

(2003) 07 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No's. 4491 of 1995 and 8043 of 2001

Obasamudram Limeshell Labour Development Society

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 01-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Mineral Concession Rules, 1960 — Rule 24
Mines and Minerals (Development and Regulation) Act, 1957 — Section 10(3)
Wild Life (Protection) Act, 1972 — Section 18(1), 19, 20, 21, 22

Citation : (2003) WritLR 874

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : R. Krishnamoorthy, for V. Ayyathurai and G. Muthukrishnan, for the Appellant; Selvi George, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The issues involved in both the writ petitions are one and the same. Hence, they are taken up together for hearing and

disposal by this common order.

2. Following are the few facts which led to the filing of the writ petitions. The petitioner is Obasamudram Limeshell Development Society. In G.O.

Ms. No. 1105 Industries (M-1) Department dated 11.10.88, the petitioner society was granted lease to mine limeshell, a major mineral, for a

period of five years over an extent of 100 acres of backwater poromboke land in S.F. No. 409 of Karimanal Village, Ponneri Taluk of Tiruvallur

District. The said lease was granted by exercising the powers u/s 10(3) of the Mines and Minerals (Regulation and Development) Act, 1957. The

lease deed was executed on 25.12.88 for a period of five years and the lease

came to an end on 23.12.93. In terms of the lease deed the petitioner applied for renewal for further period of five years on 22.12.92. Since no orders were passed on the renewal application within the stipulated period, the period of lease was deemed to be extended by one year i.e. upto 24.12.94 as per Rule 24(a) of the Mineral Concession Rules. Thereafter, there was no renewal and the refusal to renew the lease was communicated to the petitioner in the proceedings dated 12.10.94.

The petitioner filed W.P. No. 20367 of 1994 questioning the order refusing to renew the lease. This Court admitted the writ petition and thereafter granted interim injunction by order dated 10.11.96. It is pertinent to note that even much prior to the grant of lease on 25.12.88, in exercise of powers conferred u/s 18(1) of The Wild Life (Protection) Act, 1972 (hereinafter called as "the Act"), the Government issued G.O.Ms. No. 1247 Forest and Fisheries Department dated 22.9.80 declaring large extent of land more particularly, the area detailed in schedule to be a sanctuary for the purpose of protecting, propagating or developing wild life and the areas shall be called "Pulicat Birds Sanctuary". S. No. 409, Karimanal Village, Ponneri Taluk is also one of the area covered under the said notification. After the notification was issued, entry into the sanctuary is restricted except the persons specifically mentioned u/s 27 of the Act. u/s 29, no person shall destroy, exploit or remove any wild life or destroy or damage the habitat of any wild animal. Realising the mistake in grant of mining lease, the first respondent in W.P. No. 8043 of 2001 issued a show cause notice dated 15.10.97 calling upon the petitioner to explain as to why the lease granted to the petitioner should not be rejected in view of the above said Government Order. The petitioner submitted its explanation on 26.11.97. When the matter stood at that stage, W.P. No. 20367 of 1994 filed by the petitioner challenging the order dated 12.10.94 refusing to renew the lease was dismissed by this Court on 24.7.2000, but with liberty to the petitioner to pursue its claim before the respondents. W.A. No. 1732 of 2000 filed against the said order by the society was also dismissed on 27.11.2000. SLP No. 1425 of 2001 filed by the society was also dismissed by the Apex Court on 2.2.2001. Thereafter, the first respondent in W.P. No. 8043 of 2001 by G.O.(D) No. 333 Industries (MMA.1) Department dated 29.12.2000 rejected the application of the

petitioner for renewal of mining lease. The relevant portion of the said order reads as under:-

The Government have carefully examined the case in the light of the report of the Director of Geology and Mining and the Wildlife Warden,

Chennai as enforced by the Principal Chief Conservator of Forest and have decided to reject the first renewal of mining lease application of

Tvl.Obasamudram Limeshell Labour Development Society for the following reasons:-

1. The Supreme Court in their order dated 25.4.1998 in SLP No. 6868/85 have ordered for cancelling of all mining leases granted contrary to the notification issued u/s 18(1) of the Wild Life (Protection) Act, 1972.

