



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.08.2021**

CORAM

WEB COPY

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR**

W.P. (MD)No.26837 of 2019  
and  
W.M.P. (MD)No.23184 of 2019

S.Kalidass

... Petitioner

Vs.

1.The Director,  
Tamil Nadu Mines and Minerals Department,  
Thiru Vi.Ka.Industries Estate,  
Alanthur Road, Guindy,  
Chennai-600 032.

2.The District Collector,  
Sivagangai District,  
Sivagangai.

3.The Assistant Director,  
Geology and Mining,  
Collector Office Complex,  
Sivagangai.

4.The Revenue Divisional Officer,  
Sivagangai Revenue Division,  
Sivagangai.

5.The Tahsildhar,  
Sivagangai Taluk,  
Sivagangai.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent vide Na.Ka.M.2/292/2019, dated 28.11.2019 and quash the same as illegal and devoid of merits and consequently direct the second respondent to conduct fresh enquiry and pass order after providing reasonable opportunities to the petitioner in all prospective manner.

For Petitioner : Mr.Raja.Karthikeyan  
For Respondents : Mr.D.Ghandiraj  
Government Advocate



**ORDER**

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent vide Na.Ka.M.2/292/2019, dated 28.11.2019 and quash the same and consequently direct the second respondent to conduct fresh enquiry and pass order after providing reasonable opportunities to the petitioner.

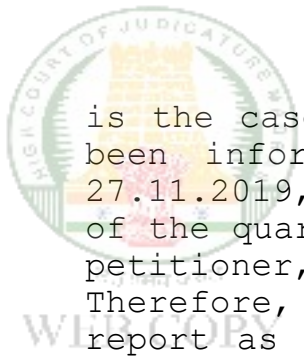
2.It is the case of the petitioner that, the petitioner had been given quarry lease / permit for quarrying of gravel sand to the extent of 2.28.5 hectares in S.Nos.13/1 part (1.37.0 hectares) and 13/30 part (0.91.5 hectares) of Thraniyenthal Village, Sivagangai Taluk and District. Pursuant to the said lease and quarry permit given to the petitioner, the quarry operation went on and according to the petitioner, after completing quarry operation, he had handed over the quarry site to the owners of the land on 02.08.2019 and this has been reported to the respondents.

3.Subsequently, it seems that, there has been some litigation by way of writ petition filed before this Court making some allegations against the petitioner that the petitioner in violation of the licence and quarry permit, has exploited more quantity of gravel sand and therefore, in violation of the same, since the quarry has been operated, there has been a heavy loss to the Government and therefore, that should be enquired into.

4.At that juncture, there has been an inspection on 12.11.2019 at quarry site by the Officials concerned, who are the respondents herein and based on that inspection report, a show cause notice dated 12.11.2019 was issued to the petitioner.

5.In this context, it is the case of the petitioner that the inspection conducted on 12.11.2019 is behind his back and pointing out the same, the petitioner had given a detailed reply dated 18.11.2019 to the District Collector concerned stating that he has not violated quarry licence or permit conditions and moreover, when the inspection was conducted on 12.11.2019, since the petitioner has not been given notice and behind his back, the inspection was conducted, he needs an opportunity of hearing and therefore, requiring all these aspects, the petitioner had given reply on 18.11.2019 to the District Collector concerned.

6.Subsequently, in the writ petition filed with regard to the quarry in issue, that is, W.P.(MD)No.22014 of 2019 which was pending before this Court, some interim directions seems to have been given on 13.11.2019, pursuant to which, the respondent District Collector and other Officers decided to have further inspection on 27.11.2019 and on that date of inspection, which is the second inspection, it



is the case of the respondent that, over phone, the petitioner had been informed that the inspection is going to be conducted on 27.11.2019, that is, on the very same date, after reaching the spot of the quarry site, despite the information having been given to the petitioner, he did not come to participate in the inspection. Therefore, the Officials have inspected the spot and based on the report as well as further inputs received in this regard from the Officials concerned of the Geology and Mining Department, the second respondent District Collector has decided to approach the matter and accordingly, he passed the impugned order dated 28.11.2019, whereby the petitioner had been directed to pay an additional amount of Rs.1,02,55,340/-. Challenging the said order, the petitioner has moved this writ petition with the aforesaid prayer.

