



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DELIVERED ON : 12.09.2017

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P (MD) Nos.9281 and 9282 of 2015

and

M.P (MD) Nos.1 and 1 of 2015

W.P (MD) No.9281 of 2015:

M/s.Gem Granites,
represented by its
Partner,
S.R.Asaithambi

... Petitioner

Vs.

The District Collector,
Madurai District,
Madurai.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus forbearing the respondent from passing any final orders pursuant to the respondent's show cause notice dated 08.02.2013 in Roc.No.962/2012-Mines, without complying with the petitioner's request dated 10.12.2014 for furnishing of the documents mentioned therein as undertaken by the respondent before this Court in W.P(MD)No.3852 of 2013.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel for Mr.K.K.Senthil

For Respondent : Mr.B.Pugalendhi,
Additional Advocate General
assisted by
Mr.M.Alagathevan,
Special Government Pleader

* * * * *

W.P (MD) No.9282 of 2015:

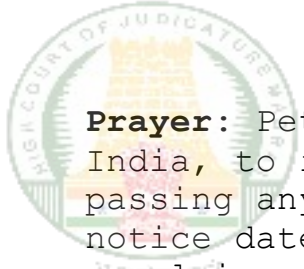
M/s.Gem Granites,
represented by its
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... Petitioner

Vs.

The District Collector,
Madurai District,
Madurai.

... Respondent



Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus forbearing the respondent from passing any final orders pursuant to the respondent's show cause notice dated 11.02.2013 in Roc.No.968/2012-Mines, without complying with the petitioner's request dated 10.12.2014 for furnishing of the documents mentioned therein as undertaken by the respondent before this Court in W.P(MD)No.3853 of 2013.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel for Mr.K.K.Senthil

For Respondent : Mr.B.Pugalendhi,
Additional Advocate General
assisted by
Mr.M.Alagathevan,
Special Government Pleader

COMMON ORDER

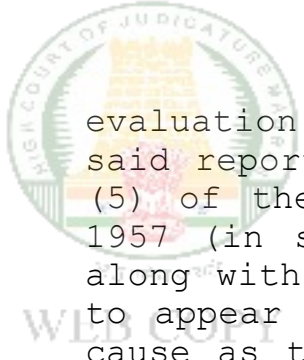
W.P(MD)No.9281 of 2015 has been filed seeking a writ of Mandamus forbearing the respondent from passing any final orders pursuant to the respondent's show cause notice dated 08.02.2013 in Roc.No.962/2012-Mines, without complying with the petitioner's request dated 10.12.2014 for furnishing of the documents mentioned therein as undertaken by the respondent before this Court in W.P (MD)No.3852 of 2013.

2. W.P(MD)No.9282 of 2015 has been filed seeking a writ of Mandamus forbearing the respondent from passing any final orders pursuant to the respondent's show cause notice dated 11.02.2013 in Roc.No.968/2012-Mines, without complying with the petitioner's request dated 10.12.2014 for furnishing of the documents mentioned therein as undertaken by the respondent before this Court in W.P (MD)No.3853 of 2013.

3. Facts-in-nutshell, necessary for the disposal of these writ petitions are as follows:

3.1. The petitioner is a granite quarry lease-holder and as per the lease deeds entered into between the petitioner and the respondent, the petitioner was permitted to quarry granite in the lands mentioned therein. Meanwhile, the show cause notices were issued by the respondent alleging that the petitioner involved in the illegal transport of granite from the lease-hold areas without transport permit/illicit quarrying and transportation in non-lease hold areas and thereby, caused huge loss to the exchequer of the Government.

3.2. In the show cause notices, it is stated that on receipt of several complaints about the illicit quarrying, the Director, Madurai, constituted special teams to carry out a comprehensive, systematic and scientific survey. Further, the show cause notices were issued based on the inspection-cum-



evaluation reports submitted by the special teams. Based on the said reports, the show cause notices were issued under Section 21 (5) of the Mines and Minerals (Regulation and Development) Act, 1957 (in short 'the Act'). The evaluation reports were enclosed along with the show cause notices and the petitioner was directed to appear for personal hearing before the respondent and to show cause as to why the reports of the said special teams should not be accepted and action should not be taken under Section 21(5) of the Act.

