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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.3018 of 2013
and M.P.Nos.1 of 2013 & 1 of 2015
AND

W.P.Nos.6697 to 6701 of 2015
and M.P.Nos.1 to 1 of 2015

and M.P.Nos.2, 2 & 2 of 2015 (in W.P.Nos.6699 to 6701 of 2015)

V.Kandasamy	... Petitioner in W.P.No.3018 of 2013
M.Ravi	... Petitioner in W.P.No.6697 of 2015
B.Senthilkumar	... Petitioner in W.P.No.6698 of 2015
B.Ravichandran	... Petitioner in W.P.No.6699 of 2015
R.Ravichandran	... Petitioner in W.P.No.6700 of 2015
V.Paneerselvam	... Petitioner in W.P.No.6701 of 2015

Vs

The Revenue Divisional Officer,
Perambalur,
Perambalur District.

... Respondents

- 1 The Government of Tamil Nadu
Rep by its Secretary to Government
Industries Department Secretariat Fort St.
George Chennai 9
- 2 The District Collector
Perambalur District
- 3 The Assistant Director of
Geology and Mining Office of the District
Collector Perambalur
- 4 The Sub Collector
Perambalur District Perambalur



5 The Tahsildar
Alathur Perambalur District

... Respondents 1 to 5 in W.P.Nos.6697 to 6701 of 2015

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-Vs-

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the respondent's show cause notice bearing Na.Ka.A1/7334/2012 dated 22.01.2013 pertaining to the stone quarry bearing S.F.No.374/1A2 over an extent of 1.42.0 Hectares in Thondamanthurai (East) Village, Veppanthattai Taluk, Perambalur District and quash the same.

Common prayers in W.P.Nos.6697 to 6701 of 2015:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issue a Writ of Certiorarified Mandamus calling for the records relating to the 4th respondent herein dated 08/01/2015 in Na. Ka. A1.4478/2014 and the notice dated 23.2.2015 in Na. Ka. A1/4478/2014 of the 4th respondent herein and quash the same as wholly without jurisdiction and forbear the respondents from conducting any proceedings pursuant to the notices and pass such further or other orders.

In all writ petitions:

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
For Mr.V.Sanjeevi in W.P.No.3018 of
2013 and For M/s.AL.Ganthimathi in
W.P.Nos.6697 to 6701 of 2015

For Respondents : Mr.B.Vijay,
Additional Government Pleader.

C O M M O N O R D E R

Since the issues involved in all these writ petitions are one and the same, they are disposed of by this common order.

2. The lis on hand, are instituted questioning the legal validity of the show cause notices issued to the petitioners, who all are miners. All possess valid lease and miners, who are possessing valid license for mining operations.

3. In view of the fact that these show cause notices are under challenge, this Court thought fit not to venture into an adjudication of actual disputes, which all are to be done with reference to the documents in original and evidences to be



placed by the respective parties. Thus, it is suffice if the scope of the show cause notices and the challenges made therein, are to be considered. The impugned show cause notices reveal that the petitioners had extended their mining operations excessively and quarried over and above the permitted limits and thereby committed an act of illegality, irregularity or otherwise based on facts to facts. Thus, the Authorities issued show cause notices by imposing penalty under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the 'Act') as well as the Tamil Nadu Minor Mineral Concession Rules, 1959. (hereinafter referred to as the 'Rules').

4. The learned Senior Counsel as well as the learned counsels appearing on behalf of the petitioners mainly contended that the Authorities have no jurisdiction to issue show cause notice by invoking Rule 36(A) of the Rules as Section 21 of the Act contemplates 'Penalties' and as per the procedures laid down in the Act, the Authorities, on identification of illegality or otherwise, necessarily has to lodge a complaint before the jurisdictional Court for prosecution, by following the Criminal Procedure Code. Thus, the procedure adopted by issuing a show cause notice contravenes the spirit of Section 21 of the Act and thus, the show cause notices are liable to be set aside.

5. The learned Senior Counsel is of an opinion that once the authorities thought fit to invoke Penalty provisions then, the procedures contemplated under Section 21 of the Act alone must be followed and the Authorities cannot invoke Section 21 of the Act and simultaneously Rule 36 A of the Rules, which is improper and therefore, the notices are liable to be set aside.

6. The learned counsel for the petitioner Mr.V.Sanjeevi pointed out that the show cause notices does not speak about the inspection report and the manner in which the assessments are made regarding the excess mining operation. In the absence of those details, the petitioners will not be in a position to submit their explanation defending their case. Thus, on that ground also, the notices are liable to be set aside.

