

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.2408/2013
MP.No.1/2013 and 2/2014

R.Manickam

Petitioner

Vs

- 1.The Commissioner of Geology and Mining
Industrial Estate, Guindy, Chennai-32
- 2.The District Collector, Namakkal District
- 3.The Revenue Divisional Officer, Tiruchengode
- 4.The Assistant Director,
Geology and Mining, Namakkal
- 5.The Tahsildar, Tiruchengoe, Namakkal
Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, pleaded to issue a writ of Certiorari, calling for the entire records relating to the impugned order passed by the 1st Respondent in his proceedings Na.Ka.No.5586/M.M.9/2008 dtt. 31.12.2012 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.T.N. Rajagopalan,
Special Government Pleader

ORDER

This Writ Petition is filed to issue a Writ of Certiorari to call for the records relating to the impugned order passed by the 1st Respondent in his proceedings Na.Ka.No.5586/M.M.9/2008, dated 31.12.2012 and quash the same. In MP.No.1/2013, this court by order dated 31.1.2013 granted an order of interim stay on the Petitioner depositing a sum of Rs.4,00,000/-, which was modified to the effect that the Petitioner should deposit a sum of Rs.2,00,000/- in MP.No.2/2013, by order dated 2.4.2013 and the Respondents filed MP.No.2 of 2014 to vacate the order of interim stay along with a counter affidavit.

2. The case of the Petitioner is that the Petitioner owns lands to an extent of 2.18 acres in S.No.356/1 and 0.62.5 acres in SF.No.356/2 in Yemapalli Village, Tiruchengode, Namakkal and the said lands are rocky in nature. The Petitioners quarried stones in the said lands and used the same for his own purpose of putting up the compound wall and for agricultural purposes and later only, the Petitioner came to know that he had to obtain necessary permission for such quarrying in his own lands also. Accordingly, on 27.4.2005, the Petitioner applied for permission to quarry the stones under Section 19 of the Tamil Nadu Mines and Minerals Concession rules and on inspection by the authority, the Petitioner informed that he had quarried only 500 loads of stones for his own purpose. While so, on the report of the 4th Respondent, as per the directions of the 2nd Respondent, the concerned District Revenue Officer, issued a show cause notice dated 18.7.2005, to show cause as to why penalty as per the provisions of Rule 36A of the said Rules cannot be imposed upon the Petitioner and accordingly, the Petitioner attended the enquiry and submitted his explanation. By order dated 23.2.2006, the DRO directed the Petitioner to pay a sum of Rs.22,57,920/- as seigniorage fee for quarrying 2016 loads of stone. As against the same, the Petitioner preferred an appeal to the 2nd Respondent, which was dismissed and as against the same, the Petitioner preferred second appeal before the 1st Respondent, who while reducing the seigniorage fee, has come to the conclusion that the Petitioner had quarried 2113 loads of stones and directed the Petitioner to pay a penalty of Rs.16,05,880/-. Challenging the same, the Petitioner filed a Writ Petition in WP.No.9127/2008, which was disposed of, remitting the matter back to the 1st Respondent for fresh consideration and thereafter, the Petitioner made a representation dated 8.8.2012 to the 1st Respondent and as the same was not disposed of, the Petitioner filed another Writ Petition in WP.No.23602/2012, directing the 1st Respondent to dispose of the second appeal filed by the Petitioner on 5.4.2007. Accordingly, the 1st Respondent, by the impugned order, rejected the second appeal of the Petitioner, confirming the order of the 1st Respondent on 8.1.2008. Hence, this Writ Petition has been filed for the relief as stated above.

