

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 21.12.2017

Delivered on : .02.2018
CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.14086 of 2012 and
M.P.Nos.1, 2, 3 of 2012 and
M.P.No.1 of 2014

M/s.Shanmugapriya Granites
Rep by its Proprietor, P.K.Shankar
No.2/669, S.S.Nivas,
Mohan Maistry Colony,
Pidamaneri 636 703,
Dharmapuri Town and Taluk
Dharmapuri District.

.... Petitioner

Vs

- 1.The Secretary to Government,
Industries Department,
Fort St.George,
Chennai 600 009.
- 2.The Director,
Department of Geology and Mining,
Guindy,
Chennai 600 032.
- 3.The District Collector,
Krishnagiri District,
Krishnagiri.
- 4.Dr.C.N.Mahesvaran, I.A.S.,
District Collector,
Krishnagiri District,
Krishnagiri.
- 5.The Deputy Director,
Department of Geology and Mining,
Krishnagiri,
Krishnagiri.
- 6.Mr.S.Krishnamurthy,
Deputy Director,
Department of Geology and Mining,
Krishnagiri,
Krishnagiri.

7.Mr.Saravanan,
Additional Director of Geology and Mining,
Department of Geology and Mining,
Krishnagiri.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the 3rd respondent dated 21.05.2012 made in Roc.148/2012/Mines-2 and quash the same and consequently forbear the respondents from in any way interfering with the quarrying operation in respect of ryothwari land situated at Attakurikki Village, Hosur Taluk, Krishnagiri District, measuring to an extent of 1.01.0 Hectare in Survey No.172/1A(p).

For Petitioner : Mr.M.Venkatachalapathy (SC) for
Mr.D.Balachandran

For Respondents : Mr.Manishankar,
Additional Advocate General,
assisted by Mr.S.Gunasekaran,

Addl. Government Pleader for RR1 to 5
: No appearance for R6 and R7

O R D E R

Heard Mr.M.Venkatachalapathy, learned senior counsel for the petitioner and Mr.Manishankar, learned Additional Advocate General appearing for the respondents 1 to 5.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to call for the records of the 3rd respondent dated 21.05.2012 made in Roc.148/2012/Mines-2 and quash the same and consequently forbear the respondents from in any way interfering with the quarrying operation in respect of ryothwari land situated at Attakurikki Village, Hosur Taluk, Krishnagiri District, measuring to an extent of 1.01.0 Hectare in Survey No.172/1A(p)."

3. The case of the petitioner is as follows:-

The petitioner is a proprietary concern involved in the business of mining black granite for several years. The petitioner taken a lease of land comprised in Survey No.172/1A (Part), which is classified as Ryothwari land situated at Attakurikki Village, Hosur Taluk, Krishnagiri District, measuring to an extent of 1.01.0 Hectare, for the purpose of mining black granite. The Government passed G.O. (3D) No.90,

Ind. (MME.2) Department, dated 27.12.2007, for grant of lease of the said land in favour of the petitioner. In pursuance thereof, a lease deed was also executed for a period of 20 years commencing from 04.02.2008 to 03.02.2028 through a registered Document No.529 of 2008, on the file of the Office of the Sub Registrar, Shoolangiri. Number of conditions have been laid on in respect of the lease agreement and field map was enclosed along with the lease deed, indicating the area to be subjected for mining operation.

4. According to the petitioner, he had made huge investments while taking the mining lease for the purpose of establishing Office, purchase of machineries and also recruitment of nearly 100 employees for carrying on the quarrying operation. According to the petitioner, the usual procedure followed for removal of quarried stone tablet was that for every granite stone tablets which were quarried, at the request of the purchaser, the authority had to take the measurements of those tablets and make entries thereof in a register called Measurement Register. Thereafter, the petitioner was required to pay the charges for removal of those quarried granite stone tablets. After obtaining necessary transport permit for moving the stone tablet from the quarried site and sold to the prospective purchasers. The fifth respondent is the authority to carryout the inspection and grant permit for removal of the granite stone tablets.

