

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.08.2016

Coram

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

W.P.No.24717 of 2016 &
W.M.P.No.21110 of 2016

J.Janikiraman

.. Petitioner

Vs

1.The District Collector
Tiruvallur District.

2.The Revenue Divisional Officer
Ponneri Division
Tiruvallur District.

.. Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari to call for the records of the first respondent vide Ref.No.786/2014/G & M-1, dated 25.06.2016 and quash the same.

For petitioner .. Ms.S.Deepika

For Respondents ... Mr.S.Diwakar
Spl.Govt. Pleader

O R D E R

Heard Ms.S.Deepika, learned counsel appearing for the petitioner and Mr.S.Diwakar, learned Special Government Pleader accepting notice for the respondent and with the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal.

2.The petitioner has filed this Writ Petition challenging the order passed by the first respondent dated 25.06.2016, in and by which, the petitioner's Appeal Petition filed against the order passed by the second respondent dated 17.09.2015, wherein penalty was imposed on the petitioner for alleged illicit mining, was dismissed on the ground of limitation.

3.It may not be necessary to go into the factual position,

except to note that the the petitioner was granted a lease to quarry 4725 lorry loads of savudu, in a lake owned by Public Works Department in Survey No.14,Thirupalaivanam, (Madura Kanchivayal) Village, for the period of 55 days from 25.05.2015 till 18.07.2015, under Rule 12 of the Tamilnadu Minor Mineral Concessin Rules, 1959, as per the proceedings of the first respondent dated 23.05.2015. The petitioner has paid a sum of Rs.5,67,000/- towards the Seignorage fee besides a sum of Rs.56,700/-, as security deposit.

4.It appears that in the interregnum, a Public Interest Litigation was filed in W.P.No.16703 of 2015, which ultimately has been closed by the Hon'ble First Bench of this Court, by an order dated 29.07.2016. However, the said order would not have any impact on the present proceedings.

5.Admittedly, the petitioner had filed the Appeal Petition beyond the period of limitation and there was a delay of 220 days. The petitioner had appeared before the first respondent and submitted reasons for the delay and a statement was recorded by the first respondent on 21.06.2016, from which it is seen that the petitioner had to undergo extensive treatment for Renal problem as well as cardiac problem and this has been clearly mentioned in the statement recorded before the first respondent. However, the first respondent rejected the petitioner's Appeal Petition, since the petitioner himself admitted that his Appeal Petition was filed beyond time. But, the fact remains that the petitioner has set out the reasons for the delay and has also sought for condonation of delay by filing separate Petition along with Petition for condonation of delay, dated 13.06.2016, copy of which has been filed in the additional typed set of papers. The fact that the first respondent was aware of the reasons for the delay, is not in dispute,however, there is nothing in the impugned order to indicate that the first respondent was not satisfied with the reasons assigned by the petitioner for not being able to prefer the Appeal Petition, within the time limit.

6.The learned counsel for the petitioner relied upon the decision of this Court in the case of PONNUSAMY & ORS v THE DEBTS RECOVERY TRIBUNAL [C.R.P (NPD) No.253 of 2008 dated 09.02.2009], which was affirmed by the Hon'ble Supreme Court in Civil Appeal No.5924 of 2015 in BALESHWAR DAYAL JAISWAL v. BANK OF INDIA & ORS. The question which arose for consideration in the case of PONNUSAMY & ORS, was whether the Tribunal while considering the Appeal Petition filed under section 17(1) of the SARFAESI Act, is entitled to entertain a Petition to condone the delay or not, in other words, in the absence of a specific provision in the SARFAESI Act, either empowering the Tribunal to

condone the delay or extending the provisions of the Limitation Act, whether the Tribunal was entitled to exercise such power. The Court by its order dated 09.02.2009, allowed the Civil Revision Petition and held that Petition filed under Section 5 of the Limitation Act would apply to the Application filed under section 17 of the SARFAESI Act. The Hon'ble Supreme Court, which was considering the correctness of the decision of this Court in the Civil Revision Petition as well as the other orders passed by the other High Courts, held as follows:

"8..... Unless the scheme of the statute expressly excludes the power of condonation, there is no reason to deny such power to a Appellate Tribunal when the statutory scheme so warrants. Principle of legislation by incorporation is well known and has been applied inter alia in Ram Kirpal Bhagat vs. The State of Bihar, Bolani Ores Ltd., vs. State of Orissa, Mahindra and Mahindra Ltd., vs. Union of India and Onkarlal Nandalal vs. State of Rajasthan replied upon on behalf of the appellants. We have thus, no hesitation in holding that the Appellate Tribunal under the SARFAESI Act has the power to condone the delay in filing an appeal before it by virtue of Section 18(2) SARFAESI Act and proviso to Section 20(3) of the RDB Act."

