



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD)No.7502 of 2022

and W.M.P. (MD) .No.5674 of 2022

WEB COPY

M.Maheshwaran

.. Petitioner

Vs

1.The District Collector,
Office of the District Collector,
Theni District.

2.The Assistant Director,
Geology and Mining,
Office of the District Collector,
Theni District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the impugned show cause notice issued by the 1st respondent in his proceedings in RC No.204/Mines/2022 dated 16.03.2022 and quash the same as illegal and unconstitutional.

For Petitioner : Mr.B.Saravanan for
Mr.C.Jeganathan

For Respondents : Mr.P.Thilak Kumar
Government Pleader

ORDER

This writ petition has been filed challenging the show cause notice, dated 16.03.2022, issued by the first respondent, calling upon the petitioner to submit a reply with regard to the alleged illegal quarrying said to have been committed by the petitioner, pursuant to an aerial survey conducted by the second respondent.

2.The said aerial survey was done pursuant to a direction given by a Division Bench of this Court in a Public Interest Litigation in W.P.(MD).No.16194 of 2020, on 18.11.2020. According to the petitioner, under the show cause notice, the first respondent has predetermined the issue and without giving any opportunity to the petitioner to study the alleged inspection report pursuant to the aerial survey, the show cause notice has been issued. It is also the contention of the petitioner that when the aerial survey was conducted, he was not put on notice by the second respondent. The petitioner has challenged the impugned show cause notice on the ground that the same has been issued in a predetermined manner and



therefore, this Court is having the powers to entertain this writ petition and quash the same.

3.Heard Mr.B.Saravanan, learned counsel appearing for the petitioner and Mr.P.Thilak Kumar, learned Government Pleader, who accepts notice on behalf of the respondents.

4.Admittedly, the inspection was done by the second respondent in respect of the petitioner's quarry lease as well as others pursuant to a direction given by the Division Bench of this Court in a Public Interest Litigation in W.P.(MD).No.16194 of 2020, on 18.11.2020. The contention of the petitioner in this writ petition is that he was also not a party to the aforementioned Public Interest Litigation. According to the petitioner, though the show cause notice refers to a report pursuant to the aerial survey, the same was also not furnished to the petitioner. The petitioner was also not present at the time of aerial survey. Only under the aforementioned circumstances, the petitioner has challenged the impugned show cause notice, as according to him, the first respondent has already predetermined the issue and in all possibility, an adverse order will be passed against him, even if his explanation is submitted by him to the show cause notice.

5.It is settled law that a show cause notice can be challenged only when it has been issued without jurisdiction and without authority under law. In the case on hand, the first respondent is having the authority under law to issue the impugned show cause notice on the ground of the alleged illegal quarrying said to have been committed by the petitioner. The only contention raised by the petitioner in this writ petition is that as according to him, as seen from the impugned show cause notice, the first respondent has predetermined the issue as the inspection report is the basis for the impugned show cause notice and the said inspection report was not furnished to the petitioner. Therefore, according to the petitioner, the first respondent has already decided that adverse orders will be passed against the petitioner. Under the impugned show cause notice, the first respondent has informed the petitioner that he has been doing quarrying operations in non-leasing areas, but no survey numbers where he has been doing quarrying operations, have not been disclosed. Since the aerial survey was done only pursuant to the directions given by the Division Bench of this Court in a Public Interest Litigation in W.P.(MD).No.16194 of 2020, on 18.11.2020, the scope for challenge with regard to the show cause notice pursuant to the directions issued by the Division Bench, is further restricted for the petitioner. The impugned show cause notice, though refers to the aerial survey, does not, on a *prima facie* consideration by this Court, clearly indicate that the first respondent has predetermined the issue against the petitioner.

6.This Court is of the considered view that the petitioner will not be prejudiced, if a reply is sent to the show cause notice



stating his objections and also raising whatever contentions that he has raised in this writ petition. However, before sending any reply, he has approached this Court prematurely. However, since the petitioner has raised the contention that he was not present at the time of the aerial survey and was not furnished with the copy of the report based on the aerial survey, this Court is of the considered view that the petitioner's interest will have to be protected, in case, any adverse orders are passed against him pursuant to the impugned show cause notice for a particular period till the petitioner is able to challenge the same in the manner known to him under law. Excepting for this direction, the challenge of the impugned show cause notice is unsustainable in view of the aforementioned reasons given by this Court, that too, when the survey was done only pursuant to the directions given by the Division Bench of this Court in a Public Interest Litigation in W.P. (MD).No.16194 of 2020, on 18.11.2020.

7.For the foregoing reasons, this writ petition is disposed of, by directing the petitioner to submit a reply to the impugned show cause notice within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said reply, the first respondent shall pass final orders within a period of two weeks thereafter. In order to protect the interest of the petitioner, in case, any adverse order is passed against him, the first respondent shall keep the adverse order, if any, in abeyance for a period of one month from the date of final order to enable the petitioner to challenge the same, if so advised, in the manner known to him under law. Till final orders are passed pursuant to the directions given by this Court today, the petitioner shall carry on quarrying operations in respect of the lease area alone without any hindrance. In case any adverse orders are passed, then the petitioner shall cease the quarrying operations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.D.II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

TM

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 District Collector,
Office of the District Collector,
Theni District.

2.The Assistant Director,
Geology and Mining,
Office of the District Collector,
Theni District.

+1 CC to M/s.SPL.GP (SR-20107[F] dated 21/04/2022)

W.P. (MD) No. 7502 of 2022

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RD(05.05.2022) 4P 4C