

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM

THE HONOURABLE MR.JUSTICE K. RAVICHANDRABAABU

W.P.No.21554 of 2017

J.Subramani

... Petitioner

vs.

1. The District Collector,
Tiruvallur District,
Tiruvallur.

2. The Assistant Director of Geology
and Mining,
Tiruvallur District,
Thiruvallur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus to direct the respondents to forthwith grant permission to the petitioner to remove 5000 Lorry loads of Savadu earth as per the application of the petitioner dated 15.04.2013 as per the proceedings of the respondent in R.C.No.463/2013/G&M-2 dated 28.11.2016 in respect of the P.W.D. Tank in S.No.352/1 (P) Thirukkandalam Village, Uttukottai Taluk, Thiruvallur District.

For Petitioner : Mr.K.R.Krishnan

For Respondents: Mr.A.Kumar,
Special Government Pleader.

O R D E R

The petitioner seeks for a mandamus to direct the respondents to forthwith grant permission to the petitioner to remove 5000 Lorry loads of Savadu earth as per the application of the petitioner dated 15.04.2013 as per the proceedings of the respondent in R.C.No.463/2013/G&M-2 dated 28.11.2016 in respect of the P.W.D. Tank in S.No.352/1 (P) Thirukkandalam Village, Uttukottai Taluk, Thiruvallur District.

2. Heard Mr.K.R.Krishnan, learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

3. The petitioner filed an application on 15.04.2013 for grant of permission to remove gravel from the subject matter PWD Tank. It is contended by the learned counsel for the petitioner that in pursuant to the amendment of Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959, the application filed by the petitioner has to be placed before the Special Committee constituted as per the above amended provision for considering the claim of the petitioner. Thus, it is contended that the first respondent has not forwarded the application so far which has resulted in filing the present writ petition.

4. Learned counsel for the petitioner, by citing a decision made by this Court in a batch of writ petition in W.P.No.28019/2015 etc. dated 20.04.2016 and the other order passed by this Court followed in W.P.No.22468/2016 etc. dated 30.06.2016 and W.P.No.21300/2016 dated 22.06.2016, following the earlier order passed by this Court in the said batch of cases, submitted that the 1st respondent is bound to forward the application of the petitioner to the Special Committee.

5. Learned counsel for the petitioner also pointed out that notification of the tank was already there even before the amendment and therefore, there cannot be any impediment for the first respondent to place the matter before the Special Committee.

6. Learned Special Government Pleader, on the other hand, submitted that as per the amended Rule, the applications can be received only when a particular tank is notified by the Department and therefore, the petitioner's application, filed earlier to the amendment, need not be forwarded.

7. I have considered the rival submissions made by the learned counsel on either side.

8. A careful perusal of the order passed in W.P.No.28019/2015 etc. dated 20.04.2016 would clearly indicate that the petitioners therein were the parties who made the applications earlier to the amendment and taking note of such fact as well, the learned Judge has observed in paragraph Nos.20 to 24 as follows:

20. In the case on hand, admittedly, the petitioners were not granted permission to quarry Savadu in Public Works Department tanks. The District Collector should have passed orders in the applications, submitted by the petitioners, within a reasonable time. But the District Collector kept the application pending for a very long time. However, since the provisions of Rule 12 of

the Tamil Nadu Minor mineral Concession Rules, 1959 were amended on 23.09.2015, now, the District Collector cannot grant permission on her own against the provisions of the Amended Rule 12 of Tamil Nadu Minor Mineral Concession Rules, 1959. It is settled position that Mandamus cannot be issued against the statute. The ratio laid down in the judgment, relied by the learned Special Government Pleader, reported in (1981) 2 SCC 205 (State of Tamil Nadu Vs. M/s. Hind Stone and others) squarely applies to the facts and circumstances of the present case.

21. In spite of all the authorities, recommending for grant of permission to the petitioners for quarrying the Savadu in the Public Works Department Tanks, now, mandamus cannot be issued in view of the amended provisions of Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959.

22. When the amended Rule 12 contemplates that the District Collector can grant permission only after the recommendations of the Special Committee, the District Collector cannot be directed to grant permission, ignoring the provisions of the Amended Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959.

23. The District Collector can pass orders only based on the recommendations of the Special Committee. As per the amended Rule 12, the District Collector shall place all the eligible applications before the Special Committee, for scrutinising the applications and for getting its recommendations.

24. It is open to the District Collector to place the petitioners' applications before the Special Committee, constituted by her, as contemplated under the Amended Rule 12 of the Tamil Nadu Minor Mineral concession Rules, 1959, and based on the recommendations of the Special Committee, the District Collector may pass orders on the applications. For the reasons stated above, all the writ petitions are liable to be dismissed and accordingly, the same are dismissed. No costs. Consequently, connected MPs are closed.

9. No doubt, the learned Judge dismissed the batch of cases,

however, by observing that it was open to the District Collector therein to place it before the Special Committee and based on the recommendation of the Special Committee, the District Collector may pass orders on the application. The very same order was followed by the other learned Judge in W.P.No.22468/2016 etc. dated 30.06.2016 and W.P.No.21300/2016 dated 22.06.2016. Therefore, I do not find any impediment for the first respondent to forward the application before the Special Committee. But at the same time, this Court would like to point out that it is for the Special Committee to consider the matter on its own merits and in accordance with law and pass orders on the application of the petitioner independently. Mere reference by the first respondent to the Special Committee does not mean that there is any recommendation by the first respondent. Accordingly, this writ petition is disposed of by directing the first respondent to place the application of the petitioner before the Special Committee for passing orders on the same on merits and in accordance with law. Such exercise shall be done by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The District Collector,
Tiruvallur District,
Tiruvallur.
2. The Assistant Director of Geology
and Mining,
Tiruvallur District,
Thiruvallur.

+1cc to Mr.K.R.Krishnan, Advocate, S.R.No.79420
+1cc to the Government Pleader, S.R.No.80109

W.P.No.21554 of 2017

GR(CO)
GN(16/11/2017)