

(1995) 04 MAD CK 0052
In the Madras High Court
Case No : W.A. No. 136 of 1995

T. Paulraj

APPELLANT

Vs

The District Collector, Kanyakumari, District at Nagercoil

RESPONDENT

Date of Decision : 20-04-1995

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15
Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 8(8)
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1996 Mad 84 : (1995) 2 LW 437 : (1995) WritLR 545

Hon'ble Judges : K.A. Swami, C.J.;Raju, J

Bench : Division Bench

Advocate : Mr. K.T. Palpandian, M/s. C. Godwin and E. Ravikumar, for the Appellant; Mr. M. Vellaisamy, Additional Govt. Pleader, for the Respondent

Judgement

K. A. Swami, C. J.

1. This appeal is preferred against the order dated 13th October, 1993 by the learned single Judge in W. P. No. 8242 of 1992.

2. In the Writ Petition, the Petitioner sought for issue of a Writ in the nature of mandamus directing the respondent No. 1 to confirm the auction

held on 31-3-1992 regarding a mining lease of an area comprised in S.No. 7223 of Nandankulam, Kottaram Village, Kanyakumari District.

During the pendency of the Writ Petition, Writ Miscellaneous Petition No. 11926 of 1992 was filed seeking a direction to the respondent to pass

order as to confirmation. The learned single Judge by the order dated 16-3-1993 directed the first respondent to pass an order of confirmation,

within four weeks from 12-2-1993. Accordingly, in compliance of the said order, the first respondent confirmed the lease in favour of the

petitioner for the period from 1-4-1992 to 31-3-1993. This aspect of the matter

was also placed before the learned single Judge in the said Writ

Petition. While finally disposing of the Writ Petition, the learned single Judge has issued the following direction:

"The order as passed on 16-3-1993, confirms the lease up to 31-3-1993. I have no words to condemn the attitude of the first respondent in

making this order. Apart from the fact that he has not obeyed the order of this Court, in substance and spirit, the first respondent has gone beyond

the notification itself in respect of which the petitioner was the highest bidder. The notification itself is for the grant of lease for a period of three

years from 1-4-1992 to 31-3-1995. I do not think that the first respondent has any jurisdiction to restrict the period as 1-4-1992 to 31-3-1993. I

am inclined to call this order as a mischievous order. The only way to render justice to the party is to set aside the order dated 16-3-1993 to the

limited extent of substituting the period of lease as 1-4-1992 to 31-3-1995. Therefore, instead of the prayer sought for in the Writ Petition,

I direct the respondents to modify the order dated, 16-3-1993 and grant the lease for the period from 1-4-1992 to 31-3-93. The Writ Petition is

allowed in the above terms with costs. Counsel's fee Rs. 1000/-(Rupees one thousand).

3. Pursuant to the order of the learned single Judge, a Lease Deed has now been executed for a period from 1-4-1992 to 31-3-1995. However,

the grievance made in this writ appeal is that for no reason of the appellant, there was a delay in confirming the auction. The three years period of

lease, therefore, should be directed to run from the date the Lease Deed has been executed, but not from 1-4-1992. On the contrary, the

contention of the learned Government Pleader for the respondent is that the quarry as per the Tamil Nadu Minor Mineral Concession Rules, 1959,

(for short the Rules) was put up for auction for a period from 1-4-1992 to 31-3-1995, that as the auction was held for a specific period, merely

because there is a delay in confirming the auction, it cannot result in altering the period for which the leasehold right was auctioned, that the Rules

do not contain any provision, for such extension of lease period, that it is a matter of contract between the parties, that the contract was for the

specific period from 1992-93 to 1994-95, as such, it is neither open to the appellant to seek alteration in the period of lease, nor to this Court to

substitute the contract. Therefore, it is the submission of the learned Government Pleader on behalf of the respondents that the order passed by the learned single Judge does not call for interference. It is also submitted on behalf of the respondents that the parties are bound by the terms of the lease. As such, it is not open to the parties to plead or seek relief beyond the terms of the lease.

3.1. In reply to the aforesaid contentions of the learned Government Pleader, it is submitted by Mr. Pal Pandian, learned counsel appearing for the appellant that in similar cases, this Court has directed to extend the period of lease. Therefore, the petitioner is entitled to seek such a relief on the basis of the precedents of this Court.

4. In the light of the above contentions, the following point arises for consideration. Whether in the fact and circumstances of the case, the appellant is entitled to seek alteration in the period of lease on the ground that there has been a delay in confirming the auction.

4.1. It may be pointed out here that the lease in question is governed by the provisions contained in the Rules. There is no rule pointed out to us to enable the respondents to extend the period of lease in the event there is a delay in confirming the auction of the leasehold right. It is also necessary to notice that in fact there is no rule enabling extension of the period of lease or alteration thereto. There is also no rule enabling renewal of the lease. The rules as amended only provide for auctioning of the leasehold right. It is also the established position of law that the parties are governed by the terms of the lease.

5. In *District Collector, Tiruchirappalli v. S. R. Pitchai* 1989 WLR 435, this Court has observed as follows:

Before concluding, it is necessary to state that when a definite period is fixed for a mining lease; on its expiry a party to such a lease transaction

cannot secure the nature of order as obtained by the petitioner either in W.P. No. 8680 of 1989 or in W.M.P. No. 14835 of 1989 or in W.M.P.

No. 13637 of 1989. When the Rules contemplate renewal and in the absence of an order for renewal, it is not for the Court to permit any

quarrying operations against the Rules, by imposing the conditions in the manner as done. Learned Judge had relief upon the earlier order of this

Court pending disposal of *Niranjan v. State of Tamil Nadu* by Commissioner,

Secretary, Industries Department and others, Madras. Such

directions and enablement cannot be ordered under these Rules, once it is shown that the period of lease has come to an end. The discretionary

powers of Courts do not go to the extent of rewriting the terms of the lease and by imposing conditions which are not permissible under the Rules.

