

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.26253 of 2015

MP.No.1/2015

K.Nehruprakash

Petitioner

Vs

- 1.The Government of Tamil Nadu represented by its  
Additional Chief Secretary to Government  
Industries Department, Fort St.George, Chennai-9
- 2.The Commissioner of Geology and Mining  
Guindy, Chennai-32
- 3.The District Collector, Tuticorin
- 4.The Revenue Divisional Officer, Kovilpatti  
Tuticorin District

Respondents

5.

Prayer:- This Writ Petition is filed to issue a Writ of Certiorari to call for the records of the 1st Respondent in GO (D)No.119 Industries (MMC.1) Department, dated 1.7.2015, confirming the orders of the Respondents 2, 3 and 4, passed in proceedings Ref.Rc.No.4296/MM2/2013, dated 29.4.2014, Ref.Rc.GM.1/601/2012, dated 8.4.2013 and Na.Ka.A2-9222-2012, dated 21.12.2012, respectively and to quash the same.

For Petitioner : Mr.V.Sanjeevi

For Respondent : Mr.T.N.Rajagopalan, SGP

ORDER

In this Writ Petition, the Petitioner seeks to quash the proceedings of the 1st Respondent, dated 1.7.2015, confirming the orders of the Respondents 2, 3 and 4, dated 29.4.2014, 8.4.2013 and 21.12.2012, respectively, imposing penalty for the alleged excess quarry.

2. The case of the Petitioner is as follows:-

a. Pursuant to the petitioner's application dated 27.09.2007 for grant of quarry lease for quarrying Quartzite and Gravel (Minor Mineral) from the patta land bearing SF.No.555/1C1 to an extent of 4.04.5 Hectares in Ottapidaram Village and Taluk, Thoothukudi District, the 4th Respondent and the Assistant Director of Geology and Mining, Thoothukudi inspected the area and recommended for grant of quarry lease for a period of 5 years, by their reports dated 10.12.2007 and 12.5.2009, based on which, the 3rd Respondent, by proceedings Roc.No.G.M.1/1222/2007 dated 29.6.2009, granted a quarry lease to the petitioner for quarrying and transportation of Quartzite and Gravel for a period of 5 years under the provisions of Rule 19(1) and 20 of Tamil Nadu Minor Mineral Concession Rules, 1959 and the lease agreement was executed on 29.6.2009 for a period of 5 years, commencing from 29.6.2009 and ending with 28.6.2014. Pursuant to the said lease agreement, the Petitioner started the quarrying operation and transported the minerals, after getting transport permits issued by the 2nd Respondent Department periodically. So far, the Petitioner quarried only 1/3<sup>rd</sup> of the leasehold land and 2/3<sup>rd</sup> portion of the land remains unquarried.

b. Based on a third party's petition, dated 25.9.2012, the 3rd Respondent issued directions for inspection, based on which, on 26.9.2012, the Assistant Director of Geology and Mining, Thoothukudi, the Tahsildar, Ottapidaram Taluk and the Surveyors inspected the area and the Assistant Director of Geology and Mining prepared a statement on his own and got the Petitioner's signature, acknowledging the factum of inspection only. The Petitioner did not know the actual contents of the said statement. The Assistant Director of Geology and Mining appears to have reported that the permitted quantity for the quartzite was 1237 units and the permitted quantity for Saral was 25738 units, but the quarried quantity of Quartzite was 3296 units and the quarried quantity of Saral was 62617 units and the excess quantity of Quartzite was 2059 units and the excess quantity of Saral was 36879 units. The report appears to have further stated that there was 150 meter length, 103.8 meter breadth and 12.7 meter depth -197739 Cu.M. Or 65913 units quarried. Based on the said report and the measurement details of the Assistant Director of geology and Mining, the 3rd Respondent by letter in Ref.No.Naka.2/601/12 dated 6.11.2012, directed the 4th Respondent to impose the penalty for the alleged excess quantity under Rule 36A(1) of the Tamil Nadu Minor Mineral Concession Rules, 1959. Thereafter, 4th Respondent, by notice dated 23.11.2012, required the petitioner to show cause as to why the penalty of Rs.1,09,63,850/- shall not be imposed for such excess quarrying and removal without permit. In the said notice, the market value of the above

quantity and seigniorage fee for the above said quantity are all mentioned and letter dated 6.11.2012, directing the imposition of penalty, was also clearly referred to and relied upon. Therefore, it is clear that the 4th Respondent predetermined to impose the penalty for the said alleged quantity, which was fortified by the final order passed by the revenue Divisional Officer, without considering the request for re-survey and without holding an enquiry. The order of the 4th Respondent imposing penalty, having acted under direction, is unsustainable and illegal.