3.3. Aggrieved thereby, the petitioner herein challenged the show cause notices dated 08.02.2013 and 11.02.2013 issued by the respondent by filing W.P(MD)Nos.3852 and 3853 of 2013 and this Court, in M/s.Anooradha Granites, Proprietorix Mrs.N.Dhanalakshmi, rep. by her power agent, R.Karthikeyan v. The District Collector, Madurai District, Madurai [W.P(MD)Nos.2677 to 2681 of 2013, etc., batch of cases, decided on 02.09.2014], held that the show-cause notices do not reveal the pre-determination of mind and dismissed the said writ petitions.

3.4. Alleging that the undertaking given by the learned Special Government Pleader in the common order dated 02.09.2014, has not been complied with by the respondent, the petitioner has come forward with the present writ petitions.

4. Mr.M.Ajmal Khan, learned Senior Counsel appearing on behalf of Mr.K.K.Senthil, learned Counsel for the petitioner, made the following submissions:

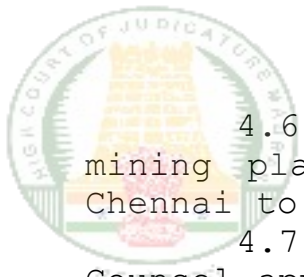
4.1. The documents sought for by the petitioner are not furnished to him and hence, the petitioner is unable to substantiate his case by way of reply to the show cause notices dated 08.02.2013 and 11.02.2013;

4.2. Despite several representations were made to the respondent, no action has been taken by the respondent to furnish the documents as required by the petitioner, which would clearly vitiate the entire proceedings consequent to the show cause notice issued by the respondent;

4.3. In the event of the enquiry being conducted by the respondent, without furnishing the documents sought for by the petitioner, it would ultimately cause prejudice to the interest of the petitioner;

4.4. More particularly, the petitioner sought for the technical inspection report prepared during the area inspection by the Deputy Director/Assistant Director of the Department of Geology and Mining, along with a sketch, indicating the total deposit of the area, defects and the possible recovery percentage, including the marketability, general appearance and topography of the site in question;

4.5. Further, if the details of the seized granite blocks allegedly transported before 2013 from Madurai District, are furnished to the petitioner, the petitioner would be able to establish whether any of the trucks of the petitioner was seized or not;



4.6. Similarly, the petitioner has sought for the certified mining plan approved by the Department of Geology and Mining, Chennai to substantiate his claim; and

4.7. It is the prime contention of the learned Senior Counsel appearing for the petitioner that unless the petitioner is furnished with all the relevant documents, he could not submit his effective reply to the show cause notices and thus, prayed for appropriate orders.

5. Per contra, Mr.B.Pugalendhi, learned Additional Advocate General assisted by Mr.M.alaguthevan, learned Government Advocate appearing for the respondent, among other things, contended thus:

5.1. Admittedly, the petitioner has been served with all the documents sought for by him in his representation dated 10.12.2014 and thus, he refuted the contentions of the learned Senior Counsel appearing for the petitioner in this regard;

5.2. Insofar as the certified mining plan approved by the Department of Geology and Mining, Chennai, is concerned, it is the contention of the learned Additional Advocate General appearing for the respondent that the original approved mining plan is available with the petitioner/lessee;

5.3. Further, the mining plan pertaining to the petitioner's quarry was handed over to the Special Officer/Legal Commissioner appointed by this Court;

5.4. The Special Team has not pointed out the recovery percentage in the inspection-cum-evaluation report and thus, the respondent would not be in a position to furnish the same to the petitioner;

5.5. On verification of records, it was found that none of the trucks of the petitioner was seized prior to 2013 and the same has been duly informed to the petitioner, by reply dated 16.06.2015; and

5.6. The petitioner has approached this Court only to defeat the enquiry proceedings and thus, prayed for the dismissal of these writ petitions.

6. Heard both sides and perused the materials available on record, including the report filed by the respondent, dated Nil/June 2015.

7. In the earlier round of litigation, this Court, in M/s.Anooradha Granites, Proprietorix Mrs.N.Dhanalakshmi, rep. by her power agent, R.Karthikeyan v. The District Collector, Madurai District, Madurai [W.P(MD)Nos.2677 to 2681 of 2013, etc., batch of cases, decided on 02.09.2014], has observed as follows:

"20.4. In these writ petitions under consideration, show-cause notices were issued, inspection reports were furnished, the petitioners were directed to appear for personal hearing to give objections on the reports and the learned Special Government Pleader also made a statement before



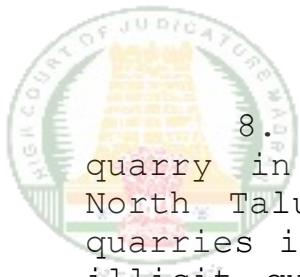
this Court that all reasonable opportunity would be given and relevant documents, if any, required by the petitioners would be furnished, if those documents are in the possession of the Department. Hence, I am of the view that the said judgment cannot be applied to these cases.