7. The learned Additional Government Pleader appearing on behalf of the respondents objected the contentions raised on behalf of the petitioners by stating that the application of Section 21 of the Act and Rule 36(A) of the Rules are based on different circumstances and therefore, there is no impediment for the Competent Authorities for invoking Rule 36 (A) of the Rules. The State, by exercising the powers conferred under Section 15 of the Act framed the Rules and such Rules are in force and based on the facts and circumstances of each case, the Authorities competent are empowered to invoke the Rules for the



purpose of imposing Penalty by following the procedures as contemplated under the Rules. This being the position, there is no infirmity as such, in respect of the show cause notices issued and it is left open to the petitioners to defend their case by submitting their explanation and in the event of submitting any explanation/objections along with the documents, if any, the competent Authorities would be in a position to consider the case on merits and take a decision and proceed accordingly.

8. The learned counsel for the petitioners placed a reliance in respect of the judgment of the Hon'ble Division Bench of this Court dated 29.10.2018 passed in W.P.(MD).Nos.19936 of 2017 and etc., batch, and they have relied on Paragraph 9 of the judgment, which reads as under:

"9. Section 21 of the Act came into 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 later 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.,"

9. However, the State preferred Review Application in Review Application Writ (MD).Nos.80 to 82 of 2019 against the above judgment and the Review Petitions were considered and a judgment was pronounced on 09.09.2019. In the Review Petitions, the Hon'ble Division Bench considered Section 21 of the Act. Section 23A of the Act provides 'Compounding of offences'. However, in respect of the said writ petition, the relief sought for is to forbear the respondents from quarrying sand in river Vellar, Survey No.316, Subramaniyapuram Village, Edayar Panchayat, Aranthangi Taluk, Pudukottai District. In the said context, the Hon'ble Division Bench has said that Rule 36-A has to be read in consonance with Section 23A of the Act. In paragraphs 16 and 17 of the judgment, the Hon'ble Division Bench dealt with the scope of Section 36-A of the Tamil Nadu Minor and Mineral Concession Rules, 1959 and its effect and the said paragraphs read as under:

"16. Much reliance has been made on Rule 36(A) of the Tamil Nadu Minor and Minerals Concession Rules, 1959. We would like to place on record the relevant portion of the aforesaid provision, which speaks on



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penalty:-

"36-A. Penalties. - (1) Whenever any person contravenes the provisions of sub-sections (1) and (1-A) of Section 4 of the Act in any land, enhanced seigniorage fee upto a maximum of fifteen times the normal rate subject to a minimum of twenty-five thousand rupees shall be charged and recovered from that person by the District Collector or the District Forest Officer, as the case may be, or in the alternative, he shall be liable to be punished as provided in sub-section (1) of Section 21 of the Act"

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 23A 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."

10. This being the scope of the said judgment, the reliance placed on behalf of the petitioners that Rule 36-A cannot be applied based on the judgment, deserves no merit consideration. Admittedly, the said Rule is not struck down and Section 15 (g) of the Act provides Power to the State in this regard. For all these reasons, the judgment cited is of no avail to the petitioners as the facts and circumstances are dissimilar and not comparable.

11. It is relevant to consider Section 15 (g) and Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 along with Rule 36A of the Tamil Nadu Minor Mineral Concession Rules, 1959.

11.1 Section 15 (1) empowers the State Governments to make rules in respect of minor minerals. Accordingly, the State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

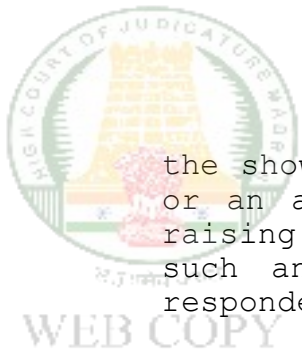
11.2 Section 15 (1) (g) provides Power to the State for fixing and collection of rent, royalty, fees, dead rent, fines



11.3 Section 21 (5) denotes that "Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority."

11.5 The cogent reading of the above provisions of the Act and Rule 36-A of the Rules unambiguously clarifies that the State Government is empowered to make Rules by notification in the official Gazette in respect of fixing and collection of rent, royalty, fees, dead rent, fines or other charges. Further, Section 21(5) also empowers the State Government to recover the loss or the price thereof etc,. Thus, there is no ambiguity in respect of the power conferred on the State Government to make Rules and Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules is within the scope of the provisions of the Act and it does not supersede the provisions of the Act, in fact it reads in consonance with the provisions for the purpose of effective control of the mining operations across the State. Thus, the contention of the petitioners that Section 21 alone is the avail for the State Government is untenable.

