

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2017

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

W.P.No.38912 of 2003

S.Palaniappan

...Petitioner

Vs.

1.The District Collector,
Salem District,
Salem.

2.The Assistant Director of
Geology & Mining,
Salem.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent by proceedings in R.O.C.420/2003/Mines-B dated 12.11.2003, quash the same and consequently direct the 2nd respondent to issue Transport Permits to transport the Minerals digged while digging the well in the petitioner's land in S.F.No.82/3D of Unjanoor, Annadanapatti Village, Sankari Taluk.

For Petitioner : Mr.G.Arul Murugesan

For Respondents : Mr.M.Elumalai
Government Advocate

ORDER

The prayer sought for in this Writ Petition is for a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent by proceedings in R.O.C.420/2003/Mines-B dated 12.11.2003, quash the same and consequently, direct the 2nd respondent to issue Transport Permits to transport the Minerals digged, while digging the well in the petitioner's land in S.F.No.82/3D of Unjanoor, Annadanapatti Village, Sankari Taluk.

The short facts which are required to be noticed for the disposal of this writ petition are as follows:

2.The petitioner has claimed that he is the owner of the land comprised in S.F.No.82/3D of Unjanoor, Annadanapatti Village, Sankari Taluk. In the said land, the petitioner had

been doing agriculture activities and there are 50 coconut trees and 100 mango trees. In order to get irrigation facilities, the petitioner wanted to dig a well in that land. Therefore, he had made an application to the 2nd respondent seeking permission to dig the well. Based on which, the 2nd respondent inspected the land and recommended that the digging of well is essential due to the drought condition. Accordingly, the 1st respondent by Proceedings in K.Dis.1069/2002/Mines-B, dated 20.01.2003, permitted the petitioner to deepen the well on condition that while digging the well, the limestone minerals found in the well should be stocked separately and it should be disposed of only after obtaining prior permission from the Authorities concerned, of course, after paying the royalty to the Government and obtaining transport permit from the 2nd respondent.

3. Pursuant to the order of the 1st respondent, the petitioner started excavating further to deepen the well and the materials digged were stocked separately. As per the order of the 1st respondent, the petitioner has also paid royalty to the Government through Treasury. Thereafter, the petitioner obtained transport permit from the 2nd respondent. Pursuant to the instructions of the Government, the 2nd respondent issued despatch slips for transporting the removed stocks to the nearby areas. When that being so, all of sudden, the 1st respondent, vide proceedings dated 12.11.2003, passed an order, cancelling the permission for digging the well. Challenging the same, the present Writ petition has been filed.

4. I have heard Mr.G.Arul Murugesan, learned counsel appearing for the petitioner and Mr.M.Elumalai, learned Government Advocate appearing for the respondents.

5. By the impugned order dated 12.11.2003, the 1st respondent/District Collector has cancelled the permission for digging the well to the petitioner on the ground that based on the report of the Tahsildar and the Revenue Divisional Officer of Sankari, who according to the 1st respondent allegedly made their report stating that the petitioner misused the permission of digging the well and in the name of digging the well, the petitioner has been continuously excavating the minerals, i.e., limestones for commercial purpose and therefore, permission granted for digging the well has been cancelled and accordingly, the District Collector vide order dated 12.11.2003 cancelled the said permission.

6. In this regard, the learned counsel appearing for the petitioner would submit that the 1st respondent/Collector, while granting permission earlier, after having known to the fact that if digging work is undertaken, certainly, there should be an excavation of limestones and at the time of granting, a condition was imposed by the 1st respondent that the excavation

of minerals should be kept separately and only after getting permission from the authorities and after obtaining permission, to be transported.

7. Therefore, the learned counsel appearing for the petitioner would submit that only within the said permission as well as the condition imposed therein by the 1st respondent, the petitioner had digged the well and the excavation of minerals had to be transported to the nearby places. For the said purpose, the petitioner has already paid the royalty to the Government. The learned counsel appearing for the petitioner would submit that the petitioner had no knowledge about the alleged report of the Tahsildar or the Revenue Divisional Officer of Sankari. Therefore, unless the contents of the said report is furnished to them and after getting explanations, the present impugned order ought not to have been passed by the Collector. In fact, on hearing the petitioner on the above aspect, this Court directed the learned Government Advocate to produce the files, pertaining to the Tahsildar and the Revenue Divisional Officer of Sankari, as has been quoted by the 1st respondent/District Collector in the impugned order. Pursuant to the directions, issued by this Court, the learned Government Advocate has produced written instructions given by the 1st respondent/District Collector in R.O.C.255/2003/Mines-A, dated 19.12.2017, which reads thus:

"It is further submitted that, the Hon'ble High Court, Madras, has ordered in similar case in W.P.No.37958 of 2003 and WMP No.46088 of 2003 as follows:

"The impugned order states that the writ petitioner has misused the permission granted in his favour and excavated the limestones from the well. The District Collector has every reason to cancel the order because the inspection report stipulates that the writ petitioner has misused the permission accorded in his favour. However, at the time of admission this Court granted an order of interim stay and the order was modified on 23rd August, 2004, as extracted below:

"In respect of that portion of the impugned order cancelling the permission for deepening the well is not touched upon by this order. It is made clear that in the guise of deepening the well, the petitioner cannot indulge in any quarrying activities. If that be so, the petitioner is liable for penal actions under the provisions of the Act."

While modifying the order, this Court imposed the condition that the writ petitioner should not indulge in any quarrying activities. If that be so, the petitioner is liable for penal actions under the provisions of the Act. This Court is of the firm

opinion that the modified order of this Court is well balanced and the existing well already digged by the writ petitioner shall be used for taking out the water for agricultural purposes and the writ petitioner cannot remove any limestone or other minerals from the said well.

