

(2011) 01 MAD CK 0057

In the Madras High Court

Case No : Writ Petition (MD) No. 2545 of 2009 and M.P. (MD) No"s. 1 and 2 of 2009 and 1 of 2010

S. Vairavan

APPELLANT

Vs

District Collector, Sivagangai District

RESPONDENT

Date of Decision : 22-01-2011

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 4A(2)

Citation : (2011) 01 MAD CK 0057

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S.S. Sundar, for the Appellant; S.C. Herold Singh, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner has filed the present writ petition seeking to challenge an order dated 28.10.2008 passed by the

Respondent in respect of the quarry to an extent of 9.8.75 hectares in S. No. 264 in South Velangudi Village, Thiruppathur Taluk, Sivagangai

District and seeks to set aside the same.

2. When the writ petition came up on 16.4.2009, this Court found that the impugned order was passed without jurisdiction and particularly it is in

conflict with Section 4-A(2) of the Mines and Minerals (Development and Regulation) Act, 1957 and that no opportunity was given and hence the

termination was illegal. Since the mines activities had taken place for a number of years and as the entire lease amount has been deposited, the

District Collector was directed to execute the lease deed as per the provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959.

Aggrieved by the interim direction granted by this Court, the District Collector has filed a vacate stay application in M.P.(MD) No. 1 of 2010

together with supporting counter affidavit, dated 29.7.2010. Even at the time of first notice, a regular counter affidavit, dated Nil (April, 2009) was

also filed together with supporting documents in the form of typed set.

3. The case of the Petitioner was that to an extent of 9.8.75 hectares in S. No. 264 in South Velangudi village, Thiruppathur Taluk was identified

as a resourceful site for stone quarrying. The land was classified as Government Poramboke in the official notification. Only after receiving the field

reports and the other formalities, the Government had granted lease in favour of the Petitioner for quarrying operations from the year 1991.

Initially, quarrying license was granted in favour of one Chidambaram Murugesan for a period of three years from 1991. Thereafter, it was given in

favour of one V. Bharathi for a period of five years till 31.3.1999. After expiry of the previous lease, the previous lessee was successfully

preventing the lease of quarry in favour of any one else. He was indulging illicit quarrying. Once again, the quarry was brought under auction by a

notification, dated 14.6.2007 which was published in the District Gazette. The notification covers 25 different sites in various localities of

Sivagangai District including the present disputed site. As against the upset price fixed at Rs. 7,65,000/-, the Petitioner had offered Rs.

12,50,000/-. He had also remitted 10% of the lease amount. The auction of the Petitioner was confirmed in his favour.

4. It also transpires that the brother of the previous lessee filed a writ petition being W.P. No. 5834 of 2007 to quash the notification. The said writ

Petitioner by name Sivakumar contended that quarrying operation is causing inconvenience to his agricultural operations. There is an high tension

power line running across the land. The quarrying site is closer to the residential area. Though an interim order was granted initially restraining the

Petitioner from doing quarrying, the same was vacated by the division bench on 7.9.2007. In view of the same, the Respondent did not execute the

lease deed. Therefore, the Petitioner sent a letter, dated 12.11.2007 requesting the Respondent to permit to operate the quarry by receiving the

balance amount. By a communication, dated 8.4.2008, he was directed to deposit the remaining auction amount and get the lease deed executed.

Though the Petitioner has paid the balance amount and an order was passed for the grant of lease for a period of five years, by mistake instead of showing the extent as 9.78.5 hectares, it was shown only as 5 hectares in S. No. 264. When the Petitioner has made a bid for an higher extent, the reduction was unwarranted. Therefore, he sent a representation for the grant of lease for the entire amount as per his offer. Since there was no reply forthcoming, he made a further representation and sought for information under the R.T.I Act. It is at this stage the impugned order, dated 28.10.2008 came to be passed cancelling the lease granted in favour of the Petitioner. The reason assigned was that the quarrying site falls within the Mangulam Kanmoi, a tank Poramboke. Since such a lease falls within the town poramboke, it is violative of Rules 12 and 36(1) of the Tamil Nadu Minor Mineral Concession Rules, 1959.

5. Challenging the same, the Petitioner contended that the quarrying site has been classified as Government poramboke. It is neither a tank poramboke nor labeled as catchment area. Since the land in S. No. 264 was given for lease in the previous years for more than 20 years. Hence the land cannot be said as a tank poramboke. Further, auction was conducted in June, 2007. If it was really a prohibited area, there was no need for the Respondent to bring the site for auction.

6. Mr. S.S. Sundar, the learned Counsel for the Petitioner also stated that even in respect of an another S. No. 244/3, Sevvur village, despite the fact that the land was classified as a Peria Marakkudi Kanmoi, stone quarrying has been permitted in favour of one Senthilvel through public auction. Therefore, the District Collector was giving false reason.

7. In the counter affidavit, the allegations made by the Petitioner against the department were denied. As per the A-Register and the field measurement book, S. No. 264 to an extent of 9.78.5 hectare was classified as Mangudi Yenthal Kanmoi. The lease in respect of the said land will be against Section 36(1) of the Tamil Nadu Minor and Mineral Concession Rules, 1959. In W.P.(MD) No. 5995 of 2008, this Court directed cancellation of lease in respect of the land where Varachi Kanmoi was located. In the very same notification only, the Petitioner's auction site was also listed. It was also claimed that G.O. Ms. No. 41, Revenue Department, dated 20.1.87 had directed the removal of encroachment in respect

of any water course or water source. The land in question is a water course poramboke. The department cannot grant any lease in respect of the

said land. The District Collector was only adhering to the revenue records as well as the Government Order. A copy of the Adangal from A-

Register showed that the said land is clearly described as Mangudi Kanmoi.

8.A perusal of the order in W.P. No. 5834 of 2007 would show that the division bench while vacating the interim order made it clear that in case

the writ petition was allowed, the lease in favour of the Petitioner will abide by the decision in the writ petition. In any event, it is not a case where

the Petitioner had got the lease deed assigned in his favour. Though this Court granted an interim direction to execute the lease deed, but in view of

the vacate stay application, the main writ petition itself is taken up. In the absence of the Petitioner having any lease deed executed in his favour, he

cannot seek for a court direction. It is not as if the Petitioner has vested right to carry out the stone quarrying. Even in respect of the areas which

are strictly prohibited by the provisions of the Tamil Nadu Minor Mineral Concession Rules, the fact that the said place was quarried earlier does

not help the case of the Petitioner. There is no equality in the matter of illegality and any direction issued contrary will be asking the Respondent to

disobey the law, which can never be done by the court.

9. This Court is satisfied with the counter affidavit filed by the Respondent including the documents filed in support of the same. But the Petitioner

as he was lured to make an offer and also substantially complied with the order, that by itself cannot create estoppel against the statute. At the

maximum, the Petitioner can get back his amount in view of the non-fulfillment of the contractual terms. Hence the writ petition will stand dismissed.

No costs. However, the Petitioner is entitled to seek for refund of the amount deposited by him. Consequently, the interim order passed by this

Court stands withdrawn. The miscellaneous petitions stand closed.