

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-6-2013

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.44290 of 2006 and
W.P.Nos.25801 and 25802 of 2012 and
M.P.Nos.1 +1 +2 of 2012

W.P.No.44290 of 2006
S.Selvarajan

.. Petitioner.

Versus

The District Collector,
Tiruvallur District @
Tiruvallur.

.. Respondent.

Prayer: Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the respondent herein to forthwith refund the security deposit of Rs.6,73,000/- by way of National Security Bond paid by the petitioner on 25.9.2000 in respect of Sand quarry situated in S.No.291 & 4 O.A.E. measuring to an extent of 10.00.0 Hectares in Kanakavallipuram Village, Tiruvallur Taluk, Tiruvallur District.

For Petitioner : Mr.K.R.Krishnan
For Respondent : Mr.R.Ravichandran
Additional Government Pleader

W.P.Nos.25801 and 25802 of 2012
S.Selvaarajan

.. Petitioner in
both the writ petitions

Versus

1. The State of Tamil Nadu rep. By its
The Principal Secretary to Government
Industries Department
Fort St. George, Chennai-9.

2. The District Collector,
Thiruvallur District, Thiruvallur.

3. The Revenue Divisional Officer,
Thiruvallur District, Thiruvallur.

.. Respondents in
both the writ petitions

Prayer in W.P.No.25801 of 2012: Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the 1st respondent herein in his proceedings in G.O.Ms.No.(2D) NO.9 Industries Department (MMC-2) dated 9.2.2012 and consequential notice issued by the 2nd respondent dated 5.5.2012 in R.C.No.725/2000/G&M- and quash the same.

Prayer in W.P.No.25802 of 2012: Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records and quash the impugned order of the second respondent dated 5.7.2012 in Na.Ka.No.708/2010/A1 passed by the 2nd respondent.

For Petitioner :Mr.K.R.Krishnan
For Respondents:Mr.R.Ravichandran
Additional Government Pleader

COMMON ORDER

Heard the learned counsel appearing for the petitioner, as well as the learned counsel appearing on behalf of the respondents.

2. The petitioner has stated that he had been granted lease for carrying on quarrying operations in the land, having an extent of 10 hectares, in S.No.4 and 291, Kangavelipuram Village, Tiruvallur Taluk, Tiruvallur District, for a period of one year, from 15.10.2000 to 14.10.2001. The necessary lease deed had been executed in favour of the petitioner, on 15.10.2000. He had paid a total sum of Rs.6,73,000/-, as security deposit. As per Clause 8(1) of the lease deed executed in favour of the petitioner, on 15.10.2000, the security deposit ought to have been refunded to the petitioner, after the expiry of the lease period of one year, after deducting the dues payable to the government, if any.

3. The petitioner has further stated that the security deposit had not been repaid to the petitioner, for a period of six years, after the expiry of the lease period. Therefore, the petitioner had submitted representations, dated 14.1.2006 and 25.9.2006, for the refund of the security deposit of Rs.6,73,000/-, given by way of N.S.C. bonds. Therefore, the petitioner had been compelled to file a writ petition, before this Court, in W.P.No.44290 of 2006, praying that this court may be pleased to issue appropriate directions to the respondent therein, to refund the security deposit to the petitioner.

4. The petitioner has further stated that, during the lease period of one year, from 15.10.2000 to 14.10.2001, the petitioner had been prevented, by the authorities concerned, from carrying on quarrying operations, for a period of 111 days, without having proper reasons to do so. In such circumstances, the petitioner had filed a writ petition, in W.P.No.18629 of 2001, for permission to quarry for a period of 111 days. This Court had allowed the said writ petition, on 18.4.2002, granting the necessary permission to the petitioner to carry on quarrying operations for the said period, on payment of a sum of 40% over and above the amount which the petitioner had already

