

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.36501 of 2015

and

M.P.No.1 of 2015

1.R.Marappan
2.M.Chinnammal

...Petitioners

Vs

1. The Union Government of India,
Economic Adviser & Revisionary Authority,
Rep. by its Secretary,
Department of Mines,
Shastri Bhawan, New Delhi.

2. The Government of Tamil Nadu,
Rep. by its Secretary,
Department of Industries,
Chennai - 9.

3. The District Collector,
Namakkal District.

4. Mr.R.Palanisamy (Proprietor),
M/s.Indian Mineral & Allied Industries,
202, Sengodampalayam,
Rajapalayam Post,
Tiruchengode Taluk,
Namakkal District.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 1st respondent in final Order No.256/2015 & 257/2015 dated 10.09.2015 in Revisional Application File No. 27(09)/2013/RC-II and File No. 27(11)/2013-RCII and quash the same as illegal and consequently to direct the 3rd respondent to pay compensation out of the compounding fee ordered on 15.02.2013 in proceedings in Roc.No. 71/Mines/2011 to the petitioner

For Petitioners : Mr.A.Thiyagarajan

For Respondents

R1 : Mr.Ramesh Kumar Chopra
Senior Panel Counsel for Central Govt.

R2 & R3 : Mr.B.Vijay
Additional Government Pleader

R4 : Mr.G.Arulmurugan

O R D E R

The order dated 10.09.2015 passed in revision application is sought to be quashed. Further direction is sought for by the petitioners to direct the third respondent to pay compensation out of the compounding fee ordered on 15.02.2013.

2.The petitioners 1 and 2 are the joint owners of the properties at S.F.Nos.196/1 & 192/7 and S.F.Nos.192/3 & 192/8 in Sowdapuram Village, Tiruchengode Taluk, Namakkal District. The subject lands were leased out by the petitioners in favour of M/s.Indiana Minerals and Allied Industries, Salem-7/4th respondent for a period of 20 years from 1976 to 1996. Consequently, mining lease was granted in favour of the 4th respondent by the Government in G.O.S.Ms.No.801 Industries Department dated 02.08.1978. After the expiry of lease period of 20 years, the 4th respondent trespassed in the subject lands without any valid license or transport permit and carried unlawful quarrying operation of limestone. It is stated by the petitioner that based on the forged sale agreement dated 16.08.2010, the 4th respondent issued a legal notice to the petitioner. A criminal complaint was preferred to stop the illicit exploiting of limestone from the patta lands belonged to the petitioners. A legal notice was sent by the petitioners to the respondents. Accordingly, Indian Bureau of Mines [IBM] conducted an inspection in the subject lands in the presence of the petitioners and the 4th respondent and filed a report stating that the 4th respondent have carried out illegal mining to the extent of 14850.9375 M.tonnes of limestone. The 4th respondent filed a civil suit for specific performance in O.S.No.13 of 2011 before the Subordinate Court, Tiruchengode based on the forged sale agreement. The petitioners filed a writ petition in W.P.No.16103 of 2012 based on the IBM report. The High Court directed the authorities to conduct an enquiry and pass appropriate orders. The Civil Suit filed by the 4th respondent was dismissed. Thus, the criminal complaint filed by the petitioners was registered in Crime No.9 of 2011 and final

report has been filed after conducting investigation in C.C.No.247 of 2015 on the file of the learned Judicial Magistrate, Tiruchengode.

3.The District Collector, Namakkal initiated penal proceedings against the respondent for illegal mining and imposed penalty of Rs.54,15,913/-. However, the claim of the petitioner for grant of compensation was rejected. Both the petitioners as well as the 4th respondent preferred revision petition before the Appellate Tribunal, Government of India, Ministry of Mines against the orders of the District Collector, Namakkal. The revisional authority rejected the revision petition. Thus, the petitioners have chosen to file the present writ petition.

4.The learned counsel for the petitioners made a submission that illegal mining operations were established, the 4th respondent has carried out illegal mining of limestone and the penalty was imposed. Therefore, the petitioners being the pattadars are entitled for compensation. Thus, the rejection of revision is improper and the writ petition is to be considered.

