



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2015

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CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. (MD) Nos.20095 of 2013 and 20784 of 2014

and

M.P. (MD) .Nos.1/2014 and 1/2015 in W.P.No.20784 /2014

and

M.P. (MD) .No.1 of 2013 in W.P. (MD) .No.20784/2014

M/s. RM Granites,
represented by its Managing Partner
Mr.P.Rajasekaran,
No.10/1, Deputy Collector Colony,
First Street,
K.K.Nagar,
Madurai 625 020.

... Petitioner in both W.Ps.

Vs.

1. The District Collector,
Sivagangai District,
Sivagangai.

..1st Respondent in WP.No.20095 of 2013
and Respondent in WP.No.20784 of 2014

2. The Deputy Director of Geology and Mining,
Office of the District Collector,
Sivagangai.

..2nd Respondent in W.P.No.20095/2013

PRAYER in W.P. (MD) .No.20095/2013: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to forbear the respondents from in any way interfering with the petitioner's right to quarry and transport quarried mineral from lease granted patta lands of the petitioner measuring 0-70-5 hectares comprised in S.F.No.222/4, 0-96-5 hectares in S.F.No.223/1C (Part), 0-17-0 hectares in S.F.No.223/2C (Part) of Jayamkondanilai Village and 0-26-5 hectares in S.F.No.143/2, 0-05-0 hectares in S.F.No.143/3 (Part), 0-69-0 hectares in S.F.No.146/1A, 0-19-0 hectares in S.F.No.146/1C, 0-18-5 hectares in S.F.No.146/1D, 0-35-0 hectares in S.F.No.146/1E, 0-35-0 hectares in S.F.No.146/1F, 0-15-0 hectares in S.F.No.146/3 (Part), totally measuring 4-07-0 hectares situated in Mallakkottai Village and both the villages are situated in Thirupathur Taluk, Sivaganga District, during the currency of the lease granted in favour of the petitioner in respect of the subject area.

PRAYER in W.P. (MD) .No.20784 of 2014 : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the respondent's



proceedings bearing Na.Ka.No.2/265/2013, dated 18.11.2014 and quash the same.

For Petitioner : Mr.S.Kadarkarai
For Respondents : Mr.T.S.Mohamed Mohideen
Additional Govt.Pleader

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COMMON ORDER

Challenging the impugned order dated 18.11.2014, demanding a sum of Rs.1,14,26,492/- towards seigniorage fee of Rs.7,82,782/-, value of the mineral of Rs.1,53,69,750/- and penalty of Rs.39,13,910/-, these writ petitions have been filed.

2. Learned counsel appearing for the petitioner heavily contended that the petitioner was granted multi - coloured granite quarry lease in respect of his patta lands measuring 0-70-5 hectares comprised in S.F.No.222/4, 0-96-5 hectares in S.F.No.223/1C (Part), 0-17-0 hectares in S.F.No.223/2C(Part) of Jayamkonda Nilai Village and 0-26-5 hectares in S.F.No.143/2, 0-05-0 hectares in S.F.No.143/3 (Part), 0-69-0 hectares in S.F.No.146/1A, 0-19-0 hectares in S.F.No.146/1C, 0-18-5 hectares in S.F.No.146/1D, 0-35-0 hectares in S.F.No.146/1E, 0-35-0 hectares in S.F.No.146/1F, 0-15-0 hectares in S.F.No.146/3 (Part), totally measuring 4-07-0 hectares situated in Mallakkottai Village, under Rule 19-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, for a period of 20 years from 13.10.2005 to 12.10.2025. The petitioner has commenced the quarry operation as per the terms and conditions of the lease. While so, all of a sudden, the first respondent issued a show-cause notice dated 25.05.2013, alleging that the petitioner quarried within the prohibitory distance of 50 meters from the nearby tank and removed 354-200 cbm of granite and asking the petitioner to show cause why action shall not be taken to levy and collect the value of the mineral and penalty etc.

