
(2010) 03 MAD CK 0209

In the Madras High Court

Case No : Writ Petition No. 20584 of 2009 and M.P. No's. 1 and 2 of 2009

Meena Granites Industries and Others

APPELLANT

Vs

The District Collector and Another

RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 19, 19A, 19A(1), 19A(10), 19A(11)

Citation : AIR 2010 Mad 117

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : R. Ramanlal, for the Appellant; R. Thirugnanam, Special Govt. Pleader, for the Respondent

Judgement

P. Jyothimani, J.—Heard the learned Counsel appearing for the petitioner and the learned Special Government Pleader for the respondents.

2. This writ petition is directed against the order of the first respondent, dated 30.07.2009 by which the permission sought for by the petitioner to grant renewal of lease for black granite granted in patta land in S.F. No. 7/1 over an extent of 0.30.0 hectares in Kunnam Village, Vanur Taluk, Villupuram District for the period from 25.03.1995 to 11.05.2005 to continue quarry operations for a further period of 10 years namely up to 2015 came to be rejected by returning the papers. The writ petition is also filed seeking for a direction to the respondents to grant renewal in respect of the patta land belonging to the petitioner comprised in Survey No. 138/1, R.S. No. 7/1, Kunnam Village, Vanur Taluk, Villupuram District having an extent of 0.74 acres.

3. The petitioner is the proprietor of M/s. Meena Granite Industries originally, belonged to late A.M. Krishnamurthy who was granted quarry lease in the name of the petitioner in G.O.(3D) No. 57, Industries (MMB1) Department, dated 25.03.1995 to quarry black granite in the above extent of land under a registered lease deed, dated 12.05.1995 valid for a period of 10 years. It is the

case of the petitioner that after the death of the father of the petitioner, he has taken over as it as proprietor. It is the further case of the petitioner that as per the Granite Conservation and Development Rules, 1999 which are the Central Rules, the minimum period of quarry lease for granite is 20 years and maximum period is 30 years and the Government of Tamil Nadu has amended Rule 19A of the Tamil Nadu Minor Minerals Concession Rules, 1959 (hereinafter referred to as "the Rules") in the year 2001 under G.O.Ms. No. 86, Industries Department, dated 27.02.2001 granting minimum period for grant of quarry lease as 10 years and providing for right of renewal of the existing leasehold right. It is during the currency of the lease granted in favour of the father of the petitioner, the amendment came into force and according to the petitioner, the amended rule applies. According to the petitioner, by virtue of the amendment, the lease executed in favour of his father which has expired in 2005 is automatically renewed for another 10 years since under the amendment minimum 20 years period has been granted.

4. It is the further case of the petitioner that the Granite Conservation and Development Rules, 1999 will prevail over the State Rules. The petitioner's father died on 12.01.2006. Since at that time the petitioner was not in India, he was not aware of the amendment and immediately after in February 2009, when he came to India, he has applied renewal of lease on 18.07.2009 to the first respondent. The said application came to be returned by the first respondent for various reasons.

5. It is challenging the said order of re-turn, the writ petition is filed on various grounds that under Rule 19A, the minimum period of lease is not less than 20 years and maximum 30 years and it is during the pendency of the original lease for 10 years the amendment came into force and therefore, the petitioner was automatically entitled for another 10 years; that the respondents while passing the impugned order have not given reasonable opportunity to the petitioner and the order has been passed without proper application of mind; that the land is a private patta land and the Government is only going to get a revenue by seigniorage fees for the mineral blocks to be transported and therefore, by virtue of non renewal of the lease, revenue is affected.

6. In the counter affidavit filed by the respondents, it is stated that the lease granted to the petitioner's father was for quarrying black granite for a period from 12.05.1995 to 11.05.2005 and after the expiry of the period, the father of the petitioner, A. M. Krishnamoorthy has not applied for renewal. Since the renewal is not automatic, the Rule 19A(12) which provided for minimum period of 20 years will be only prospective and cannot apply to an existing lease, especially as per Rule 19A(10) necessary application has to be made to the District Collector in the form of Appendix VII to be accompanied with a non refundable fees and other requirements and such application shall be made for renewal at least 12 months before the date of expiry of the lease already granted and inasmuch as the application has not been submitted for renewal by the

father of the petitioner within the time stipulated, the petitioner or his father was not entitled for renewal. The representation made by the petitioner on 18.07.2009 is much after the expiry of the lease granted and therefore, it was returned by the first respondent asking to resubmit his application in the prescribed format with necessary records. Since the petitioner has not followed the provisions of the rule and Appendix therein, the application submitted by the petitioner came to be returned which according to the respondents is well within its right. It is also stated that as per the amended provision, the authority who is entitled to grant lease for quarrying granite is the Government represented by the Principal Secretary, Industries Department and inasmuch as the State Secretary has not been made as a party to the writ petition, the writ petition is liable to be dismissed for non joinder of necessary parties.

