M.P.Ram Mohan Raja vs State Of Tamil Nadu & Ors on 25 April, 2007

Equivalent citations: AIR 2007 SUPREME COURT 1742, 2007 (9) SCC 78, 2007 AIR SCW 2851, (2007) 3 CTC 506 (SC), (2007) 3 JCR 123 (SC), 2007 (3) CTC 506, 2007 (6) SCALE 186, (2007) 4 SUPREME 147, (2007) 3 SUPREME 935, (2007) 4 MAD LJ 961, (2007) 6 SCALE 186

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Bench: A.K.Mathur, Tarun Chatterjee

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           CASE NO.:
Appeal (civil)  2138 of 2007

PETITIONER:
M.P.Ram Mohan Raja

RESPONDENT:
State of Tamil Nadu & Ors

DATE OF JUDGMENT: 25/04/2007

BENCH:
A.K.MATHUR & TARUN CHATTERJEE

JUDGMENT:
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J U D G M E N T [Arising out of S.L.P.(C) No.12751 of 2006] A.K. MATHUR, J.

Leave granted.

This appeal is directed against the order passed by the Division Bench of the Madras High Court dated 13.7.2006 whereby the Division Bench of the High Court has dismissed the writ petition filed by the appellant- M.P.Ram Mohan Raja and disposed of the writ appeal filed by S.Ramilarasi in view of the affidavit filed by the State Government. Hence, aggrieved against the order passed by the Division Bench dismissing the writ petition the present appeal has been filed by the appellant.

Brief facts giving rise to this appeal are the appellant- writ petitioner (hereinafter to be referred to as the writ petitioner) applied to the State Government in the Industries Department on 2.2.1996 under Rule 39 of the Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter to be referred to as 'the Rules') for grant of quarry lease for quarrying jelly and rough stone for a period of 20 years from the poramboke lands over an extent of 3.64 hectares in survey No.782/2 and over an extent of 2.36 hectares in survey No. 777/4A of Ayyamkollankondam village, Rajapalayam Taluk, Kamarajar District. Rule 39 of the Rules conferred power on the State Government to grant or renew quarry

lease or permission in special cases. The validity of the said rule was affirmed by this Court in Premium Granites & Anr.v. State of Tamil Nadu & Ors. [(1994) 2 SC 691]. This Court held the rule as valid but the action of the State Government can always be subject to challenge. The writ petitioner approached the High Court of Madras by filing writ Petition No.6931 of 1996 making a grievance that his application under Rule 39 of the Rules was not disposed and as such he prayed for a direction to the State Government to dispose of his application made under Rule 39 of the Rules. By order dated 14.6.1996 the High Court disposed of the writ petition by directing the State Government to consider the application of the writ petitioner and dispose of the same within a period of four weeks from the date of receipt of copy of the order and also directed the State Government to maintain status quo in the meantime. However, on 27.6.1996 within a period of four weeks Rule 39 was repealed by the State Government. Consequently, the application of the writ petitioner came to be rejected by order dated 8.10.1996. Subsequently, the District Collector put certain lands for auction in 2003. One of the two lands for which the writ petitioner had applied for grant of lease, was also put to auction. After seven years, the writ petitioner filed the present writ petition being W.P.No.13791 of 2003 seeking a writ of certiorari to quash the order dated 8.10.1996 and to direct the first respondent to consider the application of the writ petitioner dated 2.2.1996 for grant of lease for quarrying jelly and rough stone under Rule 39 of the Rules as it stood at the relevant time.

The writ petition was admitted on 29.4.2003. By an interim order dated 27.2.2004 learned Single Judge permitted the writ petitioner to carry on quarrying operation of jelly and rough stone in the said land. The said order was challenged by the State Government in Writ Appeal No.1750 of 2004. Thereafter, learned Single Judge passed some clarificatory order against which an appeal was preferred by the State Government but the same was also dismissed. The interim order dated 27.2.2004 passed by learned Single Judge was challenged by a private party namely, S.Tamilarasi in Writ Appeal No.453 of 2006 alleging that taking advantage of the order of learned Single Judge the writ petitioner has unauthorisedly encroached upon the lease-hold land granted in his favour and started quarrying operation in the said land. Hence, both these matters were clubbed together by consent of parties and were disposed of by the High Court by the common impugned order. It may be relevant to mention here that earlier Rule 8-C of the Rules was introduced in 1977 by which grant of lease for quarrying black granite in favour of private persons was prohibited. It was clearly stipulated that lease could only be granted in favour of Corporations wholly owned by the State Government. The validity of Rule 8-C was challenged before the Madras High Court and ultimately, the matter reached before this Court and in State of Tamil Nadu v. Hind Stone [AIR 1981 SC 711] this Court allowed the State appeal and upheld the validity of Rule 8-C. However, this Court observed that some of the applications which were pending before introduction of this prohibition, may be dealt with in accordance with the Rules but at the same time it is clarified that no one has vested right for grant of lease in mining. Thereafter, Rule 39 was introduced on 8.3.1993 and that rule provided power to the State Government for relaxation. In the interest of mineral development and in public interest the Government may for the reasons to be recorded, grant or renew a lease or permission to quarry any mineral. The validity of Rule 39 was also challenged but it was upheld by this Court in Premium Granites & Anr. (supra).

