BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.08.2019

Delivered on : 09.09.2019

CORAM

THE HON'BLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HON'BLE MR.JUSTICE **N. SATHISH KUMAR**

Rev. Application(MD) Nos.80 to 82 of 2019

in W.P. (MD) Nos. 19936 of 2017, 7595 and 21485 of 2018

Rev.A.No. 80 of 2019

1.The District Collector,
Pudukottai District, Pudukottai.

2.The Assistant Director of Geology & Mining,
Collectorate, Pudukottai District.

3.The Superitendent of Police,
Pudukottai District.

4.The Inspector of Police,
Aranthangi Police Station,
Pudukottai District. ...Applicants

-vs-

1.Muthu
2.Ramanathan
3.Govindhan
4.Mennappan
5.Jeganathan
6.Pandi ... Respondents

Rev.A.No. 81 of 2019

1.The Secretary to Government,
Public Works Deparment,
Secretariat, Chennai - 600 009.

2.The Commissioner of Geology and Mining,
Guindy, Chennai - 32.

3.The District Collector,
Pudukottai District, Pudukottai.

4.The Revenue Divisional Officer,
Aranthangi, Pudukottai District.

5.The Assistant Director of Geology & Mining,
Pudukottai District, Pudukottai.

6.The Tahsildar,
Aranthangi Taluk,
Pudukottai District.

7.The Assistant Executive Engineer,
South Vellaru Basin Division,
Pudukottai District.

8.The State of Tamil Nadu,
Rep. by the Secretary,
Home Department,
Fort St.George,Chennai.
(R8 suo motu impleaded vide
order dated 24.09.2018) ..Applicants

vs

1.Mahalingam
2.K.S.Ramesh Babu
3.K.Subramanian
4.Kalidasan
5.P.Rajan
6.Saravanan
7.Natarajan
8.K.Vayakatuchamy ..Respondents

Rev.A.No. 82 of 2019

1.The Chief Secretary to Government,
Government of Tamilnadu,
Fort St.George, Chennai - 600 009.

2.The Secretary to Government,
Public Works Department,
Fort St.George, Chennai - 600 009.

3.The Revenue Secretary to Government
of Tamil Nadu
Revenue Department,
Fort St.George, Chennai - 600 009.

4.The Secretary to Government of Tamil Nadu
Highways Department,
Fort St.George, Chennai - 600 009.

5.The Commissioner,
Geolgoy and Mining Department,
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai - 600 032.

6.The District Collector,
Thanjavur District, Thanjavur. .. Applicants

vs

Ugin Prabu .. Respondent

Review Applicantions filed under Clause XLVII Rule 1 and 2 r/w Section 114 of CPC against the order dated 29.10.2018 made in W.P.(MD) Nos. 19936 of 2017, 7595 of 2018 and 21485 of 2018.

Prayer in WP(MD). 19936/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the respondents 1 to 4 to initiate adequate action forbearing the respondents 5 to 9 from quarrying sand in river Vellar Survey No.316 Subramaniyapuram Village, Edayar Panchayat, Aranthangi Taluk, Pudukottai District.

Prayer in WP(MD). 7595/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to take effective steps to prevent the illegal Sand Mining in Vellaru river in Pudukottai District by considering the petitioners representation dated 22.09.2017 and 03.01.2018.

Prayer in WP(MD). 21485/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents prohibiting the illegal sand quarrying operation in Agniyar from Edayathi to Rajamadam in Pattukkottai Taluk of Thanjavur District except under due process of law.

For Applicants (in all)	:	Mr.Vijayanarayanan, Advocate General Assisted by Mr.E.Manoharan, Addl.Government Pleader Mr.Gunaseelam Muthaiah, Addl. Government Pleader
For Respondent(s)	:	Mr.P.Ganapathy Subramanian in WMP.(MD) No. 4436/2019 Mr.T.Lenin Kumar in WMP.(MD)No. 4435/2019 Mr.M.Saravana Kumar in WMP(MD)No.4434/2019

COMMON ORDER

M.M.SUNDRESH, J.

Seeking a review of the order passed in W.P. (MD) Nos. 19936 of 2017, 7595 and 21485 of 2018 dated 29.10.2018, the present Review Applications have been filed.

