

(2010) 11 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No's. 15949 and 18193 of 2010 and M.P. No's. 1, 2 and 2 of 2010

S.S. Enterprises

APPELLANT

Vs

The District Collector Erode District

RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Motor Vehicles Act, 1988 — Section 60, 60(1), 60(3)
Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 10(1), 14, 19, 19

Citation : (2010) 11 MAD CK 0013

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : V.T. Gopalan and K. Ramakrishna Reddy, in W.P. No. 15949/2010 and AR.L. Sundaresan for R. Ravichandran, in W.P. No. 18193 of 2010, for the Appellant; R. Thirugnanam, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Chitra Venkataraman, J.—The Petitioner in W.P. No. 15949 of 2010 seeks a writ of Certiorari to quash the order dated 11.7.2010 passed

by the Respondent herein cancelling the quarrying licence granted on 15.6.1998 with effect from 22.05.2003, on the ground that the Petitioner had

violated the terms of the lease agreement; consequently the Respondent imposed penalty on the Petitioner as well as on the sub-lessee. The sub-

lessee, in turn, has challenged in so far as the order directing to pay 50% of the penalty amount in W.P. No. 18193 of 2010.

2. The facts in the writ petitions are as follows:

The Petitioner in W.P. No. 15949 of 2010 was granted granite quarry lease in respect of his patta lands comprised in S.F. Nos. 1075/1B,

1076/1A and 1079/3A, measuring to an extent of 5.07.35 Hectares situated in Bargur Village, Bhavani Taluk, Erode District, for which, an

agreement was entered into between the Petitioner and the State of Tamil Nadu. The period of lease was for 10 years from 15.6.1998 to

14.6.2008. The Petitioner entered into a sub-lease on 22.5.2003 through the power agent Sivaramakrishnan and with one Panneerselvam having

business in the name and style of M/s. Minrock International Private Limited. Admittedly, before the expiry of the lease, in his letters dated

13.6.2007 and 5.6.2008, the Petitioner approached the Respondent for renewal of lease. Awaiting renewal, the first writ Petitioner approached

this Court by filing a writ petition in W.P. No. 23319 of 2008 to forbear the Respondents from interfering with the Petitioner's rights to continue

the quarry operations and transport granite till the disposal of the Petitioner's renewal application. By order dated 24.9.2008, this Court followed

the orders passed in similar circumstances in W.A. No. 2905 of 2008 by a Division Bench of this Court dated 06.09.2007 and the Respondents

were directed to consider and pass orders on the application for renewal within a period of four weeks and till such time the order is passed, the

Petitioner in W.P. No. 15949 of 2010 was permitted to continue the quarrying operation. Based on the said order, the Petitioner in W.P. No.

15949 of 2010 is stated to have been operating the quarry operation. It is seen that on 13.07.2009, the Respondent issued a notice, stating that

contrary to the agreement given, the Petitioner in W.P. No. 15949 of 2010 had sub-leased the quarrying rights to M/s. Minrocks International (P)

Limited and taking advantage of the orders of this Court in W.P. No. 23319 of 2008 granting permission to the Petitioner in W.P. No. 15949 of

2010 to quarry the granite stones pending consideration of the renewal by the Government, the Petitioner in W.P. No. 15949 of 2010 had again

sub-leased the quarry to M/s.M.R.V. Enterprises. Since the said agreement of the Petitioner in W.P. No. 15949 of 2010 is contrary to the

provisions of the Act, a show cause notice was issued to M/s.S.S. Enterprises and M/s. Minrock International (P) Ltd., as well as to M/s.M.R.V.

Enterprises, calling upon them to show cause why the lease granted to them should not be cancelled and penalty imposed on them. They were

called to appear for an enquiry.

3. The Petitioner in W.P. No. 15949 of 2010 denies receipt of any such notice was issued to them. Nevertheless, the Petitioner in W.P. No.

18193 of 2010 appeared through the Managing Director Panneerselvam before the District Collector. It is seen that on 23.07.2009,

Panneerselvam of Minrock International (P) Ltd., writ Petitioner in W.P. No. 18193 of 2010, gave a complaint to the Collector, Erode that the

Petitioner in W.P. No. 15949 of 2010 had originally entered into an agreement with him and subsequently he had entered into an agreement with

M/s.M.R.V. Enterprises.

