

IN THE HIGH COURT OF JUDICATURE AT MADRAS

C.A.V. 03.09.2014

DATED: 27.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.9185 of 2003

N.Rajendran ... Petitioner

Vs.

The Sub Collector,
Pollachi,
Coimbatore District. ... Respondent

Prayer:Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the respondent herein relating to the order passed Ref. No.K.Dis. 13268/00-A2, dated 17.2.2003 and quash the same.

For Petitioner : Mr.V.Sanjeevi

For Respondent : Mr.M.S.Ramesh
Additional Government Pleader

O R D E R

The brief facts of the case are as follows:

The petitioner has submitted that the District Collector, Coimbatore in Coimbatore District Gazette Extraordinary Issue No.19, dated 19.05.1995 called for tenders from the public for granting lease to quarry stones from the poramboke lands for a period of 5 years under Rule 8 of the Tamil Nadu Minor Mineral Concession Rules, 1959. He along with two others submitted the tender applications with reference to the poramboke lands bearing Survey No.533 Part measuring an extent of 0.35.0 hectares in Myvadi Village, Udumalpet Taluk. After considering his tender amount, the District Collector, Coimbatore in his proceedings in Na.Ka.No.70967/95/, dated 20.8.1995 granted lease to him for a period upto 31.3.2000 from the date of execution of the lease deed. The lease deed came to be executed only on 30.8.1995. He started the quarry operation from the date of execution of the lease deed. He quarried stones from the leasehold area and transported the materials after obtaining the transport permits from the authorities of Department of Geology and Mining.

Since there was a shortfall of four months for completing the block period of 5 years, he filed a writ petition in W.P.No.9336 of 2000 before this Court seeking to issue a Writ of Mandamus directing the District Collector, Coimbatore to permit him to quarry stones for the said period of 4 months for completing the 5 years lease period. In the order dated 20.6.2000, this Court has been pleased to allow the writ petition. In pursuance of the order of this Court, the District Collector, Coimbatore in his proceedings in Na.Ka.No.755/2000/M.M.2, dated 4.8.2000 extended the lease period till 27.11.2000 for completing the full period of lease. The lease period expired on 27.11.2000. He confined the quarry operation only to the leasehold area. The authorities pertaining to the Department of Geology and Mining, Coimbatore and the District Collector, Coimbatore did not find any fault whatsoever in his quarry operation from 20.8.1995 till the expiry of the lease period. He observed the provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959 and the conditions of lease strictly without giving any room or complaint of violation whatsoever.

2. That being the above position, to his utter shock and surprise, the respondent herein sent the show cause notice in Ref.Na.Ka.No.13268/00 A2, dated 20.11.2000 wherein he was called upon to show cause within a period of 7 days as to why a sum of Rs.38,44,400/- (Rupees thirty eight lakhs forty four thousand and four hundred only) representing the cost of mineral and penalty for quarrying 5492 lorry loads of stones from Survey No.533 without permission, shall not be levied and recovered from him. In the show cause notice referred to above, it was alleged that the Sub-Collector, the respondent herein, inspected the leasehold area on 10.11.2000 at 11.00 a.m. with his subordinates; that during inspection, it was found that the stones were quarried in an extent of 2.76.0 hectares without permission; that the photographs were taken from the area showing the quarried area without permission; and that the stones to the extent of 30590.4 cubic meters were found to be quarried in the unassessed poramboke land bearing Survey No.533 in Myvadi Village. In the notice, there was no allegation whatsoever that he was found to have indulged in mining in the non-leasehold area. He was totally unaware of the inspection alleged to be made to the leasehold area and he was not put on any notice about the alleged inspection. He has nothing to do with the allegation made in the show cause notice. He sent a reply to the show cause notice on 27.11.2000 wherein he stated that he had not quarried stones in any area except the leasehold area and there was no necessity for him to indulge in illicit mining; that his quarry operation was confined to the leasehold area measuring an extent of 0.35.0 Hectares; that the entire extent of 3.11.0 Hectares in the survey filed (SF No.533) was put to quarry operation earlier from the year 1981 till the year 1994 and thereafter in the year 1995, the District Collector restricted the area for grant of lease to 0.35.0 Hectares out of 3.11.0 Hectares

in S.F.No.533 in Myvadi Village for quarrying operation and tenders were called for and that merely because that the pits existed in Survey No.533, it cannot be assumed that he quarried the stones. In the show cause notice, the respondent referred to the letter of the Tahsildar, Udumalpet dated 16.11.2000, a copy of which was not served on him. A copy of the inspection report of the respondent and the photographs said to have been taken during the inspection were also not supplied to him. He requested the respondent to furnish the following documents so as to enable him to file his detailed reply:-

- 1) Report of the Tahsildar dated 16.11.2000
- 2) Inspection report of the Sub Collector dated 10.11.2000
- 3) Measurement statement
- 4) Photographs said to have been taken during inspection
- 5) Any other statements relied upon for the action.

