

(2009) 08 MAD CK 0308

In the Madras High Court

Case No : Writ Petition No's. 525 and 527 of 2009

V. Venkatanarayanan and V. Sathiyarayanan

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 14-08-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226

Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 1A, 36, 36(1A), 36(5)

Citation : (2009) 08 MAD CK 0308

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : K. Ramakrishna Reddy, for the Appellant; V. Arun, Addl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—These writ petitions are directed against the orders of the respondent, the District Collector, Villupuram dated 22.12.2008, by which the respondent has cancelled the lease granted in favour of the petitioners.

2. The petitioner in W.P. No. 525 of 2009, was granted stone quarry lease in respect of his patta land measuring 0.08.0 hectares in survey No. 47/2 and 1.22.5 hectares in survey No. 48/1 totalling 1.30.5 hectares in Ambhuzhukkai village, Vanur taluk, Villupuram District. The lease deed was executed on 21.3.2006 for a period of five years from 21.3.2006 to 20.3.2011. Likewise, the petitioner in W.P. No. 527 of 2009 was granted stone quarry lease in respect of Government land measuring 0.40.5 hectares in survey No. 108/2 in Thiruvakkarai village, Vanur taluk, Villupuram District. The lease deed was executed on 19.9.2005 for a period of five years from 19.9.2005 to 18.9.2010.

2(a). Under Rule 36 of the Tamil Nadu Minor Mineral Concession Rules, 1959, (in short, "the Rules") in respect of granting of lease, originally there must be 500 metres of distance from the habitation to the place of quarry, whether it is patta land or Government land. It was, only after inspection that there was no

habitation for a distance of 500 mts. the lease was granted in favour of the petitioners. It is stated that in respect of these quarries when anti-social elements have encroached by putting up huts within the prohibited distance, the matter was taken up to the Supreme Court and ultimately, the Supreme Court directed the State Government to frame necessary rules regarding habitation and also to reduce the safety distance from 500 to 300 metres. It was, thereafter, Rule 36 was amended by G.O.Ms. No. 88, Industries, dated 18.10.2002, by which the distance is reduced from 500 metre radius to 300 metre radius and the term "inhabited site" is defined, which would not include encroachers.

2(b). It is the case of the petitioners that the respondent has not taken any steps to remove the encroachers who have put up unauthorized huts within the prohibited distance, however, show-cause notices were issued on 27.03.2008 to the petitioners by the respondent asking them to show-cause as to why quarry lease should not be cancelled on the ground encroachments have been made within the prohibited distance. Explanations were submitted on 8.4.2008 stating that the quarry is not situate within the prohibited distance of 300 metres of habitation and asking for inspection of the quarry sites. When the respondent, by issuing show-cause notice, stopped the petitioners' quarrying operations, the petitioners filed W.P. Nos. 25658 and 25649 of 2008 for Mandamus against the respondent from interfering with the right of quarrying operations by the petitioners. The said writ petitions were disposed on 28.10.2008 with direction to complete enquiry on the issue and pass orders.

2(c). It is the case of the petitioners that in spite of such direction, the respondent has not inspected the quarrying sites and conducted enquiry to find out as to whether the quarrying places are lying within the prohibited distance and without conducting any enquiry, the leases were cancelled under the impugned orders.

3. The impugned orders are challenged on the ground that the huts are put up by the encroachers and they are not the lawful occupants and the respondents should have taken steps to remove the encroachers and the show-cause notice was issued to avoid some contempt proceedings. It is also stated that the respondent has no right or jurisdiction to permit any encroacher to put up any dwelling hut within the prohibited distance of 300 metres after the leases for quarry were granted. The jurisdictional authority is the Director of Geology and Mining and not the respondent and therefore, the orders of cancellation are without jurisdiction. It is also the case of the petitioners that the encroachers cannot be treated as lawful occupants for the purpose of cancelling the leases, by relying upon the judgment of the Supreme Court and therefore, the impugned orders are challenged as violative of Articles 14 and 19(1)(g) of the Constitution of India. The impugned orders are violative of the principles of natural justice, since no personal hearing was given and no enquiry was conducted in the manner known to law and the authority should have acted as per the statutory rules framed.