21. On the other hand, the judgment of the Apex Court, relied on by the learned Special Government Pleader, in Union of India and another Vs. Kunisetty Satyanarayana, reported in 2006 (12) SCC 28, holding that the writ petition is not maintainable against a show-cause notice, squarely applies to the facts of these cases and the following passage in paragraph 14 of the said judgment is extracted in this regard:

"14. ... A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."

22. In fact, the said principle is also stated in Siemens case and Oryx Fisheries case. But the Apex Court, on the facts of those cases, held that the show-cause notices itself were pre-determined one and therefore, interfered in favour of the appellants therein. But in these writ petitions, I have come to the conclusion that the show-cause notices do not reveal the pre-determination of mind and hence, these writ petitions are liable to be dismissed.

23. For the aforesaid reasons, these writ petitions are dismissed. However, there will be no order as to costs. Consequently, connected



8. It is seen that the petitioner is a lessee for a granite quarry in S.Nos.78/3 and 78/11 of Idayapatti Village, Madurai North Taluk, Madurai District. Further, there are 175 granite quarries in Madurai District and based on the complaints regarding illicit quarrying of granites, inspection was done by a special team consisting of the officials of the Department of Geology and Mining, Revenue Department and Survey Department and accordingly, a comprehensive systematic and scientific survey in all the quarries was carried out and an evaluation report dated 23.01.2013 pointing out the violations committed by the lessees.

9. In the said report, it is alleged that the petitioner has illegally transported 15418.76 CBM granite blocks without remitting seigniorage fees from the lease hold areas and the estimated market value of the same is calculated at Rs.30.84 Crores. Thus, the show cause notices were issued to the petitioner under Section 21(5) of the Mines and Minerals (Development and Regulations) Act, 1957, for recovery of costs of minerals, vide Roc.No.968/2012-Mines, dated 11.02.2013, calling upon the petitioner to submit his explanation. Thereafter, the petitioner made a representation dated 10.12.2014 seeking certain documents for furnishing reply to the show cause notice dated 11.02.2013. According to the respondent, the details sought for by the petitioner have already been furnished to him and in order to drag on the enquiry alone, the petitioner has filed the present writ petitions.

10. After some arguments, the learned Additional Advocate General appearing for the respondent, on instructions from Mr.K.Vijayaragavan, Assistant Director, Department of Geology and Mining, Madurai District, who is present before this Court, submits that the recovery percentage as sought for by the petitioner will be furnished to the petitioner by way of an annexure to the show cause notices and prays for appropriate orders. A copy of the Mining Plan as requested by the petitioner is also handed over to the petitioner by the learned Additional Advocate General appearing for the respondent in the Open Court and thereby, all the required documents are furnished to the petitioner.

11. Considering the facts and circumstances of the case and also taking into consideration the seriousness of the issue involved in these writ petitions, this Court is of the view that the enquiry proceedings should not be dragged on any further for one reason or the other and accordingly, this Court passes the following order:

(i) The value of recovery percentage shall be furnished to the petitioner by way of an annexure to the show cause notices issued to the petitioner, within a period of two weeks from the date of receipt of a copy of this order;

(ii) On receipt of the same, the petitioner is directed to



file his reply/objections to the show cause notices dated 08.02.2013 and 11.02.2013 within a period of two weeks thereafter; (iii) On filing of such reply/objections by the petitioner, the respondent shall consider the same and pass appropriate orders on merits and in accordance with law, after affording due opportunity of hearing to the petitioner as well as to the interested parties, if any, within a period of four weeks thereafter.

12. With the above directions, both the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar

To
The District Collector,
Madurai District,
Madurai.

+2cc to M/s.K.K.SENTHIL, Advocate, in SR No.78076

**COMMON ORDER MADE IN
W.P(MD)Nos.9281 and 9282 of 2015
and
M.P(MD)Nos.1 and 1 of 2015
12.09.2017**

rsb
KK-RSK-SAR 2/12.09.2017/7P-4C