

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2018

Coram

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.20640 of 2004

L.Selvamani

.. Petitioner

- Vs -

1. The Government of Tamil Nadu  
rep. By its Secretary,  
Industries Department,  
Chennai-600 009.

2. The Director of Geology & Mining,  
Guindy, Chennai-600 032.

3. The District Collector,  
Erode District, Erode.

.. Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the first respondent ending with the order of the first respondent in G.O.(D)No.130, Industries (M.M.C.1) Department, dated 23.04.2002, confirming the orders of the second respondent in Rc.No.9779/B3/97, dated 04.11.1997, confirming the orders of the third respondent in RC.No.847/94/X2/Mines, dated 20.05.1997.

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For Petitioner : Mr.G.Arul Murugan

For Respondents : Mr.K.Ravikumar  
Government Advocate

ORDER

The prayer sought for herein is for a Writ of Certiorari calling for the records of the first respondent ending with the order of the first respondent in G.O.(D)No.130, Industries (M.M.C.1) Department, dated 23.04.2002, confirming the orders of the second respondent in Rc.No.9779/B3/97, dated 04.11.1997, confirming the orders of the third respondent in RC.No.847/94/X2/Mines, dated 20.05.1997.

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

The petitioner's father one K.P Loganathan, purchased the land in S.No.243/1 and 2 of Thoppampalayam Village, Sathyamangalam Taluk, Erode District under a registered Sale

deed dated 29.10.1993. According to the petitioner, even at the time of purchasing the land, there were huge pits in which rough stone had been quarried by the vendor of the petitioner's father. In that circumstance, the petitioner's father made an application on 10.12.1995 for permission to quarry rough stone from the said land. While so, on 13.05.1995, a show cause notice seems to have been issued to the father of the petitioner stating that, there was illicit quarry of rough stones at the petitioner's father land, which is concluded because of the availability of two existing bits. Therefore, the show cause notice directed the petitioner's father to give explanation as to why, penalty should not be imposed against him for such alleged illegal quarrying. The petitioner's father also had given his explanation stating that, he purchased the land only on 29.10.1993 and thereafter, he had been in his native village doing agricultural activities and that recently, he had come to the subject land and since he decided to quarry from the land for rough stone, he had made an application to the third respondent for necessary permission and that two pits found were already there in the land even at the time of purchasing the land by the petitioner's father and when it was enquired, he came to know that long back rough stones were taken from the pits for the purpose of construction of Bhavani Sagar Dam and thereafter, the pits were kept without any quarrying activities for long years.

2.2. Even though such an explanation was given by the petitioner's father, not satisfying with the same, the office of the third respondent, directed the petitioner's father to appear before the third respondent for enquiry on 24.02.1997. In the meanwhile, on 05.01.1997, the petitioner's father Loganathan died suddenly. Therefore, the petitioner had requested the third respondent office to give 10 days time to respond. Accordingly, time was given for the petitioner to appear and he appeared before the third respondent and submitted that the owner of the land was his father and he had never involved in illicit quarrying activities and since his father is no more, he is not in a position to give any further information with regard to the said show cause notice.

2.3. However, not satisfying with the earlier explanation given by the father of the petitioner as well as the present explanation given by the petitioner, the third respondent had decided to impose penalty for the alleged illicit quarrying of rough stone by the father of the petitioner by invoking Rule 36-A(1) and (3) of the Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter referred to as "the Rules") and thereby passed an order dated 20.05.1997, whereby, the third respondent directed the petitioner to pay a sum of Rs.25,04,250/- being the penalty of 15 times of the normal rate

of seigniorage fee and a sum Rs.6,67,800/- being the cost of 2226 lorry loads of the rough stones, within one month from the date of receipt of the said order. Feeling aggrieved over the said order passed by the third respondent/District Collector, dated 20.05.1997, the petitioner seems to have filed a writ petition in W.P.No.8893 of 1997.

2.4. The said writ petition was disposed of on 20.06.1997 on the ground of non-exhausting of alternative remedy, as admittedly the petitioner did not file any appeal against the order of the third respondent. Thereafter, the petitioner preferred an appeal before the second respondent, who, in turn, by order dated 04.11.1997 rejected the said appeal by confirming the order passed by the third respondent, as against which, once again the petitioner approached this Court, by filing W.P.No.431 of 1998. This writ petition also was dismissed by the order of this Court dated 03.06.1999, of course, on the same ground of non-exhausting of further alternative remedy, that is, further appeal to the first respondent/Government.

