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W.A(MD)No.1305 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

W.A(MD)No.1305 of 2022

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.

... Appellants/Respondents

vs.

R.Murugesan

... Respondent/Petitioner

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 27.04.2022 passed in W.P(MD)No.8316 of 2022, on the file of this Court.

For Appellants : Mr.G.V.Vairam Santhosh
Additional Government Pleader

For Respondent : Mr.C.Jeganathan



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JUDGMENT

(Judgment of the Court was made by R.MAHADEVAN, J.)

Heard both sides and perused the materials available on record.

2. Originally, the respondent herein was issued with a show cause notice dated 16.03.2022 by the first appellant, based on the aerial survey conducted, pursuant to the order of this court in a public interest litigation viz., WP.(MD)No.16194 of 2020 dated 18.11.2020, as if, he was involved in the illegal quarrying. Challenging the same, the respondent preferred a writ petition in W.P(MD)No.8316 of 2022 stating that without issuing any notice before conducting the survey and without providing an opportunity to study the inspection report, the first appellant issued the said show cause notice by predetermining the issue.

3. By order dated 27.04.2022, the learned Judge disposed of the aforesaid writ petition, by directing the respondent herein to submit a reply to the show-cause notice within a period of two weeks from the date of receipt of a copy of the order and thereafter, the first appellant should pass final orders within a period of two weeks. In the said order, the learned



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WEB COURT Judge further observed as follows:

"7..... In order to protect the interest of the respondent, in case, any adverse orders are passed against them, the first appellant shall keep the adverse order, if any, in abeyance for a period of one month from the date of final order to enable the respondent to challenge the same, if so advised, in the manner known to him under law."

Aggrieved by the aforesaid order, the Government authorities have filed this intra-court appeal.

4. The main submission of the learned Additional Government Pleader appearing for the appellants is that the respondent is resorting to the illegal quarrying of rough stone and gravel in the not permitted adjoining patta and poramboke lands and transport them, in violation of Section 4(1A) of the Mines and Minerals (Development and Regulation) Act, 1957 and Rule 36(5)(b) of the Tamil Nadu Minor Mineral Concession Rules, 1959. Taking note of the gravity of offence committed by the respondent, the learned Judge permitted him to continue the quarrying operation till the passing of the final order and thereafter, another period of one month to enable the respondent to file appeal, by the order impugned herein, which is illegal and contrary to law. The learned Additional Government Pleader



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further submitted that in an identical case in ***District Collector, Theni District and others v. Sunderaj by judgment dated 01.09.2022 in W.A(MD)Nos.949 to 961 of 2022***, a co-ordinate Bench of this Court has considered the very same issue and deleted the second limb of the order passed by the learned Judge. The relevant portion of the said judgment is extracted below for ready reference:-

"7. This Court is unable to sustain the second point on which these writ appeals are argued. The first appellant cannot prejudge the issue and try to implement the consequences of final order even before the adverse order is passed. It is to be noted that learned Single Judge, while disposing of the writ petitions observed that the impugned show cause notices do not indicate that the first respondent in the writ petitions has predetermined the issue against the petitioners. The observation is contrary to the submission of learned Additional Government Pleader as his request now is that the writ petitioners should suffer an order of injunction to carry on quarry operations even in respect of the land for which there is licence, merely because the show cause notices were issued on the ground that the writ petitioners' licence are liable to be cancelled for the illegal activities. When the very issue has to be considered based on the explanation offered by the petitioners, while passing final orders, this Court is unable to sustain the arguments of learned Additional Government Pleader appearing for the appellants.



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8. *In view of the above, these Writ Appeals are partly allowed by deleting the operative portion of the impugned order of learned Single Judge of this Court in paragraph 7, in which, the first respondent is directed to keep the adverse order, if any, in abeyance for a period of one month from the date of final order to enable the petitioners to challenge the same, if so advised, in the manner known to them under law. In all other respects, the order of learned Single Judge is perfectly in order. No Costs. Consequently, connected Miscellaneous Petitions are closed."*

Therefore, the learned Additional Government Pleader sought to allow this appeal by setting aside the order of the learned Judge to the extent as indicated above.

5. Though the learned counsel appearing for the respondent / writ petitioner refuted the allegations made in the show cause notice, which was impugned in the writ petition, he has agreed to pass a similar order in this writ appeal, in line with the judgment in W.A(MD)No.949 of 2022 etc. batch.

6. In the light of the aforesaid judgment referred to on the side of the appellants and having regard to the submissions made by the learned counsel on either side, this Court is inclined to delete the second limb of the



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order, dated 27.04.2022 passed by the learned Judge in W.P(MD)No.8316 of 2022, as extracted in para no.3 of this judgment and is accordingly, deleted. In respect of other aspects, there is no modification *qua* order of the learned Judge, which is impugned herein.

7. In fine, the Writ Appeal stands disposed of, in the above terms.

No costs.

[R.M.D.,J.] & [J.S.N.P.,J.]
02.11.2022

Index : Yes / No
Internet : Yes
ps

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.



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R.MAHADEVAN,J.

and

J.SATHYA NARAYANA PRASAD,J.

ps

**ORDER MADE IN
W.A(MD)No.1305 of 2022**

02.11.2022