



WEB COPY

W.P. (MD) .No.8075 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2022

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P. (MD) .No.8075 of 2022

and

W.M.P. (MD) .Nos.6040 and 6041 of 2022

Fr.Jose Chanakalayil

... Petitioner

Vs.

1.The District Collector,
Thirunelveli District,
Thirunelveli.

2.The Sub Collector,
Cheranmahadevi,
Thirunelveli.

3.The Assistant Director of Geology and Mining,
District Collector Office Campus,
Thirunelveli.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the proceedings of the second respondent ROCNo.B4/3097/2020 dated 15.09.2020 and consequential order passed by the first respondent RC No.M2/41344/2019 dated 30.10.2020 and quash the same as illegal and render justice.

For Petitioner	:	Mr.M.Ajmal Khan, Senior Counsel for Mr.C.Robert Bruce.
For Respondents	:	Mr.P.Thilak Kumar, Government Pleader.

ORDER

This Writ Petition has been filed challenging the order dated 15.09.2020 passed by the second respondent imposing a penalty of Rs.9,57,21,578/- on account of the alleged illegal mining by the lessee as well as the land owners. The petitioner has also challenged the order dated 30.10.2020 passed by the first respondent in the statutory appeal filed by the petitioner as against the order dated 15.09.2020 passed by the second respondent under which the petitioner has been directed to pay a sum of Rs.72,35,875/- as

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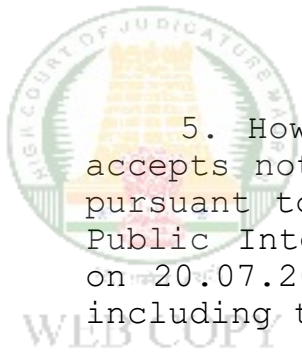


penalty as an interim measure pending disposal of the statutory appeal.

2. The petitioner has challenged the impugned orders on the ground that he or the other land owners are no way responsible for the alleged illegal mining. It is their case that they had let out the property to one Manuel George for agricultural purposes, which has been misused by him for carrying out illegal mining in the said properties. According to the petitioner, though a preliminary statement was filed before the second respondent by the petitioner and others on 14.09.2020 raising several contentions and also requesting the second respondent to grant further time to place further records/documents and also requesting the second respondent to produce copies of documents/orders based on which the second respondent has initiated proceedings, the second respondent, on the very next day on 15.09.2020, has passed the impugned order imposing a huge penalty of Rs.9,57,21,578/- against the petitioner and also against other land owners, who, according to the petitioner, are dead. It is also contended by the petitioner that without granting any opportunity of hearing to several land owners, the impugned order dated 15.09.2020 has been passed by the second respondent imposing a huge penalty of Rs.9,57,21,578/-.

3. Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner drew the attention of this Court to the impugned order dated 15.09.2020 passed by the second respondent and in particular, he referred to the various reports and Government Orders and the communications referred to in Serial Nos.1 to 34 of the reference column and would submit that none of the documents referred to therein were furnished to the petitioner. He would also point out that some of the land owners found in Serial Nos.1 to 7 in the tabular column extracted in page 8 of the impugned order, are also dead. Therefore, he would submit that without granting any opportunity of hearing to the land owners, the impugned order has been passed by the second respondent dated 15.09.2020 calling upon the land owners to pay a huge penalty in excess of Rs.9,00,00,000/-.

4. The learned Senior Counsel for the petitioner also drew the attention of this Court to the other impugned order dated 30.10.2020 passed by the first respondent and would submit that without explaining any reason, the petitioner and other land owners have been directed to remit a sum of Rs.72,35,875/-. The said order has been passed in the statutory appeal filed by the petitioner and others as against the order dated 15.09.2020 passed by the second respondent. According to the learned Senior Counsel for the petitioner, the principles of natural justice have been violated by both the first and second respondents and hence, the impugned orders will have to be quashed.



