

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.02.2020

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THE HONOURABLE MR.JUSTICE C.V.KATHIKEYAN

W.P.No.3981 of 2020
and
W.M.P.No.4725 of 2020

K.Subba Reddy

... Petitioner

vs.

The District Collector,
Villupuram District,
Villupuram.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent's proceedings bearing Rc.No.B/G&M/353/1996, dated 28.10.2019 and quash the same.

For Petitioner : Mr.Ramakrishna Reddy

For Respondents : Mr.E.Manoharan
Special Government Pleader

O R D E R

The writ petition has been filed by the petitioner seeking to call for the records of the respondent's proceedings bearing Rc.No.B/G&M/353/1996, dated 28.10.2019 and quash the same.

2. The proceedings of the District Collector, Villupuram District, dated 28.10.2019, in Rc.No.B/G&M/353/1996, is the order impugned before this Court. Originally, the petitioner was served with a show cause notice by the District Collector, Villupuram District, in letter No.A/G&M/S.R.57/2001, dated 21.01.2004. The petitioner had earlier challenged the same in W.P.No.4441 of 2004. Initially, there was an interim stay. The writ petition came to be taken up for final hearing and orders were passed on 13.02.2018. In the said writ petition, the following direction was given to the District Collector, Villupuram District:-

'15.under these circumstances, it is necessary for

this Court to pass the following orders:-

(i) The writ petitioner directed to submit his explanations/objections along with the documents, if any, within a period of five weeks from the date of receipt of a copy of this order. On receipt of any such explanations/objections from the writ petitioner, the respondent is directed to consider the same on merits and in accordance with law and pass final orders with reference to the records available, within a period of six weeks thereafter. The respondent, before passing the final orders shall conduct an enquiry into the matter, if necessary and by providing a personal hearing to the writ petitioner, if the petitioner is willing to avail the same and submits an application for personal hearing.''

3. After the said order, the petitioner herein had given a reply to the show cause notice. It is stated by the learned counsel for the petitioner that the reply to the show cause notice contained nine pages. The relevant portion has been extracted in the impugned order at paragraph No.10, which is as follows:-

'10.In the written statement dated 15.03.2019, Thiru K.Subba Reddy has submitted the following points:

'a. It is important to note that, when the subject area was under lease with TAMIN, there is no question of any third party entering into the lease granted area of TAMIN which was under their possession.

b. Unless there was a complaint by TAMIN alleging any encroachment and specifying any person or persons encroached over the lease hold area of TAMIN, the authorities cannot presume or assume that there was an illegal quarrying by third parties by encroaching over the TAMIN lease granted area.

c. The first show cause notice dated 10.05.1997, was alleging illegal quarrying of 115.469 cbm. The said second show cause notice, dated 21.01.2004, was alleging illegal quarrying of 733.740 cbm.''

4. Thereafter, the impugned order had been passed on 28.10.2019.

5. The grievance of the petitioner is that though personal hearing was granted and he had given his objections in writing, not all the points in the explanation had been considered by the District Collector, Villupuram District. It is also stated that the District Collector had not made any enquiry as directed by this Court in the earlier writ petition.

6. A finding has been given by the District Collector that the petitioner had encroached beyond his patta land and extended his quarry to the non-permitted area, which was originally quarried by TAMIN. The learned counsel for the petitioner stated that there is no basis for such finding.

7. However, the direction of this Court in the earlier writ petition was to look into the records and thereafter, pass orders. It is clearly mentioned in paragraph No.11 of the impugned order that the District Collector had explained the records. Be that as it may, there is an Appellate Authority also available, namely the Director of Geology and Mining, Chennai.

8. The learned Special Government Pleader appearing on behalf of the respondents stated that the petitioner had actually given a letter on 02.01.2020 to the said Appellate Authority. In that letter, he had stated, after wishing the said Authority a happy and prosperous New Year 2020, that he seeks a personal hearing, so that, he can file an appeal with relevant facts. If that is the case, the grievance of the petitioner has to be only against the Appellate Authority. He cannot now focus on the impugned order. He has consciously moved away from the impugned order and had expressed intention to challenge the same, by way of filing a regular appeal as directed in the impugned order. He had also sought for a personal hearing with the Director, Geology and Mining Department. The said official is not a party in the present Writ Petition. Having expressed his intention to file an appeal and prior to filing an appeal, having sought for a personal hearing, then the petitioner should have logically taken up that course of action. On the other hand, at the eleventh hour, when the limitation for filing an appeal is to expire within a few days, the present writ petition has been filed and along with a typed set of papers, a series of judgments have also been filed by the petitioner herein.