7. I have considered the rival submissions made on either side and also perused the entire documents produced before this Court.

8. It is an admitted fact that originally the lease was granted in the name of M/s. Meena Granite Industries which was represented by its Proprietor A.M. Krishnamurthy who is the father of the petitioner. Even though, it is true that M/s. Meena Granite Industries is a registered holder, the period of lease is between 12.05.1995 and 11.05.2005. It is not in dispute that during the said period the petitioner's father has carried on the quarrying operation as per the terms of the lease deed. While the lease period came to an end on 11.05.2005, the petitioner's father A.M. Krishnamoorthy was alive since he died only on 12.01.2006. On fact, it is not in dispute that during his life time either after the lease period or within 11 months before the expiry of lease period, he has not made any application for renewal and it is only on 18.07.2009, the petitioner has applied for renewal after the expiry of the lease period which is more than four years and under the impugned order the first respondent has returned the papers directing the petitioner to apply afresh to the Government through the District Collector in the form prescribed in Appendix VII of the Rules with necessary requirements. During the continuation of the lease, Section 19A was substituted by G.O.Ms. No. 86, Industries Department, dated 22.02.2001 by which it is made clear that the authority is competent to grant or renew licence or quarry lease for granite in ryotwari lands shall be the Government.

9. The Rule 19A(1)(a) of the Rules is as follows:

19A(1)(a). Notwithstanding anything to the contrary contained in Section III to these Rules, the authority competent to grant and renew prospecting licence and quarrying leases for granite in ryotwari lands shall be the State Government.

10. The Rule 19A(1)(b) of the Rules, contemplates the application to be filed along with various documents which are of course indicated in the impugned order of the first respondent.

11. The Rule 19A(10) of the Rules, which is as follows:

10) An application to the Government for grant or renewal of quarrying lease under this Rule shall be submitted to the District Collector in the Form in Appendix VII to be accompanied with a non refundable application fee of Rs. 5000/- (Rupees Five Thousand Only) remitted in the District Treasury concerned and with the following documents specified below and in the application form, namely:

- i) Original challan for remittance of nonrefundable application fee.
- ii) Sworn affidavit stating the details of the prospecting licence and quarry leases already held, applied for but not granted and applied for simultaneously.
- iii) Latest Mining Dues Clearance Certificate as per Appendix VIII.
- iv) Latest Income Tax Clearance Certificate or a sworn affidavit for having filed Income Tax returns deals with the application for renewal of quarry lease makes it clear that the application has to be made to the Government with various documents stated therein.

12. The Rule 19A(11) of the Rules, prescribes the area for which the renewal could be granted, which is as follows:

19A(11)(a) The minimum area that may be granted or renewed under a lease under this Rule for ensuring mining activities to optimum depth shall not be less than one hectare;

b) The maximum area that may be granted under a quarrying lease shall not exceed fifty hectares:

Provided that the State Government, if it is satisfied on the basis of proposed production level, geological or topographical conditions may, for the reasons to be recorded in writing, grant or renew a lease over an area more than the maximum area or less than the minimum area specified under this Rule.

13. The Rule 19A(12) of the Rules is as follows:

19A(12) The maximum period for which a quarrying lease granted under this Rule shall not exceed thirty years:

Provided that minimum period for which any such lease may be granted shall not be less than twenty years.

Therefore, it is true that the maximum period for which a quarry lease granted shall not exceed 30 years with a minimum of not less than 20 years.

14. The Rule 19A(19) of the Rules, which is relevant to the facts is as follows:

19A(19)(a) The application for grant of renewal of lease under this rule shall be made at least twelve months before the date of expiry of the quarrying lease, already granted.

b) The applicant shall submit an approved mining plan/scheme along with the

application for renewal, which is valid at the time of filing the application for renewal.

It is made clear that the application should be made for renewal at least 12 months before the date on which the said quarry lease already granted comes to an end with approved mining plan. It is also made clear under Rule 19A(20) of the Rules that the conditions applicable for grant of quarry lease shall also be applicable for the renewal of quarry lease.