5. While so, on 24.06.2011, the fifth respondent appeared to have made inspection in the quarrying site and took measurement of quarried stone tablet and according to the petitioner, the fifth respondent had taken a wrong measurement deliberately in order to create reasons for cancellation of the lease permit. This action of the fifth respondent was questioned by the petitioner. However, the petitioner was warned that any complaint in that regard would entail cancellation of the lease. However, a complaint was forwarded to respondent Nos. 1 to 3, by the letter of the petitioner on 07.01.2012. When an inspection took place on 24.06.2011, the petitioner was also verbally informed by the authority concerned, not to quarry any further.

6. In the above said circumstances, the petitioner approached this Court in W.P.No.2409 of 2012, seeking direction to respondent Nos.1 to 3 to appoint a competent Officer to conduct spot inspection of the mining operation and take measurement of the granite stone tablets and also make necessary entries in the register. A counter affidavit also filed in the said writ proceedings on behalf of the respondents. After hearing the submissions of the parties, this Court disposed of the writ petition on 28.02.2012, by giving the following directions.

"4. In paragraph 10 of the said counter

affidavit, it has been stated that the petitioner had not applied for the issuance of transport permits, on payment of the seigniorage fee, after 05.12.2011. If the petitioner applies for dispatch slips, for the transportation of the granite blocks, the officials concerned would measure the same, in the presence of the petitioner, and issue the necessary permits, if the petitioner is entitled to the same, as per the procedures established by law.

5. The learned counsel appearing for the respondents had also submitted that no oral instructions had been issued to the petitioner to stop the quarrying operations, as alleged by the petitioner. In such circumstances, since, no further orders are necessary, the writ petition stands closed. No costs."

7. According to the petitioner, after the disposal of the above writ petition, the quarrying operation commenced. However on 12.04.2012, once again, the officials, on instructions of the 5th and 6th respondents, inspected the quarry site. According to the petitioner, the officials have indulged in high handed behavior by man handling the workers employed by the petitioner. For which, the petitioner also preferred a police complaint, on the day when the inspection was conducted on 12.04.2012. The petitioner once again approached this Court in W.P.No.11160 of 2012, seeking direction to the third respondent to consider the representation of the petitioner dated 13.04.2012, to enable him to remove the granite tablets from the quarry site. The said writ petition was also disposed of on 20.04.2012. While making observations as below:-

"4. Learned additional Government Pleader appearing for the respondents submitted that he has no objection in considering the representation of the petitioner and passing orders on the same.

5. Heard the learned counsel on either side and perused the documents available on record. After considering the facts and circumstances of the case, in the interest of justice, the third respondent is directed to consider the representation of the petitioner dated 13.04.2012 and pass orders in accordance with law after giving opportunity to the petitioner as expeditiously as possible preferably within a period of 10 days from the date of receipt of a copy of this order."

8. On 08.05.2012, a memo was issued to the petitioner, proposing to take action under Rule 36(5)(h) and 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959. Number of documents were referred to in the memo dated 08.05.2012,

including the joint inspection report dated 12.04.2012 and also the report dated 30.04.2012. According to the petitioner, the documents referred to in the memo dated 08.05.2012, have not been furnished to him and he was not aware of any proceedings of the Collector and no prior notice was given before the joint inspection said to have been conducted.

9. When the petitioner was called upon to give his explanation to the memo dated 08.05.2012, he appeared through his counsel on 14.05.2012 and filed a memo, seeking for documents relied on by the officials as referred to in the memo dated 08.05.2012. However, according to the petitioner, the documents were not furnished to him. According to him, he immediately instructed his counsel to file a writ petition against the conduct of the officials and W.P.No.13649 of 2012 was filed, seeking to forbear the third respondent from taking any action in pursuance of the memo dated 08.05.2012. The matter was listed for hearing on 24.05.2012 and was adjourned to 30.05.2012. While matter stood thus, according to the petitioner, in order to nonsuit the petitioner, the impugned proceedings was issued by the third respondent on 21.05.2012, canceling the 20 year lease originally granted to him. The said proceedings is put to challenge in the present writ petition.

