



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2020

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 6358 of 2020 and

W.M.P. (MD) No. 5596 of 2020

WEB COPY

Dineshkumar

...Petitioner

Vs.

1. The District Collector,
Sivagangai District,
Sivagangai.

2. The Tahsildar,
Kalaiyarkovil Taluk,
Sivagangai District.

...Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, directing the respondents to call for the records relating to the impugned order in Na.Ka.M2/253/2020 by the first respondent dated 27.04.2020 and quash the same as illegal.

For Petitioner : Mr.T.Kumar

For Respondents : Mr.M.Rajarajan,
Government Advocate.

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

2. The petitioner has been visited with an order of penalty issued by the first respondent herein. According to the first respondent, the petitioner had unlawfully quarried minerals from survey Nos.215/17 and 215/18, Moover Kanmai group, Kalaiyarkovil, Sivagangai District, without permission from the authorities. The petitioner has been directed to pay a sum of Rs.68,800/-. This order is appealable. The petitioner raised two contentions. The first contention is that the District Collector has no authority or jurisdiction to pass the impugned order. The second contention is that the order has been passed in violation of principles of natural justice.

3. In support of his first contention, the petitioner placed reliance on the order dated 29.10.2018 passed by the Hon'ble Division Bench in W.P.(MD)No.19936 of 2017 etc. and the order dated 09.09.2019 made in Rev. Application Writ(MD)No.80 of 2019. The petitioner's counsel drew my attention to paragraph No.9 of the order dated 29.10.2018. Paragraph No.9 reads as follows:-



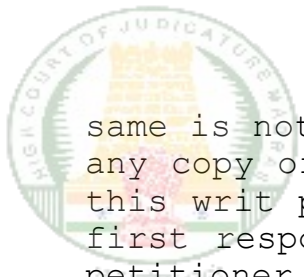
"9. Section 21 of the Act came to be inserted by Act 10 of 2015. Rule 36(A) has been in statute prior to that. This Rule has been introduced in exercise of the power under Section 15 r/w 23-C of the Act. The moment Section 21 has come into being, Rule 36-A lose its significance. In fact, it does not have any existence thereafter. After all, between rule which has been enacted in pursuant to the rule making power and substantive provision of the Act, the latter one would certainly prevail, for which there will not be any quarrel. Therefore, in no case, any revenue official can invoke Rule 36-A, for the purpose of release of mineral, tool, machinery, instrument, vehicle etc."

4. But then, as rightly pointed out by the learned Government Advocate, the order dated 29.10.2018 was subsequently reviewed by the very same Hon'ble Division Bench in Rev. Application Writ(MD) No.80 of 2019. The review order dated 09.09.2019 after referring the Rule 36(A) (1) of the Tamil Nadu Minor Mineral Concession Rules, 1959 held as follows:-

"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 23(A) 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."

5. From a careful reading of both the orders, one can come to the conclusion that the only issue that was considered by the Hon'ble Division Bench was the power of the revenue authority to release or confiscate the vehicles in such offences. The Hon'ble Division Bench did not hold that the District Collector is not having the jurisdiction to levy penalty under Rule 36(A)(1) of the Tamil Nadu Minor Mineral Concession Rules, 1959. Therefore, I have no hesitation to reject the petitioner's contention that the first respondent/District Collector does not have the authority or jurisdiction to levy penalty. However I find considerable force in the petitioner's contention that there has been a clear violation of the principles of natural justice.

6. A mere look at the order would indicate that no notice was issued to the petitioner. In fact a specific ground has also been taken in the affidavit filed in support of this writ petition. The



same is not rebutted by the learned Government Advocate by producing any copy of the show cause notice. Therefore, the order impugned in this writ petition stands quashed and the matter is remitted to the first respondent to pass orders afresh in accordance with law. The petitioner will be put on notice before passing orders.

7. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The District Collector,
Sivagangai District,
Sivagangai.
2. The Tahsildar,
Kalaiyarkovil Taluk,
Sivagangai District.

W.P. (MD)No.6358 of 2020

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