13. As far as the 1st point is concerned, no writ needs to be entertained against a show cause notice in a routine manner. Undoubtedly, all writ petitions are maintainable under Article 226 of the Constitution of India but the entertainability of the writ petition has to be considered by the Courts while admitting the writ petitions challenging the show cause notices. The writ petitions filed against a show cause notice may be entertained on the ground that the Authorities having no jurisdiction issued



the show cause notice directly hitting the provisions of the Act or an allegation of malafides are raised. Even in the case of raising an allegation of malafides, the Authority against whom such an allegation is raised, must be impleaded as a party respondent in his personal capacity in the writ proceedings.

14. In all other circumstances, the persons who received such show cause notices are expected to submit their explanations/objections and defend their case and the Authorities competent are bound to consider those explanations and take a decision on merits and in accordance with law. Thereafter, if any Appellate remedy is contemplated under the provisions of the Act, the said remedy also must be exhausted by the aggrieved persons. Contrarily, the writ petitions need not be entertained at premature stage, which will cause prejudice to either of the parties. There is a possibility of miscarriage in view that the entire factual adjudications are not done at the stage of show cause notice. This apart, the High Court may not be in a position to venture into an adjudication of such disputed facts, which all are to be done based on the original documents and evidences to be considered by the competent Authorities.

15. The power of Judicial Review under Article 226 of the Constitution of India is to ensure the processes through which a decision is taken by the Authorities in consonance with the provisions of the Act and by following the procedures as contemplated, but not the decision itself. Thus, adjudication which is an important factor must be allowed to be done by the competent Authorities. In the event of premature adjudication of facts by the High Court, undoubtedly, there is a possibility of error, omission or commission which would cause prejudice to either of the parties and it is not desirable. The importance of exhausting of the remedies at no circumstances be undermined by High Court. Such factual findings of those Authorities or statutorily contemplated bodies are of greater assistance to the High Court for the purpose of exercising the power of Judicial Review and thus, the Authorities must be allowed to exercise their adjudicatory powers in all circumstances.

16. With reference to the second point, let us consider Section 4 of the Act. Section 4 enumerates prospecting or mining operations to be under license or lease. Sub Section 1 to Section 4 of the Act, stipulates as follows:-

"4. Prospecting or mining operations to be under licence or lease.-

1) No person shall undertake any reconnaissance, prospecting or mining operations



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in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder"

Sub Section 1A to Section 4 of the Act reads as under :

" 1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder."

17. Thus, any excess mining operations made over and above the permissible limit, is construed as an impermissible activity and contemplated as an offense. Sub section 1-A denotes, 'no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of the Act' . Therefore, transporting or storing of minerals beyond the permissible limits are also offences.

18. In this back drop, Section 21 of the Act is to be considered. Section 21 speaks about Penalties and the same reads as under :

"21. Penalties.-

(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State



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Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.]

Explanation - On and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021, the expression "' raising, transporting and causing to raise or transport any mineral without any lawful authority'" occurring in this section, shall mean raising, transporting or causing to raise or transport any mineral by a person without prospecting license, mining lease or composite license or in contravention of the rules made under section 23-C."

The above provision contemplates various circumstances and procedures to be followed. Sub Section 1 to Section 21 of the



Act contemplates, "whoever contravenes the provisions of Sub-Section (1) or Sub-Section (1-A) of Section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine."

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18.1. Sub-Section 2 to Section 21 of the Act states that, "any rule made under any provisions of this Act, may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakhs rupees, or with both."

18.2. Sub Section 5 to Section 21 of the Act enumerates that, "whenever any person raises without any lawful authority any mineral from any land the State Government may recover from such person the mineral so raised and he proceeds further."

19. It is relevant to consider Rule 36 A of the Rules, 1959. Sub clause 1 to Rule 36 A contemplates, "whenever any person contravenes the provisions of sub-section (1) and (1-A) of Section 4 of the Act in any land, enhanced seigniorage fee upto a maximum of fifteen times the normal rate subject to a minimum of twenty five thousand rupees shall be charged and recovered from that person by the District Collector or the District Forest Officer, as the case may be or in the alternative, he shall be liable to be punished as provided in sub-section (1) of Section 21 of the Act."

20. As rightly pointed out by the learned Senior Counsel for the petitioners, the Rule cannot have an overriding effect of the provisions of the Act. The Rules must be in consonance with the provisions of the Act and cannot be repugnant to the Act. Thus, it is relevant to consider Section 21 of the Act and Rule 36A of the Rules, for the purpose of its implementation so as to ensure that the very purpose and object of the Act and Rules are achieved. Sub-Section 2 to Section 21 of the Act unambiguously states that, "any Rule made under any provisions of this Act, may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years with fine". Therefore, Sub-Section 2 to Section 21 of the Act provides an opportunity to frame Rule which may provide that any contravention thereof, shall be punishable with imprisonment for a term which may extend to two years or with fine, which may extend to five lakhs rupees or with both and in case of a continuing contravention, with additional fine which may extend to Rs.50,000/- for each day during which such contravention continues after conviction for the first such contravention.