paid as lease amount for the period of one year, from 15.10.2000 to 14.10.2001. Pursuant to the order passed by this court, on 18.4.2002, the second respondent had directed the petitioner to pay a sum of Rs.28,65,320/-, on 11.4.2003 and 7.7.2003. Thereafter, the second respondent had issued permission to quarry for 111 days, from 17.7.2003. However, the quarrying operations had been stopped during the said period, on different occasions. As such the petitioner had carried on quarrying operations only for a period of 77 days. He was not in a position to quarry for the remaining period of 34 days, for which he had already paid the amount due to the government. While so, the government had issued a government order, in G.O.Ms.No.95, dated 1.10.2003, introducing Rule 38A of the Tamil Nadu Minor Mineral Concessin Rules, 1959, taking over the quarrying operations which were being carried on by private operators. Thus, the entire quarrying operations had vested with the State government. The petitioner had challenged the said government order, by way of writ petition filed before this Court. This Court, by its order, dated 31.7.2007, made in W.P.No.14686 of 2007, had permitted the petitioner to carry on quarrying operations for the balance period of 34 days, for which the lease amount has already been paid. Aggrieved by the said order, the state government had preferred writ appeals, in W.A.Nos.585 and 586 of 2008. The Division Bench of this Court, by an order, dated 29.8.2008, had held that it would be proper to direct the state government to refund the proportionate lease amount for the unexpired period of 34 days, with interest at 6% per annum. No further appeal had been filed by the state government and therefore, the said order had become final. However, the first respondent had not refunded the proportionate amount and the security deposit to the petitioner. While so, the third respondent had issued a show cause notice to the petitioner, dated 4.3.2010, after a lapse of ten years, stating that the quarry in question had been inspected by the authorities concerned, on 9.4.2001, and a report had been submitted stating that the petitioner had removed 6430 lorry loads of sand from the area concerned. The petitioner had submitted a reply, on 7.3.2010, denying the allegations.

5. It had also been stated that the alleged inspection, said to have taken place on 9.4.2001, had not been done, either in the presence of the petitioner or in the presence of any person representing him. No notice had been issued to the petitioner, on 9.4.2001. However, the third respondent had rejected the objections raised by the petitioner and had confirmed the proposal made in the show cause notice, dated 4.3.2010. Accordingly, the petitioner had been directed to pay Rs.63,65,700/-, including the cost of the mineral and the penalty. Aggrieved by the said order, the petitioner had filed a writ petition before this court, in W.P.No.10959 of 2010. The said writ petition was allowed, on 14.7.2010, quashing the impugned order passed on 16.4.2010. While quashing the impugned order a direction had been issued to the second respondent to supply a copy of the report, dated 9.4.2001 and the other relevant records, to the petitioner, while calling for objections. The third respondent had also been directed to give a personal hearing to the petitioner to proceed further, if warranted. However, since no proceedings were

pending, after the quashing of the impugned order, dated 16.4.2010, the petitioner had sent a lawyer's notice, dated 4.5.2011, requesting the respondents to refund the security deposit and the proportionate lease amount for 34 days, as directed by the Division Bench of this Court, by its order, dated 5.9.2008, made in W.A.Nos.585 and 586 of 2008. Thereafter, the petitioner had been forced to file a contempt petition before this Court, in C.P.No.1898 of 2011, for refund of the security deposit and the proportionate lease amount. In order to avoid the contempt proceedings, the respondent had deliberately passed two separate orders, in G.O.Ms.No.2D MCC-2 Industries, dated 9.2.2012, rejecting the request made by the petitioner for the refund of the security deposit. Thereafter, the second respondent had directed the petitioner, on 9.5.2012, to pay a sum of Rs.14,045/-. Thereafter the petitioner had submitted representation to the District Collector concerned, in the form of an appeal, on 20.3.2001.

6. It had been further stated that the issue relating to the penalty had never been raised by the respondents till the filing of the contempt in the year 2012. As such it is clear that the demand made on the petitioner for the payment of the penalty is mala fide in nature. While the first bench of this Court had directed the refund of the lease amount for the unexpired lease period of 34 days, with interest, at the rate of 6%, it is not fair on the part of the respondents to demand payment of the penalty, with interest, at the rate of 24% per annum. Even though the respondents had based their claim on Rule 36E of the Tamil Nadu Minor Mineral Concession Rules, 1959, for making the demand of such payment, along with the interest at the rate of 24% per annum, it could be seen that such a demand has been made only with the mala fide motive of denying the amount due to the petitioner, pursuant to the direction issued by the first bench of this Court, made in W.A.Nos.585 and 586 of 2008. Even otherwise, the security deposit due to the petitioner ought to have been paid by the respondents, within one year of the expiry of the lease. In fact, respondents could have deducted the penalty amount, if any, and could have paid the balance amount, without any undue delay. However, it would not be open to the respondents to demand the payment of the penalty amount, at the rate of 24% per annum, to defeat the legitimate claim made by the petitioner.

