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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P. No. 26585 and 29426 of 2012

WP No. 26585 of 2012

S.S. Granites
rep. by Manager
No.2/669, S.S. Nivas
Mohan Maistry Colony
Pidamaneri Post
Dharmapuri Town & Taluk
Pin 636 703

.. Petitioner

Versus

1. The Secretary to Government
Industries (MME2) Department
Secretariat, Fort St. George
Chennai - 600 009
2. District Collector
O/o. the District Collector
Krishnagiri
3. The Director
Department of Geology & Mining
Guindy, Chennai - 600 032
4. K.P. Arumugam
5. K. Palanisamy (deceased)
6. Subramani
7. V.Kamala
Wife of Late. Venkatachalam
8. P. Pappathy
Wife of Late. K.Palanisamy
9. K.P. Senthilkumar
Son of Late. Palanisamy



10. S. Hemalatha
Wife of P. Sakthivel
D/o. Late. Palanisamy

(Respondents 8 to 10 were ordered to be substituted as legal heirs of deceased fifth respondent as per Order dated 31.03.2016 in WMP No. 10541 of 2016 in WP No. 26585 of 2012)

11. V. Kamala

.. Respondents

WP No. 29426 of 2012

1. K. Palaniswamy (Deceased)
2. P. Pappathy
Wife of Late. K.Palanisamy
3. K.P. Senthilkumar
Son of Late. K.Palanisamy
4. S. Hemalatha
Wife of P. Sakthivel
D/o. Late. Palanisamy

(Petitioners 2 to 4 were ordered to be substituted as legal heirs of deceased first petitioner as per Order dated 10.01.2018 in WMP No. 4320 of 2017 in WP No. 29426 of 2012)

.. Petitioners

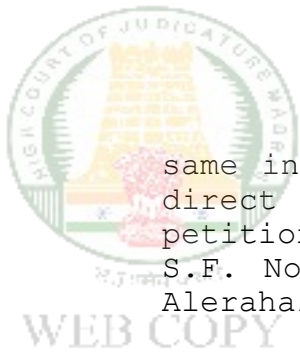
Versus

The District Collector
Krishnagiri District,
Krishnagiri.

... Respondent

W.P.No. 29426 of 2012:- Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records pertaining to the respondent's proceedings bearing Roc.478/2011/Mines-1 dated 11.09.2012 so far as the petitioner is concerned, quash the same.

W.P.No. 26585 of 2012:- Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in Roc.478/2011/Mines-1 dated 11.09.2012, quash the



same in so far as it relates to the petitioner and consequently direct the respondent to consider the application of the petitioner dated 16.06.2011 for grant of lease for quarrying in S.F. No. 55/1B and 55/3 measuring an extent of 1.08.5 hectare, Alerahalli Village in Pochampalli Taluk, Krishnagiri District.

For Petitioner : Mr. D. Baskar in WP No.26585/2012
Mr. Muthappan in WP No. 29426/2012

For Respondents : Mr. Stalin Abimanyu
Government Advocate for RR1 to 3
in WP No. 26585/12
for sole respondent in WP No. 29426/12
R4-No Appearance, R5-Died-RR8 to 10

Mr. Muthappan for RR8 to 10

COMMON ORDER

In both these writ petitions, the challenge is to the order dated 11.09.2012 passed by the District Collector, Krishnagiri. By the said order, the petitioners and others were jointly and severally held liable for illegally mining the lands other than the one for which mining lease was granted in favour of the petitioners and consequently, levied penalty as contemplated under Rule 36-A (1) & 3 of the Tamil Nadu Minor Mineral Concession Rules.

2. The learned counsel for the petitioner in WP No. 26585 of 2012 would contend that the land in Survey No.55/3 and 55/1 (part) in Alerahalli Village belonged to K.P.Arumugam, the fourth respondent herein and he was granted mining lease for a period of ten years from 01.03.1994 to 28.02.2004. According to the learned counsel for the petitioner, in the year 1999, the fourth respondent was unable to continue the quarrying and he handed over possession of the land to the fifth respondent herein. It is further stated that the fifth respondent (Petitioner in WP No. 29426 of 2012), even after the licence period, continued the quarrying of the lease. It is further stated that the fifth respondent (Petitioner in WP No. 29426 of 2012) had also purchased the lands in Survey No.55/1B owned by the sixth and seventh respondents in the year 1999 and indulged in mining even though he was not granted any licence to quarry the lands. Therefore, the learned counsel for the petitioner in WP No. 26585 of 2012 would contend that if at all, the fifth respondent (petitioner in WP No. 29426 of 2012) is liable to pay the penalty levied by the District Collector for having indulged in illicit quarrying of the lands even after expiry of the mining lease. However, the District Collector, without



considering the above, passed the impugned order directing the petitioner also to jointly and severally pay the amount determined towards penalty. According to the learned counsel for the petitioner in WP No. 26585 of 2012, a show cause notice dated 13.03.2012 was received by the petitioner and he sent a reply notice stating that he never involved in any such illegal mining and he is not responsible for the proposed action. In spite of the same, the District Collector has passed the impugned order of penalty and called upon the petitioner and others to jointly and severally pay the amount.