3. The learned counsel for the petitioner further submitted that the above said show cause notice was issued on the basis of the alleged report dated 13.04.2013, issued by the second respondent / the Deputy Director of Geology and Mining, Office of the District Collector, Sivagangai. No notice of inspection was issued at any point of time to the petitioner and no inspection took place in the presence of the petitioner and further more, no measurements were taken in the presence of the petitioner, therefore, the approach of the first respondent on the basis of the alleged report for issuing the show cause notice is not only unfair but also against the principles of natural justice, inasmuch as the alleged report dated 13.04.2013 has not been furnished to the petitioner to submit a detailed explanation. Adding further, he would submit that as per the agreement condition, 50 meters safety distance shall be left on the northern side in the lease granted area, since there is a Kanmai adjoining the lease granted, therefore, the petitioner was strictly following the said condition and there is no violation whatsoever. Besides, petitioner is having larger extent of 4-07-0 hectares, hence, there is no need or necessity for him to quarry within the



is a violation of the Rule 36(A)(5) of Tamil Nadu Minor Mineral Concession Rules, 1959. The Government, vide G.O.3(D) No.92 Industries (MMB2) Department, dated 19.09.2005, specifically mentioned that the lessee should leave safety distance of 50 mts. to the kanmoi on the northern side of the lease area. The petitioner has violated the said G.O., since he has undertaken the quarrying operation within the prohibited distance of 50 meters and he was rightly issued the show cause notice. Finally, the Tahsildar, Thirupathur has made a surprise inspection on the said quarry and reported on 28.08.2012, that the petitioner has violated the special conditions and quarried stone within the safety distance of 50 mts. Since the report of the Tahsildar, Thirupathur mentioned that the lessee quarried within the prohibitory distance of 50 mts in S.F.No.222/4 from the nearby tank and removed 354.200 cbm of granite blocks violating the conditions stipulated in the Government Order and based on that report, a show cause notice was issued to the lessee as per the Tamil Nadu Minor Mineral Concession Rules 36(A)(5) of 1959 on 25.05.2013. On receipt of the same, the petitioner has submitted a detailed explanation on 07.06.2013. Finding that the explanation offered by the petitioner was not satisfactory, the impugned order is passed. Therefore, it is not open to the petitioner to say that the impugned order passed by the respondent is suffering without any reason. Adding further, while concluding the arguments, he submitted that the petitioner himself has accepted that the area was disturbed by laying a road inside the quarrying area, itself is a violation. Therefore, the impugned order is passed, which does not call for any interference.

7. Heard the learned counsel for the petitioners and the learned Additional Government Pleader appearing for the respondents.

8. It is an admitted fact that the petitioner was granted lease for a period of 20 years on 19.09.2005 commencing from 13.10.2005 to 12.10.2015 in respect of the patta lands belonging to the petitioner measuring 0-70-5 hectares comprised in S.F.No.222/4, 0-96-5 hectares in S.F.No.223/1C (Part), 0-17-0 hectares in S.F.No.223/2C(Part) of Jayamkonda Nilai Village and 0-26-5 hectares in S.F.No.143/2, 0-05-0 hectares in S.F.No.143/3 (Part), 0-69-0 hectares in S.F.No.146/1A, 0-19-0 hectares in S.F.No.146/1C, 0-18-5 hectares in S.F.No.146/1D, 0-35-0 hectares in S.F.No.146/1E, 0-35-0 hectares in S.F.No.146/1F, 0-15-0 hectares in S.F.No.146/3 (Part), totally measuring 4-07-0 hectares situated in Mallakkottai Village, under Rule 19-A of the Tamil Nadu Minor Mineral Concession Rules, 1959. After execution of the lease agreement, on 13.10.2005, the petitioner was carrying on his quarrying operations. While so, he was issued with show cause notice on 25.05.2013, based on the report of the Tahsildar, Thirupattur dated 28.08.2012, that the petitioner has violated the terms and conditions of the lease agreement. On receipt of the same, the petitioner has submitted his detailed explanation denying the charges. However, the petitioner was issued with the show cause notice raising such an allegation that he has committed violation of the terms and conditions in the lease agreement, more particularly alleging that he has carried on quarrying activities within the prohibited distance. The respondent before conducting a