4. It is the contention of Mr. K. Ramakrishna Reddy, learned Counsel for the petitioners in the writ petitions that even after the direction issued by this Court on earlier occasion, there was no proper enquiry conducted by the respondent and in the enquiry contemplated under the Rules an opportunity must be given to the petitioners to submit explanation and there should be physical verification to find out whether tenements had been put up within the prohibited distance and if so, whether such tenements had been put up after the leases were granted to the petitioners and also to find out as to whether such occupants are encroachers and whether the leased places can be termed as "inhabited sites".

5. On the other hand, it is the contention of Mr. V. Arun, learned Additional Government Pleader appearing for the respondent that the earlier order passed by this Court was only to pass orders after conducting enquiry and after personal hearing was given to the petitioners and after obtaining statements from the petitioners, the impugned orders came to be passed and therefore, the impugned orders are well within the direction given by this Court earlier and no interference is warranted. He would also submit that the impugned orders themselves provide for an effective appellate remedy available and without resorting to the appellate remedy, which is to be made before the Director of Geology and Mining, the present writ petitions have been filed, which are liable to be dismissed.

6. The fact that the Tamil Nadu Minor Mineral Concession Rules, 1959 came to be amended by G.O.Ms. No. 88, Industries, dated 18.10.2002 and G.O.Ms. No. 286, Industries, dated 1.4.1999 is not in dispute. By virtue of the said Government Orders, Rule 36 of the Tamil Nadu Minor Mineral Concession Rules, 1959 which is captioned as "General restrictions in respect of quarrying operations" was amended. Sub Rule 1-A of the said Rule is as follows:

Rule 36. General restrictions in respect of quarrying operations:

(1) xxxx

(1-A) (a) No lease shall be granted for quarrying stone within 300 metres (three hundred metres) from any inhabited site:

Provided that the existing quarries which are subsisting under current leases shall be entitled for continuance till the expiry of the lease period. The lessees whose quarries lie within a radius of 300 metres from the inhabited site shall undertake blasting operations only after getting permission of the Director of Mines Safety, Corgaum:

Provided further that the new and existing units of quarries shall also be required to comply with the pollution control measures [(i.e.) dust control measures] besides complying with the other conditions in regard to Pollution Control Measures.

(b) The methodology specified in column (2) of the Table shall be adopted in respect of the operational sources specified in column (1) thereof for rock quarrying operations.

TABLE	-----			Sl.
No. Operational Methodology to be adopted for Sources controlling the dust.				
		-1	-2	-3
			1	Drilling
Liquid injection (water with a wetting agent) of capturing and venting emissions to	a			device.
			2	Blasting
Adoption	of	good		practices.
			3	Loading
(at	Water	wetting.		mines)
			4	Transport
Watering treatment with surface agents, soil stabilisation on paving.				

(c) No new layout, building plans falling within 300 metres from any quarry should be given approval by any agency unless prior clearance of the Director of Geology and Mining is obtained. On receipt of proposals for according clearance, the Director of Geology and Mining shall decide upon the continuance or closure, as the case may be, of any quarry which is situated within 300 metres from the new layout, buildings sought for such clearance.]

7. It is not in dispute that the prohibited distance of 500 metres for the purpose of granting lease has been reduced to 300 metres from any "inhabited site". As stated above, after the said amendments, the authorities who grant lay out or building plan cannot grant such approval within 300 metres from the quarry, unless prior clearance from the Director of Geology and Mining is obtained. It is in such circumstances, when an application is received for lay out or building plan within the distance of 300 metres from quarry site, the Director of Geology and Mining should decide either to continue or to close the quarry which is situate within 300 mts. from the new lay out or building. It is also significant to note that the term, "inhabited site" which is mentioned in Rule 36(1-A) is defined in the said rule as follows:

"inhabited site" shall mean a village site or town site or a house site as referred to in the revenue records or a house site or layout approved by a Local Body or Town or Country or Metropolitan Planning Authority, where the said Body or Authority is created under a statute and empowered to approve such an area as a house site or lay-out area.

8. The said rule also imposes an obligation on the permit holder or lessee or his tenant to keep correct account showing the quantity and other aspects of the minerals obtained and despatched from the quarry. It also imposes various restrictions including that only at the place where the permission is granted the quarry operations should be done and after the expiry of permit, the mineral should not be removed. Rule 36(5)(h) which is as follows:

Rule 36. General restrictions in respect of quarrying operations:

(1) to (4) xxx

(5) (a) to (g) xxxx

(5) (h) In case of breach by the quarrying permit-holder or quarrying lease holder or his transferee or assignee of any of these rules or of the conditions of the lease, the Director of Geology and Mining or the Chief Conservator of Forests, as the case may be, or the District Collector or the District Forest Officer, as the case may be, without prejudice to any other penalty which may be imposed in respect of such breach, may cancel the lease after granting an opportunity of hearing to the said person.

which enables the Director of Geology and Mining or the District Collector or the District Forest Officer to cancel the lease after giving an opportunity of hearing to the said lessee.

