

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.Nos.5460 and 5461 of 2015
MP.Nos.1 and 1 of 2015

1.D.Babu Reddy, Proprietor of Seenivasa Brick Works
Subbareddypalayam Village, Ponneri Taluk,
Tiruvallur

.....Petitioner in WP.5460/15

2.B.Jayakumar, Proprietor of Parasakthi Brick Works
Subbareddypalayam Village, Ponneri
Tiruvallur

.....Petitioner in WP.5461/15

Vs

The Revenue Divisional Officer, Ponneri
Tiruvallur District

Respondent in both WPs

Prayer:- These Writ Petitions are filed under Article 226 of the Constitution of India, for the relief as stated therein.

For Petitioners : Mr.K.Ramakrishna Reddy

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

ORDER

These Writ Petitions are filed to issue a Writ of Certiorari to call for the records relating to the proceedings in Na.Ka.No.4902/2014/A1, dated 07.01.2015 and quash the same.

2. The case of the Petitioners is that the District Collector, Thiruvallur District granted license to the Petitioners, by proceedings Mu.Mu.No.838/2013/ Mines-1 and Mu.Mu.No.716/2013/Mines-1, dated 15.07.2014, respectively to quarry and remove 5,753 cbm and 3429 cbm of brick earth from the lease hold patta lands comprised in Survey Nos.433/3, 434/2, 3 and 435/1A, 1C, 2 and 423/4B and 433/1A respectively, situated in Vallur-2 Vilagge, Ponneri Taluk, Thiruvallur District. The Petitioners were quarrying and removing brick

earth from the subject lands strictly by following rules and regulations. The said brick earth was removed and used in their brick chambers situated in Vellivoyal chavadi village, Ponneri Taluk, Thiruvallur and Subbareddypalayam Village, Ponneri Taluk, Tiruvallur. While so, the District Collector, by proceedings in Na.Ka.838/2013/Mines-1, dated 18.11.2014, cancelled the said licenses, without even issuing any show cause notice on the ground that based on the report of the Tahsildar, the Respondent recommended for such cancellation, alleging that as per the report of the Tahsildar, the Petitioner quarried in the adjoining patta lands and also quarried around the high tension power line tower. The Petitioner never indulged any such activities. No notice of inspection was issued to the Petitioners and the reports shall be prepared in their presence. Without even exercising the original authority power, the respondent sent a report merely basing on an exparte report of the Tahsildar without any acceptable material. Aggrieved by the said cancellation order of the District Collector of Thiruvallur, the Petitioners filed WP.Nos.1170 and 1171 of 2015 before this Court and by order dated 03.02.2015, this Court allowed the said writ petitions by setting aside the order of cancellation of license. The Respondent after recommending to cancel the license, by letter dated 07.11.2014, has issued a common show cause notice dated 02.12.2014 to show cause why penalty of Rs.12,09,800/- each to the Petitioners shall not be levied for alleged removal of 1052 units of brick earth on the allegation that the Petitioners removed brick earth from the adjoining patta lands without proper license and the Petitioners sent a reply dated 19.12.2014, denying the said allegations. However, by the impugned proceedings, dated 07.01.2015, the respondent levied and demanded a penalty of Rs.12,09,800/-, each from the Petitioners, by confirming the Show Cause Notice dated 02.12.2014. Hence, these Writ Petitions have been filed.

3. The Respondent filed separate counter affidavits, contending as follows:-

a. The Petitioners were permitted to quarry a quantity of 5753 and 3249 cubic meter of savudu earth upto the depth of 1 meter for the period of one year from 16.07.2014 to 15.07.2015 in the patta lands bearings S.No.433/3, 434/2, 434/3, 435/1A and 435/1C2 and 433/1A and 423/4B of Vallur-2 Village in Ponneri Taluk of Tiruvallur District for the use of making brick in the petitioners' brick chambers situated in S.No.167/7, 162/8 and 183/1B in Vellivoyalchavadi Village of Ponneri Taluk and in S.No.46/2 in Subbareddypalayam Village, Ponneri Taluk, as per the proceedings of the District Collector, Tiruvallur in Rc.No.838/2013/Mines-1 and Rc.No.716/2013/Mines-1, dated 15.07.2014. The Registration Nos.104/2004 and 100/2004 of the Petitioners have been renewed

upto 11.04.2015. The said quarry permission granted is subject to the conditions imposed in the lease agreement, environmental department conditions and the special conditions annexed to the proceedings dated 15.07.2014. According to special condition No.8, if it is detected that the grantee is engaged in quarrying the mineral in the survey numbers other than permitted, it is liable for pursuing appropriate action under mineral rules besides the cancellation of the license. Further, in the special condition No.10, it is categorically laid that if any violation of conditions is noticed by the authorities at the time of the inspection of the lands permitted to quarry Savudu earth, the permission so granted shall be cancelled without any prior intimation.

