

ITEM NO.19 COURT NO.4 SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).6883-6885/2010

(From the judgement and order dated 19/02/2010 in WA No. 1981/2001 & WP No. 19657/2001 & WP No. 19658/2001 of The HIGH COURT OF MADRAS)

K.K.KAMALA & ORS. Petitioner(s)

VERSUS

STATE OF T.NADU & ANR. Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned Judgment, amendment of prayer portion, impleadment and prayer for interim relief)

Date: 19/03/2010 These Petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN

For Petitioner(s) Mr. R. Balasubriman, Sr. Adv.
Mr. V. Giri, Sr. Adv.
Mr. V. Balaji, Adv.
Mr. V. Sanjeevi, Adv.
Mr. T.S. Shantti, Adv.
Mr. Pravesh Thakur, Adv.
Mr. Narendra Kumar, Adv.

For Respondent(s) Mr. P.S. Raman, Adv. Genl. (State of T.N.)
Mr. M. Dhandapani, Govt. Pleader
Mr. R. Nedumaran, Adv.

UPON hearing counsel the Court made the following
O R D E R

The Special Leave Petitions are disposed of in terms of the signed order.

Applications are dismissed.

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(O.P. Sharma) (M.S. Negi)
Court Master Court Master
(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION [C] NOS.6883-6885 OF 2010

K.M.Kamala & Ors. ...Petitioners

Vs.

O R D E R

The petitioners are the Legal Representatives one K.G. Munusamy Chetty to whom a mining lease was granted on 8.10.1955. On 19.4.1982, the State Government granted renewal of the mining lease for 20 years relating to 78.32 acres of land, to the said Munusamy Chetty, subject to the condition that the mineral should be utilized in the industry owned by the lessee. A lease deed was executed on 12.5.1982 with the said condition but with a proviso that the said condition was without prejudice to the lessee to challenge the validity thereof. On 17.9.1983, the Central Government quashed the order dated 19.4.2002 on the ground that the State Government had not obtained its prior approval for imposing the condition regarding use of the

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minerals and directed the State Government to pass fresh orders. Thereafter, the State Government obtained the approval of the Central Government for imposing the said condition and passed a fresh order dated 8.2.1984 relating to the renewal for 20 years, reiterating the condition that the lessee should utilize the mineral in his industry. Consequently the lessee was required to execute a supplemental lease deed, deleting the proviso to the condition that the lessee can challenge the condition. Munusamy Chetty did not execute a supplemental lease deed. Therefore, the State Government issued a show cause notice dated 9.2.1988 as to why his lease should not be determined for having failed to execute a supplemental lease deed, as required by the order dated 8.2.1984. In spite of it, the supplemental deed was not executed and therefore the lease was determined on 2.9.1988.

2. Munusamy Chetty filed W.P.No.11475/1988 for quashing the order dated 2.8.1988 terminating the lease. In the said writ petition, an interim order was granted on 29.9.1988 directing the respondents not to interfere with the mining operations and sale of mineral in regard to the 78.32 acres of land which was the subject-matter of the lease. Munusamy Chetty died in the year 1989 and his legal representatives continued with the mining activities under the name and style of "Ramakrishna Magnesite".

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3. The writ petition (W.P. No. 11475/1988) was dismissed for default on 21.7.1998. As a consequence, an order dated 11.4.2000 was passed by the respondents directing stoppage of mining. Immediately thereafter, on 13.4.2000, Ramakrishna Magnesite filed an application for restoration. The writ petition was restored on 30.6.2000. Ultimately, by order dated 12.9.2001, a learned Single Judge of the High Court dismissed W.P. No.11475 of 1988. The said order of the learned Single Judge was challenged in Writ Appeal No.1981 of 2001.

4. The respondents by order dated 2.6.2000, made a demand for Rs.1,85,17,400/- being the cost of 20900 MT of mineral excavated between 21.7.1998 and 11.4.2000 (for which transport permits had been issued) and also directed the sale of 1564 MT of magnesite ore kept in the mine site/stockyard, by public auction. On 31.5.2001, the State passed an order confiscating the said magnesite ore from the leasehold area, by specifying the quantity of mined mineral at site/stockyard as 1774 MT (instead of 1574 MT which was earlier mentioned). The petitioners challenged the orders dated 2.6.2000 and 31.5.2001 in W.P. Nos.19657 and 19658 of 2001.

