

(1971) 12 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No. 3146 of 1971

R. Neelakantan

APPELLANT

Vs

The Collector of Chingleput and Another

RESPONDENT

Date of Decision : 09-12-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Mines and Minerals (Development and Regulation) Act, 1957 — Section 16

Mines and Minerals (Regulation and Development) Rules, 1957 — Rule 8

Citation : AIR 1972 Mad 417 : (1972) 85 LW 420

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Judgement

1. The petitioner was running a race with the second respondent from fasli 1379 till date to get a lease of the sand quarry right in S. Nos. 185 and 363 of Vengathur and Putlur villages. From fasli 1379 the second respondent obtained a lease from the first respondent for a stated consideration, as rent. A third party filed a writ petition stating that an auction ought to have been held and if an auction was so held, he would have paid for a higher amount than that offered by the second respondent. He failed both in the writ petition and in the appeal thereon. For fasli 1380 the second respondent secured a renewal of the lease. It was then the petitioner intervened and sought to interdict such renewal by filing an application for the grant. His request was rejected on the ground that for the fasli in question the lease had been granted in favour of the second respondent. The petitioner thereafter came to this court under Art. 226 of the Constitution, but was unsuccessful. Fasli 1380 expired on 30-6-1971. On 15-1-1971, the second respondent filed a petition requesting for a further grant of the lease for fasli 1381. The application was routed to the Tahsildar of the concerned firka for report. The Tahsildar reported that there was no scope for further quarrying in the area, since there was not sufficient sand in it, and it was on this ground that the application for renewal dated 15-1-1971 made by the second respondent for fasli 1381 was rejected. The second respondent, however, was optimistic and he

pursued the matter on his own and brought to the notice of the authorities that the quarry site did possess fresh deposits of sand and that there was scope for quarrying even during the current fasli. When the matter was referred back to the Tahsildar, Tiruvellore, once over, he agreed with the second respondent. It was in that connection and in those circumstances that the representation made by the second respondent that he was entitled as of right to a renewal, as he had made such an application for the purpose within time, was accepted by the State acting through the Collector of the District, and the challenged order was passed. In the order of the Collector of the District, and the challenged order was passed. In the order of the Collector of Chingleput dated 20-9-1971, which is challenged, the Collector finds that the application for renewal which was well within time and which ought to have been considered in a manner known to law, was rejected on facts which were later found to be incorrect and that it was in those circumstances that he granted renewal of the lease in favour of the second respondent. He also noted that the applicant's case was that he had lost a sum of Rs. 15,000, due to court expenses and to the formation of road and that it would cause undue prejudice if the lease was not renewed for the current fasli. The petitioner's case is that at or about that time, when the lease for fasli 1380 came to an end, he enquired in the office of the first respondent and in the office of the local Tahsildar whether the right to quarry sand would again be leased out for fasli 1381 commencing from 1-7-1971. His case is that, on his oral approach, he was orally informed that the right to quarry would neither be renewed nor a fresh lease granted to anybody nor an auction conducted therefor. This fact, however, is denied by the first respondent. He would state that the contention of the petitioner, that he was interested in applying for the lease of the quarry and that he enquired about the availability of the quarry, is not correct. It is not, however, necessary to take any notice of this factual representation contained in the affidavit in support of the writ petition, as the record does not bear out the same, and there is nothing in writing to corroborate that such efforts were taken or made by the petitioner.