10. At the outset, learned senior counsel for the petitioner would submit that although the impugned proceedings provided for filing of an appeal before the Commissioner of Geology and Mining under Rule 36-C(2) of the Tamil Nadu Minor Mineral Concession Rules, 1959, the jurisdiction of this Court has been straight away invoked for the reason that principles of natural justice have been completely violated by the respondents while canceling the lease granted to the petitioner. According to the learned senior counsel, the documents sought by the petitioner, which were referred to in the memo dated 08.05.2012, have not been furnished to him and no prior notice was issued to him before any inspection was conducted and the entire approach of the officials concerned discloses vindictive mindset. Therefore, no purpose would be served by exhausting the appellate remedy available under the Rules.

11. The learned senior counsel would draw the attention of this Court to the memo dated 08.05.2012, in which, number of documents were referred to from Serial No.4 to 10. In response to the memo, a detailed objections were also submitted on behalf of the petitioner on 09.05.2012 and a memo was also filed by the learned counsel stating that unless the documents cited in memo dated 08.05.2012 was served on the petitioner, he would not be able to defend the matter effectively. The learned senior counsel attempted to draw the attention of this Court to the each and every aspect of the issue which was dealt with by the

third respondent who passed the impugned proceedings on 21.05.2012, in order to establish that all was not well with the order. The impugned proceedings dated 21.05.2012, after advertng to various materials which came up for consideration, has finally held that there was a violation of lease conditions by the petitioner and therefore, the lease was canceled with immediate effect as per Rule 36(5)(h) of the Tamil Nadu Minor Mineral Concession Rules, 1959. The petitioner was also directed to stop the quarrying activity in the lease site. The petitioner was also imposed with the levy of penalty as mentioned in the impugned proceedings.

12. Opposing the contention put forth by the learned senior counsel for the petitioner, learned Additional Advocate General has put forth the following submissions. At the foremost, he would submit that the entire inspection report on the impugned order deal only with the factual aspects which cannot be a matter of adjudication by this Court, which is exercising its jurisdiction of judicial review under Article 226 of the Constitution of India. When the area of factual controversy is too wide and open as in the present case, the statutory appellate remedy becomes mandatory and the same cannot be bypassed. According to the learned Additional Advocate General, the appellate authority is a competent person to deal with the factual scenario, as to the nature of quarrying of the petitioner, whether the conditions of lease were violated or not. The impugned proceedings itself is a very detailed order passed by the third respondent, only on the factual aspects and the dispute between the parties and the bone of contention cannot be resolved by this Court under Article 226 of the Constitution of India.

13. The learned Additional Advocate General would also refute the contention of the learned senior counsel for the petitioner that the principles of natural justice were violated in this case. He would submit that the petitioner was very much aware of the inspection and was also chosen to file a detailed written statement, pursuant to the show cause memo dated 08.05.2012. He would draw the attention of this Court to the impugned proceedings dated 21.05.2012, wherein, in number of places, the third respondent referred to the written statement filed by the petitioner. He would also submit that as a special case, a committee was constituted to inspect the quarrying site which is not normally done in other cases. This fact by itself would show that the petitioner was given special treatment in his mining operation. He would draw the attention of this Court to the joint inspection report dated 30.04.2012, in which, it is stated that when an inspection was conducted on 26.04.2012, the proprietor as well as the advocate were present and the inspection report was signed by the following officials viz.,

1. Additional Personal Assistant (lands) to Collector, Krishnagiri.
2. Deputy Superintendent of Police (i/c), Hosur.
3. Assistant Director of Geology and Mining, Krishnagiri.
4. Tahsildar, Hosur.
5. Inspector of Police, Shoolagiri.
6. Assistant Geologist, O/o Deputy Director of Geology and Mining, Krishnagiri.
7. Zonal Deputy Tahsildar-II, Hosur.
8. Special Deputy Tahsildar, O/o Deputy Director of Geology and Mining, Krishnagiri.
9. Sub Inspector of Survey, O/o Deputy Director of Geology and Mining, Krishnagiri.
10. Revenue Inspector, Uddanapalli.
11. Firka Surveyor, Uddanapalli.
12. Village Administrative Officer, Addakurikki Village.

