



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)No.18 of 2016

and

C.M.P(MD)Nos.7900 of 2016

D.Dhaya Devadas

... Appellant / Petitioner

Vs.

- 1.The Secretary to Government,
Ministry of Environment & Forests,
Government of India,
Paryavaran Bhavan,
CGO Complex,
Lodhi Road,
New Delhi - 110 003.
- 2.The Secretary to Government,
Ministry of Mines, Govt. of India,
3rd Floor, A Wing, Shastri Bhawan,
New Delhi - 110 001.
- 3.The Chief Vigilance Commissioner,
Central Vigilance Commission,
Satarkata Bhavan,
A-Block, GPO Complex, INA,
New Delhi - 110 023.
- 4.The Director,
Central Bureau of Investigation,
Block No.3, IIIrd Floor, CGO Complex,
Lodhi Road, New Delhi - 110 003.

5.S.Vaikundarajan

... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 01.10.2015 passed in W.P(MD)No.16924 of 2012.

Prayer in WP(MD). 16924/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of mandamus writ directing the respondents 1 to 4 take action against 5th respondent and others in accordance with law on the basis of petitioner representation dated 30.10.2012



For Appellant : Mr.V.Selvaraj,
Senior Counsel for
Mr.N.Dilip Kumar
For R-1 to R-4 : Mrs.L.Victoria Gowri,
Assistant Solicitor General of India
For R-5 : Mr.V.Lakshmi Narayanan for
Mr.A.Srinivasan

WEB COPY

JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

This writ appeal is directed against the order dated 01.10.2015 passed in W.P(MD)No.16924 of 2012.

2. The appellant, who was a writ petitioner had sought for an issuance of a Writ of Mandamus, seeking a direction to the respondents 1 to 4, to take action against the fifth respondent and others in accordance with law on the basis of the petitioner's representation dated 30.10.2012. The appellant / writ petitioner is a licensee of beach sand mining of garnet in Padukkapathu Village, Sathankulam Taluk. It was stated that he could not continue to carry on the mining operations on account of the obstruction caused by the fifth respondent as the fifth respondent is alleged to have been doing illicit beach sand mining with the connivance of the officials of the Department of Geology and Mining, the Revenue Department, Industries Department etc. According to the fifth respondent, the petitioner has got animosity and grudge against the fifth respondent on account of business and also personal rivalry and has been referring to a speech for ordering an investigation.

3. The learned single Judge had dismissed the above said writ petition on the ground that the Central Bureau of Investigation after conducting an enquiry had made it clear that no offence was made out against the fifth respondent.

4. When the writ appeal was taken up for hearing, the learned counsel appearing for the fifth respondent raised a preliminary objection that the Mandamus sought for is in criminal nature, which was already refused by this Court and hence an intra-Court appeal will not lie, placing reliance on the decision of the Honourable Supreme Court in *Ram Kishan Fauji v. State of Haryana and Others* reported in (2017) 5 Supreme Court Cases 533.

5. In the case on hand, the writ petition was filed under Article 226 of the Constitution of India, for issuance of a Mandamus, directing the respondents 1 to 4 including the Central Bureau of Investigation, to take action against the fifth respondent. If the Mandamus was issued, it would have led in



launching of criminal prosecution.

6. The learned single Judge after analysing the factual matrix, found that the Central Bureau of Investigation had already made it clear that no offence was made out and rejected the writ petition. Thus, the effort of the writ petitioner was to initiate the criminal investigation against the fifth respondent to maintain an intra-Court appeal. What matters is the nature of the proceedings, which would be the litmus test.

7. In view of the above, the writ appeal is not maintainable before the Division Bench against the order of the learned single Judge. The decision of the Honourable Supreme Court cited supra has been followed in the decision in *Vinod Kumar Pandey and Another v. Sheesh Rami Saini and Another* reported in 2019 SCC online Delhi 7652, wherein also the principle reiterated in the case of *Ram Kishan Fauji v. State of Haryana and Others*(cited supra) has been discussed in detail and the intra-Court appeal was dismissed as not maintainable.

8. The Division Bench of this Court also in *K.N.Pudur Primary Agricultural Co-operative Credit Society Ltd., Salem District and Others v. G.Balakrishnan and others* reported in AIR 2018 Madras 149 Madras, has followed the very same principle holding that as per clause 15 of the Letters Patent, intra-Court appeal is not provided if the learned single Judge has exercised the criminal jurisdiction sitting and deciding the matter under Article 226 of the Constitution of India. The same is followed in the recent judgment of this Court in *C.Sivasanakaran v. Foreigner Regional Registration Officer and Others* (WA.No.Sr 49793 of 2020) reported in 2020 SCC online Mad 2656.

9. The learned counsel appearing for the appellant fairly conceded that the intra-Court appeal is not maintainable.

10. In the light of the above principles laid down in the decision cited supra and also the fair concession made by the learned counsel appearing for the appellant, this Writ appeal is dismissed as not maintainable without going into the merits of the case. No Costs. Consequently, connected Miscellaneous Petition is closed.

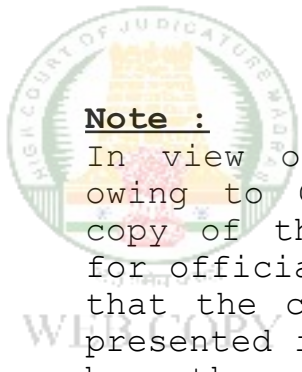
Sd/-

Assistant Registrar (ADII)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

**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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4.The Director,
Central Bureau of Investigation,
Block No.3, IIIrd Floor, CGO Complex,
Lodhi Road, New Delhi - 110 003.

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-1688[F] dated 21/01/2021)

+1 CC to M/s.S.MEENAKSHI SUNDARAM, Advocate (SR-1506[F] dated 21/01/2021)

W.A (MD) No.18 of 2016
20.01.2021

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KB(18.02.2021) 4P 7C