b. Inasmuch as it has been found, through the survey conducted by the Surveyor, that the Petitioners have illicitly quarried the savudu in the non-permitted lands in violation of the above said conditions, the Respondent submitted a report in R.C.No.4235/2015/B2 dated 07.11.2014 to the District Collector for cancellation of the permission granted to the Petitioners, based on the report received by the Tahsildar, Ponneri in R.C.12950/2014/A1, dated 04.11.2014, based on which the District Collector, Tiruvallur, has cancelled the quarrying permission in his proceedings R.C.No.838/2013/Mines-1 and RC.No.716/2013/Mines-1, dated 18.11.2014 under the Rule 19(2) of the Tamil Nadu Minor Mineral Concession Rules, 1959. Further, the District Collector, Tiruvallur has instructed the Respondent to take further action under Rules 36(A) of Tamil Nadu Minor Mineral Concession Rules, 1959 in regard to the quarrying done by the Petitioners. Accordingly, the Respondent has issued an endorsement in R.C.No.4902/2014/B1 dated 02.12.2014 to the Petitioners to show cause as to why the penalty amount of Rs.12,72,290/- for the illicitly quarried 1052 lorry loads of Savudu earth in the non-permitted area. The Petitioners has appeared before the respondent on 19.12.2014 and submitted their explanations dated 19.12.2014. After considering the said explanations, the Respondent has directed each of the Petitioners to remit a sum of Rs.12,09,800/- towards penalty levied under Rule 36(A) of the above said rules for the said offence committed by him in proceedings R.C.No.4902/2014/B1 dated 07.01.2015. In such circumstances, these Writ Petitions are liable to be dismissed.

4. The learned counsel for the Petitioners contended that the Petitioners did not indulge in any such illegal quarrying operations and that when the allegation of the respondent is that brick earth was quarried in the non lease Patta lands, the respondent has to proceed against the owners of the subject lands and cannot proceed against the nearby or adjoining brick earth quarrying license holder, just because the license holder is operating nearby and that the Respondent

issued the show cause notice without enclosing the alleged reports of the Tahsildar and that the reports prepared behind the back of the petitioners cannot be used against the petitioners and that the Respondent ought to have conducted enquiry in compliance of principles of natural justice to find out the veracity of the alleged exparte reports and to find out the person or persons responsible for the alleged illegal quarrying in the adjoining patta lands. The learned counsel further contended that in spite of specific reply of the Petitioners, denying the allegations, the respondent did not conduct any enquiry in compliance of principles of natural justice and passed the impugned order mechanically and prayed for quashing of the impugned order.

5. The learned Additional Government Pleader for the Respondent submitted that the Petitioners have to abide the conditions imposed in the proceedings of the 1st respondent dated 15.07.2014. As the Petitioners have violated the above said conditions, the District Collector has passed the orders of cancellation. There is no other brick chambers nearby where the Savudu has been quarried illicitly. If the illicit quarry of savudu earth was going on in by the other land owners, the petitioners ought to have brought the same to the notice of the respondent or the concerned authority. In the show cause notice issued by the respondent, the details of the quantum of savudu illicitly quarried in the lands in question and the penalty liable for such illicitly quarried 1052 units lorry loads have been furnished. It is for the Petitioners to obtain the inspection report from the Respondent before offering their explanation. After considering the explanation offered by the Petitioners and upon perusing the material available on records, the impugned order has been passed under the Rule 36(A) of the Tamil Nadu Minor Mineral Concession Rules, 1959 for the offence committed by the petitioner and as such, there is no irregularity or infirmity in the impugned proceedings and there is an alternative remedy of filing an appeal under Section 36C and prayed for dismissal of this Writ Petition.

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

7. Admittedly, the District Collector, by proceedings dated 18.11.2014, cancelled the licenses of the Petitioners, without issuing any show cause notice, based on the reports of the Tahsildar and the Respondent on the ground that the Petitioner quarried in the adjoining patta lands. In WP.Nos.1170 and 1171 of 2015, this court by order dated 03.02.2015, set aside the order of cancellation of license. Thereafter, the Respondent has issued a common show cause notice dated 02.12.2014 to show cause as to why penalty shall

not be levied for such alleged removal of savudu on the ground that they removed savudu from the adjoining patta lands without proper license, to which the Petitioners sent a reply dated 19.12.2014, denying the said allegations. However, by the impugned proceedings, dated 07.01.2015, the respondent demanded penalty.

