

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2021

C O R A M

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No. 4511 of 2011 &

M.P.Nos.2 & 3 of 2011

Stonemark Engineering Pvt Ltd.,
Rep. by its Managing Director,
No.567, 2nd Cross, 2nd Block,
R.T.Nagar, Bangalore - 560 032.

... Petitioner

Vs.

1.The District Collector,
Krishnagiri District,
Krishnagiri.

2.The Sub-Collector,
Hosur, Krishnagiri District.

3.The Revenue Divisional Officer,
Hosur, Krishnagiri District.

4.The Tahsildar,
Hosur, Krishnagiri District.

5.The Revenue Inspector,
Adavanapalli Village,
Bagalur, Hosur Taluk,
Krishnagiri District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the first respondent comprised in his letter in Na.Ka.No.1083/2007 (Mineral-2) dated 26.11.2007 addressed to the second respondent and the consequent proceedings dated 22.08.2008 (signed on 26.08.2008) bearing Na.Ka.7433 (2007(B2)) passed by the second respondent and the consequential order dated 02.07.2010 bearing Na.Ka.No.5967/2009/A4 issued by the fourth respondent and quash the same as being illegal, arbitrary and against the principles of natural justice.

For Petitioner :Mr.Rahul Balaji

For Respondents :Mr.E.Manoharan,
Special Government Pleader

O R D E R

This writ petition has been filed challenging the following:
(a) Letter dated 26.11.2007 of the first respondent to the second respondent recommending legal action to be initiated against the petitioner for the alleged illicit quarrying committed by them (b) Order dated 22.08.2008 passed by the second respondent levying penalty for the illicit quarrying committed by the petitioner. (c) Dstraint order dated 02.07.2010 passed by the fourth respondent pursuant to the order dated 22.08.2008 passed by the second respondent.

2. The petitioner has challenged the aforementioned orders primarily on the ground of violation of principles of natural justice committed by the second respondent while passing the impugned order levying penalty against the petitioner under the Minor Mineral Concession Rules. Under the impugned order, the petitioner has been directed to pay Rs.72,50,400/- by way of penalty for the illicit quarrying at S.F.No.71/4 in Adavanapalli Village. The petitioner denies that they had committed illicit quarrying as contended by the respondents under the impugned order. The petitioner would further state that by total non-application of mind coupled with non-consideration of material facts, the impugned order has been passed. The petitioner would contend that without furnishing the documents which were the basis for imposition of penalty on the petitioner, the impugned order has been passed by the second respondent. According to the petitioner, arbitrarily, and by total non application of mind and without adhering to the principles of natural justice, the impugned order has been passed.

3. A counter affidavit has been filed by the respondents wherein they had stated that sufficient opportunity was granted to the petitioner in the enquiry proceedings which resulted in the imposition of penalty against the petitioner. According to the respondents, the authorised representative of the petitioner participated in the enquiry proceedings and only thereafter, the impugned order has been passed. Therefore, according to them, there is no violation of principles of natural justice as alleged by the petitioner as the petitioner was afforded a fair hearing in the enquiry proceedings.

4. Heard Mr.Rahul Balaji, learned counsel for the petitioner and Mr.E.Manoharan, learned Special Government Pleader for the respondents.

5. Learned counsel for the petitioner drew the attention of this Court to Paragraph 10 of the counter affidavit filed by the respondents and would submit that none of the documents or orders referred to therein were furnished to the petitioner. According to him, without furnishing those documents and by not affording a fair hearing and by not giving sufficient opportunity to the petitioner to raise objection with regard to those documents, the impugned order has been passed. Learned counsel for the petitioner drew the attention of this court to the impugned order and would submit that the documents which were the basis for the imposition of penalty were never furnished to the petitioner in the enquiry proceedings.

6. Per contra learned Special Government Pleader for the respondents would submit that the petitioner's authorised representative was very much present in the enquiry proceedings and he also participated in the enquiry proceedings. According to him, sufficient opportunity was granted to the petitioner to raise all objections in the enquiry proceedings and only thereafter, the impugned order came to be passed. It is his contention that respondents have adhered to the principles of natural justice while passing the impugned order. According to him, since a fair hearing was afforded to the petitioner, it is the contention of the respondents that the only remedy available to the petitioner is to file the statutory appeal.