c. After receipt of the show cause notice dated 23.11.2012, the Petitioner sent a representation to the 3rd Respondent on 14.12.2012, stating that he quarried the mineral only from the leasehold land (his patta land) and transported the mineral only on payment of seigniorage fee with transport permit and requested him to order re-inspection and re-measurement, since the measurements taken by the Assistant Director of Geology and Mining, on 26.9.2012, was not correct. No notice of inspection was given to him for the inspection made on 26.9.2012. The Petitioner also sent a representation dated 14.12.2012 to the 4th Respondent, stating that he already requested the 3rd Respondent for resurvey and requested for stay of all proceedings till the land is resurveyed. The Petitioner sent another representation dated 19.12.2012 to the 4th Respondent, stating that he had quarried the mineral and transported the same only on payment of seigniorage fee and that the proposed penalty is based on the wrong measurements and that even if, in resurvey, it has been found that he had quarried in excess, he is prepared to pay the differential seigniorage fee for the excess quantity.

d. The 4th Respondent, without reference to his representation dated 19.12.2012 requesting for resurvey and without holding an enquiry, by the impugned order dated 21.12.2012, imposed the penalty of Rs.1,09,63,850/- (cost of mineral + seigniorage fee) under Rule 36A(1) for the alleged excess quantity of 2059 units of Quartzite and 36879 of units of Saral under Rule 36A(1) of the Tamil Nadu Minor Mineral Concession Rules, 1959. Since the 3rd Respondent, did not order for resurvey, the 4th Respondent confirmed the penalty mentioned in the show cause notice dated 23.11.2012. No inspection report (copy) was furnished to him and no enquiry was held, before imposing the penalty. In the meanwhile, the 3rd Respondent, by notice dated 21.12.2012, required him to show cause against the violation of lease conditions, to which, the Petitioner submitted a detailed reply dated 12.1.2013 denying the correctness of the averments regarding violation of lease conditions. However, by order dated 10.6.2014, the 3rd Respondent, cancelled the lease, against which a statutory appeal has been preferred to the Commissioner of Geology and

Mining, Chennai and the same is pending.

e. As against the order of the 4th Respondent, dated 21.12.2012, imposing the penalty of Rs.1,09,63,850/-, the Petitioner filed an appeal before the 3rd Respondent on 23.1.2013, who by order dated 8.4.2013 rejected the appeal and modified the penalty portion, deleting the cost of mineral and imposed two times of seigniorage fee for the alleged excess quantity of 2059 units of Quartzite and 36879 units of Saral (gravel) under rule 36A(5) of the Tamil Nadu Minor Mineral Concession Rules, 1959. As against the order of the 3rd Respondent, the petitioner filed the second appeal before the 2nd Respondent, who by order dated 29.4.2014, rejected the second appeal and upheld the orders of the 3rd Respondent. Against the said order, the Petitioner preferred a revision petition on 24.6.2014 before the 1st Respondent under Rule 40 of the Tamil Nadu Minor Mineral Concession Rules, 1959. The Petitioner received the Notice in Ref.Letter No.8528/MMC.1/2014-4, dated 13.1.2015, whereby the Petitioner was required to appear for personal hearing on 28.1.2015 at 3.00 p.m. In compliance with the above notice, the Petitioner along with his counsel appeared before the Additional Secretary to Government, Industries Department, Chennai, on 28.1.2015 at 3.00 p.m. At this juncture, the 4th Respondent levied one time of seigniorage fee for the alleged excess quantity and further levied Rs.25,000/- as penalty and also directed the recovery of the cost of the alleged quantity. But, the 3rd Respondent deleted the portion of the order of the 4th Respondent, directing the recovery of the cost of mineral for the reason that there was no unauthorized quarrying and the quarrying was within the leasehold area, but levied two times of seigniorage fee for the alleged quantum in the place of one time of seigniorage fee with Rs.25,000/- levied by the 3rd Respondent. In the appeal filed by the petitioner, the 3rd Respondent cannot increase the penalty, by adding one time seigniorage fee. In the Revision Petition, the petitioner has raised the additional ground that the order of the 3rd Respondent, levying two times of seigniorage fee in the place of levy of one time of seigniorage fee levied by the Revenue divisional officer, Kovilpatti in the appeal filed by him, is contrary to law and unsustainable. If the 3rd Respondent wants to impose any enhanced punishment/penalty, he has to issue a notice/opportunity and he can reduce the penalty in his appeal, but he cannot enhance the penalty. The 1st Respondent, without properly considering the grounds of Revision Petition, additional grounds raised by the petitioner and the submissions made during the personal hearing held on 28.1.2015, rejected the Revision Petition by the impugned order vide G.O.(D).No.119 Industries (MMC.1) Department dated 1.7.2015. Hence, this Writ Petition has been filed for the relief as stated above.