A number of applications were filed under Rule 39 of the Rules before the State Government for grant of lease. Government granted lease in some cases relaxing the power of prohibition but some applications were rejected. Hence, a batch of writ petitions was filed before the Madras High Court. The High Court allowed certain number of writ petitions by order dated 17.3.1995 and issued directions that all pending applications should be disposed of as far as possible within a period of twelve weeks from the date of the order. The High Court further laid down that all future applications should be disposed of as far as possible within a period of twelve weeks from the date of receipt of such applications. This order of the High Court passed on 17.3.1995 was not challenged further and it attained finality.

The writ petitioner made an application under Rule 39 of the Rules but his application was not disposed of within twelve weeks. Hence, he filed the writ petition & the High Court passed an order on 2.5.1996 directing the State Government to expedite the disposal of the application of the writ petitioner and to dispose the same within four weeks from the date of receipt of a copy of the order. Meanwhile, on 27.6.1996 within four weeks Rule 39 was repealed. The State Government passed an order on 8.10.1996 rejecting the application of the writ petitioner and the writ petitioner was asked to participate in the tender cum auction to be conducted by the Collector for granting of quarry lease for the area applied by him. The writ petitioner did not pursue the matter after the Government passed the order dated 8.10.1996 in pursuance of the direction given by the High Court and the Collector while rejecting the application of the writ petitioner held that since rule 39 has already been repealed, therefore, the writ petitioner cannot be granted any lease in view of the changed circumstances. The writ petitioner did not challenge this order till 2003 and suddenly woke up to file writ petition on 27.4.2003 being writ petition No.13791 of 2003 before the High Court. The High Court passed an interim order on 29.4.2003 permitting the writ petitioner to continue with quarrying operation on payment of lease amount quoted by the neighbouring quarry owners. Though the Government preferred an appeal against the said order, it was rejected. But the private respondent who was affected by the interim order filed a writ appeal against the said order alleging that the writ petitioner under the garb of interim order was interfering with the quarry allotted to him. As such the writ petition filed by the writ petitioner and the writ appeal were clubbed together.

We have heard learned counsel for the parties. The first and foremost question before us as was before the High Court , was of delay. The Government on 8.10.1996 passed the order in pursuance to the direction given by the High Court rejecting his application, same was challenged after inordinate delay i.e. on 27.4.2003 by the present writ petition, therefore, the writ petition was hopelessly belated. The High Court affirmed the objection of the respondents and in our opinion, rightly so. When the application of the writ petitioner under Rule 39 was rejected on 8.10.1996 by the State Government in pursuance to the direction given by the High Court, the writ petitioner waited up to 27.4.2003 and filed a hopelessly belated writ petition. But strangely enough, the said writ petition was entertained and an interim order was passed and it was not interfered despite the State Government raising an objection. It was only when the third party who felt aggrieved by the said interim order because the writ petitioner on account of this interim order started interfering with his area, that the matter was entertained by the High Court and it was clubbed up together. We are satisfied that there was no justification for the writ petitioner to have waited for a long time. Once the order was passed on 8.10.1996, then there was no need for the writ petitioner to have

waited for such a long time. We are in full agreement with the view taken by the High Court. However, the High Court despite the fact that the writ petition was belated and suffered from laches entered into the controversy on the merits also and took the view that when Rule 39 was deleted within four weeks of the direction to the State Government to dispose of the application of the writ petitioner, there was no option with the Collector but to reject the application as the rule which was in force was repealed, therefore, the basis on which the order was passed was knocked out. Therefore, the High Court declined to grant any relief to the writ petitioner and dismissed the writ petition on merit also.

