

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 3.2.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.1170 and 1171 of 2015
and
M.P.No.1 of 2015

Thiru.D.Babu Reddy
Proprietor of
Tvl.Seenivasa Brick Works
Subbareddypalayam Village
Ponneri Taluk
Thiruvallur District
Petitioner in W.P.No.1170/15

Thiru.B.Jayakumar
Proprietor of
M/s.Parasakthi Brick Works
Subbareddypalayam Village
Ponneri Taluk
Thiruvallur District
Petitioner in W.P.No.1171/15

vs.

- 1 The District Collector
Thiruvallur District Thiruvallur.
- 2 The Revenue Divisional Officer
Ponneri Ponneri Taluk
Thiruvallur District Respondents in both the cases

Prayer in W.P.No.1170 of 2015

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of the 1st respondent's proceedings bearing Na.Ka.No.838/2013/Mines-1 dated 18.11.2014 pertaining to petitioner's lease hold patta lands comprised in Survey Nos.433/3, 434/2, 3 and 435/1A 1C, 2 situated in Vallur-2 Village, Ponneri Taluk, Thiruvallur District, quash the same and consequently direct the respondents not to interfere with the lawful quarrying operations of the petitioner in the subject lands till the expiry of the licence

period i.e., 14.7.2015.

Prayer in W.P.No.1171 of 2015

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of the 1st respondent's proceedings bearing Na.Ka. No.716/2013/ Mines-1 dated 18.11.2014 pertaining to petitioner's lease hold patta lands comprised in Survey Nos.423/4B and 433/1A situated in Vallur-2 Village, Ponneri Taluk, Thiruvallur District, quash the same and consequently direct the respondents not to interfere with the lawful quarrying operations of the petitioner in the subject lands till the expiry of the licence period i.e., 14.7.2015.

For Petitioner : Mr.K.Ramakrishna Reddy

For Respondents : Mr.T.N.Rajagopalan, Special Govt. Pleader

COMMON ORDER

Petitioners has come forward with the aforesaid prayer.

2. The only point raised by the petitioners is that the impugned orders have been passed without issuing a show cause notice. According to them, there is a clear case of violation of principles of natural justice and the orders have got to be set aside.

3. The respondents filed a detailed counter denying the averments of the petitioners and that permission has been granted to quarry and the petitioners had illicitly quarried 1052 lorry loads of earth around High Tension electric tower located in Ponneri Taluk on account of which, there is a possibility of electric tower being affected. The petitioners had stated that they have not involved in such an action and it is open to the respondents to take appropriate action against the persons who are responsible for such quarrying but, anyhow, there was no opportunity of hearing given to the petitioners.

4. Learned Special Government Pleader would submit that there is a provision under section 36-H of the Tamil Nadu Mines and Minerals

Concession Rules for filing appeal and if still they are aggrieved after disposal of appeal, they could file second appeal as contemplated under the same section and they cannot approach this court directly seeking interference of this court.

5. Rule 36(5) (h) of the said Rules reads thus:-

"In case of breach by he 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."

Rule 36-C of the said Rules reads thus:-

"Appeal and Second appeal-- (1) Any person aggrieved by any order of the Joint Director, Deputy Director or Assistant Director (Geology and Mining) or any authority subordinate to him in the district office of the Department of Geology and Mining or Revenue Divisional Officer or Tahsildar or Deputy Tahsildar in the Revenue Department or Commissioner of Municipalities and Corporations, Executive Officers of Town Panchayats and Townships and Presidents of Village Panchayats made in exercise of the powers conferred on him by these Rules or in exercise of any of the powers delegated to him under the provisions of these Rules may within 30 days from the date of receipt of the order, prefer appeal to the District Collector concerned against such order. In case, the aggrieved person is not satisfied with the decision of the District Collector he may prefer a second appeal to the Director of Geology and Mining within 30 days from the date of receipt of the order of the District Collector.

(2) Any person aggrieved by any order made by the District Collector in exercise of the powers

conferred on him by these Rules, except on appeals under sub-rule (1) may, within 30 days from the date of communication of the order to him, appeal to the Director of Geology and Mining against such order. In case, the aggrieved person is not satisfied with the decision of the Director of Geology and Mining, he may prefer a second appeal to the State Government within 30 days from the date of receipt of the order of the Director of Geology and Mining.

(3) Any person aggrieved by any order made by the Director of Geology and Mining in exercise of the powers conferred on him by these Rules, may, within 30 days from the date of receipt of the order, appeal to the State Government."

A reading of the above provision makes it clear that in case there is a breach by the quarrying permit holder mentioned therein, the officer concerned is entitled to impose any penalty for such breach including cancellation of lease, but, after affording an opportunity of hearing to the said person who is likely to be affected.

6. In these cases, orders have been passed without issuance of show cause notice. Even though in the counter, the respondents have referred to the clause of the agreement to the effect that if there is any violation of the conditions, the licence would be cancelled forthwith, the said contention cannot run to counter the rules extracted above. Since the petitioners have not been given an opportunity, the impugned orders are set aside.

7. The petitioners are directed to treat the impugned order as show cause notices and give reply within a period of seven days from the date of receipt of copy of this order. The petitioners also appear before the authority in person on 20.2.2015 wherein they are entitled to make their submissions in support of their contention. In case if they fail to avail this opportunity, it is open to the authority to pass orders within a week from 20.2.2015. This court makes it very clear that if the petitioners fail to avail this opportunity for any reason whatsoever, it is open to the authority to proceed in accordance with law. If there is any proceeding with regard to imposing of penalty, that is an independent proceedings

which has not been considered by this court in these writ petitions. In any way, the petitioners shall not carry on the quarrying beyond the time granted in the agreement unless otherwise it is extended by the authorities specifically.

8. The writ petitions are disposed of accordingly. No costs. The connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

To

1 The District Collector
Thiruvallur District Thiruvallur.

2 The Revenue Divisional Officer
Ponneri Ponneri Taluk Thiruvallur District.

+2cc to Mr.K.Ramakrishna Reddy ,Advocate SR.No.5377,5378/15
+1cc to Govt. Pleader SR.No.5656/15

W.P.Nos.1170 & 1171 of 2015

AK(co)
PMK 25.2.2015

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