

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.01.2019
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.2707 of 2019
and
W.M.P.Nos.2965 & 2967 of 2019

A.Manikandan

..Petitioner

Vs

- 1.The District Collector
Nagapattinam
Collectorate
Nagapattinam District.
- 2.Assistant Director
Industries and Mines
Nagapattinam District.
- 3.Revenue Divisional Officer
Mayiladudurai
Nagapattinam
- 4.Assistant Executive Engineer
Public Works Department
Mayiladudurai.
- 5.The Project Director
District Rural Development Agency
Collectorate
Nagapattinam.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the 1st respondent passed in Na Ka No.378/Mines/2018 dated 04.01.2019 and quash the same and consequently direct the respondents to permit clearance of sand(savudu) de-silted and lifted in furtherance to the permission granted by the 3rd respondent.

For Petitioner : Mr.S.Silambanan, Senior counsel
for Mr.A.Mohamed Ismail

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

O R D E R

The order passed by the 1st respondent in proceedings dated 04.01.2019, directing the authorities to utilize the sand confiscated from a secret place for the Government buildings and for other schemes and accordingly, deposit the amount of Rs.23,94,000/- (Rupees Twenty Three Lakh, Ninety Four Thousand only) in the Government accounts in respect of the sand confiscated about 1800 unit and the rate fixed for one unit is Rs.1,330/- (Rupees One Thousand, Three Hundred and Thirty only) is under challenge in the present writ petition.

2.The learned Senior counsel appearing on behalf of the writ petitioner states that the Government had come with the scheme, where it was permissible to freely lift minerals such as sand / savudu / vandal sand etc., while de-silting water bodies ponds, lakes etc., after due permission in terms of Rule 12(2) of the Tamil Nadu Minor Mineral Concession Rules 1959. The petitioner submitted an application to the 3rd respondent/Revenue Divisional officer seeking permission. The 3rd respondent permitted the writ petitioner to lift the savudu/vandal from the respective ponds. In accordance with the permission granted, the writ petitioner spent a huge sum and had de-silted the ponds and had lifted the sand as permitted.

3.The petitioner along with other persons had approached one Mr.Agoram, who had vacant high lands and sought to store the said sand in the said place and had promised to lift the same in due course when it was conducive for using the same. The said Mr.Agoram also granted permission to store the sand in his lands. Initially, it was proposed by the 2nd respondent to auction the said sand claiming it to be used for construction. However, the said sand which was tested and was found that it is not suitable for building constructions and therefore, it was kept in the place belongs to one Mr.Agoram.

4.The learned Senior counsel submits that the writ petitioner has not committed any offence and he is an innocent person. The petitioner along with others kept the savudu/vandal in the place belongs to Mr.Agoram for the purpose of utilizing the same for their agricultural purpose and to utilize the same in their agricultural fields. However, the authorities concerned without providing any opportunity to the writ petitioner confiscated the savudu/vandal and registered a criminal case and thereafter, the District Collector passed the impugned order. The writ petitioner is ready to establish his innocence before

the Court of law. However, the petitioner is ready to pay the amount fixed by the District Collector in the impugned order for the purpose of removing the sand, more specifically at the rate of Rs.1,330/- per unit. The present writ petition is filed seeking permission from this Court for removing the entire sand of 1800 Units and is ready to pay Rs.1,330/- per unit as fixed by the Public Works Department.

5.The learned Senior counsel made a submission that in the event of considering the claim of the writ petitioner for removing the sand, the petitioner is ready and willing to pay the amount and remove the sand from the godown.

6.The learned Additional Government Pleader opposed the contention by stating that the sand kept in the place belongs to Mr.Agoram was illegally quarried and in violation of the permission granted. The authorities during the inspection, found that the sand was quarried beyond the permitted limit and therefore, a criminal case was registered against the writ petitioner and other persons under Section 375 IPC INPPD Act r/w 21(4) of Mines and Minerals Act 420 dated 26.10.2018. In view of the fact that the criminal case is pending, the petitioner cannot be granted with the permission to remove the sand, which was quarried illegally without the permission of the competent authorities. Thus, the writ petition is liable to be rejected.

7.The permission granted by the 3rd respondent in proceedings dated 10.07.2018 is enclosed in page No.3 of the typed set of papers filed along with the writ petition. Permission was granted on certain terms and conditions. The conditions stipulated in the permission order categorically enumerates that while de-silting the savudu, if any sand is found, then the same should not be taken or further digging should not be carried. The said condition was imposed in order to protect the sand in the water bodies. When there is a specific condition imposed in the permission order itself, not to remove the sand deposited in the water bodies, the large extent of sand was removed and kept in a secret place and more specifically, the land belongs to one Mr.Agoram. Though the learned senior counsel says that the writ petitioner is an innocent person and the same is to be established by producing documents and by adducing evidences before the Criminal court of law. Such disputed facts cannot be adjudicated in a writ jurisdiction, more specifically, the criminal cases are registered and the same are pending for Trial. However, the order granting permission stipulates that sand cannot be removed and if any sand is found in the water body, then the further digging is prohibited. When further digging of the sand is prohibited, question of removing the sand does not arise at all. However, the authorities competent found 1800 units of sand in the place belongs to Mr.Agoram and they have confiscated the

entire sand and now, passed an order, stating that the land is to be utilized for the purpose of implementing the Government schemes and the amount fixed by the Public Works Department is to be deposited in the Government accounts.

8. This Court is of an opinion that when the writ petitioner is an accused in the criminal case, the present writ petition is for a direction to remove the sand cannot be granted. Secondly, all these facts, details are to be established by the writ petitioner before the Court of law. The impugned order states that the sand confiscated measuring 1800 units are to be disposed of and the amount should be deposited in the Government accounts. Such an order cannot be construed as infirm in view of the fact that such a large quantity of sand cannot be kept for long duration and the same is to be disposed of in the manner known to law and the land exclusively taken from the water bodies are to be sold by way of auction and the amount should be deposited in the Government accounts. In view of the fact that the Laboratory report shows that the sand confiscated is not completely fit for building constructions, the District Collector thought fit to utilize the sand for implementing Government schemes and deposit the amount in the Government accounts. Such an action is a practical approach adopted by the District Collector for the purpose of clearing the sand and the same cannot be held as irregular. In respect of the ground raised by the learned senior counsel that no opportunity was given to the writ petitioner, the same cannot be accepted in the present writ petition in view of the fact that the District Collector passed an order in proceedings dated 04.01.2019 for the purpose of removing the sand, which was confiscated and deposit the money in the Government accounts. However, the writ petitioner is bound to face the criminal case registered against him and establish his innocence by producing documents and by adducing evidences. During the pendency of the criminal case, the writ petitioner being an accused, cannot seek any direction from this Court to remove the sand, which was identified as illegal quarrying of excess sand from the water bodies.

9. This being the factum of the case, the very relief sought for in the present writ petition cannot be considered and the order passed by the District Collector in proceedings dated 04.01.2019 is certainly in the interest of public and to realize the State revenue by disposing of the quarried sand of 1800 units from the water bodies.

10. In this view of the matter, the writ petitioner has not established any acceptable ground for the purpose of granting

the relief as such sought for in the present writ petition and accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Collector
Nagapattinam
Collectorate, Nagapattinam District.

2.Assistant Director
Industries and Mines
Nagapattinam District.

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Mayiladudurai
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4.Assistant Executive Engineer
Public Works Department
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5.The Project Director
District Rural Development Agency
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+1cc to Mr.A.Mohamed Ismail, Advocate, S.R.No.8496

W.P.No.2707 of 2019

RSI (CO)
GSP (20/02/2019)

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