3. He has submitted that in the reply, he requested the respondent to drop the action pursuant to the show cause notice in view of the above facts and circumstances, otherwise he requested that a detailed enquiry may be held by examining the persons with reference to the materials relied upon to prove the truth and that he may be given an opportunity of hearing in the enquiry. Without even furnishing the documents, he was called upon to attend the enquiry on 04.12.2000, 08.12.2000 and 18.12.2000. The respondent failed to supply the copy of the documents sought for by him despite the specific written request dated 27.11.2000 and 8.12.2000 in addition to the oral request made on 4.12.2000, 08.12.2000 and 18.12.2000. The respondent declined to furnish copy of the document. Without considering his explanation, without furnishing copy of the documents and without holding an enquiry much less the proper and fair enquiry, the final order was passed hastily imposing a penalty of Rs.34,75,200/- (Rupees thirty four lakhs seventy five thousand and two hundred only) representing the penalty and value of the stones as detailed below:-

"as per rule 36(A) (I) and
36(A) (3) of the Tamil Nadu Minor
Mineral Concession Rules 1959

Stones taken from the rocks in : 32266.5 Cubic metres
S.F.No.533/2, 533/3 5.5. C.M. Or
5792

Seigniorage fee @ Rs.100/- per : Rs.5,79,200.00
loads for 5792 loads

Market value of one load at : Rs.17,37,600.00
Rs.300/- for 5792 loads.

2 times penalty on seigniorage : Rs.11,58,000.00
amount of Rs.579200x2

Rs.34,75,200.00

4. He has submitted that the entire order is on surmises and conjectures. After concluding the enquiry purported to be held on 18.12.2000, the respondent sought the report from the Tahsildar, Udumalpet and correct measurement regarding the actual quantity of stones alleged to be quarried without valid permission from the above said lands. In turn, the Tahsildar, Udumalpet in his letter in Ref.No.18392/00 B1, dated 05.01.2001 appears to have furnished the report that he illicitly mined in 6 places in SF No.533 in Myvadi Village without any valid permission as detailed therein. He was unable to understand as to how and on what basis the Tahsildar has submitted such a report connecting him with the illicit mining. The Tahsildar is not competent and technically qualified to assess the quantum of minerals alleged to have been quarried in 6 places. The Tahsildar reported some allegations against him behind his back and he was not put on notice about the inspection to the area in question by the Tahsildar. Even the copy of the said report of the Tahsildar dated 05.01.2001 procured after the so called enquiry held on 18.12.2000 was not even supplied to him. The report of the Tahsildar dated 05.01.2001 was cited in the reference in the order. The final order of the respondent fastening him with the penalty of illicit mining is only pursuant to the said report. The respondent erroneously assumed that the actual quantum of stones quarried in the permitted area works out to 685 loads only, but he received permits for 5295 loads from the Assistant Director of Geology and Mining, Coimbatore and that the difference of 4610 loads were illegally quarried in the non-permitted area. The order of the respondent aforesaid was totally illegal, arbitrary and is in violation of the principles of natural justice. This is only on assumption. In the above circumstances, he filed a writ petition before this Court seeking to issue a writ of Certiorari calling for the records of the respondent herein relating to the order passed in Ref. No.13268/00-A2, dated 17.01.2001 and quash the same. In the order dated 19.9.2001, this Court has been pleased to set aside the order of the

respondent and remitted back the matter to the respondent with certain directions. The operative portion of the order of this Court contained in paragraphs 3 and 4 reads as follows:-

"3. So, without going into the merits of the case, the impugned order is set aside and the matter is remitted back to the respondent, giving opportunity to proceed further after communicating the copies of the reports and inspection reports of Inspecting Authorities and thereafter giving opportunity to the petitioner to file his objections on the basis of the said report. The respondent is also directed to conduct inspection and take measurement in the presence of the writ petitioner or his representatives.

