



W.P. No.19044/2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
13.03.2023	17.04.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 19044 OF 2018

AND

W.M.P. NOS.22435 TO 22438 OF 2018

T.Kujendran

.. Petitioner

- Vs -

1. The Secretary
Industries Department
Fort St. George, Chennai 600 009.

2. The Commissioner of Geology & Mining
Thiru Vi. Ka. Industrial Estate
Guindy, Chennai 600 032.

3. The District Collector
Nagapattinam District
Nagapattinam.

4. The Revenue Divisional Officer
Mayiladuthurai Taluk
Nagapattinam District.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying

this Court to issue a writ of certiorari to call for the records of the 3rd respondent's proceedings, bearing R.C. No.176/(G&M)/2002 dated 29.8.2011 as confirmed by the 2nd respondent by proceedings bearing No.7247/MM9/2013, dated 25.10.2013 and as confirmed by the 1st respondent by G.O. (2D) No.14, Industries (MMC-1) Dept., dated 11.7.2016, pertaining to the petitioner's lease granted sand quarry measuring 10.00.0 Hectares, comprised in Survey No.1, situated in Manalmedu West Part Block-1 Village, Mayiladuthurai Taluk, Nagapattinam District and quash the same.

For Petitioner : Mr. V.Sanjeevi

For Respondents : Mr. K.M.D.Muhilan, AGP

ORDER

The penalty, seigniorage amount and the value of sand, levied by the 3rd respondent in respect of the alleged excess quarry of sand by the petitioner, without authority on the lands to which the petitioner has no licence, which has been confirmed by the 2nd and 1st respondent in the appeal, is put in issue before this Court in the present petition.



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2. It is the case of the petitioner that the petitioner was the successful bidder in respect of river sand quarry for an extent of 10.00.0 Hectares comprised in Survey No.1 in Manalmedu West Part Block-1 Village, Mayiladuthurai Taluk, Nagapattinam District and necessary lease agreement in this regard was executed on 26.2.2001 for a period of three years from 26.2.2001 to 25.2.2004.

3. It is the further case of the petitioner that pursuant to the said lease, the petitioner commenced his quarry operations and was carrying on the same in accordance with the rules and regulations and in consonance with the terms and conditions of the agreement. It is the further averment of the petitioner that as per Rule 6 of the Tamil Nadu Minor Mineral Concession Rules (for short 'the Rules'), public could remove sand in small quantity for personal use without any license and in such circumstances, the villagers used to quarry and remove sand from the river beds for their personal purposes. It is the further case of the petitioner that even during handing over of possession of the quarry, there were quarried pits surrounding the subject quarry, which was witnessed by the authorities.



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4. It is the further case of the petitioner that due to certain issue with the villagers, the subordinates of the 3rd respondent, in collusion with the villagers, prevented the petitioner from transporting the quarried mineral by using the bridge, which resulted in the petitioner seeking the intervention of the 3rd respondent. However, the complaint of the petitioner, enraged the villagers, which resulted in the 4th respondent sending a show cause notice dated 14.1.2003 alleging that the Assistant Director of Geology and Mining inspected the quarry on 13.1.2003 and found that the petitioner had quarried 1820 lorry loads of sand outside the leasehold area and the petitioner was directed to appear for a personal hearing on 24.1.2003 and was directed to submit explanation as to why penalty, seigniorage and value of sand should not be levied against the petitioner. It is the further case fo the petitioner that the notice contained imaginary measurements alleged to have been taken in the adjacent area without the knowledge and notice to the petitioner.

5. It is the further case of the petitioner that the inspection alleged to have taken place was without the knowledge and notice to the petitioner and



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neither the petitioner nor his authorized representative were present during the inspection. It is the further case of the petitioner that he appeared before the 2nd respondent on 24.1.2023 and submitted his written explanation putting forth all the aforesaid points. However, inspite of the denial and explanation of the petitioner, without conducting enquiry in compliance with the principles of natural justice, vide proceedings of the 4th respondents, the petitioner was slapped with a demand of a sum of Rs.58,60,400/- towards seigniorage, value of sand and 15 times of penalty. It is the further case of the petitioner that the 4th respondent has passed the said proceedings by virtually pre-determining the issue, which is only due to the representation of the petitioner dated 7.2.2003. The order was passed arbitrarily without considering the explanation and the representation of the petitioner and maximum fine of 15 times penalty is levied, which clearly shows the manner in which the case has been dealt with by the 4th respondent.

