



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2021

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No. 14048 of 2021

K.Palpandian

... Petitioner

Vs.

- 1.The District Collector,
Madurai Collector Office,
Madurai District.
- 2.The Revenue Divisional Officer,
Revenue Divisional Office,
O/o. District Collector Office,
Madurai District.
- 3.The Assistant Director,
Geology and Mining Department,
Madurai District.
- 4.The Tahsildar,
Madurai North Taluk,
Madurai District.
- 5.The Inspector of Police,
Koodal Pudur Police Station (L & O)
Madurai District.

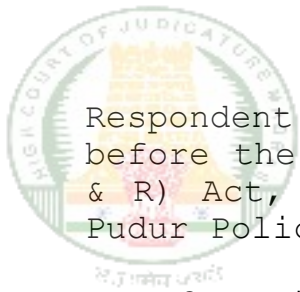
... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the fourth Respondent to take sample of the sand from the vehicle bearing Registration Number TN-05-AC-0150 and entrust the sample to the third Respondent and consequently direct the third Respondent to conduct the Soil test analysis and submit a report before the Learned Special District Court for Mines and Minerals (D & R) Act, Madurai in Crime No. 331 of 2021 on the file of Koodal Pudur Police Station, Madurai with in the time stipulated by this Hon'ble Court.

For Petitioner : Mr.M.Vivek Kumar
For Respondents : Mr.D.Ghandiraj
Government Advocate

ORDER

The prayer sought for herein is for a Writ of Mandamus, directing the fourth Respondent to take sample of the sand from the vehicle bearing Registration Number TN-05-AC-0150 and entrust the sample to the third Respondent and consequently direct the third



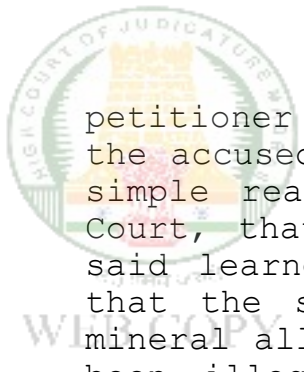
Respondent to conduct the Soil test analysis and submit a report before the Learned Special District Court for Mines and Minerals (D & R) Act, Madurai in Crime No. 331 of 2021 on the file of Koodal Pudur Police Station, Madurai.

2. It is the case of the petitioner that the petitioner is the owner of the vehicle, that is Tata Motors Tipper Lorry, bearing Registration No. TN-05-AC-0150 and the said vehicle was seized in a case booked in Crime No. 331 of 2021 on the file of the fifth respondent police for the alleged offence punishable under Section 379 of IPC and Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957.

3. In this context, it is the case of the petitioner that, petitioner being the lorry owner is doing business of transporting the sand especially, M-sand which is being produced by the crusher units. Accordingly, on 28.04.2021, he purchased 3.60 units of M-sand from one Sivasakthi M-sand Company and the same while was transporting in the lorry concerned, it had some repair and therefore, the sand could not be immediately transported and subsequently, in view of the COVID-19 lockdown procedure, the lorry could not be plied. Therefore, after the lockdown procedure has been relaxed, on 07.06.2021, the M-sand which claimed to have been purchased by the petitioner as stated above, had been transported. When the sand was transported, an interception has been taken place, where the lorry was seized by the fifth respondent police on the alleged ground that the sand which was transported through the lorry of the petitioner was not M-sand, it is only the river sand lifted from Vaigai river. Therefore, on that ground, a case has been booked and the petitioner had been arrested. Subsequently, the petitioner obtained bail from the Special District Court dealing with the cases of offences in contravention of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, Madurai, by order dated 23.06.2021.

4. In this context, custody of the vehicle application also seems to have been filed by the petitioner, under Section 451 of Cr.P.C., before the Special Court, which was considered and an interim custody of the vehicle was granted to the petitioner by order of the Special Court dated 30.07.2021.

