

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.12489 of 2003

N.Rajendran ... Petitioner

Vs.

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

2. The Sub Collector,
Pollachi,
Coimbatore District.

... Respondents

Prayer : Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring Rule 36A of the Tamil Nadu Minor Mineral Concession Rules, 1959, illegal and ultra vires the Mines and Minerals (Development and Regulations) Act, 1957.

For Petitioner : Mr.V.Sanjeevi

For Respondents : 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 Collector of Coimbatore had granted him mining lease to quarry stones in land admeasuring Hecs. 0.35.0 bearing S.No.533 Part of Myvadi Village, Udumalpet Taluk in and by his proceedings No.Na.Ka.70967/95/L6 dated 20.8.1995 subsequently, the lease deed was executed on 30.8.1995. As the period of lease fell short of full five years, he has filed W.P.No.9336 of 2000 praying for issue of writ of mandamus directing the Collector of Coimbatore District to permit him to quarry stones for the period of four months to complete the full period of 5 years. This Court by order dated

20.6.2000 was pleased to allow the said W.P.No.9336 of 2000. In compliance thereof, the District Collector, Coimbatore permitted him to quarry stones till 27.11.2000. Pursuant to the order of the District Collector, he quarried stones in the leasehold area till 27.11.2000. The second respondent had issued notice dated 20.11.2000 to him to show cause why the sum of Rs.38,44,400/- should not be levied as penalty alleging that he had quarried outside the leasehold area. He had submitted his explanation in detail. The second respondent by proceedings No.13268/2000/A2, dated 17.1.2001 passed orders levying penalty of Rs.34,75,200/-. He had filed W.P.No.2647 of 2001 challenging the said order of the second respondent levying penalty. This Court by order dated 19.9.2001 was pleased to allow the writ petition, set aside the impugned order and remitted the matter to the second respondent for fresh disposal in the light of directions contained in the aforesaid order of this Court.

2. The second respondent had, without complying with the directions contained in the order of this Court, in and by his proceedings No.K.Dis.13268/00-A2, dated 17.2.2003, confirmed the earlier order dated 17.1.2001 despite the same having been set aside by this Court in the order dated 19.9.2001 and made in W.P.No.2647/2001. Against the said order, he has filed W.P.No.9185/2003 challenging the subsequent order of the second respondent dated 17.2.2003. This Court had been pleased to stay the impugned order by order dated 25.3.2003 made in WP.MP.No.11709/2003 in W.P.No.9185/2003. He has submitted that the aforesaid order of the second respondent has been passed in exercise of powers under Rule 36-A(1) and (3) of the Tamil Nadu Minor Mineral Concession Rules, 1959. He has submitted that the distribution of legislative power with reference to regulation of Mines and Minerals development is contained both in Entry 54 of List I and Entry 23 of List II of the seventh Schedule to the Constitution of India which read as follows:-

"Entry 54 of List I: Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

"Entry 23 of List II: Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

3. He has submitted that the Parliament had enacted the Mines and Minerals (Development and Regulation) Act, 1957 (Act 67 of 1957) hereinafter referred to as the 'Act' which extends to the whole of India. The field of legislation relating to regulation of mines and minerals development is thus occupied by the Mines and Minerals

(Development and Regulation) Act, 1957. Section 14 of the Act provides that Sections 5 to 13 shall not apply in relation to minor minerals. He has submitted that in terms of the Act, the State Government is vested with executive power in relation to minerals, that apart Section 15 of the Act vests in the State Government the power to frame rules in respect of minor minerals. Sub section (3) of Section 15 provides that the holder of a mining lease or any other mineral concession shall pay royalty or dead rent whichever is more and further provides that the State Government shall not enhance the rate of royalty or dead rent in respect of minor minerals for more than once during any period of 3 years.