4. However, an order was ultimately passed on 11.07.2010 confirming the above-said notice, cancelling the licence from the date of agreement

made by M/s.S.S. Enterprises with R. Panneerselvam and imposed a penalty, of which, 50% of the amount was to be remitted by M/s.S.S.

Enterprises, the Petitioner in W.P. No. 15949 of 2010 and the balance 50% to be remitted by Minrock International (P) Ltd., the Petitioner in

W.P. No. 18193 of 2010. The order further stated that as per Rule 36-A(5) of Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter

referred to as the Rules,1959), the enhanced seignior age fee is ordered to be remitted jointly and severally by the Petitioners in the above writ

petitions. Viz., Sumathi, Proprietrix of M/s.S.S. Enterprises (W.P. No. 15949 of 2010) and Panneerselvam, Managing Director of M/s Minrocks

International Pvt. Ltd (W.P. No. 18193/2010) and hence a sum of Rs. 1,37,70,598/- was sought to be levied on these two writ Petitioners. The

order further stated that the Petitioners in the above writ petitions are at liberty to prefer an appeal within 30 days from the date of communication

of the said order to the Commissioner of Geology and Mining, Guindy, Chennai. Thus, the present writ petitions are filed before this Court,

challenging the order of the District Collector, the Respondent herein, dated 11.7.2010.

5. During the pendency of these writ petitions, one Deepa, Power Agent of K.R. Rajakrishnan, filed a miscellaneous petition in M.P. No. 2 of

2010 in W.P. No. 15949 of 2010 to implead herself in the writ petition. It is stated by the Petitioner in the said Miscellaneous Petition that she is

the owner of the land in R.S. No. 1075/1A and 1075/1B measuring an extent of 0.41.10 Hectares in Burgur Village, Bhavani Taluk, Erode

District, she having purchased the said land from one E.M. Subramanian and another by way of Registered sale deed dated 13.04.2009. It is

further stated that the land originally belonged to one Mathey Gowder. The said E.M. Subramanian, along with his daughter S. Maheshwari, sold

the said land to the Petitioner in this Miscellaneous Petition under registered sale deed dated 13.4.2009. Against the Petitioner's vendor E.M.

Subramanian, the Petitioner in W.P. No. 15949 of 2010 filed the suit in O.S. No. 239 of 2005 on the file of Principal District Munsif, Bhavani for

declaration of title and permanent injunction and the same is now pending and temporary injunction sought for in I.A. No. 792 of 2005 in O.S. No.

239 of 2005 was dismissed by order dated 4.8.2005. As against the same, the writ Petitioner came before this Court by way of C.R.P. No. 2823

of 2007 and this Court, by order dated 28.8.2008, rejected the Civil Revision Petition and directed the Court below to dispose of the suit in O.S.

No. 239 of 2005 on merits and in accordance with law. During the pendency of the same, the Petitioner in W.P. No. 15949 of 2010 filed another

suit in O.S. No. 70 of 2009 on the file of the District and Sessions Court of Erode, for declaration of title and permanent injunction against six

others with reference to the same land. The Petitioner in M.P. No. 2 of 2010 in W.P. No. 15949 of 2010 is the purchaser of a portion of the land

from one of the co-owners who happens to be one of the Plaintiffs therein. The Petitioner in W.P. No. 15949 of 2010, thereafter, withdrew the

suit in O.S. No. 239 of 2005. The subsequent suit is hit by Section 11, Code of CPC The Petitioner in M.P. No. 2 of 2010 states that the

Petitioner in W.P. No. 15949 of 2010 is not the absolute owner of the land in question and that the Petitioner in W.P. No. 15949 of 2010 cannot

claim exclusive ownership of the land bearing Survey No. 1075 in Bargur Village and without the consent of the necessary parties, the writ

Petitioner obtained lease for 10 years and they continued the 8 quarry operation in the light of the orders of this Court made in W.P. No. 23119 of

2008 dated 29.4.2008. It is stated that the Petitioner in the said miscellaneous petition has also made a petition on 27.5.2009 to the District

