

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 04.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.16833 of 2004
and
WMP.No.18928 of 2004

P.MylsamyPetitioner

V.

1.The District Collector,
Coimbatore District.

2.The Assistant Director,
Department of Geology and Mining,
Collectorate,
Coimbatore.

3.The Tahsildar,
Pollachi.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a writ of Certiorari, calling for the records relating to the order dated 31.03.2004 made in Na.Ka.No.1725/99/Ex.1 pertaining to the property comprised in S.F.No.93/C4 in 10, Muthur Village, Pollachi Taluk measuring 0.40.0 hectare passed by the second respondent and to quash the same as null and void.

For Petitioner : Mrs.S.Girija

For Respondents: Mrs.K.Bhuvaneswari
Additional Government Pleader

O R D E R

The petitioner herein had entered into a lease agreement for quarrying of rough stone for a period of three years from 22.02.1992 to 21.02.1995. After the expiry of the lease period i.e., after almost 9 years, the second respondent herein had issued an impugned demand notice dated 18.03.2004, calling upon the petitioner to pay a sum of Rs.96,424/- towards seinerage

fee. The reason assigned for the delay in the demand is that there was an interim order in the writ petition in W.P.No.13306 of 1992 filed by the Building Materials Transport Owners Association and in view of the stay having been vacated, the present demand has been made. Challenging the same, the Writ Petition has been filed.

2. Heard Mrs.S.Girija, learned counsel for the petitioner and Mrs.K.Bhuvaneswari, learned Additional Government Pleader appearing on behalf of the respondents.

3. The learned counsel for the petitioner submitted that the writ petition is liable to be rejected on the ground of laches, since the petitioner had undertaken the quarry work between the years 1992 to 1995 and the impugned order came to be passed almost after nine years. Even otherwise, the learned counsel for the petitioner submitted that, prior to the impugned demand, no notice was given to the petitioner detailing about the demand, in how and what manner, the respondents had arrived at the quantum of the seinerage fee.

4. The Learned Additional Government Pleader, on the other hand submitted that, in view of the interim order granted in the Writ Petition in W.P.No.13306 of 1992 filed by the Building Materials Transport Owners Association, they were not in a position to collect the seinerage fee from persons like the petitioner. Since now, the interim order has been vacated, the respondents herein had made the said demand. As such, she would submit that there is no infirmity in the demand notice and the petitioner is liable to pay the seinerage fee.

5. I have given careful consideration to the submissions made by the respective counsels.

6. It is not in dispute that the petitioner herein had entered into a lease agreement for quarrying of rough stone for the period between 22.02.1992 to 21.02.1995. During the first year of his lease, the petitioner herein had been paying seinerage fee at the rate of Rs.19/- per load and Rs.75/- per load for the remaining period. The present impugned order has been issued, without a show cause notice, which fact, is also not in dispute. As rightly pointed out by the learned counsel for the petitioner, the mode in which the amount of Rs. 96,424/- was quantified in the impugned order, has not been explained. When the petitioner herein has come out with a specific case that they have been paying the seinerage fee and there is no amount due, it would have been appropriate that the respondents should have explained as to how they have arrived at the amount demanded therein. Such a prior notice should also have given, by way of an opportunity to the petitioner to render his

explanation as to whether he is liable to pay the amount or whether the amount was properly quantified. Even otherwise, since the demand is being made after a period of more than 9 years, it would have been appropriate for the respondents to call for an explanation to show cause as to why the amount should not be recovered.

7. The learned Additional Government Pleader submitted that in view of the pendency of the another writ petition and the interim order therein, they were unable to make the demand earlier. In normal circumstances, when notice of this nature is set aside by this Court, on the ground that it is in violation of the principles of natural justice, the matter would be remanded back to the respondents for fresh adjudication, with a direction to give prior notice to the petitioner, calling for explanation. But in the instant case, since the petitioner's lease had expired in the year 1995 and more than 24 years have lapsed, it would be difficult for both the parties to ascertain the actual seinerage fee and their liability to pay such an amount. Above all, it is submitted that after the petitioner's lease period had expired, the subject lands were leased out to one Mr.Thangaraj for a period of 5 years i.e., between 13.05.1995 to 29.05.2000. As such, physical verification for the purpose of ascertaining the quarried minerals also would be difficult.

8. For all these reasons, I do not find it fit to remand back the matter to the respondents for fresh consideration. Accordingly, the petitioner is entitled to succeed in view of the above reasonings. Consequently, the order passed by the second respondent dated 31.03.2004 made in Na.Ka.No.1725/99/Ex.1 is set aside and the Writ Petition stands allowed. Connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Coimbatore District.

2.The Assistant Director,
Department of Geology and Mining,
Collectorate,
Coimbatore.

3.The Tahsildar,
Pollachi.

+1cc to M/S.S.Girija, Advocate Sr.33668
+1cc to the Government Pleader sr.34064, 34029

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srg 7/6/2019



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