3. In the counter affidavit filed by the 2nd Respondent, it is averred that based on the telephone call received on 9.5.2005, the 4th Respondent inspected the subject lands on 10.5.2005 and submitted his report, dated 18.7.2005 stating that there was illicit quarrying of stones by the Petitioner in the subject land measuring 90.0 meters length, 20.0 meters width and 4.0 meters depth and total quantity of material removed was 2113 lorry loads of stone and recommended for taking penal action against the Petitioner and accordingly, the 3rd Respondent, after conducting enquiry and giving opportunity to the Petitioner, by proceedings dated 23.2.2006, levied penalty of Rs.22,57,920/- as per the provisions of Rule 36A. As against the same, the Petitioner filed an appeal before the 2nd Respondent on 20.3.2006 and the 1st Respondent uphold the order of the 3rd Respondent by his

proceedings dated 20.3.2007, after giving an opportunity to the Petitioner on 26.2.2007. Aggrieved over the same, the Petitioner filed second appeal before the 1st Respondent, which was disposed of by proceedings dated 8.1.2008, reducing the penalty to Rs.16,05,880/- and directing the District Collector to take necessary action and accordingly, the District Collector directed the Revenue Divisional Officer to collect the said penalty amount from the Petitioner. Aggrieved by the order of the 1st Respondent, the Petitioner filed WP.No.9127/2008, which was disposed of by order dated 29.3.2011, directing the Petitioner to deposit a sum of Rs.3,80,340/- and remitting the matter back to the 1st Respondent, who by the impugned order has confirmed the earlier order dated 8.1.2008 with a direction to collect the penalty of Rs.16,05,880/- from the Petitioner. For quarrying any minerals from the patta or poramboke land, permission should be obtained from the concerned authority or otherwise it will be treated as illicit quarrying. In order to escape from the penal proceedings, the Petitioner has submitted the application seeking stone quarry lease. On proper inspection and on ascertainment of the illicit quarrying of stones by the Petitioner only, the Petitioner was directed to pay penalty according to law. In such circumstances, this Writ Petition is liable to be dismissed.

4. The learned counsel for the Petitioner contended that when the Petitioner quarried stones from his patta land for his own purpose and for agricultural purpose and not for commercial purpose, the penalty imposed by the 1st Respondent is illegal and arbitrary and hence, prayed for quashing of the impugned order.

5. The learned Additional Government Pleader for the Respondents reiterated the averments made in the counter affidavit and supported the action of the Respondents and sought to dismiss the 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 Petitioner exploited the minerals and transported the same commercially to the tune of 2113 lorry loads of stone from the subject lands for construction of compound wall, without permission. Hence, he was issued with a show cause notice dated 18.7.2005, requiring the Petitioner to show cause as to why penalty should not be imposed for such illicit quarrying and on consideration of the explanation, the Petitioner was directed to pay penalty by order dated 23.2.2008 and in further appeals, the imposing of penalty was confirmed and by the impugned order, he was directed to pay the penalty imposed therein.

8. For quarrying any minerals from the patta or poramboke land, permission should be obtained from the concerned authority or otherwise it will be treated as illicit quarrying and action would be taken accordingly and construction of compound

wall does not come under the category of agricultural activity, as claimed by the Petitioner.

9. As per sub section (5) of Section 21 of the Mines and Minerals (Development and Regulations) Act, 1957, 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 when such mineral has already been disposed of, the price thereof and the 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. Before quarrying such minerals, the Petitioner ought to have obtained permission. But, in order to escape from the penal proceedings, the Petitioner has submitted the application seeking stone quarry lease, after quarrying the minerals, for which, there is no provision in law. On proper inspection and on ascertainment of the illicit quarrying of stones by the Petitioner and on proper reports only, by the impugned order, the Petitioner was directed to pay penalty according to law and there is no violation of any provisions of law nor there is any jurisdictional error, while passing the orders passed by the appellate authority and there is no infirmity or illegality in the impugned order.

9. For the reasons stated above, this Writ Petition is dismissed. No costs. Consequently, the connected MP is closed. However, liberty is given to the Petitioner to avail the alternative remedy of filing an appeal to the Government, if he is so advised.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Srcm

To:

- सत्यमेव जयते
- 1.The Commissioner of Geology and Mining,
Industrial Estate, Guindy, Chennai-32
 - 2.The District Collector, Namakkal District
 - 3.The Revenue Divisional Officer, Tiruchengode
 - 4.The Assistant Director, Geology and Mining, Namakkal
 - 5.The Tahsildar, Tiruchengoe, Namakkal

+1cc to Mr.C. Prakasam, Advocate, S.R.No.54838
+1cc to the Government Pleader, S.R.No.54708

KJI (CO)
EU(19/10/2015)

WP.No.2408/2013