Collector, Erode about the irregularities committed by the Petitioner in W.P. No. 15949 of 2010 and only on his complaint, an enquiry was

conducted and orders were passed cancelling the lease. In support of the said order, the present Miscellaneous Petition in M.P. No. 2 of 2010 has

been filed seeking to implead himself in the writ petition as a necessary party. As far as the present petition filed for impleading the said Petitioner in the writ petition is concerned, I do not find any merit in the contention that as a purchaser of a portion of the lands from one of the alleged co-owners, in respect of which, a suit is pending and as the complainant, he is entitled to defend the order of the Collector. As far as the present case is concerned, the cancellation of lease granted to the Petitioner rests on the merits of the claim of the Petitioners to be decided in the light of the provisions of the Act and as per the agreement entered into between the Petitioners and the Respondent herein and the jurisdiction of the Respondent to deal with a lease which is no longer in existence. In a dispute concerning violation of the terms of the licence granted, an alleged subsequent purchaser cannot have any say either supporting the order of the Respondent or that of the Petitioner merely on the score that he was the complainant and he has interest in the property concerned. The rights of this Petitioner in the M.P. is a matter which has to be settled only in the civil proceedings. The correctness or otherwise of the order impugned herein has to be seen not from the angle of this Petitioner in the M.P. but with reference to the jurisdiction of the authority concerned under the Rules.

6. Learned Senior Counsel appearing on behalf of the Petitioner pointed out that the lease is for a period of ten years and on the admitted fact that the lease granted for ten years on 15.6.1998 has come to an end on 14.06.2008, the mere fact that the Petitioner in W.P. No. 15949 of 2010 has continued the operation by virtue of the order of this Court pending consideration of the renewal application by the Government, does not mean that the Respondent has authority to cancel the lease alleging violation, that too long after the expiry of the lease period.

7. On going through the provisions contained in Rule 39 and 19-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 relating to renewal and quarrying lease and Rule 20 of the said Rules regarding disposal of application, the authority to cancel the lease would arise only during the subsistence of the lease and before the expiry of the lease. The contention of the Petitioner is that pending renewal application, the Respondent has no right to deal with a subject which is no longer there. The provision for renewal is a separate one, on which the Respondent should consider and

pass orders.

8. In this connection, learned Senior counsel appearing for the Petitioner referred to the decision of this Court reported in Ajantha Travels,

Pondicherry Vs. State Transport Authority, Pondicherry and Another, dealing with a case of cancellation of permit made long after the expiry of

the permit period and submitted that the facts herein are similar to the issue involved in the decided case and hence, the orders have to be quashed.

9. On notice, the Respondent has filed a counter affidavit wherein it is specifically averred that considering the violation committed by the

Petitioner, the present proceedings are taken to cancel the lease. Further, in the context of the orders passed by this Court in the writ petition filed

by the Petitioner, the Petitioner is operating the quarry pending the application for renewal and hence, the rights of the Respondent cannot be

viewed as without jurisdiction, on the premise that after expiry of the lease term, the same cannot be terminated. Pointing to the violation of the

terms of agreement of lease, learned Special Government Pleader referred to the substantial control of the Petitioner in W.P. No. 15949 of 2010

over the quarry; that the Petitioner in W.P. No. 15949 of 2010 is not correct in contending that they had merely availed of the service for the

purpose of removal of quarry stones. Referring to Rule 36F, the Respondent states that on the admitted fact of the Petitioner subletting without the

permission of the State, rightly the provisions were invoked to cancel the licence and levy penalty. The Respondent reiterated its rights based on

the orders passed by this Court in a writ proceedings, permitting the Petitioner in W.P. No. 15949 of 2010 to operate the lease and hence, rightly

the proceedings are taken against the Petitioner in W.P. No. 15949 of 2010.

10. Supporting his submission, learned Government Pleader drew my attention to the decision of the Supreme Court reported in O.N.G.C. and

Another Vs. Asson. of Natural Gas Consuming Inds. and Others, holding that when after the expiry of the contract term, a party to the contract

continues with the contract under the terms of the Court order, the effect would be that the terms of the contract between the parties would be

impliedly continued and the rights and liabilities there under would be enforceable. When the Petitioner in W.P. No. 15949 of 2010 is operating the

quarry under the orders of this Court for continuation of the lease, rightly the

Respondent had passed an order cancelling the lease. Hence, no exception could be taken. Learned Special Government Pleader submitted that going by the specific provisions under the Act, the Respondent has every jurisdiction to pass the present order for the violations committed.