15. Therefore, the construction of the entire provisions make abundantly clear that the renewal of an existing lease is not automatic and the same has to be done by filing an application twelve months before the expiry of the original lease, already granted. The original lease granted in favour of the father of the petitioner was up to 2005 and admittedly, the father of the petitioner to whom the lease was granted of course in the name of the company as its proprietor has not made any such application within the time stipulated under Rule 19A(19) of the Rules. The renewal, by reading along with Sub-rule (b) of Rule 19A(19) of the Rules, as elicited above, will be possible only if such an application is made and it is no doubt true that when such application is made within the time stipulated in the statute, the petitioner's father would have been entitled for renewal as a matter of statutory right. In the absence of any such application having been made in accordance with law, it is not possible to accept the contention of the learned Senior counsel for the petitioner that during the subsistence of the earlier lease, the Rule 19A was substituted and therefore, at the expiry of the first lease period, there is automatic extension for another 10 years.

16. As stated above, the conjoint reading of Rule 19A(19) of the Rules makes it clear that such renewal as a matter of statutory right is available only if such an application is made by the positive conduct of the party in making application for renewal in accordance with the provisions of the Rules. It is seen that even after four years after the death of the petitioner's father, the petitioner, on 18.07.2009, of course, in the name of M/s. Meena Granite Industries, he has not chosen to apply to the Government as per the provisions of the Rules but applied to the Collector who is not the authority to grant lease. He may be the authority as per the direction of the Government for executing the lease, after the grant is given by the Government, and unless the Government grants such a lease, the District Collector cannot execute the lease. Therefore, the application stated to have been made to the first respondent cannot be said to be in conformity with the provisions of the Rules, even assuming that the petitioner has inherited his father's business in the Granite Industries. It is, in those circumstances, the District collector has passed the impugned order, in my view correctly, directing the petitioner to make fresh application for the grant of licence thereby rejecting the claim of the petitioner for renewal, due to the reasons stated above.

17. In these circumstances, the reliance placed by the learned Senior Counsel for the petitioner on the order of the First Bench of this Court to which I am a party,

dated 06.09.2007, in W.P. Nos. 2905 of 2005 etc., batch, is not helpful to the petitioner's case at all. That was a case where before the expiry of the lease period, the application for renewal was filed to the authority under Rule 19 of the Rules and in the mean time, Rule 19A came into force based on the enactment of the Central Rules and therefore, only on the admission of the learned Advocate General that the applications for renewal will be considered, the said order came to be passed by this Court.

18. In paragraph-2 of the said order, the facts of that case were elicited as follows:

2. The petitioners have been granted quarry leases by the State Government under Rule 19 of the Tamil Nadu Minor Mineral Concession Rules, 1959. The duration of all the leases is ten years and there is no dispute that all the said leases have expired by efflux of time in the year 2005. Before the expiry of the period of lease, the petitioners had applied for renewal of the lease, but those applications were not considered by the competent authority and therefore, these petitions have been filed seeking a mandamus to direct the authorities to consider their applications for renewal and to pass appropriate orders. In all these petitions, interim relief has been granted, by virtue of which, the writ petitioners have been carrying out operations in granite quarry on the basis of the rates as fixed under Rule 19 of the Minor Mineral Concession Rules, 1959.

Therefore, it shows that the facts of the present case are totally different and it was in those circumstances, on the admission of the learned Advocate General, the First Bench of this Court passed the following order:

4. Learned Advocate General submitted that the applications for renewal will be considered and orders will be passed on the applications within a period of four months from today. He submitted that the petitioners have been allowed to continue the quarrying operations by virtue of the interim orders passed by this Court and the State Government is also entitled to fix the rental/charges for the period after the expiry of the lease under Rule 19 of the Minor Minerals Concession Rules, 1959 till fresh permission is granted. He submitted that the State Government will fix rental/charges within a period of 30 days from today. We make it clear that only after the revised rental/charges are paid, as fixed by the State Government, within a period of eight weeks, the applications for renewal will be considered by the State Government. It is needless to say that the petitioners will be entitled to carry on the quarrying operations till their applications for renewal are considered and disposed of.

19. In such view of the matter, the petitioner is not entitled for the relief claimed in the writ petition and I do not see any reason to interfere with the order passed by the first respondent either on the basis that it is perverse or illegal or against the statutory rules. In such view of the matter, the writ petition stands dismissed. However, as it is stated in the impugned order itself it is always open to the petitioner to make fresh application for fresh lease in accordance with the

statutory provisions to the appropriate authority. No costs. Consequently, M. P. Nos. 1 & 2 of 2009 are closed.