

The State of Tamil Nadu. Vs. M.Senthilkumar

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Court : Chennai

Decided On : Feb-27-2012

Judge : Chitra Venkataraman; R.Karuppiah, Jj.

Appeal No. : Writ Appeal (MD)No.648 of 2011 and M.P.(MD)Nos.2 and 3 of 2011

Appellant : The State of Tamil Nadu

Respondent : M.Senthilkumar

Advocate for Def. : Mr.V.Ramesh, Adv.

Advocate for Pet/Ap. : Mr. K.Chellapandian, Adv.

Judgement :

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

1. The State is on appeal as against the order of learned Single Judge, dated passed in W.P.(MD)No.674 of 2008, wherein this Court quashed G.O.Rt.No.304, Industries (MMC1) Department, dated 30.10.2007. and directed the appellants herein to permit the respondent/writ petitioner to do sand quarrying operations in Survey Nos.152/2, 177/4 in Melur village, Srirangam Taluk, pursuant to the orders of the Apex Court reported in 2006 AIR SCW 1778 : 2006(4) SCC 517 - State of Tamil Nadu v. P.Krishnamoorthy.

2. Admittedly, the respondent herein was granted quarrying lease for a period from 29.01.2002 to 28.01.2005. However, by reason of an amendment to Tamil Nadu Minor Mineral Concession

Rules, 1959, inserting Rule 38-A, inserted under G.O.Ms.No.95, Industries, dated 01.10.2003, the right of quarrying sand in Government lands and in ryotwari lands vested with the State Government to the exclusion of others and the proportionate lease amount for the unexpired period of the lease and the unadjusted seigniorage fee, if any, was directed to be refunded, as per the said provision.

3. The said provision was challenged before this Court and ultimately law was settled by the Apex court in 2006(4) SCC 517 - State of Tamil Nadu v. P.Krishnamoorthy. In paragraph No.36 of the judgment, while upholding the provision, the Apex Court read down the provision to point out that in regard to mining leases pending as on 02.10.2003, such of those petitioners whose leases were subsisting on the date of amendment would be entitled to carry on the quarrying activities for a period of six months or for the actual unexpired period of lease as on 02.10.2003, whichever is less.

The Apex Court further pointed out that the said benefit would be available to even those who have orders of the court for grant of mining leases, but where mining leases were not executed for one reason or the other. The Apex court, however, recognized that it was open to the State Government to prematurely terminate the leases for any of the causes mentioned in Section 4-A(2) of the Mines and Minerals (Regulation and Development) Act, 1957, by giving a notice and hearing under Section 4-A(3) of the Act, if they want to terminate any lease within the said period of six months.

4. As far as the present case is concerned, admittedly, on the date of introduction of the amendment, the lease was subsisting and thereafter it was terminated by the State Government. This was challenged by the respondent/writ petitioner before this Court. In considering the claim of the respondent/writ petitioner, learned Single Judge pointed out to the decision of the Apex Court in 2006(4) SCC 517 - State of Tamil Nadu v. P.Krishnamoorthy as well as to the order passed by the Division Bench of this Court in W.A.No.132 of 2008, dated 06.04.2009,

wherein the Division Bench, following the decision of the Apex Court cited supra, rejected the stand of the Government that on the introduction of Rule 38-A, the lease granted in respect of persons who were not parties to the decision of the Apex Court by filing either writ petitions or appeal would stand automatically come to an end and held that the benefit of the directions issued by the Apex Court in paragraphs 36 and 37 of the judgment would be available even in respect of those lessees who had their lease extended by orders of the Court. Thus following the decision of the Division Bench of this Court in W.A.No.132 of 2008, dated 06.04.2009, learned Single Judge allowed the writ petition filed by the respondent herein. Aggrieved by the same, the present writ appeal at the instance of the State.

5.Learned Additional Advocate General appearing for the State, justifying the order of the Government in G.O.Rt.No.304, Industries (MMC1) Department, dated 30.10.2007, pointed out that when the respondent/writ petitioner had not challenged G.O.Ms.No.95, Industries Department, dated 01.10.2003, whereby Rule 38-A was introduced, the benefit of the judgment of the Apex Court would not be made available to the respondent/writ petitioner, irrespective of the fact that the lease granted in favour of the respondent/writ petitioner remained unexpired on the date of introduction of the new rule, as per the decision of the Apex Court.

6.We do not find any justifiable ground to sustain the reasoning projected by the learned Additional Advocate General. As already pointed out, a perusal of the decision of the Apex Court clearly points out that in respect of leases which remained unexpired as on the date of introduction of Rule 38A, the lessees would be entitled to quarry either for six months or for the unexpired period of lease, which ever is less. A perusal of the decision of the Division Bench of this Court in W.A.No.132, dated 06.04.2009, also shows that the lessee therein had the benefit of leasing rights extended as per the orders of this Court and he had not challenged the notification issued in G.O.Ms.No.95, Industries Department, dated 01.10.2003. Referring to the decision of the Apex Court cited supra, the Division Bench of this Court pointed out that as on the appointed date, namely 02.10.2003, the lessee was having a valid lease to quarry, which was clear in terms of the orders of the District Collector, dated 20.03.2001. This Court further pointed out

that as per the decision of the Hon'ble Apex court, the benefit of six months or the unexpired period operation, whichever is less, was given to the lessees therein and those whose leases were subsisting as on 02.10.2003 and further it was not denied by the State that the case of the lessee in the writ appeal was not different from the case of those lessees who were before the Apex Court. Thus, applying the decision of the Apex Court, this Court held that there is no reason to reject the claim of the lessee in the writ appeal for the extended period of quarrying operations.

7. Applying the said decision to the facts of the case herein, on the admitted position that the lease granted to the respondent herein remained unexpired even as on the date of introduction of the new rule, we do not find any justifiable ground to upset the order of the learned Single Judge. As already pointed out, paragraph 36 of the judgment of the Apex Court is categorical enough to hold that such of those writ petitioners whose leases were subsisting as on 02.10.2003 and whose activities were stopped with effect from the date of introduction of new rule would be entitled to carry on quarrying operation for a period of six months or for the unexpired lease period as on 02.10.2003, whichever is less. The Apex Court further observed, this benefit will be available even those who have orders of the court for grant of mining leases, but where mining leases were not executed for one reason or the other. The mere fact that the respondent/writ petitioner had not come before this Court challenging the introduction of Rule 38-A per se can not cut at the root of the benefit given under the Apex Court's decision and the writ petitioner is justified in placing reliance on the decision of the Apex Court reported in (2003) 1 SCC 726 - Beg Raj Singh vs. State of U.P. and others.

8. In the light of the decision of the Apex Court in 2006(4) SCC 517 as well as the Division Bench of this Court in W.A.No.132 of 2008, dated 06.04.2009, we have no hesitation in confirming the order of the learned Single Judge and thereby dismiss the writ appeal filed by the State.

9. Accordingly, the writ appeal stands dismissed. No costs. Connected M.P.(MD)No.2 of 2011 is dismissed and M.P.(MD)No.3 of 2011 is closed. However, considering the time limit between the date of disposal of the writ

petition and the present writ appeal, in fairness to the claim of the respondent/writ petitioner, the appellants is hereby directed to issue necessary Government Orders within a period of six weeks from the date of receipt of a copy of this Order.

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