6. In *P. Radhakrishnan v. The District Collector, Dindigul* 1993 (I) MLJ 50, this Court has observed as follows: ---

Mr. R. Krishnamoorthy, learned senior counsel appearing for the appellant, would submit that the Rules as such do not inhibit producing of block

stones; and the lease deeds are not in conformity with the form prescribed under the Rule; and the prescribed form does not contemplate a

condition relating to inhibition for producing block stones. Learned senior counsel appearing for the appellant would contend that the Rules and the

form thereunder are statutory in character and there cannot be a stipulation of terms besides those contemplated in the form. Merely because there

is no express inhibition in the Rules, it does not mean that anything the appellant desires is permitted. What is not permitted expressly must be

deemed to have been inhibited. Even if we do by the Rules, they are generously couched so as to be pliable to enter into lease deeds to meet

situations according to facts and circumstances. The Rules and the forms thereunder are not rigid and inflexible in this regard and they do permit

scope for settling terms according to the needs of the case. Further, the parties settled all their rights and obligations in the lease deeds and they

must ultimately speak. The appellant never demurred earlier on the other hand accepted the terms. It is not possible to enlarge the rights secured to

the appellant under the lease deeds. We are not able to sustain the claim of the appellant to have more rights than what have been secured under

the lease deeds. Accordingly, these Writ Appeals are dismissed as lacking in merits. No costs.

7. However, two judgments of this Court, one rendered by a Division Bench and another rendered by a learned single Judge of this Court are

relied upon by the learned counsel appearing for the appellant. In Writ Petition No. 1529 of 1984 in a case *Pallavi Granite Industries, Rep. by its*

Managing Partner v. The Collector of South Arcot District at Cuddalore and another, a learned single Judge of this Court has held that though the

period of lease was to commence on 19-2-1974, the actual possession was handed over to the petitioner only on 23-4-1974 and the entire lease

amount was collected from the petitioner for the full period of three years. Therefore, the lease therein was entitled to be in possession for a full

period of three years. It is not possible to agree with the view-expressed by the learned single Judge as it does not accord with law inasmuch as

the lease is governed by the Rules, which do not contain any provision enabling alteration in or extension of the period of the lease. Accordingly,

the aforesaid decision in W.P. 1529 of 1984 is overruled, as it does not lay down the law correctly. This decision has been followed by a Division

Bench in Writ Appeal No. 962 to 965 of 1992 in Mutliusami and others v. The State of Tamil Nadu Represented by Its Commissioner and

Secretary, Industries Department. In this case also as is noticed in the judgment, the lease amount for the full period was accepted. However, it has

been stated that the lease term would commence from the date of putting into possession of the lessee. Firstly, the aforesaid two decisions are

distinguishable on the facts as in those cases, the lease amount for the entire period was collected. Secondly, as far as the principle stated therein

that the lease would commence from the date of putting in possession of the lessee, is contrary to the law governing the leases as contemplated in

the Transfer of Property Act. As far as the rules of the Tamil Nadu Minor Mineral Concession Rules, 1959 are concerned, there is no such rule.

We must point out here that we are concerned with the statutory contract. It is not a contract outside the statute. The contract herein is governed

by the Rules. Therefore, for anything and everything, the lessor and lessee must look to the Rules only. In the absence of any rule prohibiting

alteration of the terms of the lease, it is open to the parties to agree to alter the terms of the contract within the ambit of the Rules. We have already

pointed out that the Rules do not contain any provision for the extension of the lease period. Section 105 of the Transfer of Property Act, 1982,

defines, "lease" as thus:

A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in

consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on

specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Therefore, the period of lease must be certain and definite. If that be so, in the auction notice that was issued, the definite period of lease was

mentioned, i.e., 1992-93 to 1994-95. The auction took place for this period only. If that period has to be altered, it could be done only by

alteration of the terms of the contract by the parties to the contract as per the Rules. Therefore, we are of the view that the rule stated in general

terms in the aforesaid two decisions that the lease period will commence from the date of delivery of possession is without noticing the relevant

provisions of law governing the lease and the Rules. Therefore, we are of the view that the aforesaid rule stated therein is per incuriam. It cannot

form a binding precedent. We have already pointed out that on facts these two decisions are distinguishable as in those cases the lease amount for

the entire period of three years were collected. Under these circumstances, we are of the view that it is not possible to grant the relief sought for by

the appellant in this appeal that the three years period of the lease should be counted from the date of confirmation of the lease, in the absence of

any provision contained in the Rules.

8. At this juncture, it is brought to our notice that Rule 8(8)(a) of the Rules as inserted by G.O. Ms. No. 166, dated 16-6-1994, with effect from

22-6-1994, provides that in the event it is not possible to execute the lease deed before the 1st day of April in the first financial year of lease

period due to administrative delay, the lease is entitled for proportionate reduction in the annual lease amount in the first year of the lease period.

This rule would also go to show that the lessee is not entitled to have the lease period altered due to delay in execution of the lease, but he is

entitled for proportionate reduction in the annual lease amount. The Rule as inserted with effect from 22-6-94 accords with the view taken by us.

9. We also make it clear that the fact that we deny the relief to the appellant, does not take away the right of the appellant to seek other remedy by

way of damages, if any, in an appropriate proceeding before an appropriate Court on the ground that he has not been given the lease for a period

of three years. We keep that question open. For the reasons stated above, the writ appeal fails and the same is dismissed. No order as to costs.

10. Writ appeal dismissed.