8. When it is the case of the Respondent that the Petitioner quarried in the adjacent lands, the Respondent ought to have enquired the adjacent land owners also and conducted enquiry in compliance of principles of natural justice to find out the person responsible for the alleged illegal quarrying in the adjoining lands. The Respondent issued the show cause notice without enclosing the alleged reports of the Tahsildar and the Respondent, which were prepared in the absence of the Petitioners. In spite of specific reply of the Petitioners, the respondent did not conduct any enquiry and passed the impugned order mechanically, without considering the objections raised by the Petitioners. When there was no proper enquiry conducted or no personal hearing given or no materials 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.

9. There is absolutely no evidence the show as to who were responsible for illicit quarrying and in the absence of any material, it is not possible to accept the contention of the learned Additional Government Pleader for the Respondents that without the knowledge of the Petitioners, such quarrying could not have been done by third parties.

10. In 2009-2-MLJ-577 (VSO Balakrishnan Vs. The District Collector, Tiruvallur), this court set aside the similar impugned order of imposing penalty in respect of illegal quarrying alleged to have been carried on in the adjacent area.

11. For the reasons stated above and in view of the decision of this court cited supra, the impugned order is set aside and the matter is remanded back to the Respondent for fresh consideration. The Respondent is directed to give opportunity to the Petitioner and the other parties concerned and to conduct proper enquiry with the adjacent land owners and thereafter, pass appropriate orders, on merits and in accordance with law. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

12. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, the connected MP are closed.

sd/-
ASSISTANT REGISTRAR (CS-II)

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

Srcm

To:

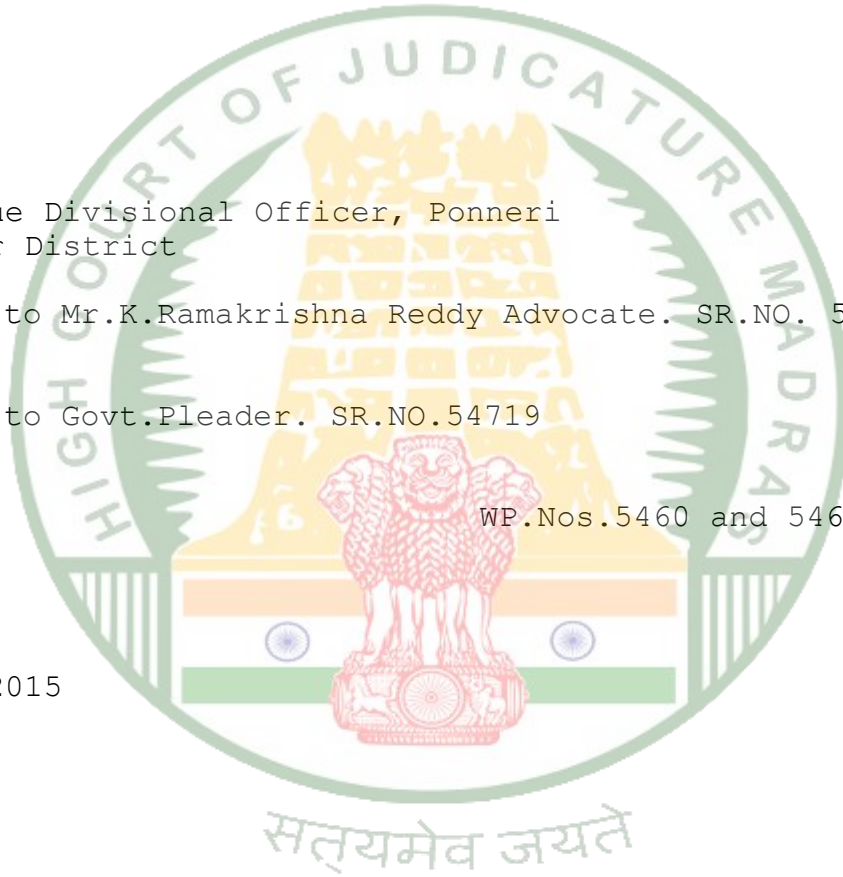
The Revenue Divisional Officer, Ponneri
Tiruvallur District

+2 CC to Mr.K.Ramakrishna Reddy Advocate. SR.NO. 54298 &
54299

+1 CC to Govt.Pleader. SR.NO.54719

WP.Nos.5460 and 5461 of 2015

CO-CA
JD 16/10/2015



WEB COPY