2. By order dated 29.10.2018, we have issued several directions on the action required to be taken by the Revenue Authorities when vehicles are involved in illicit mining followed by the role required to be played by the Court. Aggrieved over the same, the applicants filed Special Leave Petitions in SLP(C) Nos.33477 - 33479 of 2018. The same were dismissed on 11.01.2019 giving liberty to the applicants to file proper application for reconsideration with respect to the directions issued. The following is the order passed:-

> *"Heard learned counsel for the petitioners and perused the relevant material.*
> *We are not inclined to interfere with the order impugned in the special leave petitions. The same are accordingly, disposed of.*
> *However, if the petitioners have any grievance with regard to any of the directions contained in the order of the High Court, it will be open for them to request the High Court for reconsideration of the matter. In the event, it becomes necessary, the petitioner will be at liberty to approach this Court once again."*

Accordingly, the present review applications have been filed.

3. The learned Advocate General appearing for the applicants contended that there is a factual error which has crept in, in holding that Section 21(4-A) of the Mines and Minerals (Development and Regulation) Act, 1957 (for brevity, referred to as "*the M&M Act*") has come into force by the insertion of Act 10 of 2015 and, therefore, Section 23A of the M&M Act has lost his relevancy. It is only an amendment and hence the finding given is factually incorrect. The applicants have got power under Rule 36-A of the Tamil Nadu Minor and Minerals Concession Rules, 1959. Such a power cannot be taken away. When once compounding takes place, the vehicle is entitled for release. Thus, the order passed requires to be reviewed.

4. The learned counsel appearing for the respondents/writ petitioners would submit that there is nothing wrong in the order passed. What is available to the applicants is only the power of seizure. This Court has rightly held that the applicants do not have the power of confiscation followed by adjudication. A perusal of the Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mining Dealers' Rules, 2011 would clearly show that it is for the Court to pass appropriate orders. Reliance

has also been made on the provisions contained under Section 14(4) of the Tamil Nadu Prohibition Act and Sections 49(a) and (e) of the Tamil Nadu Forest Act, 1882. Therefore, confiscation stands on a different footing than of a mere seizure.

5. Yet another learned counsel appearing for one of the writ petitioners would submit that the order passed by this Court has not been understood properly by the jurisdictional Courts. The Revenue Officials are not filing any private complaints. The Courts are not taking applications for release of vehicles, since there is no complaint on file. There is also doubt with respect to the case registered for the offence punishable under Section 379 IPC, for theft. Hence, this aspect will have to be clarified.

6. First, let us deal with the provisions contained in the M&M Act. Section 4(1A) of the M&M Act prohibits storage, transport or any attempt to transport or store any mineral except in tune with the provisions of the Act and the Rules. This provision has been inserted by Act of 10 of 2015 with effect from 18.12.1999. We may refer to the aforesaid provision appositely:-

> *"4(1-A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder."*

7. Thus, the aforesaid provision makes it very clear that nobody is entitled to attempt or actually transport or store minerals in violation of the provisions of the Act and the Rules.

8. Sections 21(4) and 4A of the M&M Act were also substituted by Act 38 of 1999 with effect from 18.12.1999. For better appreciation, we would also place on record the aforesaid provisions:-

> *"Section 21. Penalties*
> *(1) to (3) ******
> *(4)Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer of authority specially empowered in this behalf.*
> *(4-A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section(4), shall be liable to be confiscated by an order of the Court competent to take cognizance of the offence under sub-section(1) and shall be disposed of in accordance with the directions of such Court."*

9. As per these provisions, the power of seizure is certainly available with the officer or authority empowered accordingly. Such

a seizure would involve the actual mineral, machinery by way of tool and equipment, vehicle or such incidental materials. As per Section 21(4A) of the M&M Act, such seized materials are liable to be confiscated by an order of Court competent to take cognizance of the offence under Section 21(1) of the M&M Act and the seized materials are to be disposed of in accordance with the directions of such Court. Taking note of the aforesaid provisions, we have held that what is permissible to the Revenue Officials, namely the officer authorized, is only the seizure and not confiscation or disposal of such materials. The said reasoning adopted, in our considered view, does not require any re-look, though we respectfully agree with the learned Advocate General that there is a factual error in coming to the conclusion that insertion has taken place only by Act 10 of 2015 which is, in fact, only an amendment. We may note that the Act does not specifically deal with the issue qua release. Once we hold that the power of confiscation lies with the Court alone, the question qua release shall also be decided by it alone. We are dealing with a penal provision in a regulatory statute and therefore the word 'shall' will have to be given the actual meaning. Thus, confiscation is the rule and release in the consequence, of an adjudication. The question of release would arise only on the decision as to whether confiscation is required or not.

