

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.13481 of 2007

and

M.P.Nos.1 of 2007 and 1 of 2008

Order Reserved on
05.08.2014

Judgment Pronounced on 26.11.2015

1.E.Sivakumar
2.A.Kandasamy Gounder

... Petitioners

Vs.

The District Collector,
Erode District,
Erode.

... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the respondent relating to the order issued in Ref.Na.Ka.No.62389/2006/X1, dated 19.02.2007, quash the same.

For Petitioners : Mr.V.Sanjeevi

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

O R D E R

The short facts of the case are as follows:

The first petitioner submits that he is well acquainted with the facts stated herein. He is filing this writ petition for himself and on behalf of the second petitioner, also since the second petitioner has authorized him to swear to this affidavit. He submits that himself and the second petitioner S.Kandasami Gounder are the joint owners of the land bearing Survey No.486/1, admeasuring 1 acre and 58

cents in Thattaravalasu Village, Dharapuram Taluk, Erode District. They have purchased the said land from Mr.Veerasingam and his son Mr.V.Selvaraj having residence at Ellappalayam, Erasinampalayam Village, Dharapuram Taluk on 27.12.2005 by way of registered sale deed. The said sale deed is registered as document No.1304 of 2005 in the office of Sub-Registrar, Moolanur on 27.12.2005. The respondent herein passed the impugned order in Ref.Na.Ka.No.62389/2006/X1, dated 19.02.2007 levying the penalty of Rs.8,91,730/- for the alleged mining of 374 Tonnes of Quartz and 250 Tonnes of Feldspar from the above said patta land. The order is illegal and wholly unsustainable.

2. The impugned order states that though two opportunities are given to the land owners to appear before the respondent to give their explanation on 08.01.2007 and 19.02.2007, they have failed to appear and hence the penalty is levied. No notice or opportunity is afforded to us. We did not receive any notice whatsoever. Even the present order dated 19.02.2007 passed by the respondent is communicated to the second petitioner alone. He has not yet received the order copy till date, though the order levying penalty is passed against both of us. That apart, we have not mined any mineral from any land much less their patta land. The order reads that they have mined quartz and feldspar from the land bearing Survey No.486/1 without permission; that 4 lorry loads of quartz and feldspar mineral and half lorry loads of stones (bt';if fw;fs;) are mined and that the oil engine was seized and handed over to the Village Administrative Officer of Thattaravalasu. The order further reads that the inspection is made to the area pursuant to the request of the Revenue Divisional Officer, Darapuram to take action against the land owners i.e., Sivakumar and Kandasamy for mining mineral in the patta land bearing S.F.No.486/1 and one pit showing the mining of quartz and feldspar was found during inspection and there is a stock of 10 Tonnes of quartz and 10 Tonnes of feldspar. The order refers about the calculation to arrive at the probable quantum of minerals to be mined therein. The order proceeds on the basis that total quantity mined in the pit is 624 metric Tonnes of which 374 M.Ts is feldspar and 250 Metric Tonnes is quartz and on that basis the penalty is imposed. The order did not mention the details of inspection to the area but the very inspection forming the basis of the order is behind their back. No notice much less the show cause notice is issued to them. The order refers to the personal letter of the Revenue Divisional Officer dated 25.10.2006 and the inspection report of the Assistant Geologist, Department of Geology and Mining, Erode dated 20.11.2006 but, copy of the same are not furnished to us. No enquiry is held. The impugned order of the respondent is in gross violation of the basic principles of natural justice. They have not mined or removed a single stone from their patta land. The order is ex-facie illegal and arbitrary. The alleged quantum of mineral as referred to in the order is on the hypothetical and imaginary basis. The findings and conclusions of the respondent for levying penalty is on assumption and suspicion. The order is

wholly unsustainable in law. Aggrieved against the same, they are constrained to file the above writ petition before this Court under Article 226 of the Constitution of India.

3. He submits that the respondent stated in the order that the appeal could be preferred to the Commissioner and Director of Geology and Mining, Chennai-32. That is not correct. This itself shows the non-application of the mind on the part of the respondent. The mineral alleged to be quarried is the major mineral and therefore the appeal will not lie with the Commissioner and Director of Geology and Mining, Chennai-32. Though the Revision lies with the Central Government, they are filing this writ petition before this Court, as the order impugned in the writ petition is passed in gross violation of the basic principles of natural justice. Hence, this writ petition is filed.

4. The learned counsel appearing for the petitioners has submitted that the petitioners are joint owners of the land comprised in Survey No.486/1 of Thattaravalasu Village, Dharapuram Taluk, Erode District, measuring about 01 Acre 52 Cents. The respondent had passed the impugned order, dated 19.02.2007, directing them to pay a sum of Rs.8,91,730/- towards penalty for the alleged mining of 374 Tonnes of quarts and 250 Tonnes of Feldspar from the said land. The impugned order is not sustainable in law.

5. Further, the learned counsel has submitted that the respondent had not given any opportunity besides no prior notice was served. The impugned order had been communicated to the second petitioner alone and he has not received the same. Further, the petitioners had not mined any mineral from the said land. The respondent had seized an oil engine from the said land and handed over the same to the Village Administrative Officer. Before seizing the oil engine no enquiry was conducted. In such circumstances, there is a shortcoming on the part of the respondent side in seizing the oil engine.

6. The learned counsel has further submitted that the Revenue Divisional Officer had inspected the premises and prepared a statement of his own contention and demanded a sum of Rs.8,91,730/- towards penalty. The statement prepared by the Revenue Divisional Officer is a one-sided statement. Further, the respondent had given an option to the petitioners to prefer appeal before the Director attached to the Geology and Mining Department. Actually, the Director of Geology and Mining Department is not a competent authority to hear the appeal against the impugned order passed by the respondent. Hence, the learned counsel prayed this Court to set aside the impugned order.

7. The learned Additional Government Pleader appearing for the respondent has submitted that the petitioners had quarried quarts and feldspar from the subject land without permission. The illegal quarry operation had been inspected by the Revenue Divisional Officer and he

found that the petitioners had quarried 624 metric tonnes of quartz and feldspar and levied penalty. Further, the instruments, namely, oil engine and pulling machine had been seized and sold in a public auction. Before passing the impugned order, the respondent had issued notices to the petitioners for their appearance. However, even though they received the same, they did not reply. In such circumstances, principle of natural justice has not been violated and the impugned order is fit to be proceeded with further.

8. 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 directs the respondent to issue one more notice to the petitioners within a period of thirty days from the date of receipt of a copy of this Order and decide the matter on merits and in accordance with law, after hearing the petitioners.

9. In the result, the writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.
vs/krk

Sd/-
Assistant Registrar (Judicial)

/True Copy/

Sub-Assistant Registrar

To:

The District Collector,
Erode District,
Erode.

+1 C.C. TO MR.V.Sanjeevi, Advocate in SR.NO.64488

W.P.No.13481 of 2007
and
M.P.Nos.1 of 2007 and 1 of 2007

MG (CO)
sd : 09/12/2015