



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.04.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

W.P.[MD]No.6041 of 2022

and

W.M.P.[MD]No.4707 & 4708 of 2022

WEB COPY

K.Albert Arulraj

... Petitioner

/Vs./

The Revenue Divisional Officer,
Palani Revenue Division,
Dindigul District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the respondent in Na.Ka.No.676-1/2019/A-7 dated 09.03.2022 and to quash the same and consequently directing the respondent to furnish all the relating records and thereafter conduct the enquiry in accordance with law.

For Petitioner : Mr.C.M.Arumugam
For Respondent : Mr.P.Thilak Kumar
Government Pleader

ORDER

This writ petition has been filed challenging the order dated 09.03.2022 passed under Section 36A of the Tamil Nadu Minor Mineral Concession Rules, 1959, imposing penalty of Rs.12,65,411/- on the petitioner for the illegal mining committed by him. The petitioner has challenged the impugned order on the ground of violation of principles of natural justice. According to him, the inspection reports dated 23.04.2019 and 12.03.2021 referred to in the impugned order were not furnished to him, which is the basis for imposition of penalty under Section 36A of the Tamil Nadu Minor Mineral Concession Rules, 1959. The learned counsel appearing for the petitioner drew the attention of this Court to the impugned order.

2.As seen from the impugned order, the copies of the inspection reports relied upon by the respondent in imposing penalty on the petitioner had admittedly not been furnished to the petitioner. The basis for imposition of penalty is the aforementioned inspection reports dated 23.04.2019 and 12.03.2021. The petitioner had also requested for copies of the aforementioned inspection reports from the respondent through his letter dated 27.07.2021 and despite the same, the respondent has not furnished the copies of the inspection reports. It is also the contention of the petitioner that while



conducting search as per the provisions of Section 23B of the Mines and Minerals (Development and Regulation) Act, 1957, Section 100 Cr.P.C., has to be followed. Section 100 Cr.P.C., reads as follows:

"100. Persons in charge of closed place to allow search - (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under sub-



section (3), a list of all things taken possession of, shall be prepared, and a copy thereof shall be delivered to such person.

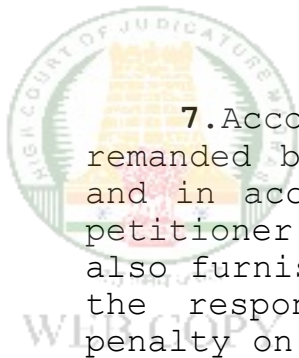
(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).
"

3. According to the petitioner, the aforementioned procedure has not been followed and therefore, the search said to have been conducted by the respondent is not in accordance with Section 23B of the Mines and Minerals (Development and Regulation) Act, 1957.

4. However, it is the contention of the learned Government Pleader appearing for the respondent that only in accordance with the procedure established under law, penalty has been imposed on the petitioner. According to him, only to drag on the proceedings, the petitioner has filed this writ petition. He would submit that since there is an alternate statutory appellate remedy available to the petitioner, the present writ petition is not maintainable. He would also submit that only pursuant to the directions given by the Division Bench of this Court in a Public Interest Litigation, where the petitioner was the ninth respondent, legal action was initiated against the petitioner for illegal mining.

5. The petitioner has challenged the impugned order only on the ground of violation of principles of natural justice. Admittedly, the inspection reports referred to in the impugned order stated supra were not furnished to the petitioner. The petitioner has also contended that the procedure established for conduct of search under Section 23B of the Mines and Minerals (Development and Regulation) Act, 1957, has not been followed by the respondent.

6. For the foregoing reasons, though it may be found later that the petitioner is guilty of illegal mining, this Court is of the considered view that since the inspection reports referred to supra were not furnished to the petitioner, which is the basis for imposition of penalty on the petitioner and in order to give the petitioner sufficient opportunity of hearing with regard to the inspection reports, the impugned order will have to be quashed and the matter has to be remanded back to the respondent for fresh consideration on merits and in accordance with law, after affording a fair hearing to the petitioner including granting him the right of personal hearing and also furnishing him copies of the inspection reports, based on which the respondent had earlier passed the impugned order imposing penalty on the petitioner.



7. Accordingly, the impugned order is quashed and the matter is remanded back to the respondent for fresh consideration on merits and in accordance with law, after affording a fair hearing to the petitioner including granting him the right of personal hearing and also furnishing him copies of the inspection reports, based on which the respondent had earlier passed the impugned order imposing penalty on the petitioner. The respondent is directed to pass final orders in the aforesaid terms, within a period of three [3] months from the date of receipt of a copy of this order.

8. With the above direction, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Revenue Divisional Officer,
Palani Revenue Division,
Dindigul District.

+1 CC to M/s.C.M. ARUMUGAM, Advocate (SR-16583[F]
dated 05/04/2022)

+1 CC to M/s.SPL GP (SR-16343[F] dated 04/04/2022)

order made in

W.P. [MD]No.6041 of 2022

Dated:

04.04.2022

VR(CO)
GC(19.04.2022) 4P 4C