

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4401 of 2004

and

W.P.M.P.No.5190 of 2004 and W.V.M.P.No.2 of 2013

Mr.K.Subba Reddy

..Petitioner

vs

The District Collector,
Villupuram District,
Villupuram.

..Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the respondent's notice bearing A/G&M/S.R.57/2001 dated 21.01.2004, quash the same.

For Petitioner : Mr.K.Ramakrishna Reddy

For Respondent : M/s.R.Janaki,
Additional Government Pleader

O R D E R

The show cause notice dated 21.01.2004 issued by the respondent in respect of illegal quarrying of Black Granite in S.F.No.9/2006 in Kunnam Village, Vanur Taluk is under challenge in the present writ petition.

2.The learned counsel for the writ petitioner states that the show cause notice itself is untenable on the ground that the authorities competent had predetermined the issues on merits and issued the show cause notice. Thus, no purpose would be served in submitting the explanations before such authorities as the writ petitioner may not get fair opportunity and justice before the respondent.

3.The learned counsel for the petitioner cited the judgment of the Hon'ble Supreme Court of India in the case of Siemens

Ltd., Vs. State of Maharashtra & others, reported in 2006 12 SCC 33, wherein the Apex Court of India held that the writ proceedings against the show cause notice shall be entertained under Article 226 of the Constitution of India, if the notice has been issued without jurisdiction has been held by the Apex Court in several decisions. Further, the learned counsel for the petitioner urged this Court by citing Paragraph 9 of the judgment that if the notice is issued with premeditation, a writ petition would be maintainable. Relying on said sentence observed by the Hon'ble Supreme Court of India, the learned counsel for the petitioner is of an opinion that the show cause notice is liable to be scrapped on the ground that the same was issued on premeditation.

4.The learned counsel for the petitioner further states that the show cause notice had been issued by the respondent on personal vengeance and there is no complaint against the writ petitioner by the TAMIN, who is the lessee of the land in question.

5.This Court is of an opinion that the impugned show cause notice has been issued, setting out certain allegations against the writ petitioner. The petitioner was provided with an opportunity to submit his explanations in respect of the allegations set out in the impugned show cause notice. Instead of submitting reply / explanations, the writ petitioner has chosen to file the present writ petition.

6.This Court is of an undoubted opinion that no show cause notice can be entertained in a writ proceedings in a routine manner. Judicial review against the show cause notice is certainly limited. A show cause notice can be challenged by filing a writ petition, if the same has been issued by an incompetent authority, having no jurisdiction or an allegation of mala fides are raised or if the same is in violation of the statutory rules in force. Even, in case of raising an allegation of mala fides, the authorities against whom such an allegation is raised, is to be impleaded as a party respondent in his personal capacity in the writ proceedings. In the absence of any one of these legal grounds, the Courts would not entertain a writ proceedings against the show cause notice.

7.Let us now look into the arguments advanced on behalf of the writ petitioner.

8.The learned counsel for the writ petitioner states that on personal vengeance, the show cause notice had been issued. However, the allegations are not established and no such authority has been impleaded in his personal capacity with

concrete allegations in the affidavit. In such circumstances, the Courts would not be in a position to accept such an allegation of mala fide against the official. Thus, the said contention deserves no further consideration.

9. The second point raised is the authorities had issued show cause notice with premeditation and therefore, the notice is liable to be scrapped based on the principles settled in the Siemens Case (cited supra). In respect of premeditation, the same is to be interpreted carefully and a constructive interpretation would be appropriate in such circumstances. The observations made by the Hon'ble Supreme Court of India is general in nature and the word "Premeditation" cannot be applied in respect of all the writ petitions, wherein the show cause notices are challenged. Each case is to be decided with reference to the facts and circumstances of the case. Thus, if the facts are established that the authorities have premeditated the issues, then alone the said principles can be applied and the relief can be granted and not otherwise.