4. With the above direction, this writ petition is allowed. No costs. Consequently, WMP No.3582 of 2001 is closed."

5. He has submitted that the Revenue Divisional Officer, Pollachi in his Memorandum dated 24.4.2002 served the report of the Tahsildar, Udumalpet dated 16.11.2000 on him. Thereafter, in the memo dated 26.06.2002, the respondent herein required him to be present on the land bearing Survey No.533 in the afternoon of 10.07.2002 stating that the respondent shall proceed to inspect the area and survey the land with Surveyors. In the said memorandum dated 26.06.2002, it was stated that in the notice dated 24.5.2002, he was directed to furnish reply on the inspection report of the Tahsildar, Udumalpet dated 16.11.2000 within 15 days from the date of the notice and he has not submitted his objection to the said report of the Tahsildar. As a matter of fact, he has not received any memo or notice dated 24.5.2002 requiring him to submit his objection to the report of the Tahsildar. Pursuant to the notice dated 26.06.2002, he was present on the site on 10.7.2002 from 11.00 a.m. till 7.00 p.m. Nobody turned up for inspection as stated in the memo dated 26.6.2002. Thereafter, he has not received any notice for inspection and no notice of inspection was served on him. But, it appears that the respondent along with the Assistant Director of Geology and Mining, Coimbatore inspected the spot on 20.8.2002 without any notice whatsoever. His brother, Thiru.Elango happened to be present at the Crusher which is situated near the area and he was asked to come there and that is how, his brother happened to be present on 20.08.2002 during the inspection of the respondent. He is not his representative. Neither he was informed nor he was present at the time of inspection. He has not authorised anybody to be present at the time of inspection.

6. He has submitted that in the final order of the respondent, reference was made to the effect that the individual was given opportunity and he was asked to give his objection if any and further, the Sub Collector, Pollachi along with the Assistant

Director of Geology and Mining, Coimbatore inspected the spot on 20.8.2002 after giving due notice to the writ petitioner. But, as a matter of fact, he has not received any notice dated 24.05.2002 as cited in the reference No.4 of the order of the respondent. He has also not received the notice dated 12.8.2002 for the inspection to be conducted on 20.08.2002. But, on the contrary, the respondent inspected the spot on 20.08.2002 without giving notice to him (the writ petitioner) and without his presence. He has received only the notice dated 26.6.2002 for the inspection to be conducted on 10.7.2002. But the inspection was not made on the said date viz. 10.7.2002, but on the contrary, the inspection was said to be made on 20.8.2002 without notice to him and without his presence. Even after the said inspection, the respondent failed to furnish him copy of the inspection report pursuant to the inspection held on 20.8.2002. Without even conducting any enquiry and giving fair opportunity to him, the respondent passed the present impugned order dated 17.02.2003 after 6 months. By a perusal of the order of the respondent, it is clear that the respondent has not proceeded the matter afresh pursuant to the order of this Court, but rather he proceeded as an appellate authority to see that the earlier order dated 17.1.2001 is correct even though the earlier order dated 17.01.2001 was set aside by this Court and it is not the subject matter of the enquiry before the respondent herein. The order of the respondent is wholly illegal, arbitrary and violative of the basic principles of natural justice. The respondent failed to follow to the direction of this Court.

7. He has submitted that the power to impose the penalty is vested with the District Collector originally under sub Rule 1 of Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959. In G.O.Ms.No.3, Industries, dated 2.1.1998, the proviso is introduced to sub rule 1 of Rule 36-A to the effect that in respect of minor minerals namely building and road construction stones including gravel, ordinary sand, earth and turf, ordinary clay including silt, brick and tile clay, the powers and duties exercisable and dischargeable by the District Collectors under the sub rule shall be exercisable and dischargeable by the Revenue Divisional Officer concerned within the respect jurisdiction. Therefore, the Sub Collector or the Revenue Divisional Officer, as the case may be, by exercising the powers of the Collector passed the order and so, there cannot be an effective appeal before the District Collector against the order of the respondent. That apart, no enquiry was held and no opportunity of personal hearing was afforded to him pursuant to the order of this Court. The order is in gross violation of the basic principles of natural justice. In the above circumstances, he has filed this writ petition.