4. He has submitted that Section 21 of the Act relating to penalties provides-

(a) That whoever contravenes the provisions of sub sections(1) or (1A) of Section 4 shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to Rs.25,000/- or with both;

(b) That the contravention of any rules made under any of the provisions of the Act shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to Rs.5,000/- or with both and in case of continuing contravention with additional fine which may extend to Rs.500/- for every day during which such contravention continues after conviction for the first such contravention.

© Where a person trespasses into any land in contravention of sub section (1) of Section 4 the trespasser may be served with an order of eviction by the State Government or any authority authorised by the State Government.

(d) Where any person raises, transports or causes to be raised or transported without lawful authority any mineral from any land, the officer or authority specifically empowered shall seize the mineral, tool, equipment, vehicle or other thing and the subject matter of seizure shall be liable to be confiscated by order of the Court competent to take cognizance of the offence under Section 21(1).

(e) Where 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 lawful authority; and

(f) That the offence under sub section (1) shall be cognizable.

5.He has submitted that the Government of Tamil Nadu had, in exercise of the power contained in Section 15 of the Act, made the Tamil Nadu Minor Mineral Concession Rules, 1959 hereinafter referred to as the 'Rules'. Rule 36-A of the said Rules which relates to penalties provides as follows:

(a) For contravention of sub section 1 of Section 4 of the Act, two penalties are provided:-

(i) Enhanced seigniorage fee upto maximum of 15 times the normal rate subject to a minimum of Rs.25,000/- to be charged and recovered by the District Collector or the District Forest Officer or in the alternative.

(ii) Punishment as provided in sub section (1) of Section 21.

(b) For raising mineral from any land without lawful authority, the District Collector or the District Forest Officer may recover from such person the mineral raised or where mineral has been disposed of, price thereof and also may recover area assessment, seigniorage fee or tax.

(c) For contravention of sub rule (1) of Rule 10 provides for two punishments-

(i) Recovery of double the lease amount or double seigniorage fee, or in the alternative

(ii) imprisonment for a period of one year or fine or Rs.5,000/- or both and in case of continuing contravention additional fine which may extend to Rs.500/- for every day.

(d) For contravention of any provision other than sub rule (1) of Rule 10, two punishments are provided, namely-

(i) Recovery of enhanced seigniorage fee upto a maximum of 15 times the normal rate subject to a minimum of Rs.25,000/- or in the alternative

(ii) Imprisonment for a term of one year or fine of Rs.5,000/- or both and in case of continuing contravention additional fine which may extend to Rs.500/- per day.

6. He has submitted that he was aggrieved by the order of the second respondent imposing penalty in exercise of the powers under Rule 36 A of the Tamil Nadu Minor Mineral Concession Rules, 1959. There being no other efficacious, alternative remedy to challenge the said Rule 36-A, he is constrained to invoke the extra-ordinary jurisdiction of this Court to file the above writ petition under

Article 226 of the Constitution of India. He submits that Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 is ultra vires Act, beyond the rule making powers of the State Government, illegal and liable to be struck down by this Court. Hence, this writ petition is filed.

7. The second respondent has filed counter statement stating that the writ petitioner N.Rajendran, was granted a lease to quarry rough stones in S.F.No.533/1 of Myvadi Village, Udumalpet Taluk, Coimbatore District over an extent of 0.35.0 hectares, in Collector's No.70967/95 L6 dated 20.8.1995 for the period from 20.8.1995 to 27.11.2000 under the Tamil Nadu Minor Mineral Concession Rules, 1959.