5. However, Mr.P.Thilak Kumar, learned Government Pleader, who accepts notice on behalf of the respondents, would submit that only pursuant to directions given by a Division Bench of this Court in a Public Interest Litigation in W.P.(MD).Nos.11057 and 15312 of 2020 on 20.07.2021, F.I.Rs have been registered against the land owners including the present petitioner also.

6. According to the learned Senior Counsel for the petitioner, the land owners including the petitioner also were arrested and thereafter, they were granted bail. He would further submit that the CBCID enquiry initiated by the respondents have got nothing to do with the penalty proceedings initiated by the respondents, which is the subject matter of this Writ Petition.

7. After giving due consideration to the impugned orders which are challenged in this Writ Petition, this Court is of the considered view that no proper opportunity of hearing has been granted to the petitioner. The petitioner has submitted a written explanation on 14.09.2020. As seen from the said written explanation dated 14.09.2020, the petitioner has sought for the reports/orders based on which the second respondent has initiated action against the petitioner and other land owners for the alleged illegal mining. However, on the very next day, on 15.09.2020, the second respondent has passed the impugned order directing the land owners to pay a penalty in excess of Rs.9,00,00,000/-. As seen from the impugned proceedings, some of the land owners, according to the petitioner, are dead. If that be so, the legal heirs of the deceased persons ought to have been intimated about the impugned proceedings, which has not been done so in the instant case, as seen from the records produced by the petitioner.

8. In the impugned order dated 15.09.2020 passed by the second respondent imposing penalty in excess of Rs.9,00,00,000/- in favour of the land owners including the petitioner, several documents have been relied upon by the second respondent for coming to the conclusion that the land owners are liable to pay a penalty in excess of Rs.9,00,00,000/-. But, as seen from the impugned order, the copies of the documents reflected in the impugned order have not been furnished to the land owners. Unless and until they were furnished, no opportunity would have been granted to them to submit their explanation. Even in the other impugned order dated 30.10.2020 in the statutory appeal filed by the petitioner and others as against the order dated 15.09.2020, the first respondent has not given any reasons for directing the petitioner to pay a sum of Rs.72,35,875/-. For fixing any penalty amount, reasons ought to have been given, that too, when the petitioner as well as the other land owners have categorically denied their liability to pay the penalty amount, as, according to them, they are not responsible for the same and if at all, it is only their lessee, Manuel George, who can be fastened with liability as regards penalty for the alleged



illegal mining.

9. For the foregoing reasons, this Court is of the considered view that the principles of natural justice have been violated both by the second respondent as well as by the first respondent, as seen from the respective impugned orders dated 15.09.2020 and 30.10.2020. Since the petitioner has already exercised his statutory right of appeal before the first respondent aggrieved by the order dated 15.09.2020 passed by the second respondent, the impugned orders, on account of violation of the principles of natural justice, have to be quashed and the matter has to be remanded back to the first respondent for fresh consideration on merits and in accordance with law, after affording a fair hearing to the petitioner and other land owners.

10. Accordingly, the impugned order dated 15.09.2020 passed by the second respondent and the impugned order dated 30.10.2020 passed by the first respondent are hereby quashed and the matter is remanded back to the first respondent for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner and other land owners and by following the procedure established under law. Till final orders are passed, the first respondent shall not impose any penalty on the petitioner as per the provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959.

11. With the aforesaid direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1.The District Collector,
Thirunelveli District,
Thirunelveli.

2.The Sub Collector,
Cheranmahadevi,
Thirunelveli.



3.The Assistant Director of Geology and Mining,
District Collector Office Campus,
Thirunelveli.

+1 CC to M/s.C. ROBERT BRUCE, Advocate (SR-21508[F] dated
27/04/2022)

+1 CC to M/s.SPL.GP. (SR-21885[F] dated 27/04/2022)

W.P. (MD) .No.8075 of 2022
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SRK(CO)
KB(16.05.2022) 5P 6C