surprise inspection, at least after the surprise inspection conducted by the Tahsildar, Thirupattur on 28.08.2012 in the petitioner's patta land whatever on completion of the surprise inspection after preparation of the report should have furnished a copy of the report on 28.08.2012. Admittedly, in the present case, the respondents have not furnished the copy of the report. Further, it is an admitted fact that the respondent is entitled to undertake a surprise inspection into the land belonging to the petitioners, but after surprise inspection was carried on for the purpose of measuring the land, he should put the petitioner on notice and the reason is, for the purpose of conducting the measurement, the presence of the petitioner is required. In the present case, admittedly, although the inspection took place behind the back of the petitioner, the measurement has not been taken place in the presence of the petitioner, the alleged report submitted by the Tahsildar, Thiruchirapalli on 28.08.2012 also has not been till date submitted, which clearly shows that the petitioner was denied the reasonable opportunity to submit his explanation and also to take part in the enquiry held on 25.06.2013. Therefore, the petitioner has repeatedly argued that the impugned order is not only non speaking, but it is cryptic.

9. A careful perusal of the impugned order does not show any fact as to whether the respondent has furnished the copy of the report of the Tahsildar, Thirupattur dated 28.08.2012 or whether the respondent, at the time of passing of the present impugned order, has dealt with the stand taken by the petitioner in his explanation whether he has pleaded that he has formed an approach road in the northern side of the lease hold area leading to the southern side of the lease hold area where the quarrying operations are going on.

10. In addition thereto, in the explanation, he has also stated that he has not taken even a paper weight of stone within the prohibited distance and even this aspect has also not been dealt with in the impugned order. As a matter of fact, a perusal of the impugned order cannot be construed as a reasoned order, because it does not indicate that the petitioner, who is a lessee, has involved in illegal quarrying. This is relevant because what is contemplated under the impugned order is penal liability, therefore, it goes without saying that unless proper proof or materials are placed to the effect that the petitioner individually has been carrying on illicit quarrying, imposition of penal liability would certainly be impermissible in law. Besides, it is not in dispute that even before the show cause notice was issued, surprise inspection had been done by the responsible officers and based on their report only, a show cause notice came to be issued. Even a reference to the impugned order makes it clear that there was no personal hearing or any enquiry conducted in this case. Similarly, it is not even the case of the respondent that copy of the inspection report has been furnished to the petitioner, while issuing the show cause notice.

11. Further, it is also pertinent to mention that every show cause notice must accompany the copies of the alleged reports which formed basis for issuance of show cause notice. Whiles, neither the



impugned order nor the counter affidavit filed by the respondent shows that any copy of the inspection report was submitted to the petitioner at any point of time. Moreover, a mere reading of the impugned order shows that the procedure followed appears to be summary in nature. In such view of the matter, when there is a violation of principles of natural justice, availability of an alternative remedy is not a bar for maintaining the writ petition. In this regard, it is relevant to refer to the judgment of the Apex Court in the case of **Harbanslal Sahnia v. Indian Oil Corpn. Ltd. (2003) 2 SCC 107**, wherein the Apex Court has held that alternative remedy is a rule of discretion and not one of compulsion. The Supreme Court has held as follows:

"7..... In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks. "

The above observation clearly shows that the present case attracts the applicability of the first two conditions.

12. Again in **Whirlpool Corporation. v. Registrar of Trade Marks (1998 (8) SCC 1)**, the Supreme Court has held that the existence of alternative statutory remedy is not a constitutional bar to the High Court's jurisdiction, but it is a self imposed restriction. The Supreme Court has again reiterated that in cases where fundamental rights are sought to be enforced or violation of the principles of natural justice was complained or the proceedings are wholly without jurisdiction, the writ petitions are maintainable.

13. The Hon'ble Apex Court, in the case of **M/s.Kranti Asso. Prvt. Ltd. & Another v. Masood Ahmed Khan and others reported in (2010 9 SCC 496)**, emphasizing the importance of giving reasons while passing the order on administrative side, held thus:

"50. The position in the United States has been indicated by this Court in *S.N. Mukherjee (supra)* in paragraph 11 at page 1988 of the judgment. This Court held that in the United States the Courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the Court cannot exercise their duty of review unless they are advised of the considerations underlying the action under review".