Learned counsel for the appellant submitted that the writ petition should not be dismissed on the ground of delay. In support thereof, learned counsel invited our attention to a decision of this Court in P.C.Sethi & Ors. v. Union of India & Ors. (AIR 1975 SC 2164). In that case it was held that because the Government has held out hopes, therefore, the petition was not liable to be dismissed on the ground of delay. In the case of K.Thimmappa & Ors. v. Chairman, Central Board of Directors, State Bank of India & Anr.. [(2001) 2 SCC 259], their Lordships held that a petition cannot be rejected solely on the ground of laches if it violates Article 14 of the Constitution and when there is no infraction of Article 14, the question of delay in filing the petition cannot be ignored. In the case of Hindustan Petroleum Corporation Ltd. & Anr. v. Dolly Das [(1999) 4 SCC 450] it was held that delay itself cannot defeat the claim of the petitioner for relief unless the position of the respondent has been irretrievably altered or he has been put to undue hardship. In the case of M/s. Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur & Ors. etc. [(1992) 2 SCC 598] their Lordships found that dismissal of the writ petition in limine was not proper. Since the demand of cess was made illegally in 1967 and the suit was dismissed in 1971, their Lordships found that it was involving matter of serious consequence to the party, therefore delay was not considered fatal in that case.

As against this, learned counsel for the respondents invited our attention to a decision in State of Orissa v. Lochan Nayak (dead) by LRs. [(2003) 10 SCC 678]. In this case, the question of allotment of land was involved and the Commissioner rejected the allotment made in 1984 against which repondent filed writ petition in the High Court in 1992. The High Court remanded the matter back to the Revenue Officer for consideration of the matter afresh. Meanwhile, the allotment was further cancelled in 1992. This Court held that due to in ordinate delay in filing the writ petition, the High Court ought not to have entertained the writ petition and accordingly, set aside the order of the High Court.

So far as the question of delay is concerned, no hard and first rule can be laid down and it will depend on the facts of each case. In the present case, the facts stare at the face of it that on 8.10.1996 an order was passed by the Collector in pursuance to the order passed by the High Court, rejecting the application of the writ petitioner for consideration of the grant of mining lease. The writ petitioner sat tight over the matter and did not challenge the same up to 2003. This on the face of it appears to be very serious. A person who can sit tight for such a long time for no justifiable reason, cannot be given any benefit.

Learned counsel for the appellant submitted that when the High Court passed the order on 14.6.1996, at that time Rule 39 was in existence. Therefore, the case of the writ petitioner should have been decided by the High Court as if the Rule had not been deleted or repealed. In support thereof, learned counsel for the appellant has invited our attention to the following decisions of this Court.

i) 1993 Supp (1) SCC 96(II) In the matter of : Cauvery Water Disputes Tribunal.

ii) AIR 1994 SC 1 State of Haryana & Ors. v. The Karnal Co-op.Farmers' Society Limited etc.

iii) AIR 2003 SC 833 Beg Raj Singh v. State of U.P. & Ors.

In the matter of Cauvery Water Disputes Tribunal, their Lordships held that Legislature can change the law in general by changing the basis on which a decision given by court but it cannot affect setting aside the decision inter parties itself. Similarly, in the case of State of Haryana & Ors. it was held that decree of civil court and judicial order holding that certain lands and immovable properties fell outside "shamilat deh" regulated by principal Act, subsequent amendment directing Assistant Collector to decide the claim by ignoring them was held to be unconstitutional as it encroaches upon judicial power. In the case of Beg Raj Singh, the petitioner was granted mining lease for 3 to 5 years but the petitioner was erroneously granted lease for one year. It was held that a right accrued to the petitioner to continue for a minimum period of three years in terms of the policy decision and it was held that it cannot be curtailed because of lapse of time in litigation and on the ground that higher revenue would be earned by the Government by auctioning the mining rights. Therefore the Court directed that the petitioner would be entitled to continue for a period of three years.

Now, coming to the merits of the writ petition we find that the rule was already repealed on 27.6.1996 and the ground reality had also changed. So far as grant of mining and mineral lease is concerned, no person has a vested right in it. There is no quarrel on the legal proposition that if certain rights have been decided on the basis of the law which was obtaining at that time, that will not nullify the judicial decision unless the bases are taken out. In the present case, the rule under which the writ petitioner sought direction for consideration of his application has already been repealed within the time frame directed by the High Court. Therefore the basis on which the order was passed has been totally knocked out. Rule 39 on the basis of which direction was given was not in existence. Therefore, it could not have been possible for the authorities to have acceded to the request of the writ petitioner. More so, no one has a vested right in mineral lease. In this connection it will be more useful to refer to a decision of this Court in State of Tamil Nadu v. M/s. Hind Stone & Ors. [(1981) 2 SCC 205]. Their Lordships in the aforesaid case observed as follows:

> " The submission was that it was not open to the government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot

> on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal of leases made long prior to the date of G.O.Ms. No.1312 should be dealt with as if Rule 8- C did not exist."

Similarly in the case of P.T.R.Exports (Madras) Pvt. Ltd. v. Union of India [(1996) 5 SCC 268] their Lordships reiterated the same position.

As a result of our above discussion, we find no merit in this appeal and the same is dismissed with no order as to costs.