

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.2076 of 2016
and
W.M.P.No.1809 and 1810 of 2016

Mr.C.M.Anandan

...Petitioner

Vs.

1. The Government of Tamil Nadu,
rep. by its Principal Secretary,
Industries Department (M.M.E.1. Dept. Fort St. George)
Chepauk, Chennai - 600 009.
2. The Commissioner,
Geology, Mining and Minerals,
Having his Office at Industrial Estate,
Guindy, Chennai- 600 032.
3. The Director,
Geology, Mining and Minerals,
Having his Office at Industrial Estate,
Guindy, Chennai- 600 032.
4. The District Collector,
Collectors Office,
Thiruvallur, Thiruvallur District.
5. The District Collector,
Collectors Office, M.Singaravelar Maaligai,
No.62, Rajaji Salai, Chennai - 600 001.
6. The Assistant Director,
Mines and Minerals,
Thiruvallur, Thiruvallur District.
7. The Revenue Divisional Officer,
Tirutanni, Thiruvallur District.
8. The Tahsildar,
Purasaiwalkam- Perambur Taluk,
Sydenhams Road,
Park Town, Chennai - 600 003.

...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records from the file of the fourth respondent, the District Collector, Thiruvallur, insofar as it relates to the order passed in her proceedings Na.Ka.No.197/98/Q2, dated 24.12.1998, as confirmed by the third respondent, in his proceeding No.Rc.No.4541/M-5/99, dated 16.02.2001, and the consequential order passed by the fourth respondent, in his proceedings in R.C.No.992/2006/G & M-2, dated 05.10.2015, and the fifth respondent, the District Collector, Chennai, in her proceedings, No.G27371/15, dated - 10.2015, and signed on 08.11.2015, and to quash the said orders. (Prayer amended, as per order passed today in W.M.P.No.25793 of 2016)

For Petitioner : Mr.Raja Kallifulla
Senior Counsel for
Mr.J.Jayendra Krishnan

For Respondents : Mr.S.Diwakar
Special Government Pleader

O R D E R

Heard Mr.Raja Kallifulla, learned Senior Counsel appearing for Mr.J.Jayendra Krishnan, learned counsel for the petitioner, and Mr.S.Diwakar, learned Special Government Pleader, appearing for respondents.

2. The amended prayer in the Writ Petition is for issuance of a writ of certiorari to quash the order passed by the fourth respondent, insofar as it relates to the order, dated 24.12.1998, confirmed by the third respondent, by order, dated 16.02.2001, and the consequential orders passed by the fourth respondent, dated 05.10.2015, and the fifth respondent, dated .10.2016.

3. The impugned order has been challenged primarily on the ground that, it has been passed, in violation of principles of natural justice, as both the District Collector, the Original Authority as well as the First Appellate Authority, Director of Geology and Mining, did not afford any opportunity to the petitioner.

4. For the first time, in the counter affidavit, a stand was taken by the District Collector/fourth respondent that the Appeal preferred by the petitioner against his order, dated 24.12.1998, to the Director of Geology and Mining, was rejected, by proceeding, dated 16.02.2001.

5. The case was heard on several dates, and periodically

directions were issued to the respondents to produce files, and ultimately, files from the Office of the District Collector, were produced before this Court. On perusal of the files, it is prima facie clear that the fourth respondent/District Collector had passed orders on 24.12.1998, without affording opportunity to the petitioner. To verify as to whether there is any order passed by the Director of Geology and Mining, as alleged in para No. 9 of the counter affidavit of the District Collector, this Court has passed orders, dated 21.07.2016, directing the third respondent to forward the concerned files relating to the petitioner's Appeal. In response, the Joint Director of Department of Geology and Mining, Chennai, by certificate, dated 29.08.2016, has stated that all the records, which were kept in the ground floor of their Office premises have been destroyed during the recent flood. Thus, as on date, there are no papers available with the Office of the Director of Geology and Mining.

6. The allegation against the petitioner is that, the petitioner was granted lease to quarry the sand, in an extent of 40.00.0 hectares in S.No.197 of Kuppam Village, Tiruttani Taluk, Tiruvallur District, for a period of 5 years, by virtue of G.O.3 (D) No.303, Industries (MME-1) Department, dated 09.10.1995, and the period of lease was from 30.10.1995 to 29.10.2000, but the petitioner has quarried the sand in a non-leased area, which resulted in issuance of a show cause notice, dated 12.10.1998, calling for explanation from the petitioner. The petitioner is stated to have submitted his explanation, and the District Collector passed orders, levying penalty of Rs.5,50,152/-, being three times higher than the normal rate of seignior age fee. The petitioner's request to review this penalty was also rejected by the District Collector, by a memo, dated 18.02.1999.

7. Further case of the fourth respondent is that, the petitioner, through his counsel, preferred an Appeal to the Director of Geology and Mining, which was dismissed, by order, dated 16.02.2001. However, the correctness of the said contention in the counter affidavit could not be readily verified, as files in the Office of the Director of Geology and Mining have been fully destroyed during the recent flood, as noticed above.

8. Be that as it may, this Court is constrained to examine as to whether the order passed by the fourth respondent/District Collector, dated 24.12.1998, confirms to the principles of natural justice, and whether the petitioner had adequate opportunity to putforth his case.

9. On perusal of the impugned order, dated 24.12.1998, it

is evidently clear that, it is a non-speaking order. The fourth respondent/District Collector has not discussed about any of the aspects, which were raised by the petitioner, in his letters, dated 24.06.1998 and 28.10.1998. Thus, the order, which is devoid of reason, is an order, which is in violation of principles of natural justice, and would call for interference. That apart, action has been initiated, in issuing a show cause notice based on the report of the Tahsildar, Tirutani, dated 28.08.1998, and the fourth respondent has also referred to the report of the Assistant Director (Geology and Mining), dated 01.09.1998. These documents were not furnished to the petitioner. Even assuming that these documents/reports were collected behind the back of the petitioner, when the fourth respondent proposed to rely upon the same, then, he ought to have furnished copies thereof, so that the petitioner would be able to submit effective reply. Thus, it is clear that the impugned order is in violation of principles of natural justice.

10. In the light of the above said conclusion, no useful purpose would be served by remanding the matter to the Director of Geology and Mining, since the error has occurred even at the time of passing the order in original by the District Collector/fourth respondent.

11. For the reasons stated hereinabove, the Writ Petition is allowed, the order passed by the fourth respondent/District Collector, dated 24.12.1998, as well as the order passed by the Director of Geology and Mining, dated 16.02.2001, and the consequential orders of the fourth and fifth respondents, dated 05.10.2015 and 10.10.2015 are set aside and the matter is remanded to the fourth respondent/District Collector for fresh consideration, who shall furnish copies of the reports, which were referred to and relied on, in the impugned order, and grant 15 days' time to the petitioner to submit his objection and afford an opportunity of personal hearing to the petitioner, and pass fresh orders on merits and in accordance with law, as expeditiously as possible, preferably, within a period of three months from the date on which the petitioner submit his objections. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

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rep. by its Principal Secretary,
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+1 cc to M/s.J.Jayendra krishnan,advocate,sr.48818

+1 cc to Govt.Pleader,sr.49151.

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krd 12/9

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