

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

C O R A M

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.24400 of 2012

&

M.P.No.2 of 2012

P.Kamalam

... Petitioner

Vs.

1.The Secretary to Government/Revisional Authority,
Ministry of Mines,
Government of India,
Shastri Bhawan, New Delhi - 110 001.

2.The District Collector,
Salem District,
Salem.

3.The Assistant Director of Geology and Mining,
Salem,
Salem District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for issuance of a writ of certiorari calling for the records pertaining to the order of the 1st respondent vide proceedings in Final order No.163 of 2012 dated 27.03.2012 and the order of the 2nd respondent in Na.Ka.No.716/2009/mines/B dated 05.01.2010 comprised proceedings in RC.No.7196/2009/19B, and quash the same.

For Petitioner : Mr.G.Arul Murugan

For Respondents : Mr.K.Ravikumar,
Additional Government Pleader

O R D E R

This writ petition has been filed challenging the order dated 27.03.2012 passed by the first respondent confirming the order dated 05.01.2010 passed by the second respondent.

2. The case of the petitioner is that she is the absolute owner of the agricultural land situated in survey No.66/7A of Morur Village, Sankagiri Taluk, Salem District. According to her, adjacent to her property M/s.Indiana Mines and Allied Industries which is having a mining lease for their property measuring an extent of 7.27 acres in survey No.85/1A and 10.31 acres in survey No.86/1. It is the case of the petitioner that several vehicles within the state of Tamil Nadu as well as from other states come to the adjacent property owned by M/s.Indiana Mines and Allied Industries which is having a valid mining lease. According to the petitioner, the drivers of the vehicles who come for loading from M/s.Indiana Mines and Allied Industries sometimes park their vehicles near the petitioner's land.

3. It is the case of the petitioner that the Revenue Divisional Officer and Village Administrative Officer seem to have conducted inspection and seized two lorries which were loaded with minerals as they were not having a valid transport permit. It is the case of the petitioner that the officials seem to have forcibly taken the statement from the drivers of the lorries as if the minerals loaded in the lorries were excavated from the petitioner's land comprised in S.No.66/7A of Morur Village, Sankagiri Taluk, Salem District. It is the case of the petitioner that her lands are situated in a dry place and there is water scarcity and she has planted mango trees and there is no mining activity in her land.

4. According to the petitioner, to her shock and surprise, the second respondent issued a show cause notice dated 10.10.2009 to the petitioner alleging that illegal mining was carried on in her land and that she has levelled the land to plant Mango trees overnight to destroy the evidence of illegal mining. According to the petitioner, she sent a detailed reply to the show cause notice on 23.10.2009 bringing to the notice of the second respondent that she never carried mining operations in her property and has also denied that the lime stone found in the seized lorries as well as the lorries belong to her.

5. According to her, only due to previous animosity with the petitioner as she had earlier preferred complaint against the revenue officials, the show cause notice dated 10.10.2009 was issued. Thereafter, an enquiry was conducted by the second respondent and further explanation was given by the petitioner in the enquiry proceedings. According to the petitioner, the second respondent erroneously by an order dated 05.01.2010 has imposed penalty of Rs.2,59,335/- towards fine, royalty and value of the minerals. Aggrieved by the order dated 05.01.2010 passed by the second respondent, the petitioner filed a revision before

the first respondent. By order dated 27.03.2012, the first respondent confirmed the order of the second respondent and dismissed the revision as the petitioner failed to appear before the first respondent, despite the receipt of the notice in the revision.

6. It is also the case of the petitioner that written arguments on behalf of the petitioner were sent in the revision proceedings which were held at New Delhi and the same has not been considered by the first respondent in the impugned order. Aggrieved by the order dated 27.03.2012 passed by the first respondent, this writ petition has been filed.

7. A counter affidavit has been filed by the second respondent stating that the petitioner is none else than the wife of Mr.R.Palanisamy who is the proprietor of M/s.Indiana Mines and Allied Industries. It is their case that the minerals weighing 748.8 tonnes seized were extracted only from the petitioner's land. According to them, sufficient opportunity was given to the petitioner to place all her submissions both before the second respondent as well as the first respondent.

8. It is their case that the value of the minerals fixed under the impugned orders is only based on the inspection report given by the Special Tahsildar, Mines and Assistant Geologist, Mines who are the competent authorities to make assessment of the seized minerals. According to them, since the petitioner as well as her husband who is the proprietor of M/s.Indiana Mines and Allied Industries are adjacent owners and they have colluded together and the minerals were infact extracted only from the land belonging to the petitioner. It is also their case that the petitioner has closed the pit which was dug up earlier in her property for the extraction of minerals overnight on 02.09.2009 and Mango saplings were planted now. Therefore, according to the respondents, the impugned orders have been passed only based on personal inspection made by the officials as well as their inspection reports.

9. Heard Mr.G.Arul Murugan, learned counsel for the petitioner and Mr.K.Ravikumar, learned Additional Government Pleader for the respondents.

