

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.16063 of 2004

V.Basheer Ahmed

.. Petitioner

Vs.

The Revenue Divisional Officer, Villupuram.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the respondent relating to his order passed in Na.Ka.No.A4/5180/03, dated 14.04.2004 and quash the same.

For Petitioner : Mr.V.Sanjeevi

For Respondent : Mr.S.Diwakar, Special Government
Pleader

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records of the respondent relating to his order passed in Na.Ka.No.A4/5180/03 dated 14.04.2004 and quash the same.

2. The case of the petitioner is that the petitioner has purchased the lands bearing Survey Nos.1/1A, 1/1B, 1/3A and 1/3B ad-measuring 4.62 acres (1.86.5 Hectares) in Kallapattu Village, Villupuram Taluk and District, in and by registered sale deed dated 06.03.2000. He made an application dated 07.07.2003 to the District Collector, Villupuram District for grant of lease for quarrying/removing red earth from the said patta lands for a period of five years in terms of the Tamil Nadu Minor Mineral Concession Rules, by remitting necessary charges. The permission was granted for a period of three years, by proceedings dated 05.01.2004 of the District Collector, Villupuram. The petitioner has stated that he has received a communication on 30.03.2004 asking to show cause as to why amounts of Rs.15,300/- towards the seigniorage fee, Rs.51,000/- towards cost of minerals and penalty, shall not be recovered for removing 170 lorry loads of red earth from the above said patta

lands illicitly and without any lease/permission. It is stated by the petitioner that he has never quarried or removed red earth from the above said patta lands and even at the time of purchase of lands, there were pits in the lands. In order to make the lands fit for cultivation, the petitioner has applied for lease to quarry the red earth. It is the grievance of the writ petitioner that he has never indulged in any illicit mining as alleged in the show cause notice, which was explained to the Assistant Director of Mines. The petitioner submitted his reply to the said show cause notice on 14.04.2004 accepting to pay the amount of Rs.66,300/- towards seigniorage fee and the cost of minerals with a view to facilitate the execution of the lease deed without any further delay. The District Collector and the Assistant Director of Mines refused to take action to execute the lease deed despite representations of the petitioner. Unfortunately, the impugned proceedings of the respondent had been issued which is based on Inspection report of the Assistant Director of Geology and Mining, and the said report has not been furnished to the petitioner.

3. It is further stated by the petitioner that the explanation given to the Assistant Director of Mines that there were pits in the lands even before the purchase of lands, was not taken note of by the respondent and the Assistant Director of Mines has submitted a report stating that the petitioner has purchased the lands in question and that there were already pits. According to the petitioner, he had never indulged in the illegal act, much less the one stated by the respondent in the impugned order, dated 14.04.2004. Hence, the impugned order is liable to be interfered with.

4. It is further stated by the petitioner that he has not been given any opportunity of being heard before imposing the penalty and mere admission to pay the amount demanded without penalty, cannot be construed as admission to pay the penalty.

5. The respondent has filed detailed counter affidavit, in which, it is stated that the petitioner has purchased the lands vide document No.274/2000 on 06.03.2000 of the Sub-Registrar, Valavanur. The petitioner has applied for grant of lease for quarrying the red earth from the lands in question, which were inspected on 20.09.2003 by the respondent and grant of lease was recommended to the District Collector. The Assistant Director of Mines had inspected the lands and submitted his technical report stating that illicit quarrying of red gravel was noticed in the lands measuring 170 lorry loads in five pits. On the basis of the said technical report, the Collector has given direction to the respondent-Revenue Divisional Officer, Villupuram to take action under Rule 36-A of the Tamil Nadu Minor Mineral

Concession Rules against the illicit quarry of red gravel. The petitioner was issued with a show cause notice asking to pay a sum of Rs.15,300/- towards the seigniorage fee, Rs.51,000/- towards the cost of minerals and Rs.76,500/- towards penalty, aggregating to Rs.1,42,800/-. The petitioner, in his explanation dated 14.04.2004, has accepted to pay Rs.66,300/- towards the seigniorage fee and the cost of minerals, with a view to get the lease executed and did not offer any remarks about the fine levied. The explanation offered by the petitioner was duly considered and rejected on merits and the petitioner was directed to pay a sum of Rs.1,42,800/- as mentioned in the impugned order.

6. It is further stated in the counter that the contention that the petitioner was not given an opportunity, is not correct and the petitioner, on receipt of the show cause notice, dated 30.03.2004, has submitted reply/explanation on 14.04.2004, which was considered and the impugned order had been passed.

7. According to the respondent, the petitioner is solely responsible for the illicit movement of any quarry previously moved even before the date of purchase of the lands. Since the petitioner has agreed to pay the seigniorage fee and the cost of minerals and as the inspection was made in his presence, there is no need to conduct separate enquiry as contended by the petitioner. It is further stated in the counter that the Assistant Director of Mines has inspected the lands and found that there are five pits, from which, illegal quarry was undertaken. According to the respondent, since there is a violation on the part of the petitioner, the contention that the petitioner was not given an opportunity and penalty levied is incorrect, is not justified. The Writ Petition is devoid of merits and the same is liable to be dismissed.

8. Heard both sides and perused the materials available on record.

9. The fact that the land belongs to the petitioner who purchased them on 06.03.2000, is not in dispute. The Assistant Director of Mines has inspected the lands and only thereafter the lease was granted and the period of lease already expired. The only grievance of the petitioner is that the petitioner shall not be ordered to pay the penalty, when there is admission in the report of the Assistant Director of Mines that there were pits even at the time of purchase of the lands. When there were pits, the respondent should have identified the pits while granting the lease for a period of three years. Merely because the petitioner has agreed to pay the seigniorage fee and the cost of minerals, as contemplated under the Tamil Nadu Minor

Mineral Concession Rules, does not mean that the penalty can be levied.

10. It is not the case of the respondent that the pits were not there at the time of granting lease and even before the lease was granted, there was illegal quarry. The petitioner has stated that in order to avoid further delay the process of getting the lease executed, he has agreed to pay the amount, which cannot, by any stretch of imagination, be construed that the petitioner has carried on the illegal quarry.

11. Hence, I find much force in the contentions of the petitioner and this Court accepts the contention of the petitioner insofar as the levy of penalty is concerned. The petitioner is directed to pay the amount mentioned in the impugned order dated 14.04.2004 other than the penalty that is imposed, within a period one month from the date of copy of receipt of this order, failing which, the amount to be paid by the petitioner, shall carry 12% interest from the date of the impugned order till the date of payment.

12. The Writ Petition is allowed in part to the extent indicated above. No costs.

Assistant Registrar
Dt.8.11.17

//True Copy//

Sub Assistant Registrar

To:
The Revenue Divisional Officer,
Villupuram.

+1 cc to Govt.Pleader,sr.71421

+1 cc to Mr.V.Sanjeevi,advocate,sr.71303.

Krd 21/11

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