8. He submits that during the course of field Inspection of the Sub Collector, Pollachi on 10.11.2000 along with the Tahsildar, Udumalpet, Revenue Inspector, Madathukulam, Village Administrative Officer, Myvadi and the Firka Surveyor, Madathukulam, it was detected that the lessee viz. The Writ Petitioner had illicitly carried out mining operations outside the leased out area also to an extent of 2.76.0 hectares in S.F.No.533/2 and 533/3. Therefore, the pits from which rough stones were illicitly removed were measured, the quantity of mineral removed arrived at and the price of the mineral removed, seigniorage fee and penalty etc, amounting to Rs.34,75,200/- was ordered to be recovered from the lessee in Proceedings No.13268/2000 A2 dated 17.2.2001 of the Sub Collector, Pollachi, as per the provisions contained in rule 36-A(1) and (3) of the Tamil Nadu Minor Mineral Concessions Rules, 1959.

9. He has submitted that aggrieved with the said order, the writ petitioner filed W.P.No.2647/2001 and this Court, in their order dated 19.09.2001, remitted back the case to the Sub Collector, Pollachi with a direction to furnish copies of reports to the writ petitioner, give opportunities to file his objections, conduct field Inspections in the presence of the writ petitioner etc., and to pass order afresh. Copies of the orders required by the writ petitioner were provided to him, ample opportunities were given to the writ petitioner to file his objections. The field was jointly inspected by the Sub Collector, Pollachi and the Assistant Director of Geology and Mining, Coimbatore and the pits were measured in the presence of Thiru.Elango, the brother of the writ petitioner and the earlier orders were confirmed by the Sub Collector, Pollachi in proceedings No.13268/2000 A2 dated 17.2.2003. He has submitted that the writ petitioner filed a separate writ petition in W.P.No.9185/2003 before this Court and challenged the said order dated 17.2.2003 which imposed the recovery of Rs.34,75,200/- being the price of the minerals illicitly removed and penalty etc. The above writ petition is still pending before this Court. Besides the writ petitioner also filed this W.P.No.12489 of 2003 for a declaration that the Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 is illegal and ultra vires.

10. He has submitted that it is not correct to say that the second respondent did not comply with the orders of this Court. In fact, the orders of this Court were complied within spirit and copies of orders were supplied to the writ petitioner and he was given ample opportunities to defend this case and the field was inspected by the second respondent and the Assistant Director of Geology and Mining, Coimbatore and the pits measured in the presence of one Elango, the brother of the writ petitioner and the quantity of mineral illicitly removed was assessed. He has submitted that it is not only the section 15(1) of the mines and minerals (Development and Regulation) Act, 1957, which provides the power to State Government to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for the purposes connected therewith, but also, Section 23 C(1) of the said Act provides the power to State Governments to make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith. The writ petitioner has purposefully omitted to specify about the Section 23 C of the Act, to suit his conveniences and the writ petitioner has just furnished the provisions of Sub Sections (1) to (6) of Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957.

11. He has submitted that the contention of the writ petitioner is false, frivolous, vexatious, baseless and untenable. The writ petitioner has not exhausted the remedies available to him under sub rules (1) (2) and (3) of Rule 26 C of the Tamil Nadu Minor Mineral Concession Rules 1959, by way of appeal and second appeal, if he is actually aggrieved by the order of the second respondent herein, as stated by him. But he did not choose to do so and straightaway approached this Court, without exhausting the remedies available to him. Therefore, the writ petition is liable to be dismissed on this score alone. He humbly submits that the contention of the writ petitioner is baseless and untenable. In addition to Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, Section 23C of the said Act also provides Rule making powers to the State Governments for preventing illegal mining transportation and storage of mineral and for the purposes connected therewith. Therefore, the framing of rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, is well within the powers of the Government of Tamil Nadu and therefore rule 36-A of the said rules is valid and enforceable. He has submitted that the two penalties specified in rule 36-A(1) for contravention of the provisions of Sub section (1) and (1-A) of Section 4 of the Mines and Minerals (Development and Regulation) Act, 1957, is an alternative penalty to each other, and therefore anyone of the two penalties can be independently levied on any offender at a time. Further, the offenders are provided with the alternative penalty of paying the enhanced seigniorage fee without actually under going imprisonment or fine or with both. The said provision of alternate penalty is not at all prejudicial, in any way to any