6. It is the further case of the petitioner that the alleged report of the Assistant Director of Geology and Mining was on the basis of the statement of the Village Administrative Officer without conducting any enquiry. It is the



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further case of the petitioner that the quarry was subjected to periodical inspection by the authorities, who had issued the transport permits to transport the quarried mineral. It is the further averment of the petitioner that it is impossible to transport 1820 lorry loads of quarried sand without being detected by the officers, including the check posts. There is no evidence on the basis of which the said order has come to be passed and it is only a vindictive action taken against the petitioner due to the representation submitted by the petitioner.

7. It is the further averment of the petitioner that the order was passed by the 4th respondent in violation of principles of natural justice. The appeal filed by the petitioner before the 3rd respondent was dismissed vide order dated 21.3.2003 without conducting any enquiry and aggrieved by the said order of the 3rd respondent, the petitioner preferred W.P. No.10215 of 2003 and this Court, by order dated 21.02.2011, allowed the writ petition by setting aside the order of the 3rd and 4th respondents and directed the 3rd respondent to furnish copies of the alleged exparte report of the Assistant Director of Geology and Mining and, thereafter, to receive the explanation and conduct



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enquiry by giving an opportunity of personal hearing to the petitioner and pass orders in the manner known to law.

8. It is the further case of the petitioner that pursuant to the said order, the 3rd respondent furnished the exparte report to the petitioner and sought his explanation and by reply dated 11.4.2011, the petitioner submitted his reply denying the allegations and requested the 3rd respondent to conduct an enquiry. However, the 3rd respondent, without conducting any enquiry, vide notice dated 30.5.2011, directed the petitioner to appear for the personal hearing on 13.6.2011 and the petitioner appeared before the 3rd respondent and submitted his written explanation reiterating his allegations and denying the findings recorded by the Assistant Director of Geology and Mining. However, without considering all the materials and in stark contravention of the orders passed by this Court in W.P. No.10215/03, the 3rd respondent once against passed the very same order on 29.8.2011, by reproducing its earlier order dated 21.3.2003. Though a contempt petition was preferred against the said order by filing Contempt Application No.1826/2011 in which initially



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order of stay was granted, however, the said contempt application was dismissed on 29.10.2012.

9. It is the further case of the petitioner that a notice dated 28.2.2013 was caused by the 3rd respondent directing the petitioner to remit the penalty amount of Rs.58,60,400/- against which the petitioner filed W.P. No.15466 of 2013, which was subsequently withdrawn by the petitioner on 11.6.2013. Thereafter, the petitioner filed appeal before the 2nd respondent on 22.7.2013 along with a petition to condone the delay, which was dismissed by the 2nd respondent without going into the merits of the case citing that there is no provision under the Rules to condone the delay and aggrieved by the said order, the petitioner preferred second appeal before the 1st respondent on 3.12.2013, which was entertained by the 1st respondent and reports were called for from the 2nd and 3rd respondents.

10. It is the further case of the petitioner that after receiving the reports from the 2nd and 3rd respondents after affording an opportunity of personal hearing to the petitioner and upon receiving the written explanation



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of the petitioner rejected the second appeal by following the recommendations of respondents 2 and 3 without independently applying his mind to the materials. It is the further case of the petitioner that the aforesaid order of the 1st respondent was not communicated to the petitioner and only when the authorities sought to enforce the said order in the month of May, 2018, the petitioner came to know about the said order and, thereafter, the petitioner sought for a copy of the said order and proceeded to file a petition under the Right to Information Act seeking a copy of the said order, which was given to the petitioner. It is the further averment of the petitioner that the order of the 1st respondent shows clear non-application of mind, as the 1st respondent has mechanically passed the order accepting the recommendations of respondents 2 and 3, which is evident from the impugned order and, therefore, the petitioner has come before this Court by filing the present petition challenging the aforesaid impugned orders.