11. A perusal of Rule 19A of the Tamil Nadu Minor Mineral Concession Rules, 1959 shows that a person seeking licence for quarrying granite in

Ryotwari lands has to make an application under Rule 19-A of the Tamil Nadu Minor Mineral Concession Rules 1959. Rule 19A of the Tamil

Nadu Minor Mineral Concession Rules 1959 also speaks about the procedure for renewal of licence that may be granted by the Government. Sub

Rule (8) of Rule 19A is the relevant Rule on the subject of renewal. Sub Rule 19(a) of Rule 19A states that the application for grant of renewal of

the lease shall be made at least 12 months before the date of expiry of the quarrying lease already granted. Sub Rule (9) says that the conditions

and procedures for grant of quarrying lease under this Rule shall apply mutatis mutandis for renewal of lease. On receipt of the application, Rule

19(10) states that the application for granting the renewal of the quarrying lease shall be submitted to the District Collector in the Form in Appendix

VII, accompanied with the non-refundable fee. Rule 36F of the Tamil Nadu Minor Mineral Concession Rules 1959 speaks about the transfer of

lease. This Rule states that the lessee shall not assign, sub-let, mortgage or in any other manner, transfer the quarrying lease, or any right, title or

interest therein without the consent of the State Government in writing. Rule 14 36-F(4) of Tamil Nadu Minor Mineral Concession Rules, 1959

states that the State Government shall not give their consent for transfer of quarrying lease, unless the transferee has accepted all the conditions and

liabilities of the transferor in respect of quarrying lease which is proposed to be transferred. The consequences of violation of the provisions of the

lease granted is also provided under Sub rule (h) of Rule 36. Rule 36-A of Tamil Nadu Minor Mineral Concession Rules, 1959 relates to levy of

penalty whenever any person contravenes the provisions of the Act therein. For the purpose of this case, Sub Rule (5) of Rule 36-A would be

relevant. The said Rule states that whenever any person contravenes any provisions, other than Sub-rule (1) of Rule 10 of Tamil Nadu Minor

Mineral Concession Rules 1959, the condition of a quarrying permit or quarrying

lease, the Director of Geology and Mining or the Chief

Conservator of Forests or the District Collector may initiate proceeding for recovery and enhance the seignior age fee specified there in.

12. In the background of the said provision of the Tamil Nadu Minor Mineral Concession Rules, admittedly in this case, the quarrying lease

granted on 15.6.1998 for ten years had expired on 14.6.2008. Leaving aside the order passed by this Court on 24.9.2008, it is a matter of record

that the Respondent initiated proceedings on 13.7.2009 by issuing a show cause notice, intimating about the proposed action for violation of the

terms of the agreement. In defence of the action taken after the expiry of the lease as regards the violation committed during the currency of the

lease, learned Special Government Pleader contended that the continuance of quarrying by the Petitioner under the orders of this Court has to be

treated only as continuance of lease. I do not agree with the said line of reasoning, particularly in the context of the provisions of the Act. Given the

fact that the Respondent has the discretion to either grant the renewal or to refuse the same, the present operation of the Petitioner cannot be

brought under either as a continuance of the lease as under the original grant or as a case of renewal. Even in the case of grant of renewal, the

provision says that the Petitioner like the lessee has to make an application under the prescribed form as in the case of the first application and it is

open to the authority concerned either to extend the same or reject the request. With the discretion thus reserved with the authority, the mere fact

of the Petitioner continuing the lease under orders of the Court does not mean that there is an automatic extension granted to the Petitioner in terms

of Rule 19A(8) of the Rules. Consequently, going by the provisions of Rule 36 of the Rules, given the fact that the Rule also provides for taking

penal action in the event of breach committed by the lease agreement holder, the assumption of jurisdiction rests on the existence of lease that

action could be taken on the facts thus available indicating the violation of the terms of agreement. On the admitted fact that the relationship had

already come to an end as lessee and lesser, the action taken long after the expiry of the lease on 14.6.2008, thus shows that on the date of

issuance of notice on 13.07.2007, the Respondent had no authority to cancel the licence that is no longer in existence. As already pointed out,

cancellation of licence results in snapping of contractual relationship. This can happen if and only when the agreement is alive for enforcement. The

authority concerned have no jurisdiction to pass an order of cancellation of licence retrospectively.

13. A reading of Sub rule (h) of Rule 36 of the Rules says that in case of breach by the quarrying permit holder or lease holder, the District

Collector can cancel the lease after giving an opportunity of hearing to the said person. The cancelling authority's power is apart from the power

reserved on the authority concerned to impose any other penalty and in respect of such breach, Rule 36-A of the Rules is one such provision

empowering the authority concerned to impose penalty on any violation that may come to the knowledge and it necessarily need not be during the

currency of lease -- Refer Rule 36A(5). However, the mere fact that Rule 36A(5) of the Rules provides for such levy of penalty, even after the

expiry of lease, does not mean that the Respondent could order cancellation of licence or lease long after the expiry of lease.