2.5. Accordingly, the petitioner preferred further appeal to the first respondent/Government and the first respondent by the order dated 23.04.2002 in G.O.Ms.No.130, Industries (MMC.1) Department, rejected the further appeal filed before the Government by confirming the orders passed by the third respondent, original authority, as well as the second respondent, appellate authority. Aggrieved over the said order passed by the first respondent dated 23.04.2002, the petitioner has filed the present writ petition with the aforesaid prayer.

3. I have heard Mr.G.Arul Murugan, learned counsel appearing for the writ petitioner. He raised the following grounds assailing the impugned orders:

(i) According to the learned counsel appearing for the petitioner, the original impugned order dated 20.05.1997 was passed by the third respondent/District Collector mainly relying upon the alleged report of the Tahsildar concerned, dated 03.06.1994. The said order also was passed on the basis of the inspection report filed by the Assistant Geologist, in the office of the Assistant Director (Mines) [hereinafter referred to as "AD (Mines)"] dated 18.02.1995. The said reports of the Tahsildar as well as AD (Mines) have never been served either on the petitioner's father or on the petitioner, as it is evident that, along with the show cause notice, no such report had been attached and even at the time of issuing further communication to appear before the third respondent, the petitioner also had not been served either of these two reports. Therefore, learned



counsel appearing for the petitioner would submit that, the very basis of the orders passed by the third respondent, that is, reports of the Tahsildar as well as the AD (Mines), since have not been served on the petitioner, the entire order of the third respondent is vitiated.

(ii) Learned counsel would further submit that, assuming that there had been an inspection by AD (Mines) on 18.02.1995, absolutely, there was no notice for such inspection and therefore, it is highly doubtful whether the AD (Mines) had inspected the land in question. Assuming that the AD (Mines) had inspected, on what basis he had come to the conclusion that, more than 2226 lorry loads of rough stone had been quarried from the pits only after the land was purchased by the petitioner's father i.e., on 29.10.1993. In the absence of these materials, which is alleged to be formed part of the report of the AD (Mines), the basis under which, the third respondent Collector has arrived to impose the penalty, it does not have any basis and therefore, the entire order gets vitiated.

(iii) It is the further submission of the learned counsel appearing for the petitioner that, Rule 36-A(1) and (3) of the Rules, has been mainly invoked by the third respondent to pass the impugned order of penalty and such invocation would be possible only against a person, who had contravened sub-sections (1) and 1A of Section 4 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "the Act"). Here, in the case in hand, the alleged violation was pointed out only against the father of the petitioner. However, the penalty had been imposed on the petitioner, for which, there is no scope for the third respondent to impose such a penalty on the petitioner under Rule 36-A(1) of the Rules.

(iv) Learned counsel appearing for the petitioner has also made a submission that, non-furnishing of the alleged report of the Tahsildar dated 03.06.1994 and the alleged inspection report of the AD (Mines) dated 18.02.1995 itself is in flagrant violation of the principles of natural justice and for the said reason alone, the impugned order cannot be sustained.

(v) In support of the said contention, learned counsel appearing for the petitioner has relied upon the following decisions of this Court :

(a) 2006 (5) CTC 857, R.Sonai V. The District Collector, Madurai District ;

(b) 2010 (6) CTC 73, S.Selvaarajan V. The Revenue Divisional Officer, Tiruvallur, Tiruvallur

District ; and

(c) 2011 (5) CTC 273, J.Joshuva V. The Revenue Divisional Officer, Tirunelveli.

(vi) By relying upon these decisions, the learned counsel appearing for the petitioner would make the submission that, based on the aforementioned grounds, the order passed by the third respondent/District Collector dated 20.05.1997 cannot be sustained.

