

(1995) 04 MAD CK 0099

In the Madras High Court

Case No : Writ Appeals No's. 849, 850, 852 and 710 of 1993 and 1310 to 1312 of 1994

The State of Tamil Nadu and others

APPELLANT

Vs

M. Malayandi and others

RESPONDENT

Date of Decision : 10-04-1995

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15(1)
Tamil Nadu Minor Mineral Concession Rules, 1951 — Rule 17, 18, 19, 20, 21
Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 17

Citation : AIR 1996 Mad 1

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

Bench : Division Bench

Advocate : M. Vellaisamy, Additional Government Pleader, for the Appellant;
Balasaravanakumar, for the Respondent

Judgement

K. A. Swami, C.J.—Writ Appeals 849 of 1993 and 1311 of 1994 go together. Similarly, Writ Appeals 850 of 1993 and 1310 of 1994 go together as also Writ Appeals 852 of 1993 and 1312 of 1994.

2. In Writ Appeals 849, 850, 852 of 1993 and 710 of 1993, the common question that arises for consideration is as to the scope of the lease deed granted in favour of the respondent in each one of these writ appeals. According to the case of the appellant, the respondent in each one of the appeals is not entitled to quarry block stones as he is permitted under the leases only to quarry "Aralai", "Jalli", "Soling", "Ammi", "Attukkal", "Latti Vari", Thimmi" and "Kalthoon", whereas it is the case of the writ petitioners who are the respondents in each one of these appeals that no such restriction is contained in the lease deed, therefore they are entitled to quarry block stones also.

3. It is necessary to notice that even though the quarries in question are situate in the patta lands, the lessees are not entitled to quarry and remove the minerals without the lease or licence granted by the State Government as per S. 3 of the

Tamil Nadu Minor Mineral Concession Rules, 1951, S. 3 contains Rules 17 to 34, which deal with the topic "ryotiwari lands in which the minerals belong to Government".

4. Learned single Judge has held that as there is no restriction contained in the lease deed for quarrying the block stones, it is open to the lessees in question to quarry block stones.

5. The petitioner in each one of these cases had sought for grant of quarry lease to quarry Aralai, Jalli, Soling, Ammi, Attukal, Pattivari, Thimmi and Kalthoon. The dictionary meaning of each one of these expressions does not take into their fold block stones. In all the lease deeds, except one what is mentioned is to quarry the stone. In one of the lease deeds concerned in Writ Appeal 852 of 1993, it is only mentioned as rough stone. According to English Oxford Dictionary, the expression "stone" means :

"1.a. solid non metallic mineral matter of which rock is made, b. a piece of this, esp. a small piece. 2. building a limestone (portland stone), b sandstone (batch stone). 3. mineral precious stone. 4. a stony meteorite, an aerolite. 5. (often in comb), a piece of stone of a definite shape or for a particular purpose (torn stone; stepping stone). 6. a thing resembling stone in hardness or form e.g. the hard case of the kernel in some fruits, b. med. (often in pl.) a hard morbid concretion in the body esp. in the kidney or gallbladder (gallstones)".

Therefore, it is not possible to hold that the lease deeds permit the petitioners to quarry granite blocks.

6. It is also necessary to mention that the royalty payable for quarrying "Aralai, Jalli, Soling, Ammi, Attukal, Pattivari, Thimmi and Kalthoon" is quite different from the one payable for the granite block. Therefore, it is not as though these expressions are unconnected with the royalty payable. The royalty payable in respect of granite blocks is very high whereas in the case of "Aralai, Jalli" and other small pieces of stones it is very very low. If that be so, it is not possible to read something into the lease deeds on the ground that there is no restriction contained in the leases for quarrying granite blocks. We have already pointed out that even though the quarry is situate in a patta land nevertheless it is not open to any one to quarry without the lease or licence obtained as per the provisions contained in the rules. These rules apart from providing for granting of permission also provide for the seigniorage fees payable in respect of each type of mineral such as "aralai, jalli, soling, ammi, attukkal, pattivari, thimmi and kalthoon". In addition to this, in the application sought for by each one of these petitioners, they have not sought for a lease for quarrying granite blocks. They have sought for quarrying rough stone, jalli and other pieces of stones, which cannot be considered as granite blocks. In addition to such requests made in the applications, in the orders passed by the Collector granting the leases, there is no mention about the right being granted to the petitioners for quarrying granite blocks. The lease deeds are executed pursuant to the orders passed granting the

leases and such orders do not contain any expression as "granite blocks" and the orders granting the leases specifically state, "aralai, jalli, soling, ammi, attukkal, pattivari, thimmi and kalthoon" and no order states that the grantee is entitled to quarry granite blocks. That being the position, it is not possible to agree with the learned single Judge that the writ petitioners are entitled to quarry any type of granite they want.