10. Learned counsel for the petitioner drew the attention of this Court to the show cause notice dated 10.10.2009 issued by the second respondent claiming penalty for alleged illegal mining committed by the petitioner over her land. He submitted that in the show cause notice, the second respondent has

referred to a letter dated 02.09.2009 of the Revenue Divisional Officer as well as the Village Administrative Officer statement dated 10.10.2009.

11. The learned counsel for the petitioner also drew the attention of this Court to the impugned order dated 05.01.2010 passed by the second respondent which refers to 10 documents including two documents mentioned in the show cause notice. According to him, the impugned order dated 05.01.2010 discloses various inspection reports. But according to him, none of the alleged inspection reports were furnished to the petitioner in the enquiry proceedings.

12. The learned counsel for the petitioner also drew the attention of this Court to the detailed reply given by the petitioner on 24.10.2009 to the show cause notice dated 10.10.2009 issued by the second respondent. According to him, when a categorical stand has been taken that illegal mining was not carried on in the petitioner's property, the respondents ought to have furnished the inspection reports which are reflected in the impugned order dated 05.01.2010. According to the petitioner, since inspection reports have not been furnished to the petitioner nor any notice given to the petitioner prior to the said inspection by the officials, the respondents have violated the principles of natural justice before passing the impugned orders.

13. The learned counsel for the petitioner also drew the attention of this Court to the order dated 27.03.2012 passed by the first respondent confirming the order of the second respondent dated 05.01.2010. According to him, proceedings of the first respondent were held in Delhi and on receipt of the notice of hearing, the petitioner had sent her written submissions. Referring to the impugned order of the first respondent dated 27.03.2012, the learned counsel for the petitioner would submit that the written submissions of the petitioner though recorded in the order has not been considered by the first respondent and the petitioner was set exparte by the first respondent and the order was passed without hearing the petitioner.

14. The learned counsel for the petitioner also drew the attention of this Court to the following authorities:

(a) a Single Bench Judgment of this court in the case of S.Selvaarajan vs. The Revenue Divisional Officer, Tiruvallur, Tiruvallur District reported in 2010 (6) CTC 73;

(b) a Single Bench Judgment of this Court in the case of J.Joshuva vs. The Revenue Divisional Officer, Tirunelveli, reported in 2011 (5) CTC 273;

(c) a Single Bench Judgment of this Court in the case of R.Sonai vs. The District Collector, Madurai reported in 2006 (5) CTC 857

15. According to him, in all the aforementioned cases, this Court had quashed the proceedings of the respondent on the ground that the impugned orders were passed based on the inspection reports of Assistant Director of Geology and mining, but neither notice was given nor copies of inspection reports were furnished.

16. The learned counsel for the petitioner submits that under Section 21(5) of the Mines and Minerals (Regulation and Development Act, 1957, the State Government is having the power to recover the penalty only in cases where they have not seized the minerals. According to him, in the instant case, the State Government has seized the minerals and therefore, they are not entitled to levy penalty.

17. Per contra, learned Additional Government Pleader for the respondents would submit that the impugned orders have been passed in accordance with law and there is no violation of principles of natural justice as sufficient opportunity was given to the petitioner before the authorities below. He would further reiterate that the petitioner is none else than the wife of R.Palanisamy who is the proprietor of M/s.Indiana Mines and Allied Industries and the owner of the adjacent land having a valid mining license. According to him, only from the petitioner's land, minerals were illegally extracted and it was seized by the respondents as seen from the inspection reports.

Discussion:

18. The respondents have claimed penalty from the petitioner for illegal mining under Section 21 of the Mines and Minerals (Regulation and Development Act, 1957. Section 21(5) of the Mines and Minerals (Regulation and Development Act, 1957 reads as follows:

"21.Penalties:

(1)...

(2)...

(3)...

(4)...

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may

be, for the period during which the land was occupied by such person without any lawful authority."

As seen from Section 21(5) only in cases where the minerals have not been seized, the State Government can recover penalty. In the case on hand, admittedly the vehicle along with the minerals were seized by the Government. Therefore, applying Section 21 (5) of the Mines and Minerals (Regulation and Development Act, 1957, the State Government does not have the power to recover penalty.

19. Admittedly, in the case on hand, a reply was given by the petitioner to the show cause notice dated 10.10.2009 claiming penalty under Section 21 of the Mines and Minerals (Regulation and Development Act, 1957 on the ground that the petitioner has carried illegal mining in her property. In the impugned order dated 05.01.2010 passed by the second respondent, several documents have been referred to which are ten in number. Admittedly, the copies of the said documents were not furnished to the petitioner. When a categorical stand has been taken by the petitioner that she has not carried illegal mining operations in her property and that only due to personal animosity of the revenue officials, the show cause notice was issued to her, it is the duty of the authorities to furnish the copies of the inspection reports based on which the impugned order dated 05.01.2010 was passed by the second respondent against the petitioner. The quasi judicial authorities like that of the 1st and 2nd respondent must always adopt fair play and transparency to avoid any suspicion about the fairness of the orders passed by them. In the case on hand, the non-furnishing of the documents reflected in the impugned orders lead to the conclusion that fair play and transparency were not adopted by the respondents.