In *S.N. Mukherjee (supra)* this court relied on the decisions of the U.S. Court in Securities and



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Exchange Commission vs. Chenery Corporation, (1942) 87 Law Ed 626 and John T. Dunlop vs. Walter Bachowski, (1975) 44 Law Ed 377 in support of its opinion discussed above.

51. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism. l. Reasons in support of decisions must be cogent,



clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

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14. The above reading speaks clearly that reason is the soul of justice and the reasons in support of decision must be clear and cogent, whereas, in the present impugned order, no reasons has been assigned for imposing penalty, therefore, for the aforesaid reasons, this Court is inclined to set aside the non-speaking impugned order passed by the respondent. Accordingly, the impugned order is set aside and the Writ Petition (MD) No.20784 of 2014 is allowed. It is also open to the respondents to proceed in accordance with law, after giving proper notice, if so advised.

15. With regard to the writ petition (MD) No.20095 of 2013 seeking for issuance of mandamus to forbear the respondents from in any way interfering with the petitioner's right to quarry and transport quarried mineral from the lease granted to the patta lands of the petitioner, it may be mentioned that when the petitioner was granted lease for a period of 20 years i.e. from 13.10.2005 to 12.10.2025, all of a sudden, transport permits were not issued, hence, the petitioner has sent letters dated 26.06.2013, 08.07.2013, 23.08.2013 and 26.08.213 requesting the first respondent to issue the transport permission to transport the materials quarried from the subject quarry. Though there is no impediment whatsoever to issue the transport permit on payment of required seigniorage fee, the first respondent did not issue the transport permit.

16. In a similar circumstances, this Court in W.P.No.14529 of 2009, dated 19.11.1999, has held that the power to grant lease does not carry with it power to suspend the lease. Relevant portion of the said order is extracted below:

"8. It is clear from the above discussion that there is no enabling provision for ordering suspension either in the Act or in the Rules. By virtue of Rules 36(5)(h) of the Rules, the Collector of the other authority can cancel the lease. The argument advanced by the learned Government Advocate that when there is a provision for cancellation of lease, it includes the power to suspend the valid lease cannot be accepted. It is not a incidental omission by the legislature or by the Government, but it is a deliberate omission. In the absence of enabling provision for suspension of lease, the impugned proceedings of the respondent is liable to be quashed."

In view of the above, so long as the lease is subsisting in favour of the petitioner till 12.10.2025, the transport permission cannot be stopped. Therefore, in view of the reasons stated in WP(MD)No.20784 of 2014 quashing the impugned order, the respondents are directed to issue the permission to quarry and to transport the quarried



materials from the lease granted to the patta lands of the petitioner measuring 0-70-5 hectares comprised in S.F.No.222/4, 0-96-5 hectares in S.F.No.223/1C (Part), 0-17-0 hectares in S.F.No.223/2C(Part) of Jayamkonda Nilai Village and 0-26-5 hectares in S.F.No.143/2, 0-05-0 hectares in S.F.No.143/3 (Part), 0-69-0 hectares in S.F.No.146/1A, 0-19-0 hectares in S.F.No.146/1C, 0-18-5 hectares in S.F.No.146/1D, 0-35-0 hectares in S.F.No.146/1E, 0-35-0 hectares in S.F.No.146/1F, 0-15-0 hectares in S.F.No.146/3 (Part), totally measuring 4-07-0 hectares situated in Mallakkottai Village.

17. In fine, both the writ petitions stand allowed with the above direction. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

**(*) CLEAR COPY ISSUED AS PER THE
LETTER DATED 20.06.2016 BY THE COUNSEL
K.RAMAKRISHNA REDDY**

To

1. The District Collector,
Sivagangai District,
Sivagangai.
2. The Deputy Director of Geology and Mining,
Office of the District Collector,
Sivagangai.

+1cc to The Special Government Pleader Sr.Nos.64258 and 64260

+1cc to Mr.S.KADARKARAI, Advocate, SR 63974.

akm/27.11.2015

/9p-5c/

W.P. (MD) Nos.20095 of 2013 and 20784 of 2014
30.10.2015