(vii) He would also submit that, even though the appeal was filed before the second respondent and further appeal was also filed before the first respondent, of-course, pursuant to the directives issued by this Court in this regard, in the earlier writ petitions filed by the petitioner, neither, the first appellate authority nor the second appellate authority, namely, second and first respondents respectively, have considered these grounds urged by the petitioner and they have mechanically passed the impugned orders, accepting the order passed by the third respondent and thereby, confirmed the same. Therefore, the learned counsel appearing for the petitioner would submit that the impugned orders are liable to be set aside and the writ petition is to be allowed.

4. Per contra, Mr.K.Ravikumar, learned Additional Government Pleader appearing for the respondents has made the submission that, it was the claim of the petitioner's father that the land was purchased on 29.10.1993 and when he purchased the land, he must have noticed that, there were two major pits available in the land and therefore, immediately, the petitioner's father should have informed the same to the third respondent or the Mines Department. The long silence on the part of the petitioner's father till February 1995, when he made an application on 10.02.1995, seeking permission for quarrying operation itself discloses that, he had been in illicit quarrying in his land from the date of his purchase and that is the reason why, when the Tahsildar concerned had inspected the land on 03.06.1994, he found more than 45 labourers were working in the quarrying operation and the quarrying operations went on full swing.

5. Learned Additional Government Pleader would further submit that the report of the Tahsildar had been forwarded to the third respondent/District Collector with a request to initiate appropriate action against the petitioner's father for such illicit quarrying. Knowing well that there would be an initiation of penal proceedings against the petitioner's father, in order to cover up, he had made an application dated

10.02.1995, seeking permission for quarrying operation as if, that first time he has made an application for quarrying operation. Immediately, on receipt of the application, the concerned AD (Mines) was directed to inspect the spot and give a report and on such directive, the Assistant Geologist in the office of the AD (Mines) had inspected the spot on 18.02.1995 and he found that, there had been quarrying operations in that land where, two major pits, as measured by him, were available and based on the size, length, breadth and depth of the pits, the AD (Mines) technically measured the possible rough stones quarried from the pits and accordingly, he had given a report to the third respondent that, there had been illegal quarrying, by which more than 2200 lorry loads of rough stones had been quarried and evacuated.

6. Learned Additional Government Pleader would further submit that, based on these reports submitted by the Tahsildar as well as the AD (Mines), the third respondent decided to issue a show cause notice against the father of the petitioner, and accordingly, the show cause notice was issued. The petitioner's father, who, on receipt of the show cause notice had chosen to give his reply stating that, the pits were available already at the time of purchasing his land and though he had noticed at the time of purchasing, only recently when he decided to start the quarrying operation, he made an application. At the time of giving such explanation, the petitioner's father did not raise the issue of non-supply of either the report of the Tahsildar or the report of the AD (Mines).

7. Further, the learned Additional Government Pleader would submit that, in the report of the Tahsildar, he has specifically mentioned that, the petitioner's father was a contractor and he was having a Crusher unit on his own and therefore, there had been every possibility of evacuating rough stone illegally quarried from his land for the purpose of his crushing unit. Therefore, these reports would go to show that certainly the petitioner's father had illegally involved in quarrying operations and after the reports of the Tahsildar was given, sensing the action to be initiated by the third respondent, he had made an application on 10.02.1995 to the third respondent seeking for permission for quarrying.

8. Learned Additional Government Pleader also has submitted that, since the petitioner is the legal heir of the original owner of the land, against whom, show cause notice was originally issued and the petitioner also had inherited the properties of his father including the subject land, where, quarrying operation went on, he is, in all respects, liable to pay the penalty imposed on his father.



9. Learned Additional Government Pleader would further submit that, in respect of the plea raised by the petitioner that, the report of the Tahsildar as well as the AD (Mines) had not been supplied, either to the petitioner's father or to the petitioner is concerned, the said plea neither was raised by the petitioner's father at the time, he had chosen to give reply to the show cause notice nor the petitioner had raised that issue, since he had appeared before the Collector and sought for time on the ground that his father suddenly died. Even at the time of enquiry, he could have requested or raised the issue that the said reports have not been served on the petitioner's father or to the petitioner and therefore, he wanted those reports to make further reply to defend himself. When that being the position, the petitioner cannot now turn around and raise the issue of non-supply of the reports of the Tahsildar as well as the AD (Mines). Therefore, the said plea cannot be accepted at this point of time and therefore, on that ground, the impugned orders, which are well-considered one, cannot be said to be unsustainable.