10. The further submission made was with respect to the effect of Section 23-A of the M&M Act. We would like to quote the aforesaid provision:-

> *"23A. Compounding of offences.-(1) Any offence punishable under this Act or any rule made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify: Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.*
>
> *(2) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith."*

11. Section 23A of the M&M Act, as stated, only speaks about the compounding of offence. Such a power can be exercised by the officer authorized under Section 22 of the M&M Act taking note of the complaint to the Court with respect to the offence. It can be exercised either before or after the institution of the proceedings.

12. There is a distinction between the compounding of offence and confiscation or release. Similarly, the seizure is different from confiscation and release. Seizure is an act which is to be done after finding that the vehicle, mineral or tool is involved in the offence and there is contravention of the provisions by way of illegal transporting. Therefore, once seizure is made there are two options open to the authorized officer - one is, he can give a complaint and leave the rest to the Court and the second is exercise of power of compounding. In both the cases, he cannot release the vehicle or the other materials seized. The effect of compounding is that the offender gets the prosecution avoided qua the offence. However, the question of release or confiscation still rests with the Court. Therefore, the collection of fine, if any, can only be relatable to the offence to be compounded. Thus, it is for the Court to decide as to whether the vehicle is to be confiscated or released.

13. In view of the aforesaid position being clarified, we have to hold that the earlier finding given by us that Section 23A of the M&M Act has become redundant is not a correct expression of law. After all, two provisions of any enactment are meant to be synchronized with each other. These two provisions are not concerned with the same issue. Thus, they operate on their respective fields. Therefore, there can never be any repugnancy arising in such a situation. To that effect, we agree with the submission of the learned Advocate General in the light of the discussion made above.

14. We may note, the power of compounding under Section 23A of the M&M Act is the power which is required to be exercised by application of mind. This is not a mere administrative power, but has the trappings of a quasi-judicial one. The effect of the exercise is that the very prosecution itself is eschewed. To our dismay, we are constrained to hold that authorized persons are treating these provisions by acting as collecting agents of fines imposed. Perhaps they need to be sensitized on the importance of sand which will have a far-reaching consequence on the universe as such. The loss and offence committed cannot be equated in terms of money. There is a huge misconception on the part of the applicants. Rivers and water bodies are to be protected not only for the present generation, but also for the future. They are meant to be used by all living and non-living beings. Therefore, it is a fit case where the Government viz., the Secretary to Government, Home Department, Fort St. George, Chennai, will have to take serious view of this matter.

15. Though external aid is not to be resorted to as a matter of course, we find that the provisions contained under Section 49 (a) and (e) of the Tamil Nadu Forest Act and Section 14(4) of the Tamil Nadu Prohibition Act also provide for such a mechanism. In fact, law is required to be applied with more vigour, for any violation of the M&M Act and the Rules will have a wider ramification on the mother earth than under the Tamil Nadu Prohibition Act. Thus, there appears

to be a lack of understanding of the sensitivity of the issue involved. Similar is the position with respect to the Tamil Nadu Prohibition and Illegal Mining and Transportation of Storage of Minerals and Dealers, 2011.

16. Much reliance has been made on Rule 36(A) of the Tamil Nadu Minor and Minerals Concession Rules, 1959. We would like to place on record the relevant portion of the aforesaid provision, which speaks on penalty:-

> *"36-A. Penalties. - (1) Whenever any person contravenes the provisions of sub-sections (1) and (1-A) 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 be liable to be punished as provided in sub-section (1) of Section 21 of the Act"*

17. This Rule merely speaks about the penalties alone. These penalties are to be construed only for the purpose of compounding the offence committed. On a reading of this Rule, it is very clear that the penalty itself is based on seigniorage fee subject to the minimum amount. This Rule, with due respect, does not speak about the release of the materials seized, including the vehicle. Hence, Rule 36(A) has to be read in consonance with Section 23A of the M&M Act. We have already held that compounding under Section 23A is different from the exercise of power under Section 21(4A) of the Act.

18. We have already dealt with the Rule making power available in the order under Review. Such a power drawn by way of delegated legislation can never be considered as affront to the parent Act. Therefore, though for different reasons, we hold that the power of release or confiscation certainly is not available with the person authorized.