9. A reference to the original orders by which the permit was granted to the petitioners show that on the basis of the applications of the petitioners and based on the technical report of the Deputy Director of Geology and Mining, Villupuram, the lease was granted for five year period which, admittedly, has not expired as on date. It is not the case of the respondent in the impugned orders that there was any violation of conditions of permit granted earlier. The objection, as it is seen in these cases is that within the prohibited area of 300 metres some local people have encroached either by attempting to put up permanent structure or temples. In view of such encroachments, the respondent having found its inability in removing the encroachers, has given show-cause notice to the petitioners for cancellation of leases, instead of removing the encroachers. In fact, in the reply to the show-cause notices, the petitioners have disputed the contents of the show-cause notices that there has been encroachment within the prohibited distance of 300 metres from the place of quarry.

10. In similar circumstances when licence was cancelled, this Court in W.P. No. 11396 of 2005 in the order dated 2.7.2008 held that before cancelling such lease, it requires a proper enquiry after giving opportunity to the parties and with that direction, the writ petition came to be allowed. In similar circumstances after issuing show-cause notice in respect of same patta land, when the respondent attempted to stop issuing permission to stone quarrying without conducting enquiry, the petitioner in W.P. No. 525 of 2009 filed W.P. No. 25658 of 2008 to forbear the respondent, the District Collector from preventing the petitioner from carrying on quarrying operations in survey No. 47/2 and 48/1 of Ambuzukkai village, Vanur taluk, Villupuram District. In that case, it was admitted by the respondent that the petitioner was sought to be prevented from quarrying only due to the reason that the encroachers are living nearby and till the enquiry is completed, the quarrying by the petitioner should be stopped. While disposing of the said writ petition, this Court has observed that,

7. Simply because this Court passed an order directing the respondent to remove encroachers by conducting enquiry, it is not proper for the respondent to deprive

right of the petitioner in continuing the quarrying operation, unless and until the licence is terminated in the manner known to law.

Ultimately, this Court has directed the respondent to complete the enquiry initiated as per the show-cause notice dated 27.3.2008 and to pass orders, which is in the following words:

9. Therefore, the writ petition is disposed of with a direction to complete the enquiry initiated by giving second show cause notice dated 27.03.2008 to the petitioner and pass appropriate orders on merits and in accordance with law expeditiously, in any event within a period of four weeks from the date of receipt of a copy of this order. It is made clear that till the respondent, District Collector passes appropriate final order, the respondent shall not prevent the petitioner from proceeding with the quarrying operation and ultimately, it is the duty of the respondent to issue permit for the purpose of removal of the stones, which have been quarried by the petitioner, pursuant to the licence. No costs. The Connected miscellaneous petition is closed.

11. The contention of the respondent in these writ petitions is that the impugned orders themselves came to be passed only as per the above directions of this Court. It is also stated that after the above said order, the petitioners were served with notices, for which written explanation was submitted and the petitioners were given opportunity to appear in person and after obtaining joint written statement from the petitioners along with other three quarry owners and after considering the safety of the life and property of the encroachers, the quarry lease was terminated. The relevant portion of the counter affidavit filed by the respondent is as follows:

12. The contention of the petitioner in para 14 and 15 of the affidavit is not correct. The petitioner was served with show cause notice and written explanation has been obtained, the writ petitioner have been given opportunity of personal hearing and joint written statement has been obtained from the petitioner along with three other quarry owners and after considering the safety of the life and property of the encroachers, the quarry lease was terminated.

Therefore, it is clear that the only reason assigned for the purpose of terminating the lease under the impugned orders is the safety of life and property of encroachers.