8. The respondent has filed counter statement stating that the petitioner, Thiru.N.Rajendran of Udumalpet Taluk, Coimbatore District, was granted a quarry lease to quarry stones in Government Poramboke land in S.F.No.533/1 of Myvadi Village, Udumalpet Taluk, Coimbatore District over an extent of 0.35.0 hectare, in Coimbatore District Collector's Ref. No.70967/95/L.6 dated 20.08.1995, for the period from 20.08.1995 to 27.11.2000 under Tamilnadu Mines and Minerals Concession.

9. The respondent has submitted that during the course of inspection of the above quarry on 10.11.2000 by the then Sub Collector, Pollachi along with the Tahsildar, Udumalpet, Revenue Inspector, Madathukulam, Village Administrative Officer, Myvadi and Firka Surveyor Madathukulam, it was detected that the lessee/petitioner has also done quarrying operations in Government poramboke lands situated in S.F.No.533/2 and 533/3 of Myvadi Village, Udumalpet Taluk. Over an extent of 2.76.0 hectares that is in the area for which no permission was granted to him. As lessee/petitioner has violated the conditions of the lease granted to him under Tamilnadu Mines and Minerals Concession Rules, 1959, a penalty of Rs.34,75,200/- has been ordered to be imposed as penalty for the value of stones removed by him, as per rule 36A(1) and 36(a) (3) of the Tamilnadu Mines and Minerals Concession Rules 1959, in this office proceedings in Ref.No.13268/00/A2. Dated 17.1.2001 and aggrieved by the said order, the lessee/petitioner has filed a writ petition in W.P.No.2647/2001 before this Court calling for the records of the respondent, viz., the Sub Collector, Pollachi relating to the order passed in Ref.No.13268/2000/A2 Dt. 17.1.2001 and quash the same.

10. The respondent has submitted that this Court, in its W.P.No.2647/01 and W.M.P.No.3582/01 Dt. 19.9.01 has ordered as follows:-

"So, without going into, the merits of the case, the impugned order is set aside and the matter is remitted back to the respondent, giving opportunity to proceed further after communicating the copies of the reports and inspection reports of Inspecting Authorities and thereafter giving opportunity to the petitioner to file his objections on the basis of the said report. The respondent is also directed to conduct inspection and take measurement in the presence of the writ petitioner or his representative."

Further, the respondent has submitted that after complying with above said, directions of this Court, Orders has been passed in this office proceedings in K.Dis.13268/00/A2 dated 17.2.2003 confirming

the previous orders passed in this office proceedings in Ref.No.13268/00/A2.dt:17.1.2001 and the lessee/petitioner has been directed to remit the penalty amount of Rs.34,75,200/- as already levied.

11. The respondent has submitted that aggrieved by the present order also, the petitioner has filed this Writ petition in W.P.No.9185/03 before this Court and this Court has granted interim stay till 11.4.2003 in its order in W.M.P.No.11709/2003 in W.P.No.9185/2003 dated 25.03.2003.. In para No.2 of the Affidavit, the petitioner has stated that he quarried stones from the lease hold area and transported the materials after obtaining transport permits from the authorities of Department of Geology and Mining. The petitioner has further contended that he confined the quarry operation only to the lease hold area and the authorities pertaining to the Department of Geology and Mining, Coimbatore and the District Collector, Coimbatore did not find any fault whatsoever in his quarry operation from 20.8.1995 till the expiry of the lease period. If so, the petitioner can very well putforth his grievances before the appellate authority viz., the District Collector, Coimbatore as necessary appeal provision has been given to him in the orders passed by the Sub Collector, Pollachi in Ref.No.13268/00/A2 dated 17.1.2001 and also in Ref.No.13268/00/A2 dated 17.2.2003.

12. The respondent has submitted that the contrary to the contention made by the petitioner, he has stated that there cannot be an effective appeal before the District Collector against the order of the respondent viz., the Sub Collector, Pollachi as the Sub Collector, Pollachi, or the Revenue Divisional Officer, as the case may be, by exercising the powers of the Collector passed the order. The petitioner was granted the quarry lease to quarry stone from the Government poromboke land, by the District Collector, Coimbatore and quarried the stones from the leasehold area and transported the materials after obtaining transport permits from the authorities of Department of Geology and Mining, Coimbatore, and hence the petitioner has got every constitutional right to put forth his appeals before the appellate forums, that is the District Collector, Coimbatore and the Government of Tamilnadu and get suitable remedy. Without exhausting the appeal sources before the appellate forums the petitioner has moved this Court, which is not in accordance with law. Hence, it was prayed to dismiss the writ petition.