2. The entire Pulicat Lake has been declared as a Birds Sanctuary.

The Government accordingly direct that the first renewal of mining lease application of Tvl.Obasamudram Limeshell Labour Development Society

for limeshell over an extent of 100 acres in S. No. 409 of Karimanal Village, Ponneri Taluk, Tiruvallur District be rejected.

Both G.O.Ms. No. 1247 Forest and Fisheries Department dated 22.9.80 and G.O. (D) No. 333 Industries (MMA.1) Department dated

29.12.2000 are challenged in these writ petitions.

3. Mr. R. Krishnamoorthy, learned Senior Counsel appearing for the petitioner would challenge G.O.Ms. No. 1247 Forest and Fisheries

Department dated 22.9.80 on the ground that certain provisions of the Act were amended by Act 44 of 1991 with effect from 2.10.91. According

to the learned Senior Counsel, Section 18(1) was amended by the said Act and Section 26-A was introduced. After the amendment Act, even

after a notification u/s 18(1) of the Act, unless a further declaration is made in the manner known to Section 26-A of the Act, the notification issued

during the year 1980 shall be inoperative. He would in fact submit that the notification dated 22.9.80 issued pursuant to the provisions of Section

18 prior to amendment cannot be relied upon to reject the request for renewal of mining lease. After the notification u/s 18, the Collector shall

inquire into and determine the existence, nature and extent of the rights of any person over the land u/s 19 of the Act. u/s 21 the Collector is

empowered to make a proclamation specifying the situation and the limits of the sanctuary and also requiring any person claiming any right

mentioned in Section 19 to make a claim of compensation in view of the notification. u/s 22, the Collector shall conduct an inquiry and thereafter

only a declaration to be made u/s 26-A of the Act. In the absence of the above, reliance placed on the Government Order to reject the request of

the petitioner for renewal of mining lease is invalid. The learned Senior Counsel would further submit that under the provisions of the Act, there is

no specific ban imposed for mining limeshell merely because of declaration of the area as bird sanctuary. The learned Senior Counsel would further

submit that the members of the petitioner society have been carrying on mining limeshell for more than four decades and if the lease is not renewed,

their livelihood would be affected. In fact, the learned Senior Counsel submitted that in the very same area fishing is allowed by the respondents.

Finally, the learned Senior Counsel submitted that in case of Tvl. Suriya Kailash and Company, Chennai, the respondents have granted mining

lease to mine limeshell in the very same area and the petitioner alone is discriminated.

4. Controverting the above submissions, Mrs. Selvi George, learned Government Advocate for the respondents submitted that G.O.Ms. No. 1247

Forest and Fisheries Department dated 22.9.80 was issued u/s 18(1) much prior to the Amendment Act 44 of 1991 and on the date when the said

Government Order was issued, the State Government was the competent authority to declare its intention in respect of the area to be a birds

sanctuary. Merely because the amendment was made by Act 44 of 1991, the Government Order issued earlier to the said amendment Act cannot

be held to be invalid. The mining lease was granted to the petitioner on 11.10.88 without reference to the said Government Order and it was a

mistake. Therefore, the petitioner has no right to insist for grant of lease in the areas in question and the learned Government Advocate submitted

that pursuant to Section 29 of the Act, destruction or damage to the habitat of any wild animal is not permissible. In the event the mining operations

are to be allowed, that will destroy and damage the wild life. Insofar as the submission as to the discrimination pleaded by the petitioner in the grant

of mining lease to one Tvl.Suriya Kailash and Company, the learned Government Advocate submitted that the said area is not covered by the

notification dated 22.9.80 and therefore the question of discrimination does not arise. The learned counsel would also submit that fishing has been

allowed to a few persons as the same will not destroy or damage the birds habitat and finally the learned Government Advocate submitted that in

any case there is no right conferred on the petitioner to insist the respondents for grant of mining lease.