11. Learned counsel appearing for the petitioner, while reiterated the arguments, which were advanced in the first round of litigation in W.P. No.10215/03 that no notice was given to the petitioner when the quarry was



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inspected by the Assistant Director of Geology and Mining, further submitted that the absence of any notice strikes at the root of the inspection.

12. It is the further submission of the learned counsel that the inspection report dated 14.01.2003 was not provided to the petitioner, which resulted in this Court setting aside the order of demand and directed the respondents to provide a copy of the said report. Pursuant to the said order, the petitioner was provided with the report and granted opportunity of hearing before the impugned order has come to be passed.

13. However, it is the pivotal submission of the learned counsel that when the inspection was carried out on 14.1.2023, the Assistant Director of Geology and Mining, Nagapattinam, was not an officer authorised to inspect and take measurements. It is the submission of the learned counsel that the power of entry and inspection provided u/s 24 of the Mines and Minerals (Development & Regulation) Act, 1957 (for short 'the Act'), the Assistant Director of Geology and Mining was empower/authorised to inspect, survey and take measurements only vide G.O. Ms. No.63, Industries (MMA-1) dated



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11.5.2005 and prior to that the said officer was not authorised u/s 24 of the Act. Such being the case, the inspection carried out by the Assistant Director of Geology and Mining is without authority and jurisdiction and, therefore, the action taken on a report, which is not valid in the eye of law, cannot be allowed to continue. In support of his submission, learned counsel appearing for the petitioner relied upon the decision of the Apex Court in ***Chiranjilal Shrilal Goenka – Vs – Jasjit Singh & Ors. (1993 (2) SCC 507)***.

14. Per contra, learned Government Advocate appearing for the respondents submitted that in the earlier round of litigation, the question of jurisdiction or authority of the Assistant Director of Geology and Mining was not put in issue by the petitioner. The main grievance of the petitioner was only in relation to non-furnishing of the report of the said authority and the petitioner has not raised any qualms with regard to the jurisdiction of the said authority, and considering the plea of the petitioner, the report of the authority was directed to be provided to the petitioner and the matter was directed to be considered afresh by the respondents.



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15. It is the further submission of the learned Government Advocate that pursuant to the said order, as directed, the report of the Assistant Director of Geology and Mining was provided to the petitioner and the petitioner had gone ahead and submitted his explanation, which has resulted in the orders impugned herein. Once the petitioner having accepted the order passed by the Assistant Director of Geology and Mining and had not raised any dispute with regard to the jurisdiction of the authority at the particular point of time, the petitioner is estopped from canvassing the plea that the inspection u/s 24 of the Act conducted by the authority is without jurisdiction and, therefore, the report has no validity in the eye of law. It is the further submission of the learned Government Advocate that it is not open to the petitioner to pick and choose his time to advance the plea of jurisdiction when the report has been accepted and acted upon by the petitioner even at the earliest point of time.

16. It is the further submission of the learned Government Advocate that the decision in *Chiranjilal case (supra)* cannot benefit the petitioner in any way as in the said case, a decree has been passed by a Court, which did not



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have jurisdiction and the Supreme Court held that neither by consent nor by order of court could jurisdiction be conferred on the court. However, in the case on hand, the petitioner having accepted the inspection report and not challenged it in the earlier round of litigation except raising the plea of violation of principles of natural justice is estopped from raising the present plea at this belated point of time. Accordingly, he prays for dismissal of the present petition.

17. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials placed on record as also the decision relied upon on behalf of the petitioner.

18. Before embarking upon to decide the merits of the contentions, it would be just and necessary for this Court to advert to the relevant provisions, which have been pressed into service on behalf of the parties.



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19. Section 15 of the Act clothes the State Government with the power to make rules in respect of minor minerals. Sub-section (g) of Section 15 (1-A), which is relevant to the issue, relating to imposition of fines and other charges and for better understanding, the same is quoted hereunder :-

“15. Power of State Governments to make rules in respect of minor minerals.- (1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

* * * * *

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;

* * * * *

20. The penalties that could be imposed on any person contravening the provisions of sub-sections (1) and (1-A) of Section 15 is provided for u/s 21 of the Act and in the present case, sub-section (5) of Section 21 is relatable, which provides as under :-

“21. Penalties.-



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(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be for the period during which the land was occupied by such person without any lawful authority.”