3. On the other hand, the learned counsel for the petitioners in WP No. 29426 of 2012 would contend that the petitioners purchased land measuring a total extent of 2.69 acres. It is stated that in respect of the land in Survey No.55/3 belonged to Mr. Subramani, the petitioner had only entered into an agreement of sale and the land owner namely K.P. Arumugam was having the mining lease to quarry multicoloured granite. However, the sale could not be completed as the land owner Arumugam expired on 28.02.2004. After the death of Arumugam, the petitioner obtained a sale deed dated 04.08.2004 from his legal heirs. It is also further stated that on 03.06.2011, the petitioner had sold the land to one Mr. P.K. Shankar of M/s. S.S. Granites and therefore, he is no longer an owner of the land in question. While so, after the sale of the lands, the respondent issued a show cause notice dated 30.01.2012 on the basis of an alleged inspection carried on by the Deputy Director of Geology and Mining on 04.07.2011. Since the petitioner had sold the lands even on 03.06.2011, he had forwarded the show cause notice dated 30.01.2012 to the subsequent purchaser of the land. Therefore, the learned counsel for the petitioner in WP No. 29426 of 2012 would contend that the petitioner is not liable for the penalty amount and he prayed for allowing this writ petition.

4. Heard the learned counsel for the petitioners and the learned Government Advocate appearing for the respondents. At the outset, it is seen from the order, which is impugned in these writ petitions, that there is gross violation of the mining lease granted to the petitioners and they have indulged in mining of excess lands. The petitioner in WP No. 26585 of 2012 only states that it was the petitioner in WP No. 29426 of 2012 who had indulged in illicit mining. On the other hand, the petitioner in WP No. 29426 of 2012 states that he had sold the lands in question even before the District Collector issued a show cause notice to him. In fact, in para No. 9 of the affidavit in WP No. 29426 of 2012, the petitioner admitted that "It is true that there was a pit in the said lands at the time of purchase of the said lands by me. I do not know whether the said lands were operated by either Mr. K.P. Arumugam, my vendor



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or by any third parties for quarrying granite". Thus, there is a disputed question involved in this case as to who had quarried excess lands, what was the period during which such mining work has been carried out, whether the excess lands were quarried beyond the period of lease etc., Such disputed question of fact cannot be gone into by this Court in these writ petitions.

5. On perusal of the order dated 11.09.2012 passed by the District Collector, Krishnagiri, the facts of the case have been elaborately dealt with and ultimately, it was concluded that the petitioners in these writ petitions and others are jointly and severally responsible for the loss caused to the exchequer due to excess mining or quarrying of the leased lands. In the order dated 11.09.2012, it was also clearly stated that if the petitioners are aggrieved by the said order, an appeal can be preferred before the Commissioner of Geology and Mining, Thiruvika Industrial Estate, Guindy, Chennai. However, for the reasons best known to them, the petitioners have not preferred any such appeal but they have filed the aforesaid writ petitions before this Court. When there is an alternative and effective statutory remedy available, the present writ petitions filed by the petitioners cannot be entertained.

6. At this stage, the learned counsel for the petitioners submitted that as against the order dated 11.09.2012, which is impugned in these writ petitions, the petitioners may be given liberty to file an appeal before the appellate authority and the appellate authority may be directed to entertain the appeal without reference to the period of limitation.

7. Having regard to the above submission of the learned counsel for the petitioners, liberty is given to the petitioners to file an appeal before the appellate authority within a period of six weeks from the date of receipt of a copy of this order and on receipt of any such appeal, the appellate authority shall entertain it without reference to the period of limitation in filing the appeal and proceed further in accordance with law.

8. Granting such liberty to the petitioners, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

// True Copy//

Sub Assistant Registrar

av/rsh



To

1. The Secretary to Government
Industries (MME2) Department
Secretariat, Fort St. George
Chennai - 600 009

2. District Collector
O/o. the District Collector
Krishnagiri.

3. The Director,
Department of Geology & Mining,
Guindy, Chennai - 600 032.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.33859 & 33860

+1cc to the Government Pleader, S.R.No.34345

WP No. 26585 & 29426/2012

KSM(CO)
SU(02/09/2021)