5. I have carefully considered the submissions of the respective counsel. The challenge to the Government Order in G.O.Ms. No. 1247 Forest and

Fisheries Department dated 22.9.80 cannot be entertained by this Court at this stage, as the Apex Court in the judgment in SLP No. 6868 of

1985 dated 25.4.88 while approving the G.O., in fact directed the State Government to cancel all mining leases granted contrary to the said

notification issued u/s 18(1) of the Act. The said order has become final and is binding not only on the State Government, but also on the

petitioner. In fact the impugned order dated 29.12.2000 refers to the order of the Apex Court and the relevant portion has been extracted in the

earlier portion of this order. When once the notification issued u/s 18(1) of the Act is approved by the Apex Court, question of challenge to the

same notification does not arise. An argument is sought to be advanced by the learned Senior Counsel on the ground that the said judgment of the

Apex Court was made prior to the Amendment Act 44 of 1991. In terms of Section 26-A, a declaration should be made following certain

procedures enumerated under Sections 19, 21 and 22 of the Act. In the absence of those procedures, the Government Order issued under the old

Act cannot be made applicable to the application of the petitioner for consideration of lease after the amendment Act. This submission of the

learned Senior Counsel is totally unacceptable. u/s 18(1) of the Act, the State Government may by notification declare its intention to constitute any

area other than an area comprised within any reserve forest or the territorial waters to be a sanctuary. u/s 19, the Collector shall inquire into and

determine the existence, nature and extent of the rights of any person over the land comprised within the limits of the sanctuary. Bar of accrual of

rights is enumerated u/s 20 of the Act. u/s 21, the Collector shall publish a proclamation in the regional language specifying the situation and the

limits of the sanctuary and the right of a person to make a claim of compensation. u/s 22 of the Act, the Collector shall expeditiously inquire into the

claim preferred before him under clause (b) of Section 21 and the existence of any right mentioned in section 19 of the Act and not claimed under

clause (b) of section 21 by exercising the powers conferred u/s 23 of the Act. Sections 24 and 25 of the Act deal with the acquisition of rights and

acquisition proceedings by the Collector. Section 26 deals with delegation of Collector's powers. The relevant provisions of the Act that are

necessary for the disposal of these writ petitions are extracted hereunder:-

S. 26A. Declaration of area as sanctuary.--(1) When-

(a) a notification has been issued u/s 18 and the period for preferring claims has elapsed, and all claims, if any, made in relation to any land in an

area intended to be declared as a sanctuary, have been disposed of by the State Government; or

(b) any area comprised within any reserve forest or any part of the territorial waters, which is considered by the State Government to be of

adequate ecological faunal floral geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wild

life or its environment, is to be included in a sanctuary, the State Government shall issue a notification specifying the limits of the area which shall be

comprised within the sanctuary and declare that the said area shall be sanctuary on and from such date as may be specified in the notification:

Provided that where any part of the territorial waters is to be so included, prior concurrence of the Central Government shall be obtained by the

State Government:

Provided further that the limits of the area of the territorial waters to be included in the sanctuary shall be determined in consultation with the Chief

Naval Hydrographer of the Central Government and after taking adequate measures to protect the occupational interests of the local fishermen.

(2) Notwithstanding anything contained in sub-section (1), the right of innocent passage of any vessel or boat through the territorial waters shall not

be affected by the notification issued under sub-section (1).

(3) No alteration of the boundaries of a sanctuary shall be made except on a resolution passed by the Legislature of the State.

S. 27. Restriction on entry in sanctuary.--(1) No person other than,--

(a) a public servant on duty,

(b) a person who has been permitted by the Chief Wild Life Warden or the authorised officer to reside within the limits of the sanctuary,

(c) a person who has any right over immovable property within the limits of the sanctuary,

(d) a person passing through the sanctuary along a public highway, and

(e) the dependants of the person referred to in clause (a), clause (b) or clause iċ½, shall enter or reside in the sanctuary, except under and in

accordance with the conditions of a permit granted u/s 28.