5.The learned counsel for the 4th respondent made a submission that the 4th respondent Mr.Palanisamy was not a partner during the relevant point of time in the partnership firm and he was inducted as partner subsequently after all these incidents and therefore, the 4th respondent is not liable to pay penalty.

6.The learned Additional Government Pleader appearing for the respondents 2 and 3 objected the contention by stating that once the illegal mining operations were established and the quantum of illegal excavation are determined, the authorities are competent to impose penalty and in the present case, the IBM conducted inspection and found that 14850.9375 M.tonnes of limestone were excavated illegally from the patta land. Accordingly, proceedings were initiated and penalty was imposed. The 4th respondent was directed to pay the penalty of Rs.54,15,913/-. As far as the petitioners are concerned, no doubt they are the pattadars but as far as the illegal mining operations are concerned, the pattadars are not entitled for any compensation as they cannot claim any ownership in respect of the mines and minerals under the earth.

7.The order dated 30.01.2018 passed by the revisional authority reveals that "From the inspection conducted in SF.No.196/1 by the IBM official, Chennai, it is amply clear that fresh illicit mining was done in the patta land and volume of 14850.-37 M.Tonnes mineral had been excavated. Moreover while conducting inspection Asst. Director of Mines, Namakkal and Shri

Shiv Kumar, Accounts Manager, representatives of Shri R.Palanisamy and the Revisionist and representatives of the Pattadar were present. The Revisionist was given opportunity of hearing. As his explanation was not found to be satisfactory, penalty of Rs.54,15,913/- was imposed".

8.No doubt the dispute between the petitioners and the 4th respondent is of civil nature and also a criminal case was registered in respect of creation of forged agreement. Those issues are to be adjudicated before the competent court of law between the parties. As far as the mining operations are concerned, admittedly, lease was granted for a period of 20 years and the Government also issued orders to that effect. Thus, subsequent quarrying or mining operations by the 4th respondent was illegal and therefore, the authorities competent invoked the provisions of the Act and initiated proceedings and imposed penalty. As far as the mining operations are concerned, the authorities of the Mining Department are empowered to initiate action in the event of illegal mining operations. Regarding the dispute between the pattadars and the miner, the same is to be resolved in the manner known to law.

9.This Court is of the considered opinion that the illegal mining operations were established beyond a pale of doubt and the quantum of limestone illegally extracted were also determined by the competent authorities and the penalty amount was also communicated to the 4th respondent. Thus, the 4th respondent is bound to pay the penalty as demanded by the competent authorities. In respect of all other disputes between the petitioners and the 4th respondent, they are at liberty to resolve the same before the competent court of law both in respect of the cases instituted before the Civil Court and the Criminal Court. As far as the recovery of penalty is concerned, the respondents 1 to 3 are bound to recover the penalty from the 4th respondent and the 4th respondent cannot claim any immunity merely on the basis that he was subsequently inducted as partner in the partnership firm. As far as the partnership firm is concerned, once the person become the partner of the firm, such partner is liable for all such actions and therefore, the 4th respondent cannot seek exoneration merely on the ground that he was subsequently inducted as a partner.

10.This being the facts and circumstances, the writ petitioners are not entitled for the relief of compensation. In respect of other reliefs against the 4th respondent, the petitioners are at liberty to approach the competent Court of law.

11.With these observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
The Union Government of India,
Economic Adviser & Revisionary Authority,
Department of Mines,
Shastri Bhawan, New Delhi.

2.The Secretary,
The Government of Tamil Nadu,
Department of Industries,
Chennai - 9.

3.The District Collector,
Namakkal District.

+2ccs to Mr.A.Thiyagarajan, Advocate SR. No.516

+1cc to Government Pleader SR. No.1138

+1cc to Mr.G.Arulmurugan, Advocate SR. No.436

W.P.No.36501 of 2015

NR (CO)
PR (25/01/2022)