7. This Court has perused and examined the impugned orders. As rightly contended by the learned counsel for the petitioner, the documents or orders referred to in paragraph 10 of the counter affidavit filed by the respondents were not furnished to the petitioner as seen from the impugned order. Paragraph 10 of the counter affidavit refers to the following (a) order of this Court made in W.P.No.29162 of 2007 (b) Reports of the Deputy Director (Geology and Mining), Krishnagiri, Deputy Tahsildar (Mines), Village Administrative Officer and Surveyor all dated 23.10.2007 declaring that the petitioner has committed illicit quarrying. It is seen from the report of the Deputy Director (Geology and Mining), Krishnagiri, Deputy Tahsildar (Mines), Village Administrative Officer and Surveyor all dated 23.10.2007 that they were requesting the first respondent to levy penalty against the petitioner for illicit quarrying and transportation of 36,000 Cbm or 6,360 lorry loads of roughstone. Admittedly, the aforementioned documents were not served on the petitioner under the enquiry proceedings which is the basis for the imposition of penalty on the petitioner. Under the impugned order, the respondents have imposed penalty of Rs.72,50,400/- against the petitioner. The first notice received by the petitioner from the respondents on 07.05.2008 for the hearing on 19.05.2008. It is the contention of the petitioner that

thereafter the hearing was rescheduled to 10.06.2008 and thereafter, it was adjourned to 30.06.2008 and finally enquiry was conducted on 07.07.2008. According to the petitioner, they were also not afforded a fair hearing in the enquiry proceedings as the enquiry was conducted only for one day i.e., on 07.07.2008.

8. From the aforementioned observations, this Court is of the considered view that principles of natural justice has been violated by the respondents before passing the impugned order as the documents based on which, the penalty has been imposed on the petitioner has admittedly not been furnished to the petitioner and within a short span of time i.e., between 07.05.2008 and 22.08.2008, the enquiry proceedings has been concluded, that too, when the respondents have imposed penalty of Rs.72,50,400/- on the petitioner for the illicit quarrying.

9. For the foregoing reasons, this Court is of the considered view that the impugned order will have to be necessarily quashed and the matter remanded back to the second respondent for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner including granting them a right of personal hearing and also giving them a right to submit their objections to the demand of penalty made by the respondents.

10. In the result, the impugned order dated 22.08.2008 passed by the second respondent and the consequential distraint order dated 02.07.2010 passed by the fourth respondent are hereby quashed and the matter remanded back to the second respondent for fresh consideration and the second respondent shall pass final orders on merits and in accordance with law after affording a fair hearing to the petitioner, including granting them the right of personal hearing and after furnishing all the documents based on which, the demand of penalty has been made to the petitioner within a period of twelve weeks from the date of receipt of a copy of this Order.

11. With the aforesaid direction, this writ petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

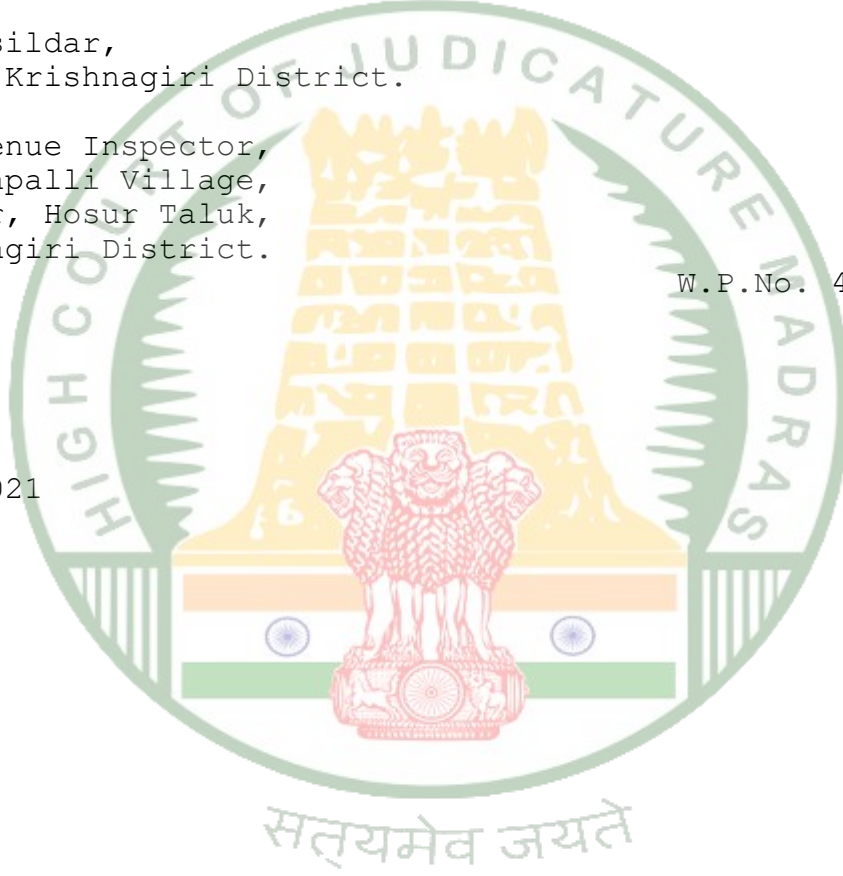
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To

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