7. The learned counsel appearing on behalf of the petitioner had submitted that the petitioner is willing to pay the penalty amount of Rs.3,67,200/-, said to be due from the petitioner, with interest at the rate of 6% per annum, from 2.2.2001 to 30.4.2013, amounting to a sum of Rs.6,02,851/-. The total amount due to the petitioner, from the State government, as on 30.4.2013, is Rs.19,68,736/-. After deducting the sum of Rs.6,02,851/-, being the penalty amount and the interest to be paid at the rate of 6% interest per annum, a sum of Rs.13,65,885/- is due to be paid to the petitioner, by the State government, as per the memo of calculation, dated 3.6.2013, filed on behalf of the petitioner.

8. In the counter affidavits filed on behalf of the respondents it has been stated that the petitioner had been granted a lease for

quarrying sand in an extent of 10.00.0 hectares, in S.F.Nos.4 and 291 of Kanakavelipuram village, Tiruvallur Taluk, Tiruvallur District, for the lease amount of Rs.63,30,000/-, for a period of one year, from 15.10.2000 to 14.10.2001. The lease had been granted by the proceedings of the District Collector, Tiruvallur District, in his proceedings Rc.No.725/2000/Q2, dated 10.10.2001. The petitioner had remitted 10% of the lease amount, as security deposit, in the form of N.S.C. bonds. During the period of the lease the petitioner was levied with the penalty for illicit quarrying of sand to the tune of Rs.3,67,200/-, by the proceedings of the Sub Collector, Tiruvallur, in Rc.No.3337/2000/A1, dated 2.2.2001. Subsequently, the subject area was inspected by the Tahsildar, Tiruvallur, on 5.4.2001 and the Assistant Director (G&M), Tiruvallur, on 9.4.2001. Based on the inspection a report had been submitted stating that 6430 lorry loads of sand had been illicitly quarried and removed from an area relating to which no lease had been granted in favour of the petitioner.

9. It had also been stated that the petitioner had made a request, after the expiry of the lease period, for the extension of lease for 111 days, for the non-operative period. The petitioner had filed a writ petition for the extension of the lease period. An order, dated 18.4.2002, had been passed by this Court, in W.P.No.18629 of 2001. In view of the said order the petitioner had been granted permission for quarrying of sand for 111 days, after the remittance of Rs.28,65,320/-. While so, the State government had introduced Rule 38A in the Tamilnadu Minor Mineral Concession Rules, 1959, by way of a government order, in G.O.Ms.No.95, Industries Department, dated 1.10.2003, whereby, all the existing quarry leases, relating to the quarrying of sand, had ceased to be effective and the State government had been vested with the power to mine sand. Accordingly, the proportionate lease amount for the unexpired period of lease and the unadjusted seigniorage fee, if any, were directed to be refunded. Hence, the petitioner's quarrying operations had been stopped, with effect from 2.10.2003, in accordance with the said government order. As such, the petitioner could not utilize 34 days of the lease period for the quarrying of sand.

10. It has been further stated that the petitioner had requested for the refund of the security deposit amount of Rs.6,73,000/-, remitted in the form of N.S.C. bonds. A writ petition had been filed before this Court, in W.P.No.44290 of 2006, for the refund of the security deposit, remitted by the petitioner during the year, 2000. Since the Tahsildar, Tiruvallur, and the Assistant Director (Mines), Tiruvallur, had detected the illicit quarrying done by the petitioner in an area relating to which no permission had been granted, the security deposit amount was not refunded. The petitioner had to forfeit the said amount to the government for the violation of the lease conditions. In the meantime the petitioner had prayed for the refund of the proportionate lease amount for the unutilized period of 34 days. He had filed a writ petition, in W.P.No.14686 of 2007, claiming refund of the amount due to him. By an order, dated 29.8.2008, made in W.A.Nos.585 and 586 of 2008, a Division Bench of this Court, by its order, dated 31.7.2007, had directed the

appellants therein to refund the proportionate lease amount for the unexpired of 34 days, with simple interest, at the rate of 6% per annum.