With this condition, the writ petitioner is permitted to dig the water from the well and all other activities are prohibited and if it is found that the writ petitioner is indulging in any other activities of excavating of limestones or any other minerals, the respondents are bound to initiate appropriate penal action under the law.

With these observations, the writ petition stands disposed of. No costs.

It is further submitted that indulging in quarrying activities in the guise of deepening of the well should not be allowed. After confirming that the petitioner was misusing the permission and used the permission for excavating the limestones, the District Collector cancelled the permission granted in favour of the writ petitioner.

It is therefore prayed that the above fact may kindly be appraised before the Hon'ble High Court and requested to be pleased to pass an order to dismiss the above writ petition and thus render Justice."

8. Though the said instructions received from the District Collector has been produced by the learned Government Advocate before this Court, he would submit that apart from these instructions, the aforementioned report of the Tahsildar as well as the Revenue Divisional Officer of Sankari, had not been forwarded and it is understood that the report is not readily available as of now.

9. Since the very impugned order itself was passed by the 1st respondent/Collector based on the alleged report of the Tahsildar and the Revenue Divisional Officer concerned, and it has not been stated, what is the exact averment or contention made in the report of the Tahsildar and the Revenue Divisional Officer in the impugned order, it can be presumed that only based on the said report, such cancellation order was passed by the 1st respondent/Collector. In this context, the contention of the learned counsel appearing for the petitioner is that the alleged report of the Tahsildar and the Revenue Divisional Officer of Sankari, if at all there, it is behind back of the petitioner and without the petitioner being put on notice about the said alleged report of the Tahsildar and the Revenue Divisional Officer concerned, no adverse order could be passed against the petitioner. The said contention will have some

force.

10. Since the petitioner himself was given permission by the Collector with condition and based on such permission and condition, the petitioner had proceeded to dig the well and during the excavation, if the materials are available i.e., the limestones, the same had to be transported, after paying the royalty to the Government and after getting transport permit. Unless a specific allegation is made against the petitioner that he has misused the permission for digging the well and he has transported the minerals on commercial basis, instead of digging the well, such permission cannot be cancelled, that too, without any issuance of notice to the petitioner. Therefore, on the ground of non issuance of notice and the non supply of the alleged report of the Tahsildar and Revenue Divisional Officer concerned to the petitioner, this Court is of the view that the impugned order is liable to be interfered with. Accordingly, the impugned order dated 12.11.2003 is quashed and the Writ Petition is allowed on the following terms:

(1) The matter is remitted back to the 1st respondent/Collector with a direction that he shall depute any officer concerned working under him to have a spot inspection of the petitioner's well, after giving notice, fixing the date for such inspection to the petitioner and after having spot inspection, based on the report be prepared and filed, to the Collector, he can take a decision, of course, after affording an opportunity to the petitioner to make his view, if any, and ultimately, pass any final orders, either accepting or rejecting the permission for continuing to digging of the well and for transporting the excavated minerals.

(2) The aforesaid exercise shall be undertaken by the 1st respondent/District Collector within a period of eight weeks from the date of receipt of a copy of this order.

With these directions, this Writ Petition is disposed of as stated above. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mps

To

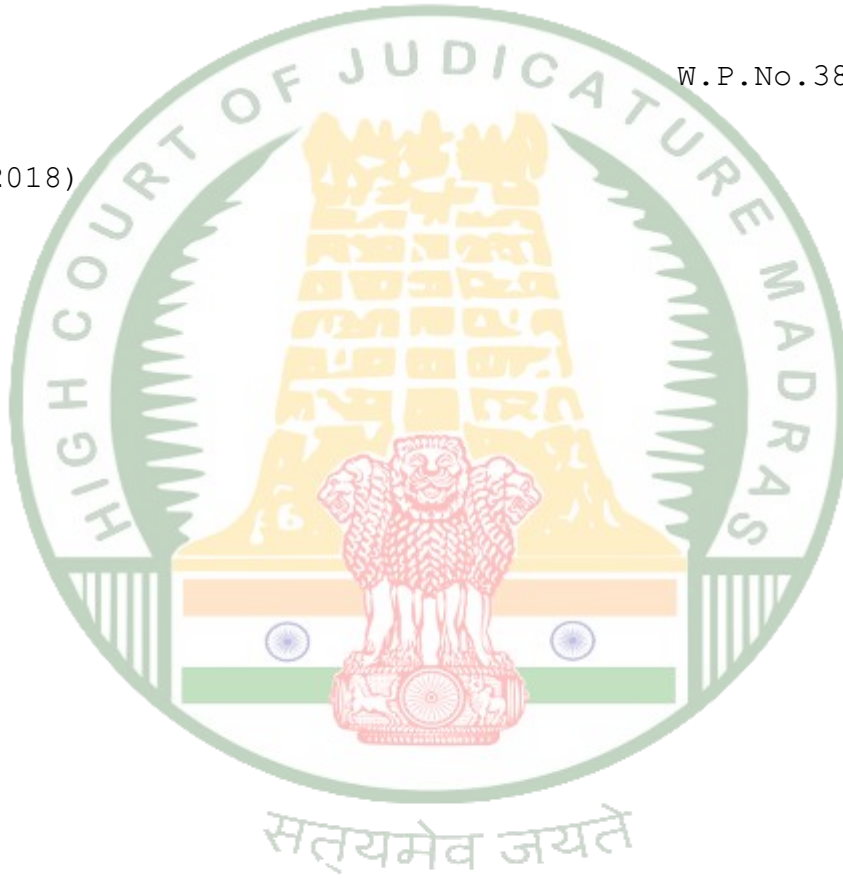
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Salem District,
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2.The Assistant Director of Geology & Mining,
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+1 CC to Mr.G. Arul Murugan, Advocate sr 91629.

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