14. According to the learned Additional Advocate General, the petitioner was shown a special consideration by appointing a committee to inspect the quarry premises as he was complaining against some of the officials of the Government, as being biased. In the absence of any motive attributable to the committee, comprising a number of responsible Government officials, the impugned proceedings cannot be successfully challenged, since the inspection report formed the basis of the impugned proceedings.

15. The learned Additional Advocate General would also draw the attention of this Court to the report of the Advocate Commissioner who was appointed by this Court. The report of the Advocate Commissioner in January 2013, wherein, in pursuance of the orders passed in M.P.No.4 of 2012 in order dated 30.11.2012, to over see the constitution of the committee for the purpose of inspecting and submitting a report. As per the mandate given by this Court, an Advocate Commissioner was a part of the committee which went for inspection and submitted the report, wherein, a large number of violations had been noticed and it was also found by the committee that there was a quarrying operation in the non lease granted area. An objection was also filed in respect of the said report by the petitioner in the present writ petition. The learned Additional Advocate General would also submit that in any event, no prejudice would be caused to the petitioner, if an appeal is filed and whatever points which according to the petitioner, are in his favour, can be urged before the appellate authority and the appellate authority alone is the best person to adjudicate such factual controversies and not this Court.

16. Both the senior counsel appearing on either side cited several decisions in support of their contention, whether the availability of the appellate remedy is a bar or not to approach this Court under Article 226 of the Constitution of India. On behalf of the learned senior counsel for the petitioner, the following decisions were relied on.

(i) In the case of R.Sonai Vs. The District Collector, Madurai District and another, reported in 2006 (5) CTC 857, the learned senior counsel would particularly, rely on the paragraph Nos.11 and 12 of the judgment of this Court, which are reproduced below:-

"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."

The learned senior counsel would submit that in this case, there was no proper hearing before the impugned proceedings are passed and therefore, the petitioner cannot be at this stage, shunted to approach the appellate authority.

(ii) In the case of S.Selvaarajan Vs. The Revenue Divisional Officer, Thiruvallur, reported in 2010 (6) CTC 73, the reliance is placed on paragraph 10 of the order passed by the learned Judge of this Court, which is reproduced below:-

"10. The contention of the respondent that this

writ petition is not maintainable as the petitioner has got a remedy of filing appeal is unsustainable as it is established by the petitioner that the respondent has violated the principles of natural justice at all stages before the impugned order was passed. It is well accepted principle of law that exceptionally writ petition can be entertained though alternate remedy is available. In the decision reported in (2008) 5 SCC 632 : (2009) 2 MLJ 1095 (Rajasthan State Electricity Board v. Union of India) in paragraph 3 the Supreme Court held that 'availability of alternative remedy is not an absolute bar for granting relief in exercise of power under Article 226 of the Constitution.'

According to the dictum laid down, the availability of the alternative remedy is not a bar to approach this Court under Article 226 of the Constitution of India.

(iii) In the case of Satwati Deswal Vs. State of Haryana and others, reported in (2010) 1 Supreme Court Cases 126, the Hon'ble Supreme Court has held that when there is a violation of principles of natural justice, the Court need not insist upon availing of alternative remedy. This decision was rendered in the context of service law.

(iv) In the case of Ashok Somany Vs. State of Haryana, reported in 1993 SCC Online P&H 36 : (1993) 2 RRR 63, the learned senior counsel would draw the attention of this Court to a portion of the observation made in the judgment by Punjab and Haryana High Court, which is extracted below:-

"The petitioner was admittedly not even associated in the enquiry that culminated into report given by the Sub-Divisional Officer, in the present case, thus, principles of natural justice were violated. The contention of Mr. Khetarpal that the petitioner had an alternative remedy, and, therefore, the petition should be dismissed, has to be repelled as such an argument has to be pressed at initial stage. The record of the case reveals that the petition was admitted after issuing notice of motion and after receiving the reply. In view of judgments L.Hirday Narain V. Income Tax Officer, Boreilly, AIR 1971 Supreme Court, 33, and Firozali Abdul-barim Jivani and another V. The Union of India and others, AIR 1992 Bombay, 179, when petitions are entertained and heard on merits same cannot be rejected on the ground that alternative remedy was not availed of."