5. At the time of considering such application, it was the plea of the petitioner before the Special Court that Exhibit P1 filed before the Special Court is the test report of the sand concerned taken privately by the petitioner from a private testing service called Sastha Soil Testing Services. On the strength of test report stating the sand in the lorry is not the river sand, it is only M-sand, since the petitioner pleaded his innocence, the learned Judge, by an order of interim custody of the vehicle concerned as stated supra, had observed that the test report filed by the



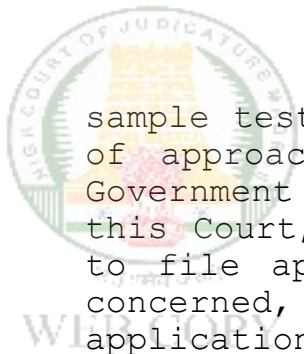
petitioner under Ex.P1 to show that the sand that was transported by the accused in the vehicle was M-sand cannot be relied upon for the simple reason that the said test has not been done through this Court, that is the Special Court. It is further observed by the said learned Judge that neither is there any material to presume that the said mineral sent to the lab was infact the sample of mineral alleged to have been taken from the mineral alleged to have been illegally quarried. The test ought to have been conducted through this Court, that is Special Court.

6.Relying upon the observations made by the learned Judge in the said order of interim custody of the petitioner's vehicle dated 30.07.2021, the learned counsel appearing for the petitioner would contend that the sand in question which has been transported through the vehicle of the petitioner must be tested by the orders of this Court. Then only, the innocence of the petitioner can be proved before the trial Court and therefore, in this regard, a mandamus can be issued to the fourth respondent to entrust the sand to the third respondent for testing and to file a report enabling the petitioner to file the report, to be submitted by the third respondent, before the trial Court to conduct the trial. Therefore, he seeks indulgence of this Court as the prayer sought for.

7.Per contra, Mr.D.Ghandiraj, learned Government Advocate appearing for the respondents would submit that, whether the sand in question, which was seized along with the vehicle concerned is whether the M-sand or river sand is concerned, it need not be testified, because even by seeing in naked eye, anybody can ascertain that it is river sand. Be that as it may, if at all the petitioner wants to send the sand sample for test and file a report to that effect, it is open to the petitioner to approach the Special Court and to file an appropriate application, as the same seems to have been observed in the order referred to above. Without exhausting the said remedy by filing appropriate application before the Special Court, the petitioner cannot invoke Article 226 of the Constitution of India by filing the present writ petition. Therefore, on that ground itself, the writ petition cannot be maintained and the same shall be rejected, he contended.

8.I have considered the rival submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

9.As has been relied upon the observations made by the learned Judge of the Special Court, where it was observed by the Special Court (which is the trial Court) before whom, the application for interim custody of the vehicle concerned was filed, as stated supra, wherein, the Court has held that the test ought to have been conducted through that Court. Therefore, there are possibilities for getting an order from the trial Court concerned to get the sand



sample tested and file a report to that effect. Therefore, instead of approaching the Special Court as pointed out by the learned Government Advocate in this regard, since the petitioner approached this Court, I am of the view that, the petitioner can be relegated to file appropriate application before the Special / Trial Court concerned, if he is so advised to where he can make an appropriate application to get order for sending the sand sample for test and to file a report to that effect. In that view of the matter, this Court is not inclined to entertain the prayer sought for herein.

10.With the above observations, this Writ Petition is disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

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

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- 2.The Revenue Divisional Officer,
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Madurai North Taluk, Madurai District.
- 5.The Inspector of Police,
Koodal Pudur Police Station (L & O), Madurai District.

+1 CC to M/s.M.VIVEK KUMAR, Advocate (SR-26196[F]
dated 12/08/2021)

+1 CC to M/s.SPL GP (SR-25873[F] dated 11/08/2021)

W.P. (MD)No.14048 of 2021

10.08.2021