10. I have considered the rival submissions made by the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents and also have perused the materials placed before this Court.

11. I have gone through the impugned order passed by the third respondent dated 20.05.1997, where, the third respondent, in the reference column cited the report of the Tahsildar, dated 03.06.1994 and the report of the Assistant Geologist from the office of the Assistant Director (Mines), dated 18.02.1995. In the very opening paragraph of the impugned order, the third respondent has stated that, the Tahsildar in his report dated 03.06.1994 had stated that the pattadar in S.No.243/2 of Thoppampalayam Village, Sathyamangalam Taluk, had been illicitly quarrying rough stone and therefore, action can be taken against him. The third respondent/District Collector also had mentioned the application submitted by the petitioner's father dated 10.02.1995 seeking quarrying permission. Thereafter, it seems the show cause notice dated 31.03.1995 was issued on the basis of the report of the Tahsildar as well as AD (Mines), which was served on the petitioner's father on 30.05.1995. It was further noted in that order by the Collector that, the father of the petitioner was directed to appear on 24.02.1997 and on that date, a letter was received from the petitioner stating that, his father expired on 05.01.1997. Therefore, he had sought for ten days time to submit his explanation.

12. The Collector has further stated in the impugned order that, the petitioner appeared before the Collector on 21.04.1997 and he filed a petition on that date stating that, his father expired on 05.01.1997 due to illness and the land was purchased by his father on 21.10.1993, who sought for permission to quarry the rough stone only after noticing the existing pits in the said land during the year 1995. Prior to that, the father of the petitioner, according to him, was doing agricultural activities in his native village in Rajaji District (Krishnagiri District).

13. By quoting all these developments, the Collector has further stated in the impugned order that, on perusal of the records as well as Tahsildar statement, it revealed that the petitioner's father had purchased the land on 29.10.1993, the Tahsildar, Sathyamangalam Taluk had inspected the land on 03.06.1994 and found that, there was illicit quarrying operation by engaging 45 labourers and the materials were transported to the crushing unit owned by the father of the petitioner i.e., K.P.Loganathan.

14. Primarily, based on these factors, the Collector had come to a conclusion that there had been illicit quarrying on the part of the petitioner's father and therefore, based on the report submitted by the AD (Mines), who had given the report stating that,

there could have been evacuating of rough stone, that is, quarry materials to the extent of more than 2200 lorry loads, therefore, the Collector by invoking Rule 36-A(1) and 36-A (3) of the Rules imposed 15 times of the normal rate of seigniorage fee as penalty to the extent of Rs.25,04,250/- and also directed to pay a sum of Rs.6,67,800/- as cost of 2226 lorry loads of rough stones.

15. During the earlier hearing of this case, since the respondents side heavily relied upon the report of the Tahsildar as well as AD (Mines), it was directed to produce the files including the said reports. Pursuant to the said direction issued by this Court, learned Additional Government Pleader has produced the files and has submitted that, the available files are produced before this Court, however, the file does not contain the report of either the Tahsildar or the AD (Mines).

16. However, this Court had an occasion to peruse the files produced before this Court, where, it is found that, a note was put up before the Collector stating that, as per the report of the Tahsildar dated 03.06.1994, whether penalty can be



imposed on the land owner or quarrying operator. Then, it was decided that, since the land owner also had applied for quarrying permission, he can be directed to appear before the Collector. Accordingly, notice had been given to the petitioner's father to appear before the third respondent/District Collector. However, on 24.02.1997, a communication had been received by the Collector's office from the petitioner stating that on 05.01.1997, his father died.

17. Noting the said factor, further time was given for the petitioner to appear. After the petitioner appeared and he gave his explanation, further note was prepared and submitted before the Collector on 21.04.1997. It is interesting to note that, in the said note submitted to the Collector, the following has been recorded :

"Submitted : Thiru.K.P.Loganathan had preferred an application for quarrying rough stone in his patta land on 10.02.1995 in S.F.No.243/1, 243/2, over an extent of 0.12.0 hectare, 2.12.0 hectare, in Thoppampalayam Village, Sathy Taluk. The application was forwarded to Tahsildar for getting land availability report. The Tahsildar in his letter No.8630/94/A3, dated 03.06.1994 has reported that Thiru.K.P.Loganathan was doing quarrying operation illicitly in S.F.No.243/2 in Thoppampalayam village and requested to take action against the pattadar."