(2) Every person shall, so long as he resides in the sanctuary, be bound-

(a) to prevent the commission, in the sanctuary, of an offence against this Act;

(b) where there is reason to believe that any such offence against this Act has been committed in such sanctuary, to help in discovering and arresting the offender;

(c) to report the death of any wild animal and to safeguard its remains until the Chief Wild Life Warden or the authorised officer takes charge thereof;

(d) to extinguish any fire in such sanctuary of which he has knowledge or information and to prevent from spreading, by any lawful means in his power, any fire within the vicinity of such sanctuary of which he has knowledge or information; and

(e) to assist any Forest Officer, Chief Wild Life Warden, Wild Life Warden or Police Officer demanding his aid for preventing the commission of any offence against this Act or in the investigation of any such offence.

(3) No person shall, with intent to cause damage to any boundary-mark of a sanctuary or to cause wrongful gain as defined in the Indian Penal Code, 1860 (45 of 1860), alter, destroy, move or deface such boundary-mark.

(4) No person shall tease or molest any wild animal or litter the grounds of sanctuary.

S. 28. Grant of permit.--(1) The Chief Wild Life Warden may, on application, grant to any person a permit to enter or reside in a sanctuary for all

or any of the following purposes, namely:

(a) investigation or study of wild life and purposes ancillary or incidental thereto;

(b) photography;

(c) scientific research;

(d) tourism;

(e) transaction of lawful business with any person residing in the sanctuary.

(2) A permit to enter or reside in a sanctuary shall be issued subject to such conditions and on payment of such fee as may be prescribed.

S. 29. Destruction, etc., in a sanctuary prohibited without permit.--No person shall destroy, exploit or remove any wild life from a sanctuary or

destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within such sanctuary except under and in accordance

with a permit granted by the Chief Wild Life Warden and no such permit shall be granted unless the State Government, being satisfied that such

destruction, exploitation or removal of wild life from the sanctuary is necessary for the improvement and better management of wild life therein,

authorises the issue of such permit.

Explanation-For the purposes of this section, grazing or movement of live-stock permitted under clause (d) of section 33 shall not be deemed to be

an act prohibited under this section.

6. A reading of Section 18 is clear inasmuch as the State Government by exercising the power u/s 18(1) declare its intention to constitute an area

for the purpose of protecting, propagating or developing wild life or its environment. The subsequent provisions of Sections 19 to 26 enable the

District Collector only to conduct enquiry to determine the rights of parties who may be affected by such notification. There is no vested right

conferred on the petitioner for an automatic renewal of mining lease, as it is subject to various conditions. The petitioner may be an aggrieved

party. In the event the area for which the mining lease was granted is declared as sanctuary nevertheless, it cannot question the power of the

Government in declaring a particular area as a bird sanctuary. Once the Government declares its intention to constitute an area for the purpose of

protecting, propagating or developing its wild life, the question of granting mining lease in the very same area does not arise. Of course, after

determining the rights of parties, the Collector has to declare the area as sanctuary u/s 26-A of the Act and the persons aggrieved are entitled to an

opportunity of making their claim only in respect of compensation. This amendment with effect from 2.10.91, in my considered view, will not affect

the right of the State Government or the respondents for that matter, to rectify the mistake in grant of lease in the year 1988, when actually a

