

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.10.2018
THE HON'BLE MRS. JUSTICE S.VIMALA
AND
THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Writ Appeal No.1720 of 2012
& M.P.No.1 of 2012

1. The Director, Geology and Mining,
Villupuram District
2. The District Collector, Villupuram District
3. The Principal Secretary to Government,
Industrial Department,
Fort St. George, Chennai 600 009 ... Appellants /
Respondents before the writ Court.

versus

S.Raj Ganesh ... Respondent /
Petitioner before the writ Court.

Writ Appeal filed under Clause 15 of the Letters Patent, against the order, dated 15.07.2011 passed in Writ Petition No.11421 of 2011.

For Appellants : Mr. Thangavadhana Balakrishnan,
Addl. Government Pleader
For Respondent : M/s. S.Rajeni Ramdoss.

J U D G M E N T

(Judgment of the Court was delivered by S.Vimala, J.,)

The appellants herein are the respondents before the writ Court.

2. The respondent in the writ appeal, as the petitioner, filed Writ of Certiorarified Mandamus in Writ Petition No.11421 of 2011 seeking to set-aside the impugned order, dated 14.08.2009, by which the writ petitioner was directed to remit penalty amount of Rs.10,24,486/- in the Government Account for the illicit transportation of black granite at Perumbakkam Village, Vanur Taluk, Villupuram District and to direct the respondents in the writ petition to return / release the lorry bearing Registration No.TN20-X-7893.

3. The brief facts leading to the filing of the writ petition are as follows:-

The petitioner is the owner of the lorry bearing Registration No.TN20-X-7893. On 14.04.2008, Nedumaran, the Manager of M/s.Enterprising Enterprises, a company which is carrying on business in quarrying of granites at Kunnam Village, hired the vehicle through the driver for the purpose of transportation of black granite to SBS Granites, Poonamallee. The petitioner was informed that the permit will be handed over to the driver at Dindivanam. While the lorry was transporting black granites, the vehicle was seized by the Tahsildar, Villupuram District, on an allegation that there was a transportation of black granites without a valid permit.

3.1. Even though the District Collector called the petitioner for enquiry on 02.06.2008, there was no enquiry, but he was threatened to put his signature in blank papers. On 15.07.2008, a communication was sent to the petitioner asking him to pay a sum of Rs.10,24,486/- as penalty.

3.2. Thereafter, the petitioner filed the writ petition in W.P.No.19992 of 2008 seeking to release the lorry. The said writ petition was disposed of on 20.08.2008. The petitioner filed appeal dated 15.09.2008 before the Director of Geology and Mining. Simultaneously, the writ petitioner also filed W.P.No.27880 of 2008 seeking direction to the Director, Geology and Mining, to dispose of the appeal filed by the petitioner. There was a direction to the first respondent therein to dispose of the Appeal within a period of eight weeks. Thereafter, the first respondent therein dismissed the Appeal filed by the petitioner on the ground of delay.

3.3. Again appeal was preferred to the third respondent therein, namely, the Principal Secretary. In the meanwhile, the District Collector has passed the order directing the petitioner to pay a sum of Rs.10,24,486/-. Under such circumstances, the present writ petition has been filed.

4. It is contended that the imposition of penalty is without application of mind and without appreciation of records. There is no power to the authority concerned to impose penalty on the owner of the vehicle who had transported the black granite innocently without knowing that it was a serious irregularity. Relying upon the decision reported in AIR 1998 SC 2927 (Assistant Forest Conservator Vs. Sharad RamChandra Kale) it is contended that when the authorities failed to establish that the owner of the truck had any knowledge that his truck was likely to be used for carrying forest product in contravention of the provisions of the Forest Act, the order of confiscation is liable to be set-aside.

4.1. It is the case of the authorities that the lorry owner has accepted that he committed the offence and according to the statement of the owner, the lorry was engaged by one Arul and the permit would be given to the driver on the way during the course of transportation of granite.

4.2. Imposition of penalty has been done invoking the provisions of Section 4 (1A) of the Tamil Nadu Mines and Minerals (Development and Regulation) Act, 1957, (in short [the Act]) and Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 (in short [the Rules]).

4.3. Section 4 (1A) of the Act reads thus:-

[Prospecting or mining operations to be under licence or lease.

4. (1) [No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder]: Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement. Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, [the Atomic Minerals Directorate for Exploration and Research] of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government Company within the meaning of Section 617 of the Companies Act, 1956.

[Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union territory of Goa, Daman and Diu.]

[(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.]

(2)]

4.4. Rule 36-A of the Rules reads as under:-

[36-A. Penalties: (1) 1 [Whenever any person contravenes the provisions of sub-section (1) of section 4 of the Act in any land, enhanced seignior age fee upto a maximum of fifteen times the normal rate subject to a minimum of [twenty five thousand rupees] shall be charged and recovered from that

person by the District Collector or the District Forest Officer as the case may be or in the alternative, he shall be liable to be punished as provided in sub-section (1) of section 21 of the Act:]

[Provided that in respect of minor minerals namely, building and road construction stones including gravel, ordinary sand, earth and turf, ordinary clay including silt, brick and tile clay the powers and duties exercisable and dischargeable by the District Collectors under this sub-rule shall be exercisable and dischargeable by the Revenue Divisional Officer concerned within their respective jurisdiction.]

(6) No machinery shall be used for quarrying sand from river beds, except with the permission of the Secretary to Government, Industries Department or any other authority or Officer, as may be authorized by him in this behalf, who may grant such permission if use of such machinery will not be detrimental to ecology.

