

(2014) 02 MAD CK 0034
In the Madras High Court
Case No : W.A. No. 2464 of 2013

M/s. Oriental Structural Engineers (P) Ltd.	APPELLANT
Vs	
The District Collector	RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Citation : (2014) 4 MLJ 732

Hon'ble Judges : V. Dhanapalan, J;M. Duraiswamy, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

V. Dhanapalan, J

1. By consent, the writ appeal itself is taken up for final hearing at the admission stage.

2. Heard Mr. K.R. Krishnan, the learned counsel for the appellant and Mr. R. Rajeswaran, the learned Special Government Pleader for the respondent.

3. The appellant filed a writ petition in W.P.No.2883 of 2009 questioning the order of the District Collector in proceedings in R.C.No. B/&M/3002/2007 dated 21.01.2009 seeking to quash the same. After hearing the learned counsel for the parties, the learned Single Judge had passed the following order:

The petitioner was granted lease to quarry rough stone in S.F.No.393/1 Part in Malaikottalam Village, Kallakurichi Taluk, S.F.No.14/1B, Edaikkal Village and S.F.No.16/1B Thenkunam Village in Ulundurpet Taluk.

2. According to the petitioner, royalty is payable only at the rate of Rs. 65/- per 100 Cft. He requested to revise the royalty from Rs. 90/- per 100 Cft to Rs. 65/- per 100 Cft. The request of the petitioner for the same was rejected by the impugned memorandum dated 21.1.2009. The petitioner has filed this Writ Petition to quash the aforesaid order dated 21.1.2009.

3. A counter affidavit is filed stating on merits that there is no infirmity in the impugned order and the royalty was collected at Rs. 90/- per 100 Cft, since the petitioner was using heavy explosives to break the rock to different sizes suitable for crushing unit and transporting them from the quarry to crusher site. Further, it is stated in the counter affidavit in page 9 that the petitioner may prefer an appeal before the Commissioner of Geology and Mining, Chennai and without exhausting the appeal remedy, they have filed this Writ Petition.

4. Heard both sides.

5. The learned counsel for the petitioner has submitted that it is not stated in the impugned memorandum that they could prefer an appeal against the same, otherwise, they could have preferred an appeal to the Commissioner. It is also stated that the petitioner paid at the rate of Rs. 90/- per 100 Cft.

6. In view of the said submission, without expressing any view on the merits of the matter, the Writ Petition is disposed of directing the petitioner to file an appeal to the Commissioner of Geology and Mining, within a period of two weeks from the date of receipt of a copy of this order and the Commissioner of Geology and Mining is directed to entertain the same without reference to the delay, if the appeal is preferred within two weeks, as the petitioner has immediately filed this Writ Petition questioning the impugned memorandum dated 21.1.2009, and pass an order in the appeal as expeditiously as possible on merits and in accordance with law. No costs. The connected Miscellaneous Petitions are closed.

4. The learned counsel for the appellant has come out with a plea that the respondent has misconstrued the direction issued by this Court and is demanding separate appeals for each of the Survey Numbers. Therefore, there cannot be a single memo in respect of the quarries in question.

5. The learned counsel for the appellant informed this Court that one of the Division Benches of this Court had directed the learned counsel for the appellant to file an affidavit. In view of the direction issued by the Division Bench, the learned counsel for the appellant, on his own, has come out with a sworn affidavit stating that the writ petition in W.P.No.2883 of 2009 was filed regarding re-fixation of seigniorage fee in respect of three different quarries granted to the Petitioner's Company for doing National Highway work. The learned counsel had further stated in the affidavit that the respondent had rejected the same by way of a memo and it cannot be construed as an order. He further submitted that since the learned Single Judge has dismissed the W.P.No.2883 of 2009 directing the writ petitioner to file an appeal before the Commissioner of Geology and Mining, the learned counsel went in person to the Office of the Commissioner of Geology and Mining, where he was informed that no appeal can be filed as against a memo and an appeal can be filed only as against an order.

6. On a perusal of the order made in W.P.No.2883 of 2009, it is seen that the learned Single Judge has considered the petitioner's case without expressing any view on the merits of the matter and disposed of the same by directing the

petitioner to file an appeal to the Commissioner of Geology and Mining, within a period of two weeks from the date of receipt of a copy of the order and the Commissioner of Geology and Mining was directed to entertain the same without reference to the delay, if the appeal was preferred within two weeks, as the petitioner has immediately filed this Writ Petition questioning the impugned memorandum dated 21.01.2009 and to pass an order in the appeal as expeditiously as possible.

7. A reading of the order would clearly indicate that the instant impugned order dated 21.01.2009 has been mentioned as impugned memorandum dated 21.01.2009 and that is the reason the appellant has come before this Court by making a plea that the respondent is not accepting the appeal.

8. Therefore, we are making it clear that the word "impugned memorandum dated 21.01.2009" has to be read as "impugned order dated 21.01.2009" to the effect that the request of M/s.Oriental Structural Engineers (P) Ltd., regarding the revision of royalty from Rs. 90 per 100 cft. to Rs. 65 per cft. in respect of rough stone quarry leases granted to them exclusively for road sector work in S.F.No.393 /1 Part etc., Malaikottalam Village of Kallakurichi Taluk, S.F.No.14/1B of Edaikkal Village and S.F.No.16/1B of Thenkunam Village of Ulundurpet Taluk and the remaining portion of the order of the learned Single Judge is upheld except for the clarification as required by the appellant.

9. With the above clarification, the Writ Appeal is disposed of. No costs.