour of the third respondent by the Government From this, the

learned counsel for the petitioner attempted to argue that leasing out is still in vogue and therefore the claims of the petitioner under R. 10 should be

considered as between the petitioner and the third respondent. However, this is met by the learned counsel for the third respondent by contending

that the State is the owner of the minerals in the lands in question and it is the State which has reserved the area for exploitation through the third

respondent, which is a fully Government owned Corporation. In other words, the learned counsel for the third respondent submitted that while

exploitation of the reserved area is only by the Government, the manner of such exploitation was through the Government Company, the third

respondent herein, and, therefore, there is no question of any grant of lease arising in this case. There is no dispute that the third respondent is a fully

Government owned Corporation in which 100% of the shares are held by the Government of Tamil Nadu. Para 2 of the counter-affidavit makes

this clear. Under R. 38, the reservation can be for the exploitation by the

Government or Corporation established by any Central or State Act or a Government Company. The reservation in this case for exclusive exploitation of grey granite mineral is in favour of a Company fully owned by the State Government. That would mean that the exploitation is by the Government through its company without, the need to resort to any lease as such. In other words, the manner of exploitation of the mineral in the area reserved is through the State owned company, and by the State. Under those circumstances, there is no question of R. 10 being applied, as if it is a case of considering preferential claims for leases between the third respondent and a private applicant. There is, therefore, no substance in this contention of the learned counsel for the petitioner.

9. Lastly the learned counsel submitted that the reservation in this case is the result of mala fides on the part of the Chairman of the third respondent on account of the inability of the third respondent to equal the efforts of the private businessmen in carrying out the quarry work and maintaining high standards and this, according to the learned counsel, had led to the Government being prevailed upon to create a monopoly with a view to eliminate private persons from the field of activity. On the other hand, counsel for third respondent referring to Para 13 of the counter-affidavit, submitted that the Chairman of the third respondent has nothing personal against the petitioner or private persons and that the allegations of mala fides have been made only with a view to enable the petitioner to file a writ petition before this Court.

10. Regarding mala fides, the affidavit in support of the writ petition does not set out clear or acceptable particulars and grounds. There is nothing to establish as to why the Chairman of the third respondent should have persuaded the Government to create a monopoly for the mineral in question in favour of the Government. It is not stated that the Chairman had any part to play in the passing of the G.O. Ms. No. 960 Industries, dt.

10-2-1984 in the exercise of powers under R. 38 of the Rules. When the Government has passed such a G.O. the third respondent as well as its officers are all bound by and obliged to give effect to the same. In doing so, it cannot be said that the Chairman of the third respondent has acted in a manner, which can be characterised to be mala fide. The imputation of mala fides against the Chairman of the third respondent is bereft of

particulars and on the allegations made in the affidavit in the writ petition it is difficult to sustain the plea of the petitioner that the reservation of the entire district of Dharmapuri for exclusive exploitation of grey granite by the State or State owned Companies was the outcome of mala fides on the part of the third respondent. Thus, on a due consideration of the facts and circumstances, no case for interfering with the order of the second respondent is made out. Consequently, the rule must be discharged and the writ petition is dismissed. There will, however, be no order as to costs.

11. Petition dismissed