



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.1930 of 2022

and W.M.P.Nos.2081, 2083 and 2084 of 2022

A.Sundaram

... Petitioner

vs

1. The Director,
Department of Geology and Mining,
Industrial Estate Guindy,
Chennai - 600 032.
2. The Assistant Director,
Department of Geology and Mining,
Coimbatore - 641 018.
3. The District Collector,
Office of the Collectorate,
Coimbatore - 641 018.

4. Uthirakumar

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in proceedings No.Na.Ka.8/Kanimam/2019 dated 29.01.2021 in granting Mining license to the 4th respondent and quash the same as illegal, incompetent and without jurisdiction and further restrain the 2nd and 3rd respondents from issuing or renewing license to quarry's that are functioning in Pollachi, Coimbatore violating the conditions imposed on them or against the provisions of Tamil Nadu Mines and Minerals Concession Rules 1959.



WEB COPY

For the Petitioner :Mr.V.Lakshminarayanan

For the Respondents :Mr.R.Shanmugasundaram

Advocate General
assisted by
Mr.P.Muthukmar
State Govt.Pleader
for RR-1 to 3

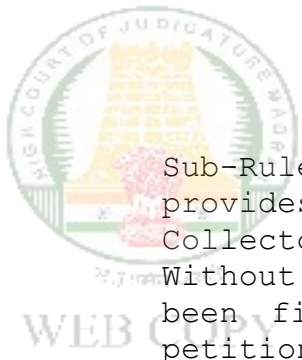
ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

The writ petition has been filed to challenge the order dated 29.01.2021 for granting the mining licence to the fourth respondent holding it to be illegal, incompetent and without jurisdiction and further to restrain the 2nd and 3rd respondents from issuing or renewing licence of quarrying in violation of the Tamil Nadu Mines and Mineral Concession Rules, 1959 (in short 'the Rules of 1959'). The other prayer is to restrain the operation of the quarry licence given under the impugned order dated 29.01.2021.

2. The learned counsel appearing for the petitioner submits that by the order dated 29.01.2021, mining licence has been granted in favour of the fourth respondent. It is ignoring the provisions of the Rules of 1959, which impose restrictions for grant of mining licence close to the water bodies of which reference has been given in the writ petition and accordingly, a challenge to the order dated 29.01.2021 has been made. It is more so when pursuant to the quarry licence given to the fourth respondent, not only there is excessive mining, but it is going beyond the areas covered under the licence and therefore, it is a case of illegal mining. A representation in that regard was given, but no heed has been paid by the respondents, therefore, left with no other option, the petitioner has filed the present public interest litigation.

3. The learned Advocate General appearing for the respondents has raised objection to the maintainability of the writ petition. He submits that the order under challenge is appellable pursuant to Rule 36-C of the Rules of 1959. The order has been passed by the authorities specified therein and appeal is otherwise maintainable even against the order passed by any authority subordinate to the authorities specified in



Sub-Rule (1) of Rule 36-C of the Rules of 1959. Sub-Rule (2) provides for an appeal against the order passed by the District Collector in exercise of the power conferred by the Rules. Without availing the remedy of appeal, this writ petition has been filed. The prayer is accordingly to dismiss the writ petition.

4. The learned counsel for the petitioner submits that the remedy of appeal is not available against the order granting mining licence, but it can be against any other order and therefore, the remedy of appeal is not available to the petitioner for challenge to the order dated 29.01.2021 granting mining licence in favour of the fourth respondent and accordingly, the writ petition is maintainable. If at all this Court comes to the conclusion that appeal is maintainable against granting of mining licence, it can be clarified and accordingly, liberty may be given to the petitioner to avail the remedy of appeal thereupon.

5. We have considered the rival submissions of the parties and perused the records.

6. The main grievance of the petitioner is against the order dated 29.01.2021 whereby mining licence was granted in favour of the fourth respondent. A prayer in reference to it has been made. There is no other prayer and if the matter is to be considered in reference to the aforesaid, an appeal lies against the order impugned herein. Rule 36-C of the Rules of 1959 is quoted hereunder for ready reference:

"36-C. Appeal and second Appeal:- (1) Any person aggrieved by any order of the Joint Director, Deputy Director or Assistant Director (Geology and Mining) or any authority subordinate to him in the District office of the Department of Geology and Mining or Revenue Divisional Officer or Tahsildar or Deputy Tahsildar in the Revenue Department or Commissioner of Municipalities and Corporations, Executive Officers of Town panchayats and Townships and presidents of village panchayats made in exercise of the powers conferred on him by these rules or in exercise of any of the powers delegated to him under the provisions of these rules may within 30 days from the date of receipt of the order, prefer appeal to the District Collector concerned against such order. In case the aggrieved person is not satisfied with the decision of the District Collector he may prefer a second appeal to the



WEB COPY

Director of Geology and Mining within 30 days from the date of receipt of the order of the District Collector.

(2) Any person aggrieved by any order made by the District Collector in exercise of the powers conferred on him by these rules, except on appeals under sub-rule (1) may, within 30 days from the date of communication of the order to him, appeal to the Director of Geology and Mining against such order. In case, the aggrieved person is not satisfied with the decision of the Director of Geology and Mining, he may prefer a second appeal to the State Government within 30 days from the date of receipt of the order of the Director of Geology and Mining.

(3) Any person aggrieved by any order made by the Director of Geology and Mining in exercise of the powers conferred on him by these rules, may, within 30 days from the date of receipt of the order, appeal to the State Government."

7. The aforesaid Rule clearly provides that any aggrieved person can file an appeal against an order of the authorities named therein as well as subordinate to them apart from the District Collector. The order under Challenge has been passed by the Assistant Director of Geology and Mining, who is the named authority under the said Rule. Therefore, the order dated 29.01.2021 comes in the category, as provided under the Rules of 1959. It is more so when even if the order is passed by the District Collector, appeal remedy is available under Rule 36-C of the Rules of 1959.

In view of the above, we do not find any extraordinary reason for the petitioner to maintain this writ petition instead of taking recourse to the appeal remedy provided under the Rules. The writ petition is, accordingly, dismissed. It is, however, with the liberty to avail the remedy of appeal. No costs. Consequently, W.M.P.Nos.2081, 2083 and 2084 of 2022 are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR



To:

WEB COPY

1. The Director,
Department of Geology and Mining,
Industrial Estate Guindy,
Chennai - 600 032.
2. The Assistant Director,
Department of Geology and Mining,
Coimbatore - 641 018.
3. The District Collector,
Office of the Collectorate,
Coimbatore - 641 018.

+lcc to M/s.V.Raghavachari, Advocate Sr.8239
+lcc to the Government Pleader Sr.8637

W.P.No.1930 of 2022

ssn[co]

srg 18/02/2022