



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.01.2022

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.4283 of 2018

S.Selvaraj

...Petitioner

Vs.

1.The Collector,
Ariyalur District,
Ariyalur.

2.The Revenue Division Officer,
Ariyalur District,
Ariyalur.

3.The Tahsildar,
Ariyalur District,
Ariyalur.

4.Mrs.Muthu Lakshmi,
The Tahsildar,
Ariyalur District,
Ariyalur.

...Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent relating to the impugned order passed by the 2nd respondent dated 12.01.2018 bearing Ref.No.Na.Ka.A2/2985/2017 and quash the same and consequently direct the respondents to pay compensation to the petitioner, a sum of Rs.17,08,600/- as rent, damage and compensation paid by the petitioner.

For Petitioner : Mr.R.Saravanakumar
for Mr.T.Sai Krishnan

For Respondents : Mr.K.M.D.Muhilan
Government Advocate
for RR1 to R3
No appearance for R4



O R D E R

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent relating to the impugned order passed by the 2nd respondent dated 12.01.2018, quash the same and consequently direct the respondents to pay compensation to the petitioner, a sum of Rs.17,08,600/- as rent, damage and compensation paid by the petitioner.

2. The brief facts of the case are as follows:

The petitioner and his brother owned various extents of land comprised in Survey Nos.63/1, 63/2, 63/3, 63/4, 64/1, 64/2, 64/3, 64/4, 64/6, 68/1, 68/2, 68/3, 68/4, 68/5 and 68/6 at Parpanacheri Village, Ariyalur Taluk. The land comprised in Survey No.63 is situated in a very low lying area than the other lands situated on the Southern side comprised in Survey No.64/1 & 64/2. Hence, in order to maintain the flow of water equally for cultivating the sugarcane crop, he has excavated soil from the land comprised in Survey No.64/1 and 64/2 by hiring a Tractor with JCB from the southern side to fill it on the northern side of the land. Therefore, the petitioner has been levelling his patta land for the past several days with the help of Tractor and JCB, and it is absolutely for agricultural purpose and not for any other purpose.

2.1. On 20.12.2017, the 4th respondent had come to the petitioner's patta land and ordered to stop work and threatened with dire consequences and later, the 3rd respondent seized the vehicles of the private drivers. After seizing the vehicles, the 2nd respondent has not passed any orders and simply parked them in their office. Thereafter, the petitioner met the 1st respondent and informed about the illegality committed by the 3rd respondent, who in turn, convinced and assured that the vehicles would be released within due course. Even thereafter, despite repeated requests and personal visits to the 1st and 2nd respondents, the seized vehicles were not released and no order was passed. Therefore, the petitioner approached this Court by way of W.P.No.893 of 2018, wherein, this Court directed the respondents therein to release the vehicles, on deposit of a sum of Rs.25,000/- for each vehicle by the petitioner, within a period of two weeks. Thereafter only, in a hurried manner, the 2nd respondent passed an order with anti date as 12.01.2018 and imposed fine to release the vehicles. According to the petitioner, if at all the order had been passed on 12.01.2018, definitely the respondents herein could have produced before this Court in earlier writ petition, but no order was produced and not served on the petitioner also.



2.2. The learned counsel for the petitioner further contended that as per the direction of this Court, the petitioner handed over a Demand Draft for Rs.75,000/- to the 2nd respondent to release all the 3 vehicles. However, the submission of the petitioner is that he has not at all quarried any sand from S.No.69, which is a Vaari Poromboke land and he has quarried only from S.No.64/1 and 64/2 which is owned by him and he has excavated the soil to level the land only to maintain water flow equally for the crop of sugarcane. He further submits that the respondent has not at all given any opportunity of hearing and no prior notice was served on the petitioner before passing the impugned order. Aggrieved over the same, the petitioner is before this Court for the above said prayer.

3. Per contra, Mr.K.M.D.Muhilan, learned Government Advocate appearing for respondents 1 to 3 submitted that as against the impugned order, the petitioner has already filed the Statutory Appeal before the District Collector, Ariyalur and without awaiting the outcome of the appeal, he has approached this Court, challenging the very same impugned order. These all are the disputed question of facts, which cannot be decided before this Court. Further he submitted that since the petitioner has excavated the soil from Vaari Poromboke, the vehicles were seized and in terms of Section 12 (2) of the Tamil Nadu Minor Mineral Concession Rules, 1959 the petitioner is supposed to have obtained necessary permission from the appropriate authorities to transport the sand from Vaari Poromboke to his agricultural land. If the petitioner has not got such permission, he would have approached the Tahsildar for permission to excavate and transport the sand. But in the present case, he has not done so. Therefore, this writ petition is liable to be dismissed and requested this Court to remand the matter back to the respondents herein.

4. Heard the learned counsel for the parties on either side and perused the materials available on record.

5. Upon hearing of the counsels and perusal of the documents, it appears that the petitioner has excavated the soil from his patta land which is situated in Survey No.64/1 and 64/2, for the purpose of leveling the sugarcane field to cultivate sugarcane. In these circumstances, the third respondent visited the petitioner's site and seized the Tractor and JCB. Thereafter, the petitioner approached this Court and filed the writ petition in W.P.No.893 of 2018 and this Court directed the respondents to release the vehicle on deposit of a sum of Rs.25,000/- for each vehicle. Accordingly, he made a deposit and the vehicles are released. Now, the issue to be decided is whether the impugned order was passed by the second respondent after giving due opportunities to the petitioner.



Though the learned Government Advocate has vehemently argued on behalf of the respondents Nos.1 to 3, they were not able to produce any document in order to prove, any notice was issued before passing the impugned order. It is trite law that before passing any order by the authority and the same can be passed, after affording proper opportunities to the aggrieved party. In the present case, it is very clear before passing the impugned order, no notice was issued to the petitioner to explain his case and no personal hearing also afforded to explain his case and in an arbitrary manner, the impugned order was passed by the third respondent stating that the petitioner has excavated the soil from the Odai Poramboke, when the petitioner excavated the soil only from his own patta land in Survey No.64/1 and 64/2. Therefore, this Court has no hesitation to hold that the impugned order was passed purely in violation of the principles of natural justice. Thus, such order cannot be sustained in the eye of law and the same is liable to be quashed. Accordingly, the impugned order is quashed.

6. In the result, the 2nd respondent is directed to return the amount of Rs.75,000/- deposited by the petitioner at the time of release of the vehicles, as per the direction of this Court in W.P.No.893 of 2018, dated 19.01.2018, within a period of 15 days from the date of receipt of a copy of this order.

7. With the above direction, this Writ Petition stands disposed of. No costs.

8. For reporting compliance, list this matter on 18.03.2022.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Collector,
Ariyalur District,
Ariyalur.

2.The Revenue Division Officer,
Ariyalur District,
Ariyalur.



3.The Tahsildar,
Ariyalur District,
Ariyalur.

WEB COPY

+1cc to Mr.T.Saikrishnan, Advocate, SR.NO.5449

W.P.No.4283 of 2018

NRJK (CO)
KKV/18/02/2022