18. The aforesaid note submitted before the Collector stating that, the application submitted by the petitioner's father on 10.02.1995 was acted upon, pursuant to which, the matter had been referred to the Tahsildar concerned for the purpose of getting land availability report. The Tahsildar, in turn, had sent his letter dated 03.06.1994 reporting that K.P.Loganathan, i.e., father of the petitioner was doing quarrying operations illicitly therefore, he had requested to take action against the Pattadars.

19. Once the application itself is dated 10.02.1995 and the same had been referred to the Tahsildar for getting land availability report, there could not be any report from the Tahsildar dated 03.06.1994. The noting has explained in the file that, even prior to the application submitted by the petitioner's father seeking permission for quarrying operation, the Tahsildar either on his own or on the basis of directive issued in this regard of the higher officials, had visited or inspected the land and had given the report.

20. Assuming that the Tahsildar had inspected and sent a report on 03.06.1994, where, he claimed to have found that quarrying operation went on and 45 labourers were working, there

is no reason absolutely given by the respondents as to why the Tahsildar had not immediately taken any action against the illegal quarrying by reporting the same to the Collector, Mines Department and also to the concerned authorities.

21. Since the Tahsildar is the Executive Magistrate also if any kind of illegal activity is taken place in front of him and he had noticed it, he should have taken immediate action by reporting the same to the higher officials as well as to the police concerned. No such action seems to have been taken by the Tahsildar concerned.

22. That apart, when the AD (Mines) filed a report after inspecting the land in question on 18.02.1995, he had also not informed either to the petitioner's father or the petitioner and neither the Tahsildar nor the AD (Mines) had recorded any statement either from the alleged labourers, who were found working in the quarrying operations or any other persons available therein.

23. Moreover, as of now, learned Additional Government Pleader has expressed the inability of the respondents that the reports of the Tahsildar as well as the AD (Mines), are not available in the file for perusal. It is not known as to why the said reports, which are the only basis for the entire action initiated against the petitioner's father and subsequently against the petitioner, are not kept carefully, since this writ petition has been pending for several years before this Court.

24. It is also the case of the petitioner that the said two reports, i.e., Tahsildar's report and the AD's (Mines) report had never been served either on his father or on him. This position has not been disputed by the respondents.

25. In this context, the following judgments referred to by the learned counsel for the petitioner can very well be pressed into service. : सत्यमेव जयते

(i) In R.Sonai V. The District Collector, Madurai District, 2006 (5) CTC 857 in a similar situation, the learned Single Judge of this Court has held as follows :

"11. The opportunity of hearing contemplated in Rule 36(h) of the Tamil Nadu Minor Mineral Concession Rules, 1959 is a real hearing and it shall not be treated as an empty formality. Since the cancellation of quarry lease involves civil consequences, it is incumbent on the part of the first respondent to follow the due process of hearing in a fair and just manner.

12. Whether the non-supply of documents relied on during the enquiry is vitiated or not is

considered by the Honourable Supreme Court in the decision reported in (2001) 9 SCC 523 (Pepsu Road Transport Corporation v. Lachhman Dass Gupta and another), wherein, in para 3 the Honourable Supreme Court held as follows :

"3. We have examined the judgment of the lower appellate court as well as the impugned judgment of the High Court. In view of the conclusion of the lower appellate court, that even the documents relied upon by the department in establishing the charge have not been given to the delinquent, the conclusion is irresistible that the delinquent had been denied a reasonable opportunity to defend himself in the proceeding and, therefore, the lower appellate court as well as the High Court are fully justified in setting aside the order of termination passed by the competent authority. We, therefore, do not find any ground to interfere with the impugned judgment of the High Court passed in the second appeal."

