

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.4887 of 2020

and

WMP Nos.5781 and 5785 of 2020

K.Venkat Narayana

...Petitioner

Vs

1. The District Collector,
Tiruvallur,
Tiruvallur District.

2. The Assistant Director of
Geology and Mining
Thiruvallur.

...Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for records of the first respondent in Na.Ka.No.183/2016/Mines-2, dated 28.08.2019 and quash the same.

For petitioner

... Mr.K.R.Krishnan

For respondents

... Mr.R.Govindasamy

Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned order dated 28.08.2019 passed by the first respondent calling upon the petitioner to pay a penalty of Rs.11,20,056/- and also cancelling the permission granted to him for removal of 434 Lorry loads of Savudu for a period of one year from 25.02.2019 to 24.02.2020.

2. The case of the petitioner is that he has not committed any violation of the terms and conditions of the licence granted to him for removing 434 Lorry loads of Savudu, which was granted for a period of one year from 25.02.2019 to 24.02.2020. It is also his case that without any show cause notice as contemplated under Rule 36(A) of Tamil Nadu Minor and Minerals Concession Rules, 1959, the impugned order has been passed and hence according to him, the impugned order is arbitrary and illegal. It is also his case that without inspecting the

petitioner's lands based on the 3rd party complaint, the impugned order has been passed arbitrarily and illegally.

3. A counter affidavit has been filed by the respondents, wherein their main stand is that statutory appellate remedy is available to the petitioner. According to them without exercising the statutory appellate remedy, the petitioner has approached this Court under Article 226 of the Constitution of India and hence, the writ petition is not maintainable.

4. Heard Mr.K.R.Krishnan, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents.

5. Rule 36(A-5) of the Tamil Nadu Minor and Minerals Concession Rules, 1959 reads as follows:

Whenever any person contravenes any provisions other than sub-rule(1) of Rule 10 of these Rules or conditions of a quarrying permit or quarrying lease granted under these Rules, the Director of Geology and Mining or the Chief Conservator of Forest, as the case may be, or the District Collector or the District Forests Officer, as the case may be, shall after giving notice, charge and that person and recover from him enhanced seigniorage fee upto a maximum of fifteen times the normal rate subject to a minimum of [twenty-five thousand rupees] or in the alternative, he shall be liable to be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both and in the case of continuing contravention, with additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention:

[Provided that in respect of minor minerals, namely, building and road construction stones including gravel, ordinary sand, earth and turf ordinary clay including silt, brick and tile clay, the powers and duties exercisable and dischargeable by the District Collectors under this sub-rule shall be exercisable and dischargeable by the Revenue Divisional Officer concerned within their respective jurisdiction].

6. As seen from Rule 36(A-5), it is clear that a show cause notice will have to be issued for imposing penalty in case of any contravention of any of the provisions of the Act or its rules to the licensee.

7. Admittedly, in the case on hand, as seen from the counter affidavit filed by the respondents before this Court, there is no reference to any show cause notice having been issued by the respondents to the petitioner before imposing penalty, as per the provisions of Rule 36-A of the Tamil Nadu Minor and Minerals Concession Rules, 1959. Therefore, the procedure contemplated under Section 36-A5 of the Tamil Nadu Minor and Minerals Concession Rules, 1959 has not been followed by the respondents before passing of the impugned order. Further, it is the case of the petitioner that he has not contravened any of the provisions of the Tamil Nadu Minor and Minerals Concession Rules, 1959 and without any inspection, the impugned order has been passed. All these factors will have to be considered before imposing any penalty against the petitioner.

8. As seen from the impugned order, no opportunity has been granted to the petitioner to put forward all his objections with regard to the demand made by the respondents.

9. Therefore, this Court is of the considered view that the impugned order has been passed arbitrarily without adhering to the principles of natural justice as well as without adhering to the procedure contemplated under Rule 36-A of the Tamil Nadu Minor and Minerals Concession Rules, 1959.

10. In the result, the impugned order, dated ***28.08.2019** is hereby quashed and the writ petition is allowed. However liberty is granted to the respondents to initiate action against the petitioner if there is any violation committed by the petitioner in accordance with law by adhering to the principles of natural justice and by adhering to the statutory provisions as contemplated under the Act as well as the Rules. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते Sd/-

Assistant Registrar (CS-VI)

Dated: 04.02.2021

* Corrected as per order
of this Court dated 11.02.2021
sd/- Assistant Registrar (CS VI)
Dated: 11.02.2021

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The District Collector,
Tiruvallur,
Tiruvallur District.

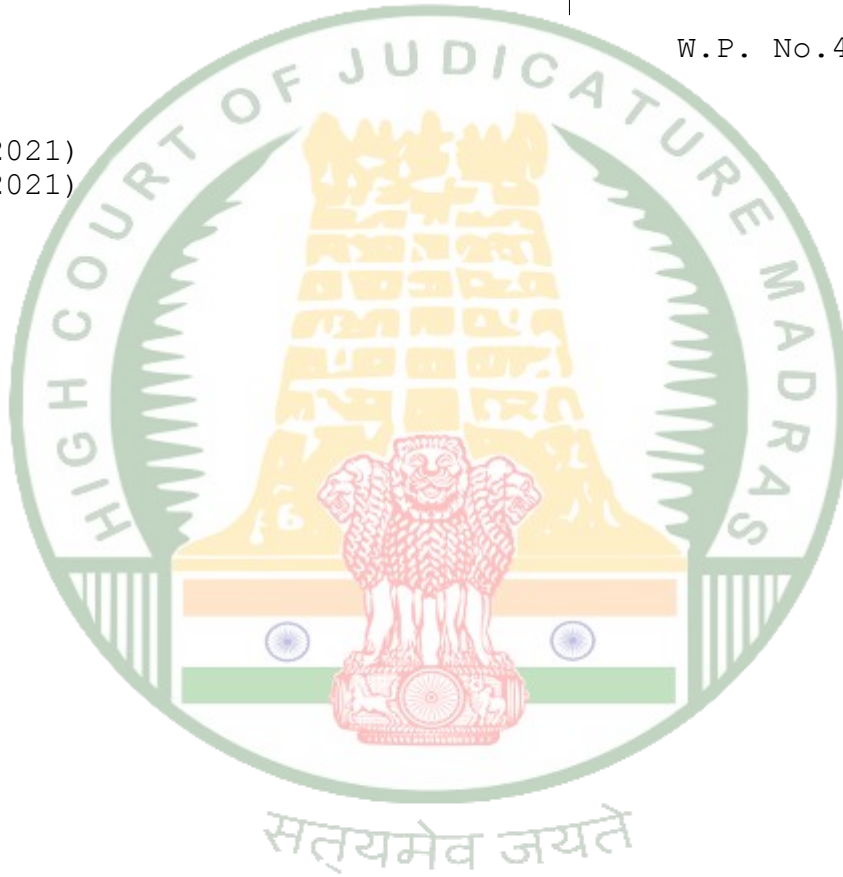
2. The Assistant Director of
Geology and Mining
Thiruvallur.

+lcc to Mr.Krishnan, Advocate SR.7755
+lcc to the Government Pleader SR.3561

To be Substituted to the
order already despatched
On 05.02.2021

W.P. No.4887 of 2020

MG(CO)
CB(04/02/2021)
SP(15/02/2021)



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