9. The learned counsel has referred to the decision reported in 2009(2) MLJ 577, V.S.O.Balakrishnan & another Vs. the District Collector, Thiruvallur District and another. In the said judgment, it has been observed that the show cause notice therein was issued with pre-determination and without furnishing copy of the inspection report. It is also stated that the impugned order had been passed without conducting any enquiry in manner known to law. In the instant case, the petitioner has moved far away from the show cause notice and the petitioner was permitted to give his explanation and he has filed his explanation and he was also granted a personal hearing and thereafter, the impugned order has been passed. As stated above, after receipt of the impugned order, the petitioner has himself decided to file an appeal, and for reasons best known to him, from 02.01.2020 till today viz., 19.02.2020, he had not taken

any steps to file an appeal. This Court cannot therefore come to his rescue. The said judgment is certainly distinguishable on facts.

10. The second Judgment relied on by the petitioner is an unreported judgment in W.A.(MD).No.488 of 2010, V.Kottaiveeran Vs. the District Collector, Madurai District. The said judgment also relates to the order of a District Collector, wherein penalty had been imposed on the appellant therein. The Hon'ble Division Bench, had finally held that the order of the Writ Court as well as the order passed by the District Collector, Madurai are unsustainable in law. In that case, it was pointed out that the appellant was given an opportunity to attend personal hearing by sending notices but he had absented himself and as such, he cannot contend that no opportunity was given to him before passing the impugned order. However, the Division Bench took note of the statement in the affidavit that owing to illness and jaundice, the petitioner therein could not attend and that no reasonable opportunity was granted. Again, the facts in this case are distinguishable. Here, there is no complaint that the petitioner has suffered from illness or jaundice in the first place and even otherwise he was granted personal hearing and his explanations were also taken into consideration and extracted in the order.

11. The 3rd judgment referred by the learned counsel is also an unreported judgment in W.P.Nos. 5460 and 5461 of 2015. This is an order of a learned Single Judge, which also relates to quarrying of Savudu in Ponneri Taluk in Tiruvallur District. In that case, a finding has been given by the learned Single Judge that the District Collector had cancelled the licenses of the petitioner therein without issuing any show cause notice and only based on the report of the Tahsildar. In the present case, a direction has been issued to the District Collector, to pass orders based on the available records. The Collector had examined the available records and had passed the order. Therefore, the facts are again distinguishable.

12. The fourth judgment which has been enclosed by the learned counsel is 2006 (12) SCC 33, Siemens Ltd., Vs. State of Maharashtra and others. In that case, the Hon'ble Supreme Court had dealt with the contention of challenging the show cause notice. The Hon'ble Supreme Court held that normally the High Court should not entertain any challenge to a show cause notice. But, it could, if the respondent has already determined the liability. In the instant case, as stated above, after the show cause notice, this Court had directed the petitioner to submit his explanation and be afforded a personal hearing and on the basis of the records, directed the respondent to pass a speaking

order, which is precisely what the respondent had done.

13. The 5th judgment relied on by learned counsel and enclosed it in the typed set is 2010 (13) SCC 427 (Oryx) Fisheries Private Limited Vs. Union of India & others. That also relates to a show cause notice, right for hearing and principles of natural justice. It must be stated that the present writ does not relate to issue of show cause notice, rather to the order of the District Collector, as against which, an appeal lies, and the records show that the petitioner himself had, voluntarily by sending a letter dated 02.01.2020, sought for a personal hearing prior to filing of the appeal. It is for the petitioner to explain as to why he has not filed appeal from 02.01.2020 till today i.e. 19.02.2020.

14. The 6th judgment relied on by the learned counsel and enclosed it in the typed set is 1991 WLR 59 M/s.Madurai Metal Industries Vs. Union of India. That again is a judgment relating to issue of show cause notice. It is to be stated again here that we have moved away from the stage of show cause notice. After the show cause notice had been issued, explanation had been given by the petitioner and he had also been heard personally and on the basis of the records, the respondent had passed an order.

15. The 7th judgment relied on by the learned counsel and enclosed the typed set is 2008 14 SCC page 723. In that case, the need for a reasoned and speaking order had been emphasized by the Hon'ble Supreme Court.

16. In the order impugned before this Court, the respondents had clearly stated as follows:

'11. On perusal of the available records it is ascertain that on verification of the field condition carried out by the Assistant Director of Geology and Mining on 23.03.1997, it was noticed that TAMIN had done quarrying in S.F.No.9/6 and left a retaining wall on the western portion of the above filed. TAMIN had not extended their quarrying operation upto the western boundary of the S.F.NO.9/6 where as the lessee Thiru K.Subba Reddy has encroached beyond the S.F.No.8/2 (his patta land) and also extended this quarrying in S.F.No.9/6 (Non permitted area) and finally it is construed that Thiru Subba Reddy had illicitly quarried over an area of 0.11.0 hect. in S.F.No.9/6 in Kunnam Village, Vanur Taluk and illegally transported 115 cu.m. of Black Granite from the adjacent field for which show cause notice was issued.