11. It had been further stated that the State Government had requested the District Collector, Tiruvallur District, to send the necessary proposal for the refund of the proportionate lease amount, with interest, as directed by the Division Bench of this Court, after deducting the penalty amount of Rs.3.67 lakhs levied on the petitioner. The District Collector, Tiruvallur District, had sent a proposal to the Government, on 15.12.2011, wherein, the details of the total amount to be refunded to the petitioner had been mentioned. It was stated that an amount of Rs.8,35,169/- had to be refunded to the petitioner, after deducting a sum of Rs.3,67,200/-. It had also been mentioned that action had to be taken for the collection of the penalty levied on the petitioner for the illicit quarrying of 6430 lorry loads of sand. Accordingly, the Sub Collector, Tiruvallur, had levied a penalty of Rs.63,65,700/-, on the petitioner, for the illicit quarrying and transportation of 6430 lorry loads of sand, from the non-lease hold area, in his proceedings No.708/2010/A1, dated 16.4.2010. The petitioner had challenged the said order, in W.P.No.10959 of 2010. This Court had set aside the impugned proceedings, by its order, dated 14.7.2010, made in W.P.No.10959 of 2010, and had remitted the matter back to the Revenue Divisional Officer concerned for passing fresh orders. In the meantime, the petitioner had filed a contempt petition, in Contempt Petition No.1898 of 2011, in W.A.Nos.585 and 586 of 2008, against the respondents. After a careful examination, the government had issued orders directing the District Collector, Tiruvallur, to refund the proportionate lease amount of Rs.12,95,736/-, to the petitioner, with interest, after adjusting the penalty amount of Rs.13,09,781/-, along with the interest accrued thereon and had directed the petitioner to remit the balance amount of Rs.14,045/-, vide notice, dated 5.5.2012. However, the petitioner has not remitted the balance amount, to the government, till date.

12. It has also been stated that there are two cases of penalty proceedings levied on the petitioner. The first case, relating to levy of Rs.3.67 lakhs, has attained finality. It is for this reason that the government had informed that, while computing the proportionate lease amount to be refunded to the petitioner, the issue relating to the penalty levied on the petitioner should also be taken into consideration and deducted from the proportionate lease amount to be paid to him. With regard to the second case, relating to the levy of penalty of Rs.63,65,700/-, the levy made on the petitioner had been challenged before this court and it had been set aside, by an order, dated 14.7.2010, made in W.P.No.10959 of 2010 and the matter had been remitted back to the Revenue Divisional Officer concerned, for passing fresh orders. The Sub Collector, Tiruvallur, while complying with the orders passed by this Court, had passed fresh orders, levying a sum of Rs.63,65,700/-, as penalty, vide proceedings, dated 5.7.2012. However, the petitioner had not remitted the penalty amount, so far. In such circumstances, the petitioner had

been directed to remit the balance amount of Rs.14,045/-, which is the amount due from the petitioner, after adjusting the penalty and interest, amounting to Rs.13,09,781/-. As such, the writ petitions filed by the petitioner are devoid of merits and therefore, they are liable to be dismissed.

13. In view of the averments made on behalf of the petitioner, as well as the respondents and in view of the submissions made by the learned counsels appearing on their behalf, and on a perusal of the records available, it is found that the Division Bench of this court had passed an order, dated 29.8.2008, in the writ appeals, in W.A.Nos.585 and 586 of 2008, directing the refund of the proportionate lease amount due to the petitioner, for the unexpired lease period of 34 days, with simple interest, at the rate of 6% per annum. Pursuant to the said order the District Collector, Tiruvallur District, had been requested, by the State government, to send the necessary proposal for the refund of the necessary lease amount, as directed by the Division Bench of this court. Accordingly, the District Collector, Tiruvallur district, had sent a proposal to the State government, on 15.12.2011, giving the details of the total amount to be refunded to the petitioner. In the said proposal it had been stated that an amount of Rs.8,35,169/- was the amount to be refunded to the petitioner, after deducting a sum of Rs.3,67,200/-, levied on the petitioner, as penalty.

14. It had also been mentioned that action had to be taken for the collection of the penalty levied on the petitioner, for the illicit quarrying of 6430 lorry loads of sand. Thereafter, the Sub Collector, Tiruvallur in his proceedings, dated 16.4.2010, had levied a penalty of Rs.63,65,700/-, on the petitioner, for the illicit quarrying of 6430 lorry loads of sand in the non-lease hold area.

15. It is also noted that the State government had issued orders directing the District Collector, Tiruvallur District, to refund the proportionate lease amount, along with the interest accrued thereon, amounting to Rs.12,95,736/-, after adjusting the penalty levied on the petitioner, with interest, amounting to a sum of Rs.13,09,781/-. As such, the petitioner was to remit to the State government a sum of Rs.14,045/-.

