



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :30.06.2017
PRONOUNCED ON: 01.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.10775 of 2017
in
WMP (MD) .No.8192 of 2017

S.Tamilarasi

... Petitioner

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Assistant Director,
Geology and Mining Officer,
Virudhunagar.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the second respondent in Na.Ka.K.V.1/13160/2017 dated 19.05.2017 quash the same and consequently direct the second respondent to return the amount of Rs.1,25,000/- deposited by the petitioner with interest of 9% forthwith.

For Petitioner : Mr.S.Venkatesh
For Respondents : Mr.G.Muthukannan
Government Advocate

ORDER

This writ petition has been filed by the petitioner praying for the issuance of a Writ of Certiorarified Mandamus to call for the records records relating to the order passed by the second respondent in Na.Ka.K.V.1/13160/2017 dated 19.05.2017 quash the same and consequently direct the second respondent to return the amount of Rs.1,25,000/- deposited by the petitioner with interest of 9% forthwith.

2. The petitioner would aver among other things that on 20.03.2017, the petitioner's husband participated in the tender on behalf of the petitioner with regard to the stone quarry situate at Survey No.777/4A, Part II, Ayankollaungkondan, Rajapalayam Taluk,



Virudhunagar District. On account of the illness of the petitioner, on behalf of the petitioner, the petitioner's husband participated in the tender and as a pre-condition to participate in the said tender, a sum of Rs.1,25,000/- has been paid by him through cheque. However, the petitioner could not succeed in the tender and therefore, she requested the amount deposited by her, for which, she made a representation on 11.05.2017 requesting the respondents to return the amount deposited by her. However, the second respondent passed the impugned order stating that the amount paid by the petitioner was adjusted towards the amount to be paid by the petitioner's husband, which is to be paid by him between 1998 to 2001 for the quarry operations conducted by him in Muthusampuram Village and South bank of Rajapalayam Taluk. Hence, the petitioner has come forward with the present writ petition.

3. Further, according to the petitioner that the petitioner's husband while taking the quarry on lease has paid the entire necessary charges and only then, the lease agreement was executed permitting him to do quarry operations and till date, no action has been taken against him. However, in the impugned order it is stated that there is due on the part of the petitioner's husband for quarry operations conducted by him, for which, he gave consent to the respondents to adjust the amount paid by the petitioner towards the dues paid by the petitioner's husband. Despite the detailed representation dated 11.05.2017 requesting them to return the amount deposited by her, the respondents did not act upon the representation sent by the petitioner forcing the petitioner to come before this Court for the relief stated supra. Further, she also alleges that only through the impugned order it was informed about the alleged pendency of the due by the petitioner's husband and no notice was issued to her as regards the dues to be paid by the petitioner's husband. She further alleges that it is not correct to state that as if the petitioner's husband voluntarily requested the respondents to credit the amount towards pending dues to be paid by him. Hence, she has come forward with the present writ petition for the relief stated supra.

4. The sum and substance of the counter affidavit is that at the request of the petitioner's husband the amount due to the government has been adjusted towards seigniorage amount to be paid by the him between 1998 and 2001. Hence, there is no fault on the part of the respondents.

5. Learned counsel for the petitioner would submit that before passing the impugned order, no notice was issued to her and even assuming that the husband of the petitioner has got due to be paid to the government, the respondents can proceed only against the husband of the petitioner and not against this petitioner. Hence, she prayed for appropriate orders.

<https://hcservices.ecourts.gov.in/hcservices/>

6. Learned Counsel for the respondents would only contend



that since the husband of the petitioner had voluntarily requested to credit the amount to the account to which seigniorage amount has not been paid by the husband of the petitioner between 1998 and 2001 for quarry operations, the amount has been adjusted towards pending dues to be paid by the husband of the petitioner. Hence, he prayed for the dismissal of the writ petition.

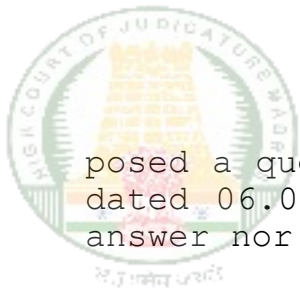
7. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

8. On perusal of the records, it is seen that no notice was issued to the petitioner before passing the order impugned in this writ petition nor proper enquiry was conducted by the respondents. Therefore, there is violation of principle of natural justice. On this only ground, this writ petition deserves to be allowed. The contention of the respondents as per the impugned order is that the petitioner's husband requested the respondents to adjust the amount paid by the petitioner on behalf of the petitioner's husband due on account of the fact that he failed to pay seigniorage amount to the respondents between 1998 and 2001 for the quarry operations conducted by him, cannot be accepted for the simple reason that there is no written request placed before this Court by the respondents to substantiate their claim.

9. It is to be pointed out that in respect of the dues to be paid by the petitioner's husband, he already filed W.P.(MD). No.2144 of 2005 before this Court to consider his representation dated 17.08.2004, whereby, this Court, on 06.09.2008 directed the first respondent therein to dispose of the said representation in accordance with law with notice to the parties. It is not known to this Court nor placed any material before this Court with regard to the subsequent development that had taken place in that matter or whether the respondents had proceeded the matter as per the direction issued by this Court in W.P.(MD).No.2144 of 2005.

10. One thing is certain that the respondents have gone to deep slumber and without issuing any notice to the petitioner herein, the respondents attempted to recover the alleged amount from the petitioner, which, in my considered opinion is bad in law and it cannot be sustained in the eye of law.

11. This Court does not held that the alleged amount to be paid by the petitioner's husband should not be recovered. But, if there is any due against the petitioner's husband, the normal course open to the respondents is to recover the amount from him only and not from the petitioner and therefore, the respondents have no right to adjust the amount paid by the petitioner towards the alleged amount to be paid by the petitioner's husband. In other words, so far, the respondents did not take any steps to recover the alleged amount from the husband of the petitioner nor acted as per the order passed in W.P.(MD).No.2144 of 2005. When this Court specifically



posed a question as to the effect of the order passed by this Court dated 06.09.2008, the learned Government Advocate did not have any answer nor produced any files relating to that case.

12. Hence, in order to suit the convenience of the respondents, the respondents have stated that the husband of the petitioner has given an undertaking to the effect that the amount of the petitioner could be adjusted towards the amount to be paid by the petitioner's husband. Hence, the respondents are directed to return the sum of Rs.1,25,000/- to the petitioner within a period of four weeks from the date of receipt of a copy of this order. However, in the facts and circumstances of the case, this Court is not inclined to award any interest to the petitioner.

With the above direction, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The Assistant Director,
Geology and Mining Officer,
Virudhunagar.

+ 2 CC TO Mr.S.VENKATESH, ADVOCATE IN SR No. 70006, 69920

SSM

TE/SKN-RSK/SAR-IV : 08/08/2017 : 4P/5C

order made in
W.P (MD) No.10775 of 2017 in
WMP (MD) .No.8192 of 2017
01.08.2017