12. As per the conditions of lease, it is not in dispute that there are various conditions given which are to be followed by the licensee and encroachment does not form part of the conditions for the lease granted. In any event, when there was encroachment by third parties within the prohibited distance of 300 metres from the place of quarrying for which the lease was granted, fairness requires that after the issue of show-cause notice, the respondent should have found first as to whether there is encroachment within the prohibited area and whether such encroachment was made either before or after the grant of lease to the petitioners. The respondent being the District Collector should take proper action

to remove the encroachers to safeguard their interest. The duty on the part of the District Collector to remove the encroachers can certainly be presumed by referring to the term, "inhabited site" defined under Rule 36 as stated above. The inhabited site must be in a lay out approved by the Local Body or Town and Country Planning Authority. Therefore, any occupation by encroachers which is unauthorised can never be termed as "inhabited site". Further, the rule contemplates that no new lay out can be approved by the competent authority if it is within 300 metres of prohibited area of quarry site unless a clearance is given by the Director of Geology and Mining. Therefore, even in a case where a person owning his land within the prohibited area seeks to have approval of lay out and building plan, the same cannot be granted by the authority concerned without obtaining clearance from the Director of Geology and Mining. It means that even in those cases, on receipt of such application for approval of lay out within the prohibited area of 300 metres, the Director of Geology and Mining has to conduct an enquiry and find out as to whether such approval to the lay out can be given and it is he who has to decide as to whether the lease has to be cancelled or the lay out proposal has to be rejected. That decision can be arrived at by the Director of Geology and Mining only by conducting a proper enquiry, which means that he or his officials should visit the site and find out the physical nature of the property.

13. While so, in case of encroachment, the respondent/District Collector being the authority of the district administration has to necessarily find out by way of enquiry after conducting local inspection through his officials as to whether there is encroachment at all and if such encroachment is within the prohibited distance of 300 metres, it is his duty to take action to remove the encroachers as such site will not be stated as a approved lay out area since the place of encroachment cannot be termed as "inhabited site" as per the rules.

14. On the facts and circumstances of the case, the respondent has not properly implemented the earlier order of this Court by which a specific direction was given to conduct enquiry, which means an enquiry as per Rule 36 of the Tamil Nadu Minor Mineral Concession Rules, 1959 as stated above, which must be in relation to "inhabited site". As it is seen in the impugned orders and also the counter affidavit filed by the respondent, it is not the case of the respondent that such enquiry was conducted. It is common knowledge that even in respect of approved sites which are situate within the prohibited distance of 300 metres, only on the spot inspection, the respondent can find out as to whether the approval of lay out is sought for after the lease was granted and in such case, it is for the respondent to take appropriate action in consultation with the Director of Geology and Mining as found in Rule 36(1-A)(c) of the Rules as elicited above. When that is the position as to the approval of lay out, the present case which relates to encroachers stands on a different and much lower footing.

15. The reason adduced as it is seen in the impugned orders and could be culled out from the counter affidavit filed by the respondent that the respondent is

unable to remove the encroachers and therefore to safeguard the life and property of encroachers, the lease should be cancelled is not the one acceptable as per law, especially with reference to Rule 36 of the Tamil Nadu Minor Mineral Concession Rules, since such decision has not been arrived at based on proper enquiry after giving opportunity to the petitioners to prove that the encroachers have no right to continue and that by continuing the lease, such encroachers' life is not in jeopardy. In the absence of such proper and full-fledged enquiry, it is not possible to accept the contents of the respondent in the counter affidavit and also the contention of the learned Additional Government Pleader that the impugned orders are sustainable in law.

16. In such circumstances, when the basic principles of enquiry have not been followed, it is a case of violation of the principles of natural justice which is explicit on the facts, I am of the view that merely because an alternative remedy of appeal is available, the petitioners must be driven to file appeal. In the absence of the basic principles of law relating to enquiry being followed, no useful purpose will be served in driving the petitioners to file appeal. Even though it has been oft-repeatedly held that when effective alternative remedy is available, the writ petition is not maintainable under Article 226 of the Constitution of India, it is equally well settled that mere availability of alternative remedy is not a bar for enforcing the right under Article 226 of the Constitution of India where the principles of natural justice are not followed and there is violation of fair play and justice. Further, it is relevant to note that the jurisdiction of the respondent to cancel the lease is only subject to the finding and decision of the Director of Geology and Mining, who is the ultimate authority and who is technically qualified to assess the correct situation. While admitting the writ petitions, this Court has also granted an order of interim stay which continues to be in force till date.

In such view of the matter, the writ petitions are allowed and the impugned orders are set aside with direction to the respondent to conduct proper enquiry as stated above and pass appropriate orders after giving opportunity to the petitioners on merits and in accordance with law. No costs. Connected miscellaneous petitions are closed.