(v) In the case of V.S.O.Balakrishnan and others Vs. The District Collector, Thiruvallur District and others, reported in

CDJ 2009 MHC 165, according to the learned senior counsel, in respect of the quarrying matter, the learned Judge of this Court has held as follows:-

"Court held - No record has been produced before this Court to satisfy that an appropriate enquiry was held to find out that there was quarrying in the land belonging to the Government, the impugned notice has been issued without any material to make out a prima facie case that the petitioner has quarried in the Government land - the petitioners lease hold area is adjacent to the alleged show illicit quarrying of either silica sand or granite - it is possible to accept the contention of Respondent Advocate that without the knowledge of the petitioners such quarrying could not have been done even by third parties - the writ petitions stands allowed and impugned orders of the respective respondents are set aside."

(vi) In the case of M/s.Krishna Marble Vs. The State of Rajasthan and others, reported in 2017 SCC Online Raj 1919, the paragraph Nos.13 and 14 are relied on by the learned senior counsel, are extracted hereunder:-

13. It is evident from the provisions of Section 4 of the Act of 1957 as above that the prospecting license and mining lease can be canceled prematurely only in the cases viz., in the interest of regulation of mines and mineral development; preservation of natural environment; control of floods; prevention of pollution; to avoid danger to public health; or communications, or to ensure safety of buildings, monuments or other structures, or for convenience of mineral resources, or for maintaining safety in the mines or for such other purposes as the Central Government may deem fit but none of the grounds for such an action are made out from the impugned order. The impugned order dated 30.11.2016 is a non-speaking order. No specific violation has been mentioned in the said order. In fact, a general decision seems to have been taken for all the prospecting licenses granted between 01.11.2014 to 12.01.2015 but no reason for even arriving at a general decision of such mass cancellation of licenses is forthcoming. Even as per the Statutory Contract, the State Government can cancel the prospecting license only if there is a breach of contract. No such notice stating any breach of contract has been stated.

14. Besides, sub-Section 3 of Section 4A of the Act of 1957 as reproduced above provides that no order of premature termination of a prospecting license can be passed without giving the holder of the licensee a

reasonable opportunity of being heard. No hearing was provided. Even the Central Government vide its order dated 24.08.2016 directed the State Government to pass an appropriate order subject to the grant of an opportunity of hearing to each individual. Admittedly, even then, no hearing was granted. Hence, the very order is not only a breach of Section 4A of the Act of 1957 but a violation of the order dated 24.08.2016, issued by the Central Government with a direction, which reads as under:

"The State Government is fully competent to take action in terms of Section 19 of the Act read with Section 4(2) at their level. However, State Government must "pass speaking" order after giving opportunity of hearing"".

In the above case, the Rajasthan High Court has held that a reasonable opportunity must be afforded before any cancellation of license. This decision of course dealt with the factual matrix of that case.

17. The learned senior counsel would therefore contend that availability of alternative remedy is not a bar for approaching this Court under Article 226 of the Constitution of India. He would therefore summarise his arguments that the petitioner having not been granted reasonable opportunity of being heard and cannot be shunted to approach the appellate authority, at this distance of time. According to the learned senior counsel, once this Court has chosen to admit the case, cannot ask the petitioner to approach the appellate authority, after the case was pending for many years. According to him, such approach can result in grave injury to the right of the petitioner.

18. Per contra, learned Additional Advocate General would rely on the following decisions:-

(i) In the case of P.Mariadoss Vs. The District Collector and others, reported in 2012 SCC Online Mad 1135, he would draw the attention of this Court to paragraph Nos.15, 20 and 21, which are reproduced below:-

"15. It is a settled legal principle that remedy under Article 226 of the Constitution being discretionary, the High Court may refuse to grant it, where there exists an alternate remedy, which is efficacious and adequate. The onus is on the petitioner to establish that the alternate remedy is not efficacious. It is equally well settled that existence of an alternate remedy is not an absolute bar for exercising the jurisdiction of this Court under Article 226 of the Constitution. In cases where

there is complete lack of jurisdiction in the officer or authority which passed the order or when the proceedings are ultra vires or without material or where the impugned order has been made in violation of principles of natural justice, would fall within the exceptional circumstances, where the Court would exercise discretion despite existence of an alternate remedy.

