

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22249 of 2008

K.S.Selvaraj

... Petitioner

Vs.

1.The District Collector,
Erode District,
Erode.

2.The Sub Collector,
Gopichettipalayam,
Erode District.

3.The Tahsildar,
Bhavani Taluk,
Erode District.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the second respondent's proceedings bearing Na.Ka.No.12786/06 A3 dated 24.02.2007 quash the same.

For Petitioner : Mr.K.Ramakrishna Reddy

For Respondents : Mr.J.Ramesh

Additional Government Pleader

ORDER

The petitioner has filed this petition seeking issuance of Writ of Certiorari to call for the records of the second respondent's proceedings bearing Na.Ka.No.12786/06 A3 dated 24.02.2007 quash the same.

2.According to the petitioner, he became the successful bidder in respect of the stone quarry measuring 3.23.5 Hectares, comprised in S.No.426(Part) situated at Ammapettai Village, Bhavani Taluk, Erode District, and the lease agreement was executed on 24.10.2005 for a period of five years from 24.10.2005 to 23.10.2010.

3.It is his further case that he was the successful bidder in respect of the said quarry during the earlier lease period and since there was no approach road to the said quarry, he entered into lease agreement with the adjacent patta land owners for approach road and operated the quarry continuously during the earlier lease period. Accordingly, when he approached the patta land owner for approach road for the second time, they did not agree for leasing out the lands and insisted the petitioner to purchase the said lands. Hence, he could not operate the quarry for a period of one year and was forced to

purchase the adjacent patta lands for approach road in the subject quarry.

4.It is his further case that after purchasing the adjacent patta lands and after laying the approach road during November, 2007, he commenced the quarry operation and approached the first respondent for issuing transport permits and wanted necessary chalan for payment of seigniorage, however, the first respondent did not issue the same. Further, to the shock and surprise of the petitioner, the first respondent issued a notice of hearing dated 02.01.2007 without any show cause notice and without enclosing copies of any reports alleging that the Assistant Director of Geology and Mining has inspected the subject quarry on 24.10.2006 and submitted a report stating that boundary stones are not fixed, board displaying the details of the lease not erected and 523 lorry loads of stones have been removed from 24.10.2005 without paying seigniorage.

5.It is his further case that pursuant to the said notice of the first respondent, the petitioner appeared before the first respondent and submitted his written reply on 08.01.2007. Whiles, to the shock and surprise of the petitioner, the second respondent issued the impugned

proceedings dated 24.02.2007 demanding penalty of Rs.5,09,975/-. Aggrieved by the same, the petitioner has filed this writ petition.

6.The learned counsel for the petitioner would submit that the first respondent issued a notice of hearing dated 02.01.2007 without any show cause notice and without enclosing copies of any reports alleging that the Assistant Director of Geology and Mining has inspected the subject quarry on 24.10.2006. He would further submit that the petitioner had no knowledge about the inspection, however, the petitioner appeared before the first respondent and submitted his written reply on 08.01.2007. However, the impugned order was passed by the second respondent.

7.The learned counsel for the petitioner would further submit that as per Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, the second respondent is not competent to pass the impugned order and the competent Authority is the Revenue Divisional Officer. Hence, the impugned order passed by the second respondent is un-sustainable one. Accordingly, he prayed for allowing the writ petition.

8.The learned Additional Government Pleader appearing for the respondents would submit that on a perusal of Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, the Revenue Divisional Officer is the Authority who has Authority to pass the impugned order. Hence, the matter may be remanded back to the Revenue Divisional Officer for proper adjudication.

9.Heard both sides.

10.It is useful to refer hereunder the relevant portion of Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959:

'36-A. Penalties:

[Whenever any person contravenes the provisions of sub-section (1) 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 subrule shall be exercisable and dischargeable by the Revenue Divisional Officer concerned within their respective jurisdiction.]

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

extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.]

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

11.The Madurai Bench of this Court has, in a similar issue, vide order dated 06.04.2017 in W.P (MD). No.1500 of 2016, set aside the impugned order therein and remitted the matter back to the second respondent therein/ Revenue Divisional Officer for fresh consideration.

12.In view of all the above and since the second respondent has without jurisdiction passed the impugned order, this Court set aside the order impugned herein and the matter is remanded back to the concerned Revenue Divisional Officer for fresh adjudication. The concerned Revenue Divisional Officer shall proceed the matter from

the personal hearing stage and after affording opportunity to the petitioner shall pass final orders within a period of six weeks from the date of receipt of a copy of this order.

13.The writ petition is accordingly disposed of. No costs. Consequently, the connected miscellaneous petitions, if any, are also closed.