14. In the above circumstances, on the admitted fact that as on the date of show cause notice, the lease had already come to an end, I do not think

that the Respondent has the authority to cancel the lease even from the date on which the Petitioner was granted sub-lease on 22.05.2003. The

assumption of jurisdiction under the provisions of the Rules for cancellation of the lease is only during the subsistence of lease and not thereafter.

15. In this connection, learned senior counsel placed reliance on the decision reported in *Ajantha Travels v. S.T.A.*, Pondicherry AIR 1983 Mad

365. The said case deals with the provisions of the Motor Vehicles Act. Referring to Section 60 of the Motor Vehicles Act which provides for

cancellation or suspension of the permit for violation of any or all of the procedures, this Court pointed out as follows:

5. Section 60 contemplates the cancellation or suspension of a permit for violation of any or all of the grounds mentioned in Clauses (a) to (f) of

Section 60(1). ... in order to attract Sections 60(1) and (3) of the Act, a permit must be subsisting. If the permit had expired and is no longer

subsisting, there cannot be any question of the permit being cancelled or suspended. ... Since the punishment that is contemplated u/s 60(1) of the

Act is the suspension or cancellation of the permit it is absolutely necessary that the permit must be subsisting at the time when the State Transport

Authority passes an order of cancellation or suspension of a permit. When once it is admitted that at the time the matter comes up for hearing before the State Transport Authority, the permit had expired, the authority will not be in a position to cancel or suspend the permit. In other words, then the authority will have no jurisdiction to proceed further with the matter in accordance with Sections 60 or 61(1) of the Act. ... It must therefore follow that the State Transport Authority will have no jurisdiction at all to enter a finding on the question whether there has been a violation of the conditions of the permit. The ultimate aim of Section 60 is to cancel or suspend the permit for violation of the conditions of the permit. If the cancellation or suspension of the permit is no longer possible by reason of the fact the currency of the permit has expired, there cannot be any question of the State Transport Authority going to the merits of the case and entering a finding whether the alleged violation has been committed by a permit holder or not.

16. The reliance placed on this decision by the Petitioner has to be seen in the context of the reliance placed by the learned 20 Special Government

Pleader to the decision reported in O.N.G.C. and Another Vs. Asson. of Natural Gas Consuming Inds. and Others, . In the said case, an

application was made before the Oil and Natural Gas Commission (for short ONGC) to take natural gas from ONGC for the purpose of running

the Industries. The agreement in question had stipulated the price payable and also contained the terms inter alia to the effect as to when the

payment would be made and in the event of failure to make the payment, the rate of interest which would be paid. The contract came to an end on

30.3.1997 and the contract should be renewed but at the enhanced price of gas, on a writ petition made before the Gujarat High Court challenging

this, under interim order, the ONGC was directed to supply gas at the old rate that they would be charged at Rs. 1,000/- per 1000 cubic metres.

In the judgment in The Oil and Natural Gas Commission and another Vs. The Association of Natural Gas Consuming Industries of Gujarat and

others, etc. etc., , the Apex Court upheld the prices fixed by the ONGC. In the context of the said fact, a question was raised as to whether

interest was to be paid on the supply made as a consequence of the orders of the Court. The Apex Court held that ONGC is entitled to claim

interest for the delayed payment of the principal amount. Even though the contract came to an end on 31.3.1979, the gas was supplied only

under orders of the Court permitting the Respondents to pay on the same terms "as at present" and the ONGC was required to continue to supply

the gas. The effect of this was that except with regard to the amount of price which was payable, which was in dispute, the rest of the terms of the

agreement which had been entered into between the parties impliedly continued. Hence, on the principle of restitution, the Apex Court held that

ONGC is entitled to be compensated. In the background of the facts therein, the Supreme Court held that, in the decision reported in *The Oil and*

Natural Gas Commission and another Vs. The Association of Natural Gas Consuming Industries of Gujarat and others, etc. etc., the Apex Court

upheld the price which was charged by ONGC. The Supreme Court held:

merely because this was not done, does not mean that the right of ONGC to get the money due to it had come to an end. The clear implication of

the disposal of the appeals would be that the interim orders which had prohibited ONGC from realising any sum in addition to the one fixed by the

interim order came to an end and ONGC would thereafter claim the money due to it. ONGC was under an obligation by virtue of the interim

orders to comply with the terms of the earlier contracts and to supply gas in the manner provided there under. This part of the contract was

performed by ONGC who thus became entitled to recover from the industries the price which had originally been charged by them. For the late

payment of the amount, the contract, in Clause 5 had contemplated payment of interest at the rate and the manner specified there in. This would be

a correct measure in determining the quantum of restitution.