20. Next aspect which has to be gone into is as to whether there has been violation of principles of natural justice and whether the petitioners were justifying in by-passing the alternate remedy. From the counter affidavit filed W.P.No.1015 of 2011, it is seen that the writ petitioner's quarry was inspected by the Special Team on 15.07.2010, 16.07.2010 and 23.07.2010. It is stated that a request was made by M/s.Roman Tarmat Limited requesting permission to lease out quarry No.8 in Survey No.99 (Part), Keerapakkam village for carrying out Government work and such request was made under Rule 7 of the Tamil Nadu Mineral Concession Rules, 1959, which enables quarrying for public purposes. The request was examined and the proposal was sent recommending grant of permission. In order to fix the boundaries, when the officials went to the site on 18.06.2010, one Panchatshram, representative of the writ petitioner and four others stopped the survey work and prevented the Government officials from discharging their official duties. The Tahsildar sent a letter to the Sub-Inspector of Police, to take action against the persons who prevented them from doing government work and also provide Police protection for conducting the survey work on 23.06.2010. It is stated that survey work was carried out on 23.06.2010, with Police protection. When the report was submitted, it came to light the petitioner was allegedly involved in illicit quarrying. Subsequently, the Inter Departmental Survey Team was formed by the Commissioner, who had jurisdiction over the whole of Tamil Nadu, to undertake survey and demarcation of the leasehold boundaries in the whole District by using theodolite survey instrument. It is stated that totally eight quarries were surveyed and demarcated during the said period. Further, it is stated that the proceedings of the Deputy Director, Geology and Mining, Kancheepuram, dated 08.09.2010, was forwarded to the petitioner, based on his request dated 06.10.2010 and 11.12.2010 and in spite of the same, the petitioner appears to have not sent any comprehensive reply to the show cause notice dated

28.09.2010. Therefore, it appears that the copy of the Inspection Report, dated 08.09.2010, has been furnished to the petitioner. Even as per the impugned order, the inspection was conducted in the presence of the lessee/his employee and it is also stated that when an earlier inspection was conducted, the employees/associates of the petitioner prevented survey being conducted.

21. The petitioners contended that no notice was given to them prior to inspection. We fail to understand as to what purpose would be served if notice is issued prior to a surprise inspection, when there has been an allegation that illicit mining is being carried on. The authorities being empowered to enter into the quarry by virtue of the power under Section 24(1) of the Central Act, the petitioners cannot insist that they should be put on prior notice before conducting the surprise inspection as in these cases. Therefore, this is not a case of denial of reasonable opportunity to the petitioners, but it is seen that the petitioner has been given show cause notice and thereafter on his request, the copy of the inspection report was also furnished and even in the impugned order as well as in the counter affidavit, there is a specific averment that the inspection was carried out in the presence of the lessee/employee. Therefore, we do not agree with the contentions raised by the learned counsel for the petitioner that there has been violation of principles of natural justice. Therefore, we find no justification for the petitioners to by-pass the appellate remedy. More so, when the issue involves serious disputed questions of fact which cannot be adjudicated in a writ petition. The allegation against the petitioners is that they exceeded their boundary limit and carried out illicit mining in Government Poromboke land. This aspect is essentially a pure question of fact and this Court cannot, based on affidavits decide whether the petitioners crossed the boundary line and did mining operations beyond the demarcated leasehold area. This is all the more a reason that the petitioner should file an appeal."

He would submit that only in exceptional circumstances, this Court would exercise its discretion, despite existence of alternative remedy and the present case does not fall in such exceptional category.

(ii) In the case of S.Jothibasur Vs. State of Tamil Nadu, reported in 2014 SCC Online Mad 5407, in this case, a Division

Bench of this Court has refused to entertain the litigation and relegated the matter to approach the appellate authority under the Tamil Nadu Minor Mineral Concession Rules, 1959.

