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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON:22.06.2017

DATED :17.07.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.15753 of 2015

and

M.P. (MD) .No.1 of 2015

C.Pappuraj

... Petitioner

Vs.

1.The Commissioner of Geology and Mining,
Chennai.

2.The District Collector,
Tuticorin District, Tuticorin.

3.The Revenue Divisional Officer,
Kovilpatti, Tuticorin District.

4.The Tahsildar,
Ettayapuram Taluk,
Tuticorin District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records pertaining to the impugned order in R.C.No.151/MM9/2012 dated 11.06.2015 on the file of the first respondent and quash the same.

For Petitioner : Mr.K.Vinayagan

For Respondents : Mr.TR.Janardhanan

Additional Government Pleader

ORDER

This writ petition has been filed praying for a Writ of Certiorari to call for the records pertaining to the impugned order in R.O.C.No.151/MM9/2012 dated 11.06.2015 on the file of the first respondent and quash the same.



2. The petitioner would aver among other things that the petitioner was a Panchayat Union Councilor, Kovilpatti and also the resident of Kasavankunru Village. It is alleged that the fourth respondent levelled allegation against the petitioner stating that he had taken gravel from the tank in Kasavankundru Village. According to the petitioner, there was an urgent necessity to repair a break in the drinking water pipe near Pillayar Kovil and to repair the same, the gravel was taken by him. Despite the said fact, the Tahsildar/fourth respondent herein recommended that the petitioner has to pay the value of the gravel along with the cost of three units gravel worth about Rs.450/- and the total penalty amount of Rs.25,855/- was imposed on him. On the basis of the enquiry report of the fourth respondent, the third respondent passed the order in Na.Ka.Aa2/11693/2008 dated 12.12.2009 holding that the petitioner took three units of gravel from the tank situated in Odai Poramboke. Therefore, the petitioner filed an appeal before the second respondent/District Collector and the same was dismissed on 08.12.2011. Aggrieved over the same, the petitioner filed a second appeal before the Commissioner of Geology and Mining, Chennai and the same was also dismissed on 11.06.2015. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner would submit that if the gravel was taken through the tractor as alleged by the respondents, the respondents should have provided the registration number, owner and driver of the vehicle in question, but, in the case on hand, they have not given the basic details to substantiate their allegation. That apart, no First Information Report was filed against the petitioner. The signature obtained from the petitioner in a blank paper has been used against the petitioner as an incriminating material and therefore, the order impugned in this writ petition is liable to be set aside.

4. The learned Additional Government Pleader would submit through the counter affidavit of the third respondent filed on behalf of the second and the fourth respondent that pursuant to a complaint given by one V.M.Subbiah, Ex-Panchayat President, Tuticorin District, the Revenue Divisional Officer, Kovilpatti directed the fourth respondent, who inturn inspected the site in question and made local enquiries and sent a report to the third respondent. Further, on enquiry by the fourth respondent with the petitioner, he admitted that he took one unit of sand to set right the breaches in the drinking water pipe lines near the temple of 'Vinayagar' in Kasavankungru village. Further, the allegation that the fourth respondent obtained his signature on a blank white paper was not acceptable since he is literate and holding the post of Panchayat Union councillor. After issuing proper notice to the petitioner, the contentions put forth by the petitioner was rejected by the various authorities. Hence, he prayed for the dismissal of the writ petition.



5. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

6. At the outset, it is to be pointed out that the petitioner has fairly admitted that he has taken gravel from the pond in question to repair the drinking water pipelines near the temple of 'Vinayagar' in Kasavankungru village. Curiously, the fourth respondent has also fairly admitted the said fact in paragraph No.4 of the counter affidavit. Therefore, it is clear that the petitioner has not taken or used the gravel sand for his personal use, but, to repair the drinking water pipe, he has taken the same. The respondents could not have appreciated the yeoman service rendered by the petitioner but at least they could not have harassed the petitioner in one way or the other forcing the petitioner to knock the doors of this Court. Water is an elixir of our life. Therefore, all efforts must be made to protect the water resources. Needless to mention that the Tamil Nadu is under severe water crisis. In a given situation, every ounce of water is to be saved and protected to save the future generation of our Country. However, it is unfortunate that the petitioner has to justify his action through the legal forum.

6.1. Of late, realising the importance of the water, the Government of Tamil Nadu has initiated steps to desilt of all the water-bodies in order to augment the water. The Government has also permitted the farmers to take limited loads of nutrition-rich silt to their farmlands. Therefore, when there is a leakage in the drinking water pipeline, a prudent man will not wait for the government officials to do such repairing, though, admittedly, such work has to be done by the official respondents only. Hence, this Court could not find fault with the action of the petitioner.

6.2. Furthermore, the alleged report obtained and sent to the higher authorities behind the back of the petitioner, was not served upon him. If it is the case of the respondents that the petitioner quarried the gravel sand illegally, the respondents could have very well filed the First Information Report against the petitioner, but they have not done so. Further, the respondents have not given the alleged vehicle registration number and owner and driver of the vehicle. Therefore, the impugned order is liable to be set aside.

7. Above all, the author of the complainant, namely, Subbiah went to the extent of filing a public interest litigation in W.P.(MD).No.13733 of 2010 dated 18.11.2010 against the petitioner as if there is public interest to recover the amount from the petitioner, where, the petitioner was not impleaded as one of the respondents, but the said writ petition was dismissed by the Division Bench of this Court vide its order dated 18.11.2010. At the most, it could be seen that in order to settle the personal score against the petitioner, the said Subbiah came forward with a



compliant against the writ petitioner. All these aspects have not been dealt with by the respondents in its proper perspective. Therefore, I have no hesitation to set aside the penalty imposed against the petitioner.

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8. Accordingly, the order impugned against the petitioner stands set aside and this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

- 1.The Commissioner of Geology and Mining,
Chennai.
- 2.The District Collector,
Tuticorin District, Tuticorin.
- 3.The Revenue Divisional Officer,
Kovilpatti, Tuticorin District.
- 4.The Tahsildar,
Ettayapuram Taluk,
Tuticorin District.

+ 1 CC TO Mr.K.VINAYAGAN, ADVOCATE IN SR No. 65778

SSM

TE/MR-KKR/SAR-II : 03/08/2017 : 4P/6C

order made in
W.P(MD)No.15753 of 2015 and
M.P. (MD) .No.1 of 2015
17.07.2017