21. There is no quarrel with regard to the power under which the appropriate authority could impose penalty and the action that could be taken against the person, who contravenes the provisions of Section 15 (1) and (1-A). The whole issue crops up only with regard to the power of entry and inspection, which is provided for u/s 214 of the Act and the same is quoted hereunder :-

“24. Power of entry and inspection.- (1) *For the purpose of ascertaining the position of the working, actual or prospective, of any mine or abandoned mine or for any other purpose connected with this Act or the rules made thereunder, any person authorised by the Central Government or a State Government in this behalf by general order, may –*

- (a) Enter and inspect any mine;*
- (b) Survey and take measurements in any such mine;*



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- (c) Weigh, measure or take measurements of the stocks of minerals lying at any mine;*
- (d) Examine any document, book, register, or record in the possession or power of any person having the control of, or connected with, any mine and place marks of identification thereon, and take extracts from or make copies of such document, book, register or record;*
- (e) Order the production of any such document, book, register, record, as is referred to in clause (d); and*
- (f) Examine any person having the control of, or connected with, any mine.*

(2) Every person authorised by the Central Government or a State Government under sub-section (1) shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, and every person to whom an order or summons is issued by virtue of the powers conferred by clause (c) or clause (f) of that sub-section shall be legally bound to comply with such order or summons, as the case may be."

22. In exercise of the powers granted u/s 15 (1) and (1-A) of the Act, Rules have been framed for regulating the quarry of minor minerals. Rule 36-A provides for penalties for any contravention of the provisions of Section 15 (1) and (1-A) of the Act and the same is quoted hereunder :-

"36-A. Penalties.-



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* * * * *

(5) Whenever any person contravenes any provisions, other than sub-rule (1) of rule 10 of these rules or conditions of a quarrying permit or quarrying lease granted under these rules the Director of Geology and Mining or the Chief Conservator of Forests, as the case may be, or the District Collector or the District Forest Officer as the case may be, shall after giving notice, charge that person and recover from him enhanced seigniorage fee up to a maximum of fifteen times the normal rate subject to a minimum of [twenty five thousand rupees] or in the alternative he shall be liable to be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both and in the case of continuing contravention with additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.”

23. Rule 36-A (5) provides for the infliction of penalty on the person, who has contravened the provisions in quarrying and recover from him enhanced seigniorage fee up to a maximum of fifteen times the normal rate subject to a minimum of [twenty five thousand rupees] or in the alternative he shall be liable to be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with



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both. It is only by invoking the aforesaid provision, the penalty has been imposed on the petitioner.

24. The petitioner is not questioning the authority of the respondents to impose penalty and other fees as provided for u/s 36-A (5) and equally the rule making power of the respondents u/s 15 of the Act. As aforesaid, the ground of attack of the petitioner is on the basis of the inspection, which is alleged to have been carried out by the Assistant Director of Geology and Mining, an officer, who according to the petitioner, is not vested with jurisdiction. It is the stand of the petitioner that as on the date when the inspection was carried out by the said authority, as mandated u/s 24 of the Act, the said authority was not vested with jurisdiction to inspect the quarries. In this regard, the petitioner places reliance upon G.O. Ms. No.63, Industries (MMA-1) dated 11.5.2005, which was published in the Government Gazette on 27.7.2005 in and by which only the Director of Industries and Commerce, Joint Director of Industries & Commerce and Collectors and Sub-Divisional Officer were alone authorised officers to inspect the mine and the Assistant



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Director of Geology and Mining was not an authorised officer to inspect the mine.

25. There is no quarrel in this behalf and the Government Order in G.O. Ms. No.63 specifically empowers the officers prescribed therein, who are clothed with power u/s 24 to inspect the mine and the Assistant Director of Geology and Mining is not an authority authorised vide the aforesaid Government Order. In the above backdrop, the facts surrounding the present case requires to be looked into for holding for or against the party to the *lis*.