10. To analyze the said situation, this Court would further like to record that if any show cause notice is issued by the competent authorities without setting out any details and the nature of allegations, then also, the writ petitions would be filed on the ground that the aggrieved persons are unable to submit their explanations in the absence of any details in the show cause notice. If the reasons are stated in the show cause notice and the allegations are also cited, then the persons are coming out with writ petitions by stating that they have premeditated the issues and predetermined the punishments. However, in all these circumstances, the legal brains are taking undue advantages of the situations like this. Courts must adopt a pragmatic view and a constructive interpretation in order to provide substantial justice to all the parties concerned. Thus, setting out the facts and details in the show cause notice is also required for the purpose of submitting explanations / objections by the persons concerned.

11. Thus, this Court has to go deep into the nature of the allegations set out in respect of predetermination or premeditation and the point raised thereon. Under these circumstances, the judgment cited above is inapplicable in respect of the facts and circumstances of the present case on hand. Undoubtedly, the details and the allegations are set out in the show cause notice and therefore, it is left open to the writ petitioner to submit his explanations / objections to the competent authorities along with the documents, if any, enabling them to consider the case on merits.

12. In respect of the submissions made by the learned counsel

for the petitioner that there is a personal vengeance, now after a lapse of about 14 years, the officials would have changed and the new set of officials would be functioning in the office of the respondent. This being the factum, the writ petitioner is bound to submit his explanations / objections for the purpose of considering the cases on merits and in accordance with law.

13.It is needless to state that the respondent / The District Collector is bound to conduct an enquiry in respect of all such illegal mining activities within his jurisdiction. This Court is of an opinion that mines and minerals are National assets. Private persons are not entitled to quarry such mines and minerals without proper licence and without following the procedures and rules. The National assets are to be protected and it is the constitutional mandate on the part of the "State" to ensure that all such illegal mining activities are curbed at once. Illegal minings are causing great loss to the environment and great financial loss to our great Country. Illegal minings are growing and few greedy men are tempted to take away the valuable mines and minerals of our great Nation. The State is duty bound to control and stop all such illegal minings in the interest of the public at large. Every citizen has got a constitutional right to claim that all such illegal minings are to be stopped by the State. In spite of various laws in force and in spite of the constitutional perspectives and directives, the State is not effectively controlling all such illegal minings occurring at the instance of few greedy men in this great Nation. People are almost frustrated with such activities and day-in and day-out, people are witnessing such illegal minings by those mafias and by some powerful persons with the collusion of the officials and with some local politicians. Such activities can never be tolerated and it is the duty of the executives to ensure that all such activities are dealt with iron hand without any leniency and they are all to be prosecuted by following the procedures as contemplated.

14.Illegal mining activities are continuing on account of various reasons. Even the executives are unable to prevent such powerful persons from carrying out illegal minings or excess mining in particular locality. The corrupt activities and the collusion of the officials may also be a reason for this. This apart, the State has to provide adequate protection for the officials, who are initiating steps to prevent all such illegal minings in a particular locality. Effective assistance of a State machinery is certainly imminent for the purpose of controlling the illegal mining activities across the State. Thus, combined actions with the help of all concerned Departments and their coordination are of paramount importance for the purpose of achieving the constitutional goal and to respect the sentiments and the rights of the people enshrined

under the Constitution of India. When the preamble of the Constitution of India enumerates that "We, the people of India", then it is duty mandatory on the part of the "State" to ensure that the illegal mining against the interest and wishes of the people are to be prevented and stopped efficiently and effectively.

15. Under these circumstances, it is necessary for this Court to pass the following orders:-

(i) The writ petitioner is directed to submit his explanations / objections along with the documents, if any, within a period of five weeks from the date of receipt of a copy of this order. On receipt of any such explanations / objections from the writ petitioner, the respondent is directed to consider the same on merits and in accordance with law and pass final orders with reference to the records available, within a period of six weeks thereafter. The respondent, before passing the final orders shall conduct an enquiry into the matter, if necessary and by providing a personal hearing to the writ petitioner, if the petitioner is willing to avail the same and submits an application for personal hearing.