16. From the records available, it is noted that, at the time when the Division Bench of this court had passed the order, on 29.8.2008, in the writ appeals, in W.A.Nos.585 and 586 of 2008, the respondents had not quantified the penalty liable to be levied on the petitioner. It is only thereafter, the District Collector, Tiruvallur District had issued orders, on 5.5.2012, refunding the proportionate lease amount due to the petitioner, with interest accrued thereon, amounting to a sum of Rs.12,95,736/-, after adjusting the penalty amount and the interest thereon, amounting to a sum of Rs.13,09,781/- and the petitioner had been directed to remit the balance amount of Rs.14,045/-.

17. From the memo of calculation filed on behalf of the

<https://hcservices.ecourts.gov.in/hcservices/>

petitioner, on 3.6.2013, it is noted that the total amount due to be refunded to the petitioner, as per the orders passed by the Division Bench of this Court, dated 29.8.2008, made in W.A.Nos.585 and 586 of 2008, is Rs.12,95,736/-. The security deposit due to the petitioner, from 14.10.2001, is Rs.6,73,000/-. As such, the total amount due to the petitioner is Rs.19,68,736/-.

18. It is also noted, from the memo of calculation, that the penalty levied on the petitioner is Rs.3,67,200/-. Interest payable on the said amount, from 2.2.2001, would amount to Rs.2,35,651/-. The total amount of penalty and interest due to be paid by the petitioner, as on 30.4.2013, was Rs.6,02,851/-. From the said calculation it could be seen that a sum of Rs.13,65,885/- is due to be refunded to the petitioner, by the State government, as on 30.4.2013.

19. It is found that there has been an inordinate delay, by the respondents, in refunding the amount due to the petitioner, as the proportionate lease amount, for the unutilized lease period of 34 days, inspite of the orders passed by this court for refunding the said amount. Further, it is not in dispute that a sum of Rs.6,73,000/-, had been deposited by the petitioner, as security deposit, and the said amount should have been refunded to the petitioner after the lease period had come to an end. However, the respondents had not chosen to refund the said amount, promptly. Even if it had been adjusted towards the amount due from the petitioner, as penalty, along with the interest thereon, at the rate of 6% per annum, from 2.2.2001, the petitioner would have received a substantial amount.

20. With regard to the amounts shown in the memo of calculation filed on behalf of the petitioner, on 3.6.2013, no serious dispute had been raised by the learned counsel appearing on behalf of the respondents. In such circumstances, the claim made on behalf of the respondents that a sum of Rs.63,65,700/- is due from the petitioner, as penalty, and therefore, he has no locus standi to challenge the government order, in G.O.Ms.No.(2D) No.9, Industries Department (MMC-2), dated 9.2.2012, and the notice 5.5.2012, issued by the second respondent, cannot be sustained.

21. No doubt, it is for the respondents to initiate appropriate proceedings against the petitioner to recover the amount of Rs.63,65,700/- said to be due from the petitioner, in accordance with the procedures established by law, if it is found, finally, that the said amount is due to be paid by the petitioner. However, such a claim made on behalf of the respondents cannot be a bar for the petitioner to claim the amount due to him, as per the memo of calculation filed on behalf of the petitioner, on 3.6.2013. Accordingly, the respondents are directed to refund a sum of Rs.13,65,885/-, as the amount due to the petitioner, as on 30.4.2013, along with the interest accrued on the said amount, at the rate of 6% per annum, till the date of its payment. The writ petitions in W.P.Nos.44290 of 2006 and W.P.No.25801 of 2012, are ordered

accordingly.

22. However, in view of the fact that an appeal remedy is available to the petitioner, against the order, dated 5.7.2012, issued by the second respondent, under Section 36-C, this court is not inclined to entertain the writ petition filed by the petitioner, in W.P.No.25802 of 2012. Accordingly, the writ petition, in W.P.No.25802 of 2012, stands dismissed. However, it is made clear that it would be open to the petitioner, in the said writ petition, to challenge the order of the second respondent, dated 5.7.2012, before the appropriate authority or forum, as per Section 36-C of the Tamil Nadu Minor Mineral Concession Rules, 1959. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/
Asst.Registrar

//True Copy//

Sub.Asst.Registrar

To

1.The Principal Secretary to Government
Industries Department
Fort St. George, Chennai-9.

2.The District Collector,
Thiruvallur District, Thiruvallur.

3.The Revenue Divisional Officer,
Thiruvallur District, Thiruvallur.

1 CC to the Government Pleader, S.R.No.32612

Writ Petition No.44290 of 2006 and
W.P.Nos.25801 and 25802 of 2012

UG(CO)
JJM 29.07.2013

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