26. The Assistant Director of Geology and Mining is alleged to have inspected the mine on 14.1.2003 and based on the inspection, upon notice and affording an opportunity of hearing, the 4th respondent had passed orders imposing a demand of seigniorage, value of sand and 15 times penalty to the tune of Rs.58,60,400/-. The appeal filed in this regard before the 3rd respondent challenging the said imposition of penalty and other fees stood negatived. It is pertinent to point out that it is not the case of the petitioner either before the 4th respondent or the 3rd respondent that the inspection



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conducted by the Assistant Director of Geology and Mining was without jurisdiction.

27. Be that as it may. Aggrieved by the dismissal of the appeal, the petitioner preferred W.P. No.10215 of 2003 and this Court, vide order dated 21.02.2011, allowed the writ petition and set aside the orders of the 3rd and 4th respondents. The relevant portion of the order passed in the aforesaid writ petition is quoted hereunder :-

“7. The admitted facts in all these case are that the impugned orders came to be passed imposing seigniorage fees, penalty, etc., on the basis of the report of the Assistant Director of Geology and Mining. It is not in dispute that such reports have not been furnished to the petitioners before imposing such huge amount of penalty as well as seigniorage fees.

8. On the crux of the issue involved in all these cases, it is clear that what is complained of by the petitioners is the violation of principles of natural justice. The entire action has been taken based on the reports of the Assistant Director of Geology, who is stated to have conducted inspection and filed reports during which time the petitioners were not directed to be present. Even though in normal circumstances appeal remedy is available against the impugned orders, the



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availability of alternative remedy is not a bar for this Court to invoke its jurisdiction under Article 226 of the Constitution of India since there is a complaint of violation of the principles of natural justice, especially after pendency of these writ petitions from 2003.

* * * * *

16. But, one other aspect that has to be considered in these cases is that when show-cause notice was given prior to the passing of the impugned order, even though it has been the case of the petitioners that they appeared in person for personal enquiry they did not request for copies of reports of the Assistant Director of Geology. Therefore, it cannot be a case where this Court should straight away set aside the orders. Therefore, I am of the considered view that one more opportunity must be given to the petitioners by furnishing the copies of reports so as to enable the petitioners to substantiate their case while the final orders are passed by the respondent in accordance with law.

17. The main complaint of the petitioners is in respect of non-compliance of the principles of natural justice.

(Emphasis Supplied)

28. On a careful perusal of the order in the earlier round of litigation in W.P. No.10215 of 2003, it is the admitted case of the petitioner, as has been captured in the said order, the whole crux of the issue raised by the petitioner



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related to non-compliance of principles of natural justice. Either it related to non-grant of opportunity or non-furnishing of the report of the Assistant Director of Geology and Mining, which incapacitated the petitioner to effectively represent and substantiate his case. Nowhere in the said writ petition, the grievance of the petitioner related to the lack of jurisdiction of the Assistant Director to conduct inspection. The above materials clearly show that the petitioner had accepted the inspection caused by the Assistant Director of Geology and Mining and had only questioned the further action of the authority in imposing the penalty without following the principles of natural justice by providing an opportunity to the petitioner after furnishing the inspection report of the Assistant Director of Geology and Mining. Nowhere, the petitioner had questioned the lack of jurisdiction of the said authority to proceed with the inspection. In such a backdrop, the petitioner having not raised any complaint with regard to the lack of jurisdiction of the authority, who caused inspection, it clearly shows that the petitioner had, in fact, accepted the inspection caused by the authority and without any qualms had only put before this Court the non-furnishing of the said report and also the non-compliance of principles of natural justice.



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29. Once the petitioner, on his own volition, has accepted the said report and had prevailed upon this Court to set aside the orders of the 3rd and 4th respondents only insofar as the said authorities had not furnished the copy of the report and provided proper opportunity to the petitioner to substantiate his case in accordance with law, the Court also, on the basis of the acceptance of the petitioner with regard to the inspection of the Assistant Director of Geology and Mining, had accepted the said report and had passed the following order :-

“17. In such view of the matter, the impugned orders in all these cases are set aside with direction to the respondents concerned to furnish the report of the Assistant Director of Geology to the respective petitioners within a period of 15 days from the date of receipt of copy of the order and thereafter, it is open to the petitioners to furnish their explanation for the same and if personal enquiry is sought for, the respondent shall afford the same and pass appropriate orders in the manner known to law. It is made clear that on receipt of such report of the Assistant Director of Geology within the time stipulated above, the respondent shall confer 15 days time to enable the petitioners to give reply and thereafter pass appropriate orders depending on the



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petitioners' request for personal hearing. Accordingly, the writ petitions stand ordered. No costs."