7. When this matter is taken up for hearing, this Court posed a point to the learned counsel appearing for the petitioner that, as to why the appeal had not been filed as against the impugned order under Rule 36(C) of the Tamil Nadu Mines and Minerals Concession Rules, 1959 when that appeal provision is available and has been indicated in the impugned order itself.

8. The learned counsel appearing for the petitioner has submitted that, in view of the violation of Principle of natural justice in passing the impugned order, instead of filing the appeal, the petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution. Therefore, the sum and substance of the issue to be agitated in this writ petition, according to the petitioner is in view of the alleged violation of principle of natural justice, the impugned order is vitiated.

9. In support of his contention, Mr. Raja. Karthikeyan, learned counsel appearing for the petitioner has submitted that, admittedly, earlier inspection ie., the first inspection conducted on 12.11.2019 is behind his back (without knowledge of the petitioner) and pursuant to which, a show cause notice was issued and in response to the said show cause, reply was given by the petitioner on 18.11.2019, where since the petitioner has pointed out that inspection was conducted behind his back, having taken note of the said factor, when second inspection was supposed to be conducted on 27.11.2019, an advance intimation has to be given to the petitioner. However, on the same day, admittedly, after the respondents and their representatives reached the quarry site they had called the petitioner over phone at the last minute to come and attend the inspection. Since the petitioner was out of station on the particular date, at the particular time, he could not immediately rush to the spot and therefore, resultantly, the second inspection dated 27.11.2019 also was conducted behind the back of the petitioner or without the presence of the petitioner.



**10.**Now, based on the second inspection conducted on 27.11.2019, since the impugned order has been passed by the second respondent, according to the learned counsel for the petitioner, that order gets vitiated, as both the inspections had been conducted without presence of the petitioner. Therefore, on that ground, the learned counsel appearing for the petitioner urges the point that the principle of natural justice has been grossly violated and therefore, on that ground, the impugned order is vitiated and hence he seeks indulgence of this Court to pass an order against the impugned order.

**11.**Per contra, learned Government Advocate appearing for the respondents, on the basis of the counter-affidavit as well as the instructions he received from the respondents, has submitted that, though quarry permission was granted to the petitioner with the condition that in howmany meters quarry operation has to be undertaken, in violation of the same, since the petitioner has quarried, the same was brought to the notice of the respondents and in this regard, not only triggered by the earlier writ petition filed by some other third party referred to in W.P.(MD)No.22014 of 2019, even otherwise, the respondents are duty bound to check-up, whether any violations have been taken place in respect of the quarry operation undertaken by the petitioner.

**12.**In this context, by both the inspections that on 12.11.2019 and 27.11.2019, it was found by the Inspecting Officers that there has been series of violations of the quarry conditions and therefore, heavy quantity of gravel sand had been excavated by the petitioner, by thus, lawful revenue which ought to have come to the exchequer, has not come to the Government, thereby, the Government lost more than a Crore of rupees and therefore, calculating the same as per the rules, the impugned order has been passed.

**13.**The learned Government Advocate would further submit that, insofar as the second inspection on 27.11.2019 is concerned, admittedly an intimation had been given over phone to the petitioner. Despite such information, the petitioner did not choose to come to the inspection spot and therefore, it is the fault on the petitioner for which, the respondents cannot be blamed. Therefore, the learned Government Advocate would submit that it is not the case of violation of principles of natural justice. Therefore, on that ground, the petitioner cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution. Accordingly, the learned Government Advocate seeks indulgence of this Court to reject the writ petition. In respect of other grounds, the petitioner can very well prefer an appeal before the appellate authority, which has been indicated in the impugned order itself. Therefore, looking from any angle, the present challenge made in the present writ petition cannot be sustained, accordingly, he seeks indulgence of this Court to dismiss the writ petition.