(ii) In S.Selvaarajan V. The Revenue Divisional Officer, 2010 (6) CTC 73, exactly a similar issue had been decided, where, the learned Single Judge has held as follows :

"8. Copy of the show cause notice dated 4.3.2010 is filed by the respondent in the typed set of papers. In the said show cause notice, the report of the Tahsildar, Tiruvallur dated 5.4.2001 as well as the report of the Assistant Director, Geology and Mining, Tiruvallur, dated 9.4.2001 are referred to as reference Nos.2 and 4, which are the basis for initiating action and for passing the impugned order. The said reports were not enclosed along with the said show cause notice for giving proper reply by the petitioner. The reports of the Tahsildar and Assistant Director are also not produced before this Court. From the perusal of the impugned order also it is evident that the said reports are the basis for initiation of action against the petitioner and for passing the impugned order imposing a fine of Rs.16,71,800/- and other amounts totalling to the tune of Rs.63,65,700/- as liability. ....

9. Imposing of huge fine attaches civil consequences and therefore fairness in procedures and principles of natural justice are to be followed by the respondent. The alleged inspection was made by



the Assistant Director (Mines) without issuing notice to the petitioner. The petitioner is not served with the reports dated 5.4.2001 and 9.4.2001 given by the Tahsildar and Assistant Director, Geology and Mining, Tiruvallur, along with the show cause notice or afterwards, i.e., before passing the impugned order or even thereafter. Hence the petitioner is not aware of the alleged reports against him. The respondent solely relying on the report of the Assistant Director (Mines), passed the impugned order.

.....  
11. Since the petitioner is complaining that the report of the Assistant Director (Mines) was drawn behind his back and also about the non-service of the said report dated 9.4.2001, which is very much relied on in the show cause notice as well as in the impugned order, I am of the view that the petitioner is justified in approaching this Court without availing the remedy of filing appeal before the District Collector. The show cause notice as well as the impugned order having been issued and passed without furnishing copy of the said report, which was drawn behind the back of the petitioner, is the basis for initiating the proceedings against the petitioner, the respondent has committed an error by relying on the adverse report against the petitioner and the petitioner has every right to challenge the said order before this Court. The respondent has taken ten long years to pass the impugned order. The said unreasonable delay is not explained in the counter affidavit.

12. In view of the above findings, the impugned order is set aside and the matter is remitted back to the respondent with liberty to serve copy of the report of the Assistant Director of Geology and Mining, Tiruvallur, dated 9.4.2001 and the petitioner is permitted to offer his remarks for the said report. After considering the same and also after giving personal hearing to the petitioner, it is open to the respondent to consider whether the said report can be relied on to proceed further and pass fresh orders in accordance with law, if it is warranted."

26. The learned Single Judge in the aforesaid judgment, after having followed number of judgments of the Hon'ble Apex Court on the point, has categorically held that, preparing a report behind the back of the person against whom, the said report is going to be utilized, is bad in law. The learned Single Judge has also held that, once the report of the Tahsildar or Mines Department believed or relied upon for

imposing penalty, such report could have been furnished to the petitioner, against whom such penalty is imposed. The learned Judge also held that, imposing of huge fine attached a civil consequence and therefore, fairness in proceedings and principle of natural justice are to be followed by the respondents. In that case also, the alleged inspection was made by the AD (Mines) without notice to the petitioner therein and the report was also not served on the petitioner therein. This was not accepted by the learned Judge and ultimately, the writ petition was allowed.

27. The said principle would be squarely applicable to the present facts of the case as herein also, both the alleged reports of the Tahsildar as well as AD (Mines) had been prepared behind the back of the petitioner's father or the petitioner. Even the said reports have not been furnished to the petitioner's father or subsequently, to the petitioner along with the show cause notice seeking explanation.

28. Therefore, in view of the absence of furnishing of the reports, it can be safely concluded that, the principles of natural justice is glaringly violated in this case.

29. That apart, in respect of the further legal plea raised by the petitioner, namely, the very invocation of Rule 36-A(1) and 3 of the Rules is concerned, in order to deal with the said issue, Rule 36-A under the heading "penalty" is extracted herein for easy reference :

"36-A. Penalties : (1) Whenever any person contravenes the provisions of sub-section (1) and (1-A) of Section 4 of the Act in any land, enhanced seigniorage 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 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.

.....

(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, seigniorage fee or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority."