(iii) In the case of Mohamed Ibrahim Vs. The District Collector and another, reported in 2012 SCC Online Mad 3806, learned Additional Advocate General would rely on paragraph Nos.7 and 8, which are extracted below:-

"7. Once the statutory appeal remedy is provided, the petitioner can avail statutory remedy. No doubt, it is true that this Court in given case can entertain the writ petition inspite of availability of alternate statutory remedy, but, such jurisdiction can be exercised only in exceptional cases, not as a matter of routine. The exercise of writ jurisdiction where alternate remedy is available is an exception and not the rule. The tendency of litigants to by-pass statutory remedy needs to be curbed and not encouraged.

8. As the petitioner has statutory remedy of appeal, this writ petition being not competent, is ordered to be dismissed."

In this case, when the statutory remedy is available, the writ petition was found to be non-competent and the same was dismissed.

(iv) In the case of The District Collector Vs. P.Suresh Babu, reported in 2009 SCC Online Mad 847, learned Additional Advocate General would draw the attention of this Court to paragraph 10, which is reproduced below:-

"10. In our considered view, the submissions of the learned Special Government Pleader merit acceptance. The settled proposition of law is that when an effective and alternative remedy is provided under the Rules, the respondent ought to have exhausted such a remedy and without exhausting such remedy, it is not open for him to straight away approach this Court under Article 226 of the Constitution of India. As rightly contended by the learned Special Government Pleader, it is not the case of the respondent/writ petitioner before the learned Single Judge that the remedy provided under Rule 36C of the Rules, is not effective or efficacious. In such circumstances, in our considered view, the writ petition ought not to have been entertained."

In this case also, the writ petition was not entertained on the ground that there was an appellate remedy available under the

Tamil Nadu Minor Mineral Concession Rules, 1959. The learned Additional Advocate General would submit that consistently this Court has taken a view, once an effective appellate remedy is available in the statute and the same has to be exhausted before invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

19. The learned Additional Advocate General would submit that the entire issue calls for adjudication of only factual disputes in the realm of the factual controversies as between the petitioner and the respondents and therefore, the adjudicatory process under Article 226 of the Constitution of India, is not meant for such adjudication and the disputes needless to mention that it cannot be resolved on the basis of the averments made in the affidavits alone. The appellate authority, in this case, is clothed with the administrative power to deal with such factual aspects on the basis of the field map and he alone is competent to deal with the appeal. In any event, the right of the petitioner will not suffer prejudice even remotely, if he is directed to approach the appellate authority and he can always vindicate his stand before the appellate authority. The petitioner would also be provided opportunity to urge all the points in his favour and the appellate authority can always consider the same on the basis of the merits of the claim of the petitioner.

20. Upon consideration of both the legal and factual submissions made on behalf of both the senior counsel, this Court is to see whether the right of the petitioner suffers any legal injury by the action of the respondents and which would entitle to approach this Court by invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. From the show cause notice dated 08.05.2012 and the impugned proceedings dated 21.05.2012, it could be seen that the entire case falls within the realm of facts as contended by the learned Additional Advocate General. Such factual disputes cannot be adjudicated by this Court, which is exercising its special jurisdiction under Article 226 of the Constitution of India.

21. The contentions put forth on behalf of the petitioner that the principles of natural justice have been violated and therefore, the petitioner has a right to approach this Court, cannot be appreciated for the reason that from the pleadings and materials placed on record, this Court does not see any prejudicial aspect while impugned proceedings was issued against the petitioner.

22. As rightly contended by the learned Additional Advocate General that the petitioner was treated as a special category and shown some extraordinary courtesy by this Court, by ordering appointment of committee of various officials to carry out the inspections in regard to the quarrying operation of the petitioner. The committee has given its report, signed by all the members who were the part of the committee and in fact, the Court gone one step further and appointed Advocate Commissioner to over see the conduct of the committee. That being the case, this Court does not find any justifiable reason on the part of the petitioner to have any grievances in regard to any violation of principles of natural justice.