2. To continue the narrative, the first respondent passed the impugned order on 20-9-1971 renewing the lease in favour of the second respondent for fasli 1381, in the circumstances stated above. The first contention of Mr. Venugopal, the learned counsel for the petitioner, is that the application for renewal having been dealt with at one point of time, to wit, on 4-6-1971, when the application for renewal dated 15-1-1971 was rejected, there could be no fresh appraisal of the situation either at the instance of the second respondent or otherwise, since such action on the part of the first respondent, who is a quasi judicial authority to sanction such grants, would virtually amount to a review of the order made on 4-6-1971. The argument is prima facie attractive. It is undoubtedly clear that the power to review, even if it is assumed to be vested in quasi-judicial tribunals, is a creature of the statute or provision of law which enables them to re-deal with the original matters. It cannot be assumed, if it is not so provided specifically or by necessary implication. But the question is whether in this case the order

impugned should be deemed to be an order made in the normal exercise of the powers of review as is ordinarily understood. The application for renewal was rejected on the score that there was no scope for further quarrying in the area as reported by the then Tahsildar, Trivellore, Factually that was an incorrect appreciation of the facts and circumstances which prevailed on site. The counter affidavit also discloses that this report, which was obviously incorrect, was not acted upon, since no possession of the quarry site was ever taken from the second respondent. Therefore, at the beginning of fasli 1381 there was no sand quarry to be leased out, according to the report originally made by the Tahsildar.

3. The ancillary contention in support of the main one that the challenged order is in the nature of an order passed on review, is that the first respondent ought to have acted under R. 8 of the rules framed u/s 16 of the Mines and Minerals (Regulation and Development) Act, 1957, Rule 8 deals with the lease of quarries to private persons. The essential prerequisite therefore is that a quarry should be in existence on the date when the fasli begins, and the impression gained by the Collector at or about the time by reason of the reports furnished to him by his subordinates was that there was no quarry at all. Thus there was no necessity for him to act under Rule 8. I am therefore unable to agree with the learned counsel for the petitioner that the prescribed procedure under the rules have not been followed.

4. The main contention, however, is that the challenged order is the product of review of the original order. As noticed already, the original order was passed on a misapprehension that the quarry was not workable and that there was no scope for further quarrying at all. This was belied by a later report which was obtained again from the Firka Tahsildar but at the instance of the second respondent. The subsequent report disclosed that there was enough sand for purposes of quarrying and that therefore the second respondent was right in having made representations to the appropriate authority and in bringing to their notice that the order of rejection of the application for renewal of the lease to which he would normally be entitled was made in wrongful exercise of jurisdiction. If, on the facts available, in the instance case, it has to be accepted, as it cannot be denied, that on the date when the renewal was refused to the second respondent, that was based on a report which was incorrect and was not supported by material, then the impugned order should be deemed to have rectified an error which had crept into the record by placing reliance upon an incorrect and unsupportable report of the Tahsildar. This is not a case where the first respondent reviewed his earlier order, but according to me, he reconsidered his order in the light of true facts and if he did so and passed an order on such appraisal of correct facts, it would undoubtedly date back to the application for renewal made quite in time by the second respondent and would certainly displace the erroneous order made by him on 4-6-1971 whereunder he wrongly refused to grant the renewal though the second respondent was otherwise eligible to it. In this view of the matter, the rule stated by the Supreme Court in *Patel Narshi Thakershi v. Sri Pradyamansinghji*, 1970 1 SCWR 491 : AIR 1960 SC

1273 repeated in C. A. 447 of 1963, that the power of review is not an inherent power and that it should be conferred by law either specifically or by necessary implication, cannot apply to the facts of this case. Here is a case where the authority was not reviewing its decision suo motu, but was correcting an error which it had committed since it based its order on a report which was not supportable. I am of the opinion that this is not a case where the principle of review is attracted and applicable.