(3) Whenever any person raises without any lawful authority any mineral from any land, the District Collector or the District Forest officer, as the case may be, may recover from such person the mineral so raised or where such mineral has already been disposed of, the price thereof, and may also recover from such person, area assessment, seignior age fee or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

[Provided that in respect of minor minerals namely, building and road construction stones including gravel, ordinary sand, earth and turf, ordinary clay including silt, brick and tile clay the powers and duties exercisable and dischargeable by the District Collectors under this sub rule shall be exercisable and dischargeable by the Revenue Divisional Officer concerned within their respective jurisdiction.]

(4) [Whenever any person] contravenes the provisions of sub-rule (1) of rule 10 and in unlawful possession of any land the Director of Geology and Mining or the Chief Conservator of Forests, as the case may be, or the District Collector or the District Forest Officer, as the case maybe, shall, after giving notice, charge and recover from that person double the rate of the lease amount where the area was held under lease through public auction or its renewal or tender or double the total seignior age fee where the area was held under lease through any other provisions of these rules, or in the alternative, shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both and in the case of continuing contravention, with additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

[Provided that in respect of minor minerals namely, building and road construction stones including gravel, ordinary sand, earth and turf, ordinary clay including silt, brick and tile clay the powers and duties exercisable and dischargeable by the District Collectors under this sub rule shall be exercisable and dischargeable by the Revenue Divisional Officer concerned within their respective jurisdiction.]

(5) [Whenever any person contravenes any provisions, other than sub-rule (1) of rule 10 of these rules or conditions of a quarrying permit or quarrying lease granted under these rules the Director of Geology and Mining or the Chief Conservator of Forests, as the case may be, or the District Collector or the District Forest Officer as the case may be, shall after giving notice, charge that person and recover from him enhanced seignior age fee up to a maximum of fifteen times the normal rate subject to a minimum of [twenty five thousand rupees] or in the alternative he shall be liable to be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both and in the case of continuing contravention with additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.]

[Provided that in respect of minor minerals namely, building and road construction stones including gravel, ordinary sand, earth and turf, ordinary clay including silt, brick and tile clay the powers and duties exercisable and dischargeable by the District Collectors under this sub rule shall be exercisable and dischargeable by the Revenue Divisional Officer concerned within their respective jurisdiction.]

[(6) No machinery shall be used for quarrying sand from river beds.]]

5. It is the specific case of the second respondent that at the time of enquiry on 02.06.2008, the owner of the vehicle gave a written statement and in the written statement, the owner has accepted that he had committed an offence and has also consented to pay the amount as fixed by the second respondent.

6. Whether this contention is correct or not is the issue to be considered, as it is one of the main grounds of appeal, challenging the remand of the matter.

7. This court has called upon the authorities to produce the original records. A perusal of the records would go to show that the enquiry has been fixed for the hearing on the date 19.05.2008 at 4.00 pm. On that date, there had been no meeting on account of administrative reasons. The next meeting was fixed for 02.06.2008. There is a note which states that the lorry owner Rajganesh has been informed through telephone on 01.06.2008 at 03.50 pm. After the end of the keynotes for conducting enquiry, there is yet another note which reads as follows:-

□Enquired the owner of the vehicle Thiru.Rajganesh. He has accepted the charges. The person who has hired his vehicle w/o (may be implying 'without') legal permit, he also should be prosecuted. Put up penalty order as per rules.□

8. A perusal of the records did not show that the lorry owner has submitted any written statement. Not even his signature has been obtained in the file, ensuring / showing / marking his presence. The contents of the so-called written statement also was not made available.

9. There are also other circumstances which would go to show that the note that the owner of the lorry accepted the charges could not have been true in the light of the □paragraph 3 Key note for conducting enquiry□. Paragraph 3 reads thus:-

□The owner of the vehicle Thiru S.Rajganesh has represented that one Arul of Karasanur has contacted the lorry driver for transporting the blocks telling that the permit will be given on the way and while transporting on the way, was detained by the officials. That the driver without his knowledge had acted and had agreed to pay the penalty levied and requested to release the vehicle.□

10. In view of the stand taken by the owner of the lorry, the note that the owner of the lorry accepted the charges cannot be correct. The note also reads that criminal prosecution has to be launched against one Arul of Karasanur Village, who engaged the lorry for illicit transportation of minerals.

11. Under such circumstances, it is very clear that the lorry owner has not been given sufficient opportunity. The issue to be decided is, who is the actual transporter of the granite. Is it the lorry owner or it is the owner of the granite, namely, Arul of Karasanur Village? There is no factual finding on that. Apparently, no notice has been issued to the said Arul and his statement is also not known.

12. Under the circumstances, rightly the learned Single Judge has set-aside the impugned order and remanded the matter to the first respondent. Therefore, the writ appeal is liable to be dismissed and it is dismissed accordingly, while confirming the order of the learned Single Judge. No costs. Consequently, the connected MP is closed.

(S.V. J.,) & (S.R.T. J.,)

05.10.2018

Index : yes / no

Web : yes / no

speaking order / non-speaking order

srk

Note to office.: (i) Office is directed to return the original files
pertaining to this case to the learned AGP appearing for the appellant.
(ii) Issue order copy on or before 09/10/2018.

S.VIMALA, J.,
AND
S.RAMATHILAGAM, J.,

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W.A.No.1720 of 2012
& M.P.No.1 of 2012

05.10.2018

Judgment in
W.A.No.1720 of 2012
& M.P.No.1 of 2012

To
The Hon'ble Dr. Justice S.Vimala
and
The Hon'ble Mrs. Justice S.Ramathilagam

Most Respectfully submitted:

S.Ramkumar
Pvt. Secy., to the Hon'ble Judges.