23. It is also to be seen that the petitioner has approached this Court time and again by raising allegations against the officials concerned, as if he was being persecuted by the Government. He was by and large successful before this Court by having his way and even having a committee appointed in the place of the officials to carry out the statutory duty under the Tamil Nadu Minor Mineral Concession Rules, 1959. Having achieved so much, the petitioner cannot further stretch his expectation and make a complaint against the report which formed the basis of the impugned proceedings dated 21.05.2012. In any event, this Court does not wish to make any comments on either the report or the impugned proceedings, since the matter is to be left to the discretion of the appellate authority to decide and take a call after due examination and appreciation of the stand of the petitioner in the face of the impugned proceedings.

24. As rightly contended by the learned Additional Advocate General, this Court does not see any iota legal injury suffered by the petitioner, at this stage, since he was present along with his advocate on the date of the inspection by the committee and he has also chosen to file a written statement, in response to the show cause notice dated 08.05.2012 and the contention of the written statement has been referred to number of paragraphs in the impugned proceedings. Therefore, it is not open to the petitioner to contend that he was not aware of the report or other connected documents in order to tap the door of this Court while side stepping the appellate remedy available to him. The petitioner having achieved to whatever extent in the earlier proceedings before this Court, has only made another attempt to advance his case before this Court directly without exhausting the remedies available under the statutory rules. Such an attempt by the petitioner under the pretext of violation of principles of natural justice, is only a ruse to draw the attention of this Court in order to subserve his own illegitimate aims.

25. The decisions cited on behalf of the petitioner by the learned senior counsel, are all rendered on the basis of the factual matrix of the respective cases and the same cannot be applied to the factual matrix of the present case. This is particularly so, that the petitioner had been already shown special concession by this Court by appointing a committee to look into his grievances and such concession is not normally extended to other lesser mortals. That being the case, the petitioner ought not to be allowed to push his right beyond the statutory boundaries of the Tamil Nadu Minor Mineral Concession Rules, 1959. In any event, as ultimately argued by the learned Additional Advocate General, all the points, which according to the petitioner, are in his favour, can be urged before the appellate authority.

26. It is always open to the petitioner to make his submissions both on the legal as well as the factual aspects before the appellate authority. In fact, an opportunity before the appellate authority is more effective on the facts and circumstances of the present case than before this Court under Article 226 of the Constitution of India. The contention of the learned senior counsel for the petitioner that this Court having chosen to admit the writ petition, cannot drive the petitioner to approach the appellate authority, is not a legally tenable argument as the power of the Court cannot be curtailed because the writ petition was admitted and kept pending.

27. In the light of the above narrative and discussion, this Court is of the considered view that the writ petition is not maintainable in law for the reason that effective and proper remedy is available under the Tamil Nadu Minor Mineral Concession Rules, 1959 and the impugned proceedings itself provides for an opportunity to the petitioner to file an appeal, if he so advised. Therefore, the non-exhaustion of the appellate remedy as provided under the rules has become fatal to the present proceedings and therefore, the writ petition is dismissed on that ground. In case, the petitioner chooses to file an appeal before the appellate authority under the Tamil Nadu Minor Mineral Concession Rules, 1959, he may do so and in case of such appeal being filed, the appellate authority is directed to consider the appeal on merits and in accordance with law uninfluenced by any observations made by this Court in this order. The period taken during the pendency of the present litigation may be excluded and the appellate authority, in case, an appeal is filed, dispose of the appeal as expeditiously as possible, after affording a reasonable opportunity to the petitioner including opportunity of personal hearing.

28. With the above rulings, the writ petition is dismissed.
No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gsk

To

- 1.The Secretary to Government,
Industries Department,
Fort St.George,
Chennai 600 009.
- 2.The Director,
Department of Geology and Mining,
Guindy,
Chennai 600 032.
- 3.The District Collector,
Krishnagiri District,
Krishnagiri.
- 4.The Deputy Director,
Department of Geology and Mining,
Krishnagiri,
Krishnagiri.

+1cc to Mr.D.Balachandran, Advocate, S.R.No.7379

RRK(07/02/2018)

सत्यमेव जयते

W.P.No.14086 of 2012

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