5. The contention of Mr. V. P. Raman, the learned counsel for the second respondent, is that the petitioner is not a person aggrieved. He bases his contention on certain factual situations. It is not in dispute that the petitioner came nowhere near the picture expressing his interest to take this quarry on lease, for fasli 1381, excepting his bare statement, that he made certain attempts to find out the factual situation which is belied by the counter affidavit filed by the first respondent, there is no positive proof that the petitioner was ever inclined to obtain a lease of the sand quarry rights for the fasli in question. No doubt, he has come to this court stating, presumably as pro bono publico, that the revenue of the State has to be safeguarded and the renewal ought not to be granted, since he was prepared to pay nearly four times the amount for which the renewal of the lease was granted by the first respondents. Mr. Venugopal, on the other hand, would rely upon K.N. Guruswamy Vs. The State of Mysore and Others, and state that, where the State revenues were involved and where public policy has also to be borne in mind the principles which governed such situations and particularly when they were codified by law or by rules, have to be strictly adhered to and the disposal of such matters should not be left to the arbitrary discretion of the executive or its officers. His case is that such observance of the rule is necessary so as to eliminate favouritism, nepotism and corruption. That this is the guideline that is indicated in the above decision. But still, the petitioner has to establish that he is a person aggrieved. When he was so meticulous as to come to this Court when a renewal was granted for fasli 1380 and when he took no steps to obtain the rights for the following fasli, nor made any application in writing for the purpose indicating that he was interested in the quarry right, it would be problematic to assume that the petitioner had or has any real interest in the subject-matter. As best, the petitioner is complaining about the inconvenience or loss which the State is likely to suffer by the manner in which the first respondent has dealt with the lease.

In Swami Motor Transport (Private) Ltd. Vs. Raman and Raman (Private) Ltd. and Others, , Rajamannar, C. J. speaking for the Bench, after referring to Rex v. Groom ex parte Cobbold, 1901 2 KB 157, stated the principle thus:

"The true principle is to determine whether the applicant has an interest distinct from the general inconvenience which may be suffered by the law being wrongly administered."

The gravamen of the charge of the petitioner is that the law was being administered wrongly in that the first respondent did not observe Rule 8 of the

rules either publicising the availability of the lease of the kind in question or by auctioning it as prescribed therein. Still one has to answer the poser whether the petitioner has a real interest in the subject-matter in issue. That depends on the manner in which the petitioner had involved himself when the quarry right was open for being leased out to the public and thereafter. Excepting that he has come to this court challenging the order of renewal granted to the second respondent, in the peculiar circumstances stated above, there is nothing on record to show that he was interested in the lease or that he took any steps to gain an advantage to himself by offering to take the lease or applying for the grant. In the counter affidavit it is repeatedly stated that the petitioner has not applied for the quarry right in the area nor did he approach the authorities, as stated, enquiring whether the grant was available or not. In this view, I am unable to accept the contention of the learned counsel for the petitioner that the petitioner is a person aggrieved or, to put it more clearly, a person who has or has a real justiciable interest which would compel this court to act under Art. 226 of the Constitution.

6. This leads us on to the question whether the relief asked for by the petitioner is appropriate. The petitioner is seeking for a writ of Mandamus directing the first respondent to put up for auction the right to quarry sand in the villages in question. This is a misconceived remedy. The petitioner was aware that there was an order dated 20-9-1971 whereby the first respondent in exercise of his powers and as a quasi-judicial authority empowered to make such grants, renewed the lease in favour of the second respondent. Unless that order is removed from the record by the issue of an appropriate writ under Art. 226 of the Constitution, a writ of mandamus cannot be issued and, if so issued, it would be meaningless.

7. As writs emanating from this court in exercise of its jurisdiction under Art. 226 of the Constitution are not issued as a matter of right or as of course, and as they are generally issued in its discretion, it has to be found whether in the instant case any other alternative direction or order should be made under Art. 226 of the Constitution. I have already stated that the petitioner was not diligent as he did not go anywhere near the authority to apprise them of his interest or interestedness to take the lease. There is nothing, excepting the statement of the petitioner in his affidavit, to show that he evinced any interest in taking the lease. As a matter of fact, I am inclined to hold that the petitioner was not interested in it, till he discovered that the second respondent had obtained a renewal of the lease in the circumstances stated above. Taking into consideration all the facts on record and the circumstances appearing in the instant case. I am unable to exercise any discretion in issuing any alternative writ or direction as prayed for.

8. This writ petition therefore fails and is dismissed. There will be no order as to costs.

9. Writ dismissed.