7. However, learned counsel appearing for the respondents in each one of these writ appeals except Writ Appeal 710 of 1993, placed reliance on the three decisions of this Court in P. Gopal v. District Collector, Tiruchirapalli (W.P. 16650 of 1990 dated 26-6-1991), T. T. Kamalam v. District Collector, Tiruchirapalli District, Trichy (W.P. 14939 of 1991 dated (sic) and S. Palaniyandi v. The District Collector, Salem (W.P. 18098 and 18099 of 1993 dated 5-10-1994. All these decisions were rendered on the basis of the decision in Gangadharan v. The Collector, North Arcot Ambedkar District, Vellore (W.A. 960 of 1990 dated 6-8-1990). It may be pointed out that in Writ Appeal 690 of 1990 it was held that the conditions contained in the lease deed cannot be altered unilaterally. There cannot be any dispute with the proposition contained in Writ Appeal 690 of 1990. But, in our view, the said judgment has been wrongly applied for the purpose of holding that the action of the State Government in preventing the petitioners from quarrying the Granite blocks would amount to imposing fresh conditions, as no such prohibition is contained in the lease deeds. The decision in Writ Petition 15650 of 1990 has proceeded on the basis that there is no prohibition contained for quarrying granite blocks. The relevant portions of the decision are contained in paragraphs 5 and 6 which are as follows:--

"5. Per contra, learned Additional Government Pleader (Writs) contends that the petitioner cannot be allowed to take stones in bigger sizes and the lease agreement dealt with only blue-metal jellies. Learned counsel for the State states that the lease has to be construed only one for quarrying blue-metal jellies and not rough stones. According to learned counsel, rough stones mean blue-metal jellies which are used for laying roads.

6. Considering the arguments of Mr. K. Govindarajan, learned counsel for the petitioner and the learned counsel for the State, I am not able to agree with the contention of the learned counsel for the State that the wording of the lease agreement had to be restricted to the extent he wants it to be restricted. A reading of the lease agreement clearly shows that the petitioner has been granted a lease for quarrying blue-metal rough stones and nowhere it is confined to non-blue metal rough stones. So long as the lease agreement entered into by the petitioner with the State is in force, the petitioner has a right to quarry and remove the minerals in accordance with the agreement and the relief prayed for by the petitioners has to be granted. In fact, the contention of learned counsel appearing for the petitioner is something a new condition in the lease agreement, which cannot be permitted in view of the judgment of the Division Bench relied on by learned counsel for the petitioner. In view of that, the writ

petition will stand allowed. The respondents shall not interfere with the petitioner's right to quarry stones from the quarry especially blue metal rough stones as stated in the lease agreement. There will be no order as to costs."

We find it very difficult to agree with the reasoning, The terms of the lease deed cannot be interpreted in the manner as has been interpreted by the learned single Judge in W.P. 15650 of 1990. The lease deeds to be interpreted as per the terms contained therein, and the scope of the lease cannot be determined on the basis that there is no prohibition contained in the lease deed, to do a certain thing which may even fall beyond the terms of the lease deed, therefore it is permissible to do. The lease is a contract between the lessor and lessee, the terms of which are agreed to by them. Therefore, the terms which are not contained in the lease deed cannot be held to have been agreed to and cannot be construed as forming part of the lease. It is not possible to hold that the lessor has no objection for doing certain things, which are not specifically prohibited or mentioned in the lease deed. The plea that there is no prohibition to quarry and carry away the granite blocks is devoid of merits. As without a lease or permission specifically granted, no one, be it the owner or the pattadar of a land, can quarry any mineral, it necessarily follows that no one can quarry any mineral, which has not been specifically permitted. Therefore, it must be held that what is not specifically permitted must be deemed to have been impliedly prohibited. We have already pointed out that the rate of seigniorage fee differs from rough stone, jelly to granite blocks. Therefore, we over-rule the decision rendered in W.P. 15650 of 1990 dated 26-6-1991, as in our view, the said decision does not lay down the law correctly, Once the said decision is over-ruled, the other decisions cannot also be approved, because in the other decisions, the aforesaid decision has been followed. Therefore, the same are to be overruled. Accordingly, the decision in W.P. 14939 of 1991 dated 24-10-1991 and W.P. 18098 and 18099 of 1993 dated 5-10-1994 are over-ruled.

8. As far as Writ Appeals 1310 to 1312 of 1994 are concerned, they arise out of writ petitions filed for issue of writs in the nature of mandamus directing the respondents to issue despatch slips, transport permits to the writ petitioners to enable them to quarry and transport rough stones of various sizes including those of big stone blocks to the places of their choice for the period of lease. We have also held that the petitioners are not entitled to quarry granite blocks. They are only entitled to quarry small pieces of stone such as "Aralai, Jalli, Soling, Ammi, Attukkal, Pattivari, Thimmi and Kalthoon", which cannot also be considered as and are not, granite blocks. Therefore, the mandamus sought for cannot be issued in the light of the view taken by us as above.

9. Writ Appeal 710 of 1993 relates to the lease granted to respondent in respect of a quarry situate in a Government land. As per the terms of the lease deed, there is a specific prohibition not to produce granite block stones dressed or undressed for export or use in such industries within the country. That being so, the mandamus sought for by the writ petitioner who is the respondent in the writ

appeal cannot be granted so as to enable him to quarry granite block stones dressed or undressed.

10. For the reasons stated above, all the writ appeals are allowed. The orders under appeals are set aside. The writ petitions are dismissed. It is held that the writ petitioners are not entitled to quarry granted block stones, dressed or undressed. They are entitled to quarry only "Aralai, Jalli, Soling, Ammi, Attukkal, Pattivari, Thimmi and Kalthoon" as mentioned in the lease deeds. In the facts and circumstances of the case, there will be no order as to costs.

11. Appeals allowed.