3. The learned counsel for the Petitioner contended that the impugned order is not sustainable, inasmuch as the Petitioner quarried the mineral in the leasehold area, there was no allegation by the Department that the Petitioner quarried in the non-leasehold area, the penalty imposed is only on assumption and based on wrong measurements and the Petitioner had quarried the mineral and transported the same only on payment of seigniorage fee. The learned counsel further submitted that there was no notice of inspection served on the Petitioner and that no copy of the inspection report was given to him and that the impugned order projects many errors of law apparent on the face of the record and prayed for quashing of the impugned order.

4. The learned Special Government Pleader for the Respondent submitted that there is no provision to waive penalty and that only after proper inspection and on various reports and following the due process of law, the penalty has been imposed on the Petitioner for the alleged excess of quarry without permit based on evidence, which warrants no interference and hence, prayed for dismissal of this Writ Petition.

5. This court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

6. The Petitioner was granted quarry lease as per procedures for a period of 5 years. After inspection and obtaining various reports, the 4th Respondent, imposed the penalty for the alleged quarry over and above the permitted quantity without permit. However, in the first appeal, the 4th Respondent, while rejecting the appeal, modified the penalty. In the second appeal, the 2nd Respondent confirmed the modified penalty, which was upheld by the 1st Respondent in the revision filed by the Petitioner.

7. According to the Petitioner, no notice of inspection was given for the inspection made on 26.9.2012 and no enquiry was conducted and no copy of the inspection report was given and his representations were not considered properly and there was no violation of the conditions and provisions of the Act and Rules.

8. On the other hand, it is the case of the Respondents that it was found on inspection that the Petitioner quarried in excess over and above the permitted quantity without obtaining proper permit and dispatch slip, as per Rule 36(5)(b) and accordingly, penalty has been imposed after following the due process of law.

9. It is seen from the records that in the affidavit, it is averred as follows:-

4. .... On 26.9.2012, the Assistant Director of Geology and Mining, Thoothukudi, the Tahsildar,

Ottapidaram Taluk and the Surveyors inspected the area and the Assistant Director of Geology and Mining prepared a statement on his own and got my signature.....

6. .... I signed the statement prepared by the Assistant Director of Geology and Mining, Tuticorin, .....

9. Though I was present during inspection in the area, I did not participate in the measurements....."

10. Further, in the representations of the Petitioner dated 14.12.2012 and 19.12.2012, requesting to resurvey on the ground that the measurements taken at the time of inspection were wrong, the Petitioner himself admitted that he quarried in his own patta lands. It is also seen from the File produced by the Respondents at Page 77 that the Petitioner himself admitted that only his workers have taken the alleged excess quantity of material.

11. In the impugned order dated 29.04.2014, it is observed as follows:-

4 (vii). ... A deep pit is noticed to the effect at quarrying. On examination of the pit, it reveals that the entire pit is consisting quartzite boulders and quartzite bearing red gravel soil. Big boulders of quartzite are seen here and there in the area applied for lease at surface level.

ix. ... during inspection on 26.09.2012, the authorities were accompanied by the Appellant, which is evident from the photographs produced by the Respondents which clearly indicates the date of inspection. Moreover, in the statement given by the Appellant, he has categorically stated that the Tahsildar, Ottapidaram, the Assistant Director (G&M) and surveyor had made a joint inspection in his quarry lease area and accepted the measurements..... and agreed to pay the penalty for excess removal. "

12. From the above admissions of the Petitioner and the findings of the Respondents, it is crystal clear that the Petitioner was present in the quarry premises at the time of field inspection on 26.9.2012 and that the measurements have been taken in his presence and he accepted the measurements in his statement recorded at the time of field inspection and accepted the depth of the pit as 40 feet in his statement.

13. For the proposition that when there has been no proper enquiry conducted or no personal hearing was conducted or

no materials were produced to show that the Petitioners were involved in illicit quarrying, there is violation of the principles of natural justice and the orders imposing penal liability on the Petitioners are not justified, various decisions of various Courts have been relied upon by the Petitioners, viz. 76 LW 76 (V.V.Shunmugha Nadar and Brothers Vs. The Joint Chief Controller of Imports and Exports, Madras ), AIR 1969 SC 48 (Orient Paper Mills Limited Vs. Union of India), 2008 7 SC 117 (Pancham Chand and others Vs. State of Himachal Pradesh), 2008 16 SCC 276 (Nagarjuna Construction Company Limited Vs. Government of AP), order dated 17.10.2003 in WP.2066 to 2071 of 1998, 2009 2 MLJ 577 (VSO Balakrishna and another Vs. District Collector, Tiruvallur), 2010 6 CTC 73 (S.Selvaarajan Vs. the Revenue Divisional Officer, Tiruvallur), 2012 1 CWC 451 (V.Kottaiveeran Vs. The District Collector, Madurai) and 2014 6 SCC 564 (Union of India Vs. Shiv Raj and others) .