5. A Division Bench of the High Court by a common
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judgment dated 19.2.2010 dismissed said Writ Appeal

No.1981/2001 as also W.P. Nos. 19657 and 19658 of 2001 with

the following directions :

- (i) a direction to the petitioners to forthwith stop mining activities.
- (ii) a direction to the petitioners to deliver vacant possession of the leasehold area measuring 78.32 acres.
- (iii) a direction confirming the order of the District Collector dated 2.6.2000 for sale of 1564 MT of magnesite by public auction and a direction to complete the same expeditiously.
- (iv) a direction to the State Government to issue a fresh show-cause notice within eight weeks to recover the cost of magnesite mined from August, 1984 till the date of the judgment (including the period 21.7.1998 and 11.4.2000) and also afford an opportunity of hearing to the petitioners.

6. The petitioners have filed these special leave petitions challenging the said common order dated 19.2.2010. We have heard the learned counsel for the petitioners and the respondents. We find no reason to

interfere with decision of the division bench dismissing WA No. 1981/2001 thereby affirming the order dated 12.9.2001 dismissing WP No. 11475/1988 by the learned Single Judge. Similarly we find no reason to interfere with the decision of the division bench dismissing W.P.No.19657 of 2001 and W.P.No.19658 of 2001.

7. But we find that while consequential directions of
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the High Court culled out in para 5 (i) to (iii) above are clarificatory directions consequential upon the dismissal of the writ appeal and writ petitions, the direction referred to in para 5 (iv) is different. The division bench of the High Court has issued the said direction to the respondents to issue a notice to recover the cost of the

mineral mined from August, 1984 to 19.2.2010 (including the period 21.7.1998 to 11.4.2000). Significantly, there was no such direction by the learned Single Judge while dismissing the writ petition filed by the petitioners. The division bench while dismissing the writ appeal by the writ petitioners has added the said direction, without there being an opportunity to the writ petitioners-appellants to have their say on that issue. We find that in pursuance of the interim order dated 29.9.1988 in W.P.No.11475/1988, the petitioners were continuing their mining activities and were duly paying the seigniorage charges and royalty to the respondents, in regard to the mineral extracted and transported. Even if we do not take note of the claim of the petitioners that an industry was in fact established by them in the year 1990 and thereby the condition regarding utility for own use was complied with, there was no justification, on the facts and circumstances to issue such a direction, except of course, in regard to the period 21.7.1998 to 11.4.2000 which was the subject matter of the two writ petitions which were dismissed.

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8. Having regard to the fact that the mining activities were carried on by the petitioners in pursuance of the interim order of the High Court by paying the seigniorage charges and royalty regularly, and the fact that the learned Single Judge had not issued such a direction and the writ appeal before the division bench was by the writ petitioners and not by the State, the consequential direction by the High Court to issue a show cause notice for the recovery of the cost of mineral mined from August, 1984 to date of the order of the High Court (excluding the period from 21.7.1998 to 11.4.2000) was neither warranted nor justified. The said consequential direction is therefore deleted.

9. The dismissal of the two writ petitions - W.P.

No.19657 and 19658 of 2001 - challenging the orders dated 2.6.2000 and 31.5.2001, confirms the liability to pay the value of the ore excavated when the stay was not in force. But it is clarified that petitioners may point out any error with reference to the quantum or seek adjustment of the amounts paid as royalty and seigniorage charges during that period.

10. If the petitioners do not deliver possession of the leased land in pursuance of the order of the High Court,
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the State is entitled to take such steps as are necessary to recover possession of the land. It is further made clear that the aforesaid dismissal of the writ appeal will not come in the way of the petitioners' pursuing any application pending before any authority in accordance with law.

11. Special Leave Petitions are disposed of accordingly.

.....J.

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(R V Raveendran)

New Delhi;
.....J.
March 19, 2010.

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(K S Radhakrishnan)