19. Thus, in the light of the above reasoning, we are constrained to dismiss the review application. However, we hasten to issue further directions in the larger public interest, especially, when it is brought to our notice that the directions issued have not been complied with and indiscriminately power of compounding has been exercised without understanding the gravity of the offence and the implication on the society.

20. Accordingly, the following directions are issued:-

(i) The Secretary to Government, Industries Department, Fort St. George, Chennai is directed to issue proper directions either by way of order or circular to all the persons authorized to exercise the power to seizure indicating the manner and the circumstances under which the power of compounding is to be exercised sparingly;

(ii) The designated Courts are directed to deal with the question of confiscation or release of the vehicles on receipt of the private complaint or seizure report from the person authorized, notwithstanding the exercise of power of compounding. The persons authorized are directed to comply with the earlier directions with reference to making the private complaints.

(iii) Whenever the vehicles/materials seized are produced before the Court for confiscation proceedings, the Courts concerned shall take photographs of the vehicle/material and keep the same in file and shall proceed to sell the vehicle/material by public auction after getting valuation report from the Motor Vehicle Inspector of the District concerned (or) the authorities concerned and shall issue sale certificate to the successful bidder and deposit the sale price to the credit of the particular case. In the event, confiscation is ordered by the trial Court, the amount shall be confiscated to the Government.

(iv) If the designated Court comes to the conclusion that the vehicle/material is not liable to be confiscated, the same shall be returned to the parties who are legally entitled to.

(v) The applicants are directed to file an affidavit on the complaints made on the direction issued by this Court, particularly in the light of the submission made that they are not being followed. Such an affidavit will have to be filed within a period of four weeks from the date of receipt of a copy of this order.

21. In the result, the Review Applications stand dismissed with the above said directions.

Post the matter 'for reporting compliance' after six weeks.

SD/-
09.09.2019

These Review Petitions having been posted on Twelfth day of September Two Thousand and Nineteen "for being spoken to"in pursuance to the order of this court dated 09.09.2019 and made herein in the presence of the abovesaid Advocate, this Court made the following order:-

(Order of the Court was made by **M.M.Sundresh,J.**)

These review applications are posted today i.e., on 12.09.2019 under the caption "for being spoken to".

2. Today it is clarified that paragraph 13 Clause (xv) of the

earlier order passed in the writ petitions in W.P.(MD) Nos.19936 of 2017, 7595 and 21485 of 2018 dated 29.10.2018 stands deleted.

3. Insofar as the complaint given under the Mines and Minerals (Development and Regulation) Act, 1957 or Tamil Nadu Minor and Minerals Concession Rules, 1959, is concerned, we further clarify that cognizance can be straight away taken by the Designated Court and therefore, there is no need to file the same before the jurisdictional Magistrate.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Chief Secretary to Government,
Government of Tamilnadu,
Fort St.George, Chennai - 600 009.

2.The Secretary to Government,
Public Works Department,
Fort St.George, Chennai - 600 009.

3.The Revenue Secretary to Government
of Tamil Nadu
Revenue Department,
Fort St.George, Chennai - 600 009.

4.The Secretary to Government of Tamil Nadu
Highways Department,
Fort St.George, Chennai - 600 009.

5.The Secretary, State of Tamil Nadu,
Home Department,
Fort St.George,Chennai.

6.The District Collector,
Pudukottai District, Pudukottai.

7.The District Collector, Thanjavur.

8.The Assistant Director of Geology & Mining,
Collectorate, Pudukottai District.

9.The Superitendent of Police,
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10.The Inspector of Police,
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Aranthangi, Pudukottai District.

13.The Assistant Director of Geology & Mining,
Pudukottai District, Pudukottai.

14.The Tahsildar,
Aranthangi Taluk,
Pudukottai District.

15.The Assistant Executive Engineer,
South Vellaru Basin Division,
Pudukottai District.

COPY TO

1. The Registrar(Judicial)
Madurai Bench of Madras High Court,
Madurai.

2. The Section Officer,
B Section,
Madurai Bench of Madras High Court, Madurai.
(to communicate to the Designated Courts
and Principal District Judges)

3. The Section Officer,
F Section,
Madurai Bench of Madras High Court, Madurai.
(to communicate to the Designated Courts
and Principal District Judges)

4. The Court Manager,
Madurai Bench of Madras High Court, Madurai.

+1CC TO MR.LENIN KUMAR, Advocate Sr. No. 86046

Judgment in
Rev.A.Nos. 80 to 82 of 2019
09.09.2019

KG(CO)
TR(30.12.2019) 11P 21C