14. In those cases relied on by the Petitioners, it was clearly proved that there was no proper enquiry or inspection. But, in the case on hand, it is not so. As already discussed above, from the categorical averments and the admissions of the Petitioner and the findings of the Respondents, as referred to above, it is clearly evident that in the presence of the Petitioner only, the inspection was conducted and measurements were taken. Therefore, the said contention of the Petitioner suffers from material infirmities.

15. Further, the Petitioner has not proved by valid documents that he directly did not involve in the illicit quarrying, as alleged by the Respondents. In other words, the Petitioner has not produced permit or dispatch slip to substantiate his case.

16. At this juncture, it is relevant to refer to the relevant provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959. Rule 36A reads as under:-

"36-A. Penalties: (1) Whenever any person contravenes the provisions of sub-section (1) of section 4 of the Act in any land, enhanced seigniorage fee upto a maximum of fifteen times the normal rate subject to a minimum of twenty five thousand rupees shall be charged and recovered from that person by the District Collector or the District Forest Officer as the case may be or in the alternative, he shall liable to be punished as provided in sub-section (1) of section 21 of the Act :

Provided 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 this sub-rule shall be exercisable and dischargeable by the Revenue Divisional Officer concerned within their respective jurisdiction.

(3) Whenever any person raises without any lawful authority any mineral from any land, the District Collector or the District Forest officer, as the case may be, may recover from such person the mineral so raised or where such mineral has already been disposed of, the price thereof, and may also recover from such person, area assessment, seigniorage fee or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority."

17. Similarly, Section 21(5) of the Minor Mineral Development and Regulations Act, 1957, reads as follows:-

"Penalties. 21(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority. "

18. In view of the above reasons and provisions of law, it can be held that the Petitioner quarried illicitly and accordingly, penalty has been imposed invoking Rule 36(A), which warrants no interference by this court.

19. In the result, this Writ Petition is dismissed. No costs. Consequently, the connected MP is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

1.The Government of Tamil Nadu represented by its Additional Chief Secretary to Government, Industries Department, Fort St.George, Chennai-9

2.The Commissioner of Geology and Mining, Guindy, Chennai-32

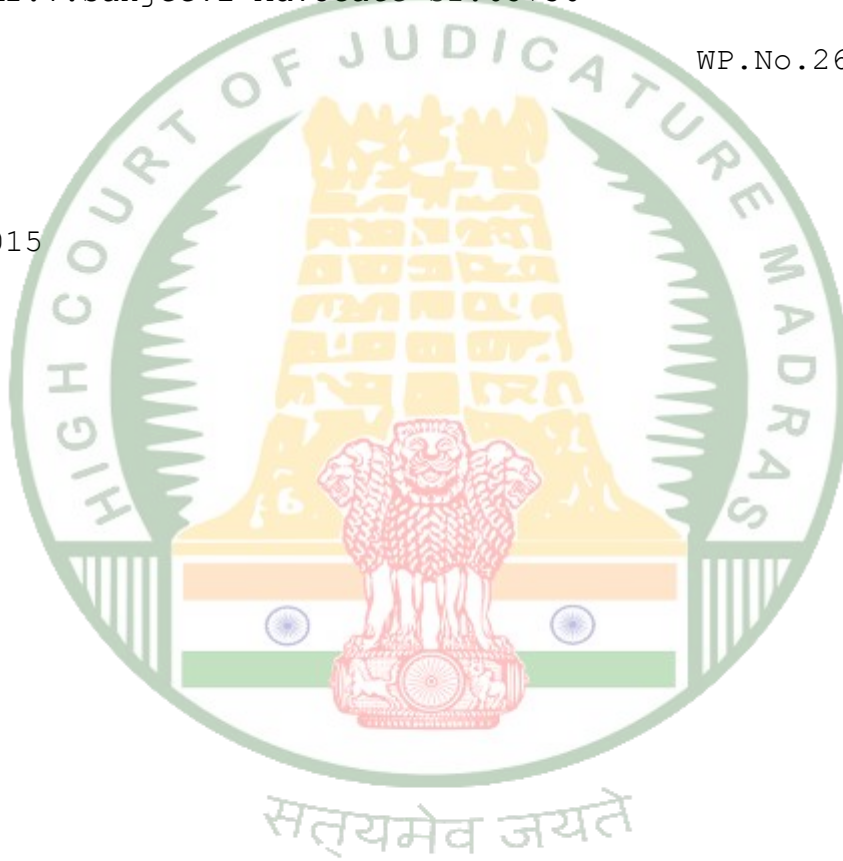
3.The District Collector, Tuticorin

4.The Revenue Divisional Officer, Kovilpatti, Tuticorin District

+1 cc to Mr.V.Sanjeevi Advocate sr.65736

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