offender and on the other hand it is actually desirable. It is not known in what way the writ petitioner was affected in view of the existence of the alternative penalty in rule 36-A of the Tamil Nadu Minor Minerals Concession Rules 1959 as he did not adduce any reason in support of his contention. Besides, section 23 A of the Mines and Minerals (Development and Regulation) Act, 1957 even provides for compounding of offences, punishable under the Act. Therefore, there would be no harm to any offender, in the existence of an alternate penalty under rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 and on the contrary it is desirable also. Therefore, the two alternate penalties provided under the said sub rules are valid and enforceable.

12. He has submitted that the penalty specified in rule 36-A(3) of the Tamil Nadu Minor Mineral Concession Rules 1959, is an alternate penalty and therefore it's imposition is valid and enforceable. The penalty specified in rule 36-A(5) of the Tamil Nadu Minor Mineral Concession Rules, 1959, is an alternative penalty and therefore it's imposition is valid and enforceable. The contention is false and baseless. The rules framed under rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 are well within the powers of the State Government of Tamil Nadu as vested in them under Section 15 and 23C of the Mines and Minerals (Development and Regulation) Act 1957. Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 provide for an alternative penalty only and hence it is valid and enforceable. In any case, both the penalties are not levied at a time. Framing of rule 36-A is well within the powers of the Government of Tamil Nadu as vested in them under section 23C of the Mines and Minerals (Development and Regulation) Act, 1957 and therefore, it is valid and enforceable. He has submitted that in view of the above facts, it is seen that the prayer of the writ petitioner lacks on merits as it has been filed without valid reasons and grounds and without exhausting the appeal and second appeal provisions available to the writ petitioner and hence it is prima facie liable to be dismissed with costs to the respondents.

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, the petitioner 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 reduced 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 and demanded a sum of Rs.38,44,400/- towards penalty for illegal quarry of 5492 lorry loads of stones in Survey No.533. The petitioner had filed a detailed explanation and thereafter the second respondent passed a fresh order levying a penalty of Rs.34,75,200/-. The petitioner had challenged the said order, in W.P.No.2647 of 2001, and this Court by Order dated 19.09.2001, set aside the order passed by the second respondent and remanded back the matter to the second respondent for fresh consideration. But, the second respondent has passed orders, dated 17.02.2003. on the same line.

14. Further, the learned counsel has submitted that the Parliament has enacted the Mines and Minerals Act, which extends to the whole India and as such the State Government is vested with executive power alone. Further, the enhanced seigniorage fee upto maximum of 15 times the normal rate subject to minimum of Rs.25,000/- to be charged and recovered by the District Collector or the District Forest Officer or in the alternative. Hence, the order passed by the second respondent ultra vires the order passed under Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules.

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 second respondent and his subordinates inspected the quarry site and found that the petitioner was carrying on quarry operation out of the leased area and as such, the petitioner had violated the conditions of the lease agreement. Hence, the second respondent levied penalty. Further, as per the directions of this Court, the second respondent and the Assistant Director of Geology and Mining Department, had conducted an inspection, measured the pits in the presence of the petitioner's brother and passed a fresh order on merits and the same is executable against the petitioner.

16. 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 is of the view that the second respondent and the Assistant Director, Geology and Mining Department, have measured the pits in the quarry site in the presence of the petitioner's brother and passed orders levying penalty. At the

time of measuring the pits, the brother of the petitioner had not raised any objection. The second respondent has followed the directions granted by this Court in W.P.No.2647 of 2001 and passed orders on merits. Hence, this writ petition is liable to be dismissed.

17. 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:

1. The Secretary to Government,
Industries Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
2. The Sub Collector,
Pollachi,
Coimbatore District.

+1 C.C. TO MR.V.Sanjeevi, Advocate in SR.NO.64489

W.P.No.12489 of 2003

BVR(CO)
sd : 21/12/2015

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