13. The learned counsel appearing for the petitioner has submitted that the District Collector, Coimbatore, called for tenders from the public for granting lease to quarry stones from the Poromboke lands for a period of five years, under Section 8 of the Tamil Nadu Minor Mineral Concession Rules, 1959. The petitioner had submitted his tender application in respect of the Poromboke land in Survey No.533 of Myvadi Village and the District Collector had

granted lease to the petitioner to carry on quarry operation upto 31.03.2000. But, the Lease Deed was executed only on 30.08.1995 and he started the quarry operation from that date. Since there was a shortfall of four months for completing the block period of five years, he had approached this Court by filing W.P.No.9336 of 2000 with a prayer to direct the District Collector to permit him to carry on quarry operation for the shortage period of four months. This Court, by Order, dated 20.06.2000, allowed the writ petition and directed the District Collector to permit the petitioner to carry on quarry operation till 27.11.2000. The petitioner, without any default, carried on quarry operation. In such circumstances, the respondent had issued a show-cause notice to the petitioner demanding a sum of Rs.38,44,400/- towards penalty for illegal quarry of 5492 lorry loads of stones in Survey No.533. Further, the respondent had inspected the quarry site without prior notice to the petitioner. The petitioner had not carried on quarry operation in any area except the leasehold area.

14. Further, the learned counsel has submitted that the pits existed in Survey No.533 cannot be assumed that the petitioner quarried the stones. The copy of the inspection report and photographs taken by the respondent have not been given to the petitioner as well as the concerned Tahsildar. The petitioner had also requested the respondent to conduct a comprehensive enquiry. The respondent, without furnishing relevant evidence and without considering the petitioner's explanation, passed a fresh order, demanding Rs.34,75,200/- towards penalty. Further, the respondent sought the report from the Tahsildar, attached to Udumalpet Taluk Office, who inturn had submitted a report stating that the petitioner had illicitly carried on quarry operation in six places. Based on the arbitrary report of the Tahsildar, the impugned order has been passed. Hence, the learned counsel has prayed this Court to set aside the impugned order.

15. The learned Additional Government Pleader appearing for the respondent has submitted that the petitioner was granted lease to quarry stones in the Poromboke lands. The lease period was from 20.08.1995 to 27.11.2000. On 10.11.2000, the respondent and his subordinates inspected the quarry site and found that the petitioner was carrying on quarry operation out of the leasehold area and as such, the petitioner had violated the conditions of the lease agreement. Hence, the respondent levied the penalty as per Rule 36 (a)(1) and 36(a)(3) of the Tamil Nadu Mines and Minerals Concession Rules. The said order had been challenged before this Court in W.P.No.2647 of 2001 and this Court, by Order, dated 19.09.2001, set aside the impugned order and directed the respondent to conduct a fresh enquiry, after providing reasonable opportunity to the petitioner. Accordingly, the respondent had complied with the direction of this Court and passed the final order on merits. If the

petitioner is not satisfied with the impugned order, he can very well prefer appeal before the District Collector.

16. Further, the learned Additional Government Pleader has submitted that the petitioner had illegally carried on quarry operation from 1995 to 2000. Therefore, the respondent had conducted a spot inspection in the presence of the petitioner's brother and passed the impugned order.

17. Considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court does not find any sufficient force in the writ petition, besides the impugned order has been passed after a spot inspection in the presence of the petitioner's brother. The very same order had been challenged by the same petitioner in W.P.No.12489 of 2003 and the same was also dismissed by this Court. In such circumstances, the writ petition is liable to be dismissed.

18. In the result, the writ petition fails and it is dismissed.
No costs.
vs/krk

Sd/-
Assistant Registrar (IV)

/True Copy/

Sub-Assistant Registrar

To:

The Sub Collector,
Pollachi,
Coimbatore District.

+1 C.C. To MR.V.Sanjeevi, Advocate in SR.NO.64490

W.P.No.9185 of 2003

BVR(CO)
sd : 21/12/2015