30. The third respondent/District Collector, in his order dated 20.05.1997 has noted in the original note file that, the records were perused, the explanation cannot be accepted. The charge of illicit quarrying is proved. The offence is grave in nature and it needs suitable punishment. Hence, as per Rule 36-A(1) and 36-A(3) of the Tamil Nadu Minor Mineral Concession Rules, 15 times of the normal rate of seigniorage fee is ordered as penalty.

31. In the context of the said decision taken by the third respondent/District Collector, the plea raised by the petitioner as to whether the District Collector has got such a power to impose such penalty against the petitioner by invoking Rule 36-A(1) and 3 of the Rules can be gone into.

32. The said Rule makes it clear that, in case of any contravention of the provisions of Sub-sections 1 and 1-A of Section 4 of the Act, the enhanced seigniorage fee upto maximum of 15 times than the normal rate can be recovered from that person or in the alternative, he shall be liable to be punished as provided in Sub-section (1) of Section 21 of the Act.

33. The word "that person" and the word "he shall be" are very crucial to be noted herein. The word "that person" means the person, who contravened the provisions of sub-section 1 and 1-A of Section 4 of the Act. From that person, 15 times seigniorage fee as penalty can be recovered. Alternative punishment also has been suggested. In that context, the word "he shall be" means the person, who contravened the aforesaid sub-sections of Section 4. In this context, Section 21 of the Act reads thus :

"21. Penalties.-1 [(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.

(2) Any rule made under any provision of this Act may provide that any contravention



thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

...

...

...

"

34. Section 21 of the Act provides for imprisonment of two years for those, who contravened the provisions, namely, sub-section 1 and 1A of Section 4 of the Act. These two years punishment is subsequently enhanced to five years by way of subsequent amendment, which is the alternative punishment. In lieu thereof, recovery of fifteen times seigniorage fee, as penalty, has been suggested.

35. In that context, the person from whom, such penalty can be recovered can be construed to "the person", who shall be made liable to be punished as provided in sub-section 1 of Section 21 of the Act. Only the person, who is guilty alone shall be punished and he alone can be sentenced, and on his behalf no one can be punished. Therefore, the words "that person" mentioned in the first limb of Rule 36-A(1) definitely pointing only the person, who made such contravention of sub-sections (1) and (1-A) of Section 4 of the Act.

36. If this is the position of the Rule 36-A, the third respondent/Collector, who, invoking this rule, has imposed the penalty of 15 times of seigniorage fee on the petitioner, who is not the real contravener, as he is only the son of the land owner against whom, the charge of contravention has been made. Therefore, there is force in the contention of the learned counsel for the petitioner that the very invocation of Rule 36-A(1) and (3) of the Rules itself is unjustifiable, as the third respondent/District Collector, does not have the jurisdiction to impose the penalty on the petitioner of fifteen times seiniorage fee, as he is not the person, who contravened the provisions of Sub-sections 1 and 1A of Section 4 of the Act.

37. Therefore, this Court is of the view that, the third respondent/District Collector ought not to have invoked the Rule 36-A (1) and (3) of the Rules for imposing penalty on the petitioner, who can never be termed as the contravener of Sub-sections 1 and 1A of Section 4 of the Act. Therefore, on this ground itself, the impugned order passed by the third respondent/District Collector can be said to be unsustainable.

38. When the appeal was filed before the second respondent and second appeal was filed before the first respondent, both the authorities have not considered all these aspects in proper perspective and they have mechanically confirmed the order passed by the third respondent/District Collector.

39. In view of the said factors as well as the legal position and the discussion made hereinabove, this Court is of the firm view that, the impugned order passed by the third respondent confirmed or affirmed by the second and first respondents respectively are totally unlawful and unjustifiable and therefore, these orders are liable to be interfered with.

40. In the result, the impugned orders are quashed and the writ petition is allowed. However, there shall be no order as to costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

smi

To

1. The Secretary,  
Industries Department,  
Government of Tamil Nadu,  
Fort St. George,  
Chennai-600 009.
  2. The Director of Geology & Mining,  
Guindy, Chennai-600 032.
  3. The District Collector,  
Erode District, Erode.
- +1 cc to Government Pleader sr71109  
+1 cc to M/s.G.Arul Murugan Advocate sr70457  
+2 ccs to Mr.K.Ravikumar Advocate sr70350

W.P.No.20640 of 2004

aa15/11/2019