17. Looking at the facts herein, a reading of the order passed by this Court in W.P. No. 23319 of 2008 dated 24.9.2008 shows that following the

decision of the Division Bench in W.P. No. 2905 of 2005 dated 6.9.2007, this Court held that the applicant would be entitled to carry on the

quarrying operation till the application for renewal was considered and disposed of. Till the renewal was granted, the State Government was

entitled to fix the charges for the period after the expiry of the lease under Rule 19 till fresh permission was granted. Going by the said terms of the

order of this Court, the decision of the Supreme Court relied on by the

Respondent, does not, in any manner, help the Respondents and the said decision is distinguishable on facts.

23 Unlike in the reported decision, the question herein is one of cancellation after the expiry of lease term. The continuance of the operations is not

under any statutory or contractual right but by the order of the Court till such time the renewal was considered by the Government which may or

may not materialise in favour of the Petitioner. As rightly pointed out by the Petitioner, the decision reported in AIR 1983 MAD 365 (M/s. Ajantha

Travels v. S.T.A., Pondicherry) is of relevance in the matter of deciding the rights of the parties herein. Even though learned Special Government

Pleader took a plea that the said decision was rendered under the Motor Vehicles Act; hence has no relevancy, yet, it must be pointed out that the

principle of law laid down that the question of cancellation or suspension would arise only during the currency of lease and not thereafter. Once the

lease term is over, the authority's jurisdiction to cancel or suspend the licence does not exist to deal with the lease anymore. Given the fact that the

present operation is only an interregnum arrangement pending orders to be passed in the renewal application, I do not find any ground to accept

the Respondent's stand that the present operation has to be construed as an extension of the expired lease and hence subsists for the purpose of

Rule 19A. The 24 provisions of the Tamil Nadu Minor Mineral Concession Rules, contemplate that renewal has to be made on a specific

application, that the renewal is not automatic, but subject to the discretion of the authority concerned on such terms as he may deem fit, which may

be with reference to senior age fee or to the area to be covered under the lease agreement. I have no hesitation in accepting the plea of the

Petitioner that the order passed is without jurisdiction.

18. It is relevant to note herein, Clause 12 of the lease agreement, which reads as follows:

In the event of any breach by the registered holder by any of the conditions of the agreement, it shall be lawful for the Government to levy

enhanced seignior age or for the Collector to give notice in writing to the registered holder about his contention to cancel these presents whereupon

the same shall stand cancelled but without prejudice to any rights which the Government may have against the registered holder in respect of any

antecedent claim on breach of covenant or condition.

Hence, even going by the said clause, the cancellation can be only when there existed a live lease agreement to act on. Hence, on the admitted

facts, the action now taken to retrospectively cancel the lease long after its expiry is illegal and unsustainable and not as per the terms of the

agreement.

19. In paragraph vi of the order, it is stated that since the lease has been cancelled with retrospective effect and for the removal of illicit quarrying

by the quarry lessee, the Petitioners herein have to bear jointly and severally and as per Sub Rule (5) of Rule 36-A of the Tamil Nadu Minor

Mineral Concession Rules, enhanced seignior age fee is ordered to be remitted jointly and severally by the Petitioners. As already pointed out, if

the Respondent, to act in a case of expired lease, has jurisdiction to levy penalty, then they have to go by the provisions contained in Rule 36-A of

the Rules and nothing beyond levying penalty or take action as provided for under Rule 36(5) of the Rules.

20. Going by the facts stated herein and the provision thus available in the case of a breach of the term of a lease, it is open to the Respondent to

proceed in such manner as they deem fit, under Sub Rule (5) of Rule 36-A of the Rules. Consequently, 26 reserving liberty to the Respondent to

proceed in accordance with law as regards the breach alleged as to the terms of the agreement, the writ petitions are allowed, thereby the order

cancelling the agreement retrospectively stands quashed. Consequently M.P. Nos. 1 and 1 of 2010 are closed and M.P. No. 2 of 2010 is

dismissed.