11.06.2019

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Speaking Order/ Non Speaking Order

Index: Yes/ No

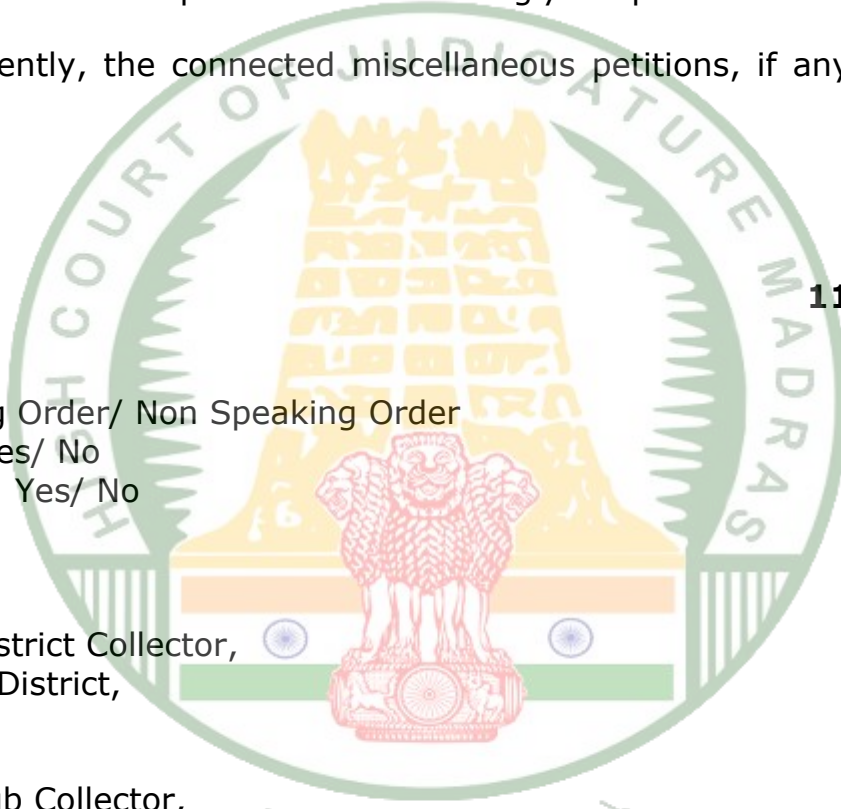
Internet: Yes/ No

To

1.The District Collector,
Erode District,
Erode.

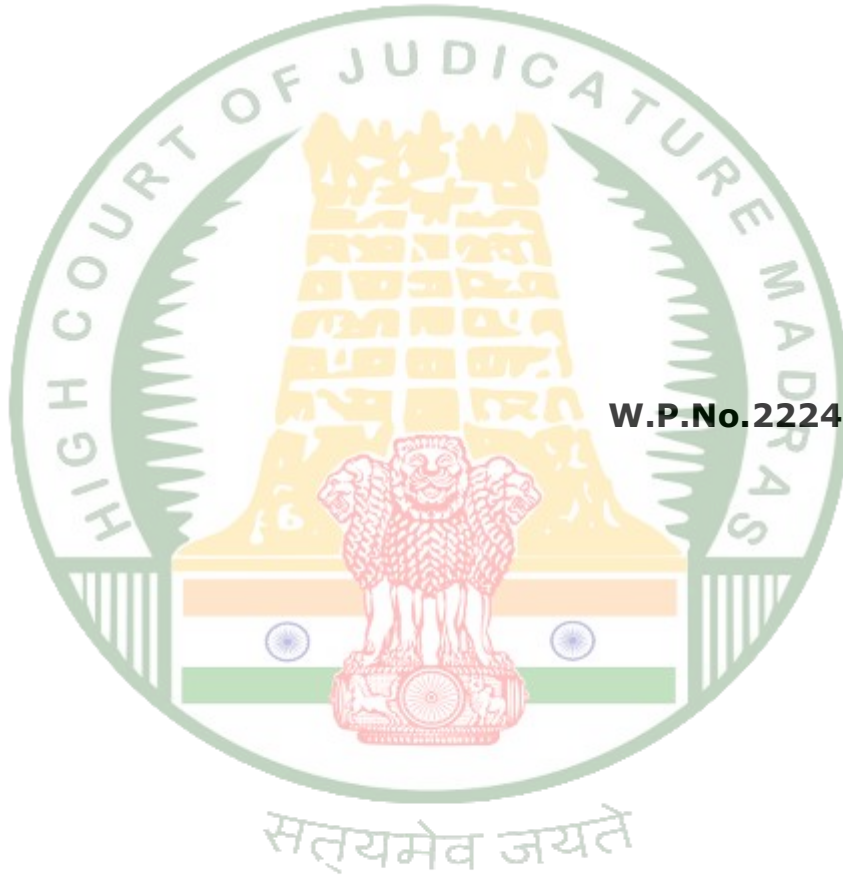
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