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

**15.**The only ground that has been urged by the petitioner for consideration before this Court in entertaining this writ petition by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution is the alleged violation of principles of natural justice.

**16.**In this context, the sum and substance of the case of the petitioner is that, though two inspections had been conducted, firstly on 12.11.2019 and secondly on 27.11.2019, both the inspections had been conducted in the absence of the petitioner.

**17.**In this regard, it is to be noted that on 12.11.2019, certainly, the inspection was conducted behind the back of the petitioner. On 27.11.2019, it is the case of the petitioner that the petitioner had not been given prior intimation to have inspection and only after reaching the inspection spot, though the phone information has been given to the petitioner, since the petitioner was out of station, he could not present before the inspection conducted by the respondents. This has been accepted by the respondents that only phone intimation was given to the petitioner on the date of inspection.

**18.**In this context, this Court does not want to express any opinion or view as to whether such phone information given by the respondents to the petitioner is enough to come to the conclusion that the procedure as contemplated under the rules has been followed or not.

**19.**In this context, this issue, as to whether the sufficient opportunity was given to the petitioner at the time of second inspection conducted on 27.11.2019 also can very well be agitated by the petitioner as the preliminary issue before the appellate authority, before whom such an appeal can very well be filed by the petitioner. If any such preliminary issue is raised by the petitioner, the same shall be decided by the appellate authority as the preliminary issue and thereafter proceed to decide on the merits of the challenge made against the impugned order.

**20.**In that view of the matter, without expressing any view on the case and counter-case projected by the learned counsel on both sides, this Court is inclined to dispose of this writ petition with the following order:

that the petitioner herein is relegated to approach the appellate authority by filing an appeal against the impugned order, within a period



WEB COPY

of two weeks from the date of receipt of a copy of this order and the same shall be entertained without insisting upon any petition for condoning the delay or any other impediment, which are applicable to the regular appeal before the appellate authority. It is open to the petitioner to raise the issue as to whether the petitioner had been given proper opportunity at the time of conducting second inspection on 27.11.2019, as preliminary issue. If any such preliminary issue is raised by the petitioner, the same shall be decided by the appellate authority and thereafter proceed towards deciding the matter on merits ie., the challenge made by the petitioner against the impugned order. It is made clear that, if the petitioner is able to satisfy the appellate authority and get the order in his favour, with regard to the preliminary issue, the matter can be remitted back for re-consideration. Further, if the petitioner is suffered with any order at the hands of the appellate authority on the very preliminary issue, with regard to the alleged non-giving of opportunity and violation of principle of natural justice is concerned, as against such order to be suffered with by the petitioner, it is open to the petitioner once again to come before this Court or before any other forum in the manner known to law.

**21.**With these observations, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

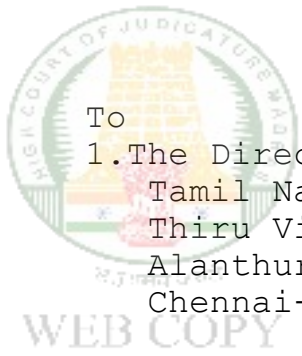
// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sm

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

1.The Director,  
Tamil Nadu Mines and Minerals Department,  
Thiru Vi.Ka.Industries Estate,  
Alanthur Road, Guindy,  
Chennai-600 032.

2.The District Collector,  
Sivagangai District, Sivagangai.

3.The Assistant Director,  
Geology and Mining,  
Collector Office Complex,  
Sivagangai.

4.The Revenue Divisional Officer,  
Sivagangai Revenue Division,  
Sivagangai.

5.The Tahsildhar,  
Sivagangai Taluk, Sivagangai.

+1 CC to M/s.RAJA.KARTHIKEYAN, Advocate ( SR-26601[F] dated  
18/08/2021 )

+1 CC to M/s.GP ( SR-26647[F] dated 18/08/2021 )

**W.P. (MD)No.26837 of 2019**

**17.08.2021**

MGJ(01.10.2021) 7P 8C