12. Against the show cause notice, Thiru Subba Reddy has filed writ petition in the year 1997. The Hon'ble High Court has quashed the show cause notice issued by the District Collector and instructed to carry out re-measurement. Accordingly, a high level committee has been constituted by the Commissioner of Geology and Mining and measurements were taken in the presence of the representatives of the petitioner and the Commissioner of Geology and Mining vide report Rc.No.15707/MM2/2002, dated 08.05.2003 has found that 733.740 cu.mts. of Black Granite has been illegally quarried and transported by Thiru.Subba Reddy."

17. The extracted portion shows that a high level committee had been constituted by the Geology and Mining Department, and measurements were taken in the presence of the representatives of the petitioner even as early as on 08.05.2003.

18. The present order is a continuation of the show cause notice already issued. The lay of the land has to be determined, as it was on the date of the show cause notice. Merely because the show cause notice was issued in the year 2004, after the disposal of the writ petition, the petitioner cannot claim that re-inspection of the entire land has to be conducted. The lay of the land would have drastically changed.

19. Therefore, I find no infirmity with the order of the respondents, particularly, because there is an Appellate remedy available and no explanation has given as to why after approaching the Appellate Authority and seeking an opportunity of personal hearing on 02.01.2020, the petitioner has suddenly taken a U-turn and filed this writ petition.

20. In the result, the writ petition is dismissed at the stage of admission. Consequently, connected miscellaneous petition is also closed. No costs.

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Sd/-

Assistant Registrar

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Sub Assistant Registrar

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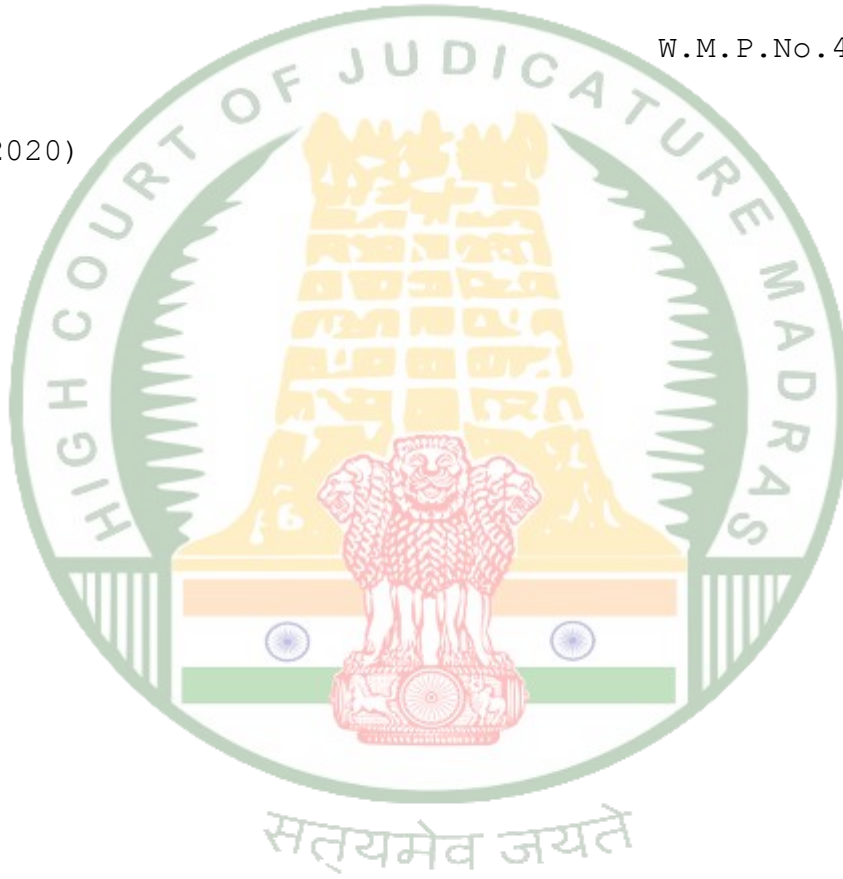
To

The District Collector,
Villupuram District,
Villupuram.

+1cc to Mr.K.Ramakrishna Reddy, Advocate, S.R.No. 13939
+1cc to the Government Pleader, S.R.No. 15123

W.P.No.3981 of 2020
and
W.M.P.No.4725 of 2020

BS (CO)
GN(26/05/2020)



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