



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

**WP (MD) No.24836 of 2016
and
W.M.P (MD) .No.17954 of 2016**

R.Velammal

... Petitioner

Vs.

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Revenue Divisional Officer,
Tirunelveli.

... Respondents

Petition filed under Article 226 Constitution of India to issue a Writ of Certiorari, calling for the records relating to the proceedings of the 2nd respondent made in Na.Ka.No.A5/2477/2016 dated 28.10.2016 and quash the same.

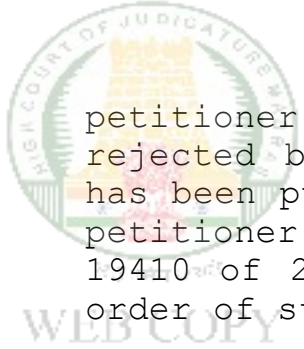
For Petitioner : Mr.K.Govindarajan

For Respondents : Mr.B.Pugalendhi,
Additional Advocate General
Assist by Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

The Writ Petition has been filed challenging the order passed by the second respondent imposing penalty on the petitioner for illegal quarry of blue metal.

2.According to the petitioner, he has obtained permission to quarry stones in his patta land in Survey No.471/1A measuring an extent of 2.43.0 Hectare situated at Tirunelveli Taluk, Vakaikulam Village from the first respondent, for a period of 5 years from the year 2001. Thereafter, the permission has been renewed periodically till 2013. While the petitioner applying for further permission in the year 2013, the Tahsildar has inspected the quarry and filed a report to the second respondent recommending for granting permission to the petitioner. At that time, there is no allegation of any illegal quarry against the



petitioner. Subsequently, the petitioner's application has been rejected by the District Collector on the ground that new house has been put up within the prohibited distance. Against which, the petitioner has filed writ petitions in W.P.(MD).Nos.17739 and 19410 of 2016 before this Court and the same is pending with an order of status-quo.

3.Now, all of a sudden, the second respondent issued notice dated 14.10.2016 as if the petitioner had illegally quarried 6845 units of Blue metal and the petitioner has also appeared before the respondent and filed his objections and requested him to measure the quarry, in his presence. Without considering the petitioner's objections, the impugned order has been passed directing the petitioner to pay seigniorage fee of Rs.18,48,150/-. Challenging the said impugned order, the present writ petition has been filed.

4.The learned counsel for the petitioner would contend that as early as in the year 2013, the very same Tahsildar conducted inspection on the quarry site, measured the entire quarry area and sent a recommendation to the Revenue Divisional Officer for granting permission to the petitioner. At the time of inspection, there is no allegation of any illegal quarry and it is not the case of the _respondent that after expiry of permission period, he has conducted quarrying operation. Now, based upon the inspection conducted by the Surveyor and Tahsildar, in his absence, the second respondent mechanically came to the conclusion that the petitioner illegally quarried 6845 units of blue metal. The above inspection has been done in the absence of the petitioner, and hence, without any opportunity to the petitioner, the impugned order has been passed.

5.Per contra, the learned counsel appearing for the respondents would contend that after issuing a show cause notice to the petitioner and hearing his objections, the second respondent came to the conclusion that the petitioner had conducted illegal quarry based on the inspection report submitted by the Surveyor and the Tahsildar and there is no illegality in the order passed by the second respondent.

6.I have considered the rival submissions made on either side and also perused the materials placed on record.

7.Perusal of the order passed by the second respondent, it is seen that the second respondent based on the inspection report submitted by the local Surveyor and Tahsildar, came to a conclusion that the petitioner conducted illegal quarry. But admittedly, at the time of inspection, no notice was given to the petitioner and the inspection has been conducted in his absence, and relying upon the above report, the second respondent has passed impugned order imposing penalty.



8. In the above circumstances, since the impugned order has been passed based on the alleged inspection conducted by the Tahsildar and Surveyor in the absence of the petitioner, this Court is of the considered view that the Survey of the quarry site ought to have done in the presence of the petitioner, especially the respondent is alleging an illegal quarry.

9. In view of the above, the impugned order passed by the second respondent is set aside and the matter is remanded back to the second respondent for fresh consideration and the second respondent is directed to conduct inspection of the quarry site in the presence of the petitioner and thereafter, after giving an opportunity to the petitioner to raise his objections, pass an order on merits and in accordance with law.

10. With the above direction, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Tirunelveli District,
Tirunelveli.
2. The Revenue Divisional Officer,
Tirunelveli.

+ 1 cc TO Mr.K.Govindarajan , Advocate in SR No. 46615
+ 1 cc TO The Special Government Pleader in SR No. 46879

Ns
AE/SV MMS/SAR2/21.03.2018/3P/5C

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