21. Rule 36A of the Rules also prescribes Penalties. The said Rule also says that whenever any person contravenes the provisions of Sub-Section 1 and (1-A) to Section 4 of the Act,



then, actions are to be initiated. The only grievance of the writ petitioners are that once Section 21 of the Act contemplates the procedure for filing of a criminal complaint by following the procedures under the Criminal Procedure Code, then the State Authorities cannot invoke Rule 36A of the Rules. However, Sub-Section 2 to Section 21 of the Act unambiguously stipulates that any Rule made under any provisions of this Act may provide that any contravention thereof shall be punishable with imprisonment, that is one aspect of the matter. Sub-Section 5 to Section 21 of the Act contemplates, "whenever any person raises, without any lawful Authority, any mineral from any land, the State Government may recover from such person the mineral so raised." Thus, Sub-Section 2 to Section 21 of the Act contemplates punishment. Sub-Section 5 to Section 21 of the Act provides power to the State Government to recover such mineral from such person, the mineral so raised or where such mineral has already been disposed of, the price thereof. Thus, the State Government is empowered to impose punishment by framing Rules in consonance with Sub-Section 2 to Section 21 of the Act and recover the loss or damages in accordance with Sub-Section 5 to Section 21 of the Act.

22. In this context, Rule 36 A of the Rules operates and Rule 36A provides both punishment under Sub-Section 1 to Section 21 of the Act and also the recovery to be made in the event of causing damage or illegal minings. The cogent reading and understanding of Section 21 of the Act and Rule 36 A of the Rules, this Court is of the considered opinion that the Authorities are competent to invoke Section 21 (1) of the Act by taking action with reference to Rule 36A of the Rules and to initiate action for confiscation of the minerals, if it is available or recover the losses, if any, occurred on account of excess or illegal mining, or otherwise. When all such circumstances are contemplated both under Section 21 of the Act as well as under Rule 36 A of the Rules, no doubt, in the present case, the Authorities thought fit to provide an opportunity to the petitioners so as to consider their explanations, if any, filed. Such show cause notices are issued only with an object to provide an opportunity and to avoid any miscarriage of justice which would cause prejudice to the interest of the mining operators, who all are otherwise conducting their mining operations in accordance with the terms and conditions of the license. Thus, a balancing approach in this regard is to be adopted and even in the absence of any contemplation of show cause notice, there is no impediment for the Authorities to seek explanation so as to get the explanation from the persons against whom such allegations are made or such illegalities are identified by the inspecting Authorities.

23. This being the scope of the show cause notice, the



petitioners are bound to submit their explanations, if they have chosen to do so. In the event of submitting an explanation, no doubt, the competent Authorities may provide an opportunity to the petitioners to peruse the relevant documents, which are all relied upon by the Department for initiation of action and thereafter, take a decision and proceed further. However, there is no impediment for the Authorities to invoke Section 21 (1) of the Act by filing an appropriate complaint before the competent Court of law under the code of Criminal Procedure Code (or) and to initiate recovery proceedings for the damages or loss caused to the State Exchequer by invoking Section 36A of the Rules as Section 21 of the Act and Rule 36A of the Rules go together and to ensure that the illegal mining operations are dealt with in accordance with law.

24. In this regard, the petitioners are permitted to submit their explanations\objections, documents, if any, within a period of four (04) weeks from the date of receipt of a copy of this order and on receipt of any such explanations, the Authorities competent/respondents shall conduct an enquiry by providing an opportunity to the writ petitioners and thereafter, take a decision on merits and in accordance with law and initiate all appropriate further proceedings by following the procedures as contemplated under the Act and Rules. With these directions, all these Writ Petitions stand Disposed of. No costs.

25. It is needless to state that the petitioners are entitled to raise all the factual as well as the legal contentions, which all are made available to them.

26. The respondents are directed to complete the entire exercise within a period of four (04) months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sts/shr

To:

1. The Revenue Divisional Officer,
Perambalur,
Perambalur District.



2 The Secretary to Government
The Government of Tamil Nadu
Industries Department Secretariat Fort St.
George Chennai 9

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3 The District Collector
Perambalur District

4 The Assistant Director of
Geology and Mining Office of the District
Collector Perambalur

5 The Sub Collector
Perambalur District Perambalur

6 The Tahsildar
Alathur Perambalur District

+1cc to M/s.AL.Ganthimathi, Advocate, S.R.No.66811

+1cc to the Government Pleader, S.R.No.67456

W.P.No.3018 of 2013 &
W.P.Nos.6697 to 6701 of 2015

JP-II(CO)
CT 19/01/2022