The ratio laid down by the Hon'ble Supreme Court in the aforementioned decision would be squarely applicable to the facts of the present case and there is no specific exclusion of the provisions of the Limitation Act. Therefore, the first respondent was entitled to exercise discretion to examine as to whether the petitioner has made out sufficient cause for not being able to present the Appeal in time.

7.The fact that the petitioner has shown sufficient cause is not disputed, since it was recorded by the first respondent by way of statement from the petitioner on 21.06.2016, which has been extracted verbatim in paragraph No.11 of the impugned order. I have perused the reasons assigned by the petitioner in the statement and I am convinced that he has shown sufficient cause for not having preferred the Appeal in time.

8.For all the above reasons, the Writ Petition is allowed and the delay in filing the Appeal Petition before the first respondent is condoned and the first respondent is directed to consider the Appeal Petition on merits and in accordance with law, after affording an opportunity of personal hearing. No

costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

rpa

To

1.The District Collector
Tiruvallur District.

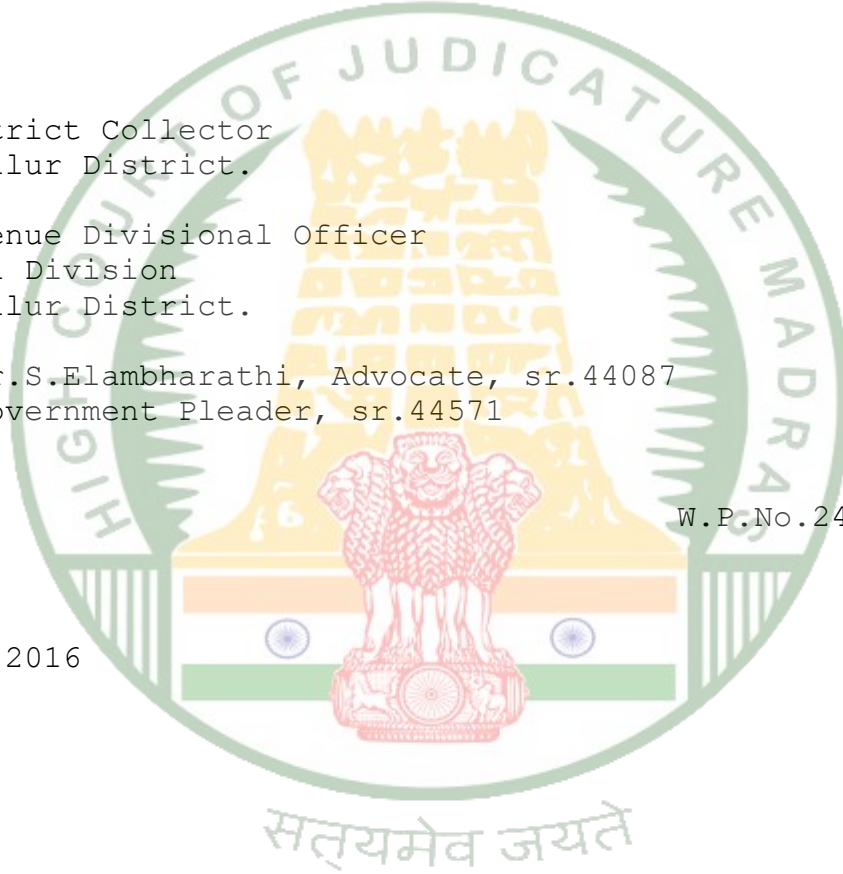
2.The Revenue Divisional Officer
Ponneri Division
Tiruvallur District.

1 cc to Mr.S.Elambharathi, Advocate, sr.44087

1 cc to Government Pleader, sr.44571

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gj ii co
kra 22.08.2016



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