20. Though the petitioner may be the wife of R.Palanisamy, proprietor of M/s.Indiana Mines and Allied Industries who is having a valid mining lease in the neighbouring land, the property bearing S.No.66/7A, Morur Village, Sankagiri Taluk, Salem District, belongs to the petitioner absolutely. Just because the petitioner's husband is having a valid mining lease in the neighbouring property, the respondents ought not to have come to the erroneous inference without any reliable evidence that the seized minerals belongs to the petitioner. They should have given sufficient opportunity to the petitioner to counter the inspection reports which have been reflected in the impugned order dated 05.01.2010.

21. In the case on hand, admittedly, the copies of the documents found in Sl.Nos.1 to 10 reflected in the impugned order of the second respondent dated 05.01.2010 have not been

furnished to the petitioner. Without furnishing the copy of the same and based on the said inspection reports, the second respondent has arbitrarily passed the impugned order dated 05.01.2010 against the petitioner which in the considered view of this Court violates the principles of natural justice.

22. The first respondent who is the revisional authority has also not considered the written submissions submitted by the petitioner though the same is extracted in the order dated 27.03.2012 passed by the first respondent. The first respondent without giving sufficient opportunity to the petitioner, has set the petitioner ex parte and passed the impugned order dated 27.03.2012.

23. As rightly contended by the learned counsel for the petitioner, sufficient opportunity has not been given to the petitioner to place all her submissions with regard to the demand made by the respondents for penalty under Section 21 of the Mines and Minerals (Regulation and Development Act, 1957. The judgements relied upon by the learned counsel for the petitioner referred to supra are squarely applicable to the facts of the instant case as in those cases also no notice of inspection or the copy of the inspection reports were furnished to the land owners prior to the passing of the orders against them under Section 21 of the Mines and Minerals (Regulation and Development Act, 1957.

24. For the foregoing reasons, this Court quashes the impugned orders dated 27.03.2012 passed by the first respondent as well as the impugned order dated 05.01.2010 passed by the second respondent and remands the matter back to the second respondent for fresh consideration and the second respondent shall pass final orders after granting sufficient opportunity to the petitioner to place all her submissions including granting her right of personal hearing, within a period of twelve weeks from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government/Revisional Authority,
Ministry of Mines,
Government of India,
Shastri Bhawan, New Delhi - 110 001.

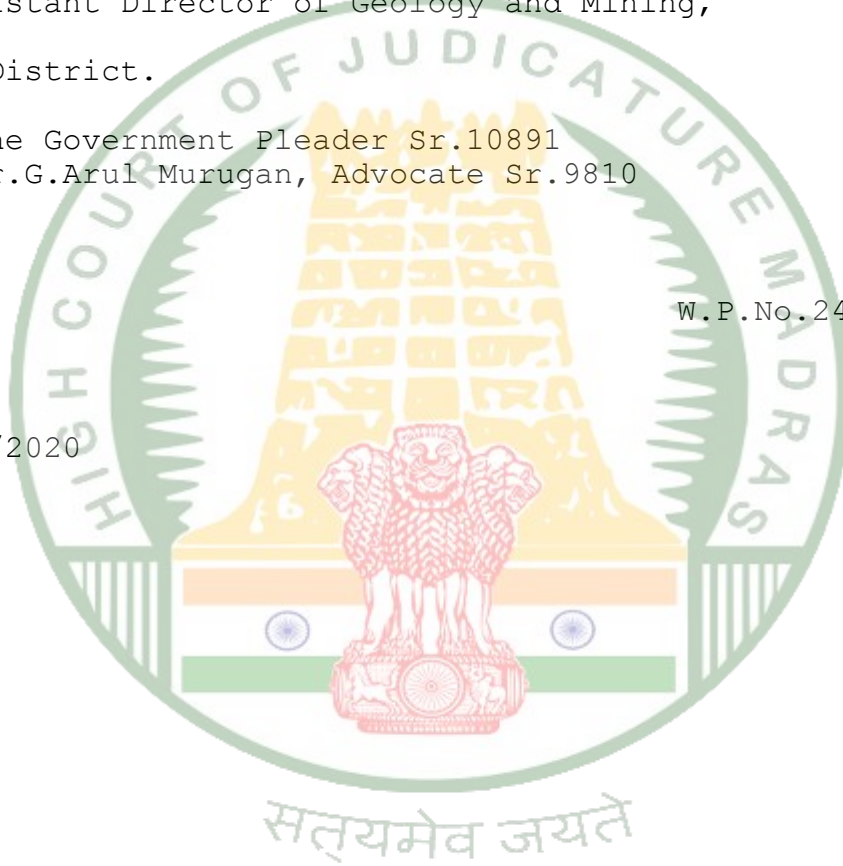
2.The District Collector,
Salem District,
Salem.

3.The Assistant Director of Geology and Mining,
Salem,
Salem District.

+1cc to the Government Pleader Sr.10891
+1cc to Mr.G.Arul Murugan, Advocate Sr.9810

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