(ii) The District Collector, Villupuram is directed to issue appropriate instructions / orders to all the officials concerned from various Departments to identify all illegal mining and other related activities within his jurisdiction and issue directions to initiate appropriate prosecutions / actions by following the procedures as contemplated under law.

(iii) The District Collector, Villupuram is directed to initiate suitable disciplinary proceedings against all the officials, who all are committing lapses, negligence and dereliction of duty in respect of identifying and initiating actions against the illegal minings within his jurisdiction.

(iv) The District Collector, Villupuram is directed to issue circular to all the officials to ensure that the National assets, Government Properties, Water bodies, Water resources are protected in all respects for the benefit of the public at large and in accordance with the directives and mandates of the Constitution of India.

15. With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Post this matter under the caption "For Reporting Compliance" after twelve(12) weeks.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The District Collector,
Villupuram District,
Villupuram.

Copy To
The Section Officer,
Writ Section,
High Court, Madras-104

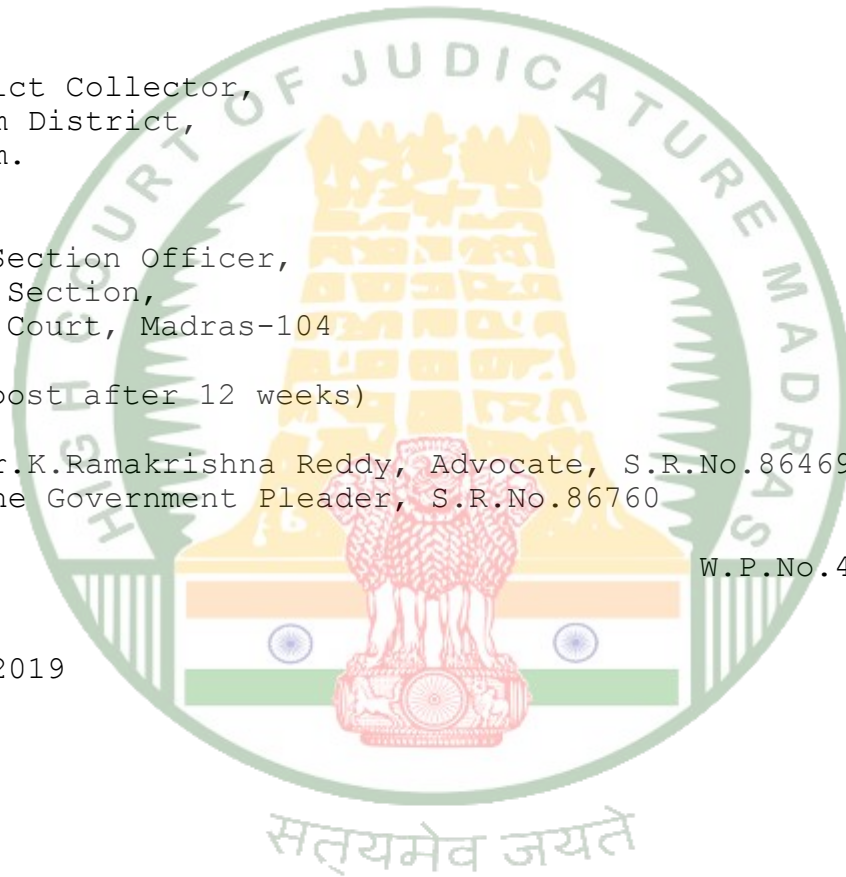
(to post after 12 weeks)

+1cc to Mr.K.Ramakrishna Reddy, Advocate, S.R.No.86469

+1cc to the Government Pleader, S.R.No.86760

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SR(Co)
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