declaration u/s 18(1) was already made even in the year 1980. It is well settled law that in case if a mistake is pleaded, it is always open to the Government to rectify the said mistake. In the grant of lease, question to be considered is with reference to the provisions contained in Sections 27 and 29 of the Act. Entry to the sanctuary is restricted u/s 27, as no person other than the persons enumerated under the Section shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted u/s 28. Section 28 specifically enables the Chief Wild Life Warden to grant permit to any person to enter or reside in a sanctuary only on the purposes specified under the said section which are limited only for investigation or study of wild life and purposes ancillary or incidental thereto, photography, scientific research, tourism and transaction of lawful business with any person residing in the sanctuary. The petitioner is not one of the persons enumerated either u/s 27 or a person entitled to grant of permit u/s 28 of the Act. Moreover, u/s 29, no person shall destroy, exploit or remove any wild life from a sanctuary or destroy or damage the habitat of any wild animal etc., and no permit shall be granted to any person by the Chief Wild Life Warden inasmuch as such destruction, exploitation is necessary for the improvement and better management of wild life therein. In this context, the request of the petitioner for grant of renewal of lease should be considered. When it is specifically pleaded that even grant of permit to any person to enter or reside in a sanctuary is by Chief Wild Life Warden, question of grant of mining lease by the authority other than the Chief Wild Life Warden is totally alien to the provisions of the Act and the request for grant of mining lease is also impermissible. Viewed from the above angle, more particularly, when the petitioner has no right to insist that mining lease should be renewed, I do not find that the petitioner is entitled to renewal of lease after the notification u/s 18(1) of the Act was issued. Hence, I find no merit in the submission of the learned Senior Counsel for the petitioner that the Government Order in G.O.Ms. No. 1247 Forest and Fisheries Department dated 22.9.80 rejecting the renewal could be in any way considered as illegal.

7. Coming to the submission of the learned Senior Counsel for the petitioner that one Tvl.Suriya Kailash and Company was granted mining lease, it

is the specific stand of the respondents that the said area is not covered under the notification dated 22.9.80. The said statement is not disputed by

the petitioner. Hence, the question of discrimination also does not arise, as the area in which the mining of limeshell was granted to the said

Tvl.Suriya Kailash and Company is entirely different from the one covered by the Government Order.

8. Coming to the last submission of the petitioner as to the permission granted to certain persons for fishing, in paragraph 3 of the counter affidavit

it is stated that fishing by standing in the water and spreading net for fishing will not alter the habitat of the birds and no power boats are allowed to

fishing inside the sanctuary area. It is further stated that the turns and areas fixed by the fishermen for fishing is not related to the Forest

Department. On the other hand, if the mining of limeshell is allowed, even manual removal of lime shell will affect the environmental ecology and

affect birds natural habitat aspect of the sanctuary. It is also stated that extraction of quarrying shell lime under water will affect the zooplankton

and phytoplankton which form the food of fish and prawns. The fish and prawns are food to the migratory birds. When the system of food chain in

the sanctuary area is affected, it will naturally affect the arrival of migratory birds. It is also stated that major portion of the lake is shallow water

area which covers with plenty of birds migrating from various places and shallow water area is fit for feeding and breeding purposes of birds

sanctuary. It is the further averment of the respondents that if mining is allowed in such a shallow water it will be deepened and shallow water area

will be reduced day by day and it will cause reduction of food to migratory birds in due course migratory birds will not turn back to the sanctuary

area. These averments of the respondents have to be accepted by this Court as the nature of destruction to the sanctuary, if the mining lease is

granted, could be assessed only by the experts on the field and not by this Court, as this Court is not an expert in those aspects. Hence, I find no

merit in the submission made on behalf of the petitioner that while fishing is allowed, the respondents can also allow mining of lime shell.

9. Lastly it was contended that the members of the petitioners society are depending only on mining of lime shell and in the event the lease is not

renewed, their livelihood will be affected. This Court, though has some sympathy over the members of the petitioner society, in view of the fact that

once a notification u/s 18(1) of the Act is issued, it is for the Chief Wild Life Warden or the State Government, as the case may be, to consider

and allow any person other than the persons enumerated u/s 27 even to enter into the sanctuary. When such specific restrictions are enumerated in

the provisions, this Court cannot by exercise of powers under Article 226 of the Constitution of India, permit the petitioner to enter into the

sanctuary and more particularly, by directing the respondents to renew the lease.

10. For all the above reasons, I do not find any merit in the challenge to quash the G.O.Ms. No. 1247 Forest and Fisheries Department dated

22.9.80 and the subsequent order in G.O.(D) No. 333 Industries (MMA.1) Department dated 29.12.2000 in rejecting the application of the

petitioner for renewal of mining lease. Hence, both the writ petitions must fail and accordingly, the same are dismissed. No costs. Consequently,

W.M.P. Nos. 11405 and 11406 of 2001 are also dismissed.