30. On a careful perusal of the entire order in W.P. No.10215/2003, it is evident that there is not even a whisper on behalf of the petitioner with regard to the jurisdiction of the Assistant Director of Geology and Mining. Premising its view on the basis of the stand of the petitioner, the Court had gone ahead and accepted the report, which has been accepted by the petitioner as well without demur, but only contested insofar as non-furnishing of the same to the petitioner and directed the respondents therein to provide a copy of the report to the petitioner so as to enable the petitioner to make an effective representation and substantiation of its case.

31. The above position stares writ large on the face of the records and there could be no quarrel with regard to the same. Pursuant to the said order in W.P. No.10215/2003, the copy of the inspection report of the Assistant Director of Geology and Mining was provided to the petitioner based on which the petitioner submitted his representation, which was rejected resulting in the order imposing penalty as aforesaid. It is pertinent to point out that the



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representation of the petitioner post the order in W.P. No.10215/03, which was submitted on 13.6.2011, the petitioner has not taken a stand with regard to the jurisdiction of the Assistant Director of Geology and Mining. All that the petitioner has stated in the said representation are that he has not committed any fraud by removing illicit sand and that the inspection was not conducted in his presence and that there is no material which could be taken in aid to implicate that the petitioner had removed sand which had caused the pits. Apart from the above, there is no other defence taken by the petitioner in the said representation. Resultantly, as aforesaid, the representation/explanation was negative and the impugned order imposing penalty was passed.

32. Even in the memorandum of appeal filed by the petitioner against the impugned order imposing penalty, the jurisdiction of the authority, who conducted inspection, viz., the Assistant Director of Geology and Mining, was not put in issue. The appeal of the petitioner is dated 22.7.2013. As stated supra, the appeal was rejected on the ground of delay, which resulted in the filing of the second appeal by the petitioner before the 1st respondent on 3.12.2013 and written submissions were also permitted to be filed and



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accordingly the petitioner filed written submissions. Curiously, it is to be pointed out that even in the said second appeal and written submission, the petitioner has not taken any stand with regard to the jurisdiction of the Assistant Director of Geology & Mining. In effect, the petitioner had accepted the inspection report of the Assistant Director of Geology and Mining and had only questioned his act *qua* the violation of principles of natural justice as the alleged inspection has been behind the back of the petitioner and that he was not put on notice before the inspection and not even called during the inspection. The petitioner, to put it bluntly, had accepted the inspection report in totality and had raised his defence only on the aspect of violation of principles of natural justice and no other ground has been taken, including the ground of lack of jurisdiction.

33. A careful perusal of the aforesaid facts, which have been culled out above from the materials available on record, clearly reveal that the petitioner had accepted the report and not questioned about the jurisdiction of the Assistant Director of Geology and Mining for more than a decade. It is also pertinent to point out that the appeal dated 22.7.2013 and the second appeal



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dated 3.12.2013 have been prepared on the basis of legal advice and not a mere submission of a representation by the petitioner. Therefore, definitely, all the papers would have been available before the legal practitioner when the appeal and second appeal were prepared. However, for reasons best known, the jurisdiction of the Assistant Director of Geology and Mining has not been put in issue at any point of time. Resultantly, the order of the 1st respondent in the second appeal has been passed on 11.7.2016, rejecting the appeal of the petitioner, prompting the petitioner to file the present petition.

34. From the above sequence of events, it transpires that for more than a decade, the issue of jurisdiction of the Assistant Director of Geology & Mining to conduct the inspection has not been put in issue by the petitioner, even though after the first round of litigation, the petitioner has solicited the services of legal practitioner to put forth his defence. In effect, the petitioner, accepting the report of the inspection conducted by the Assistant Director of Geology and Mining has only questioned the manner in which the inspection has taken place, pointing out the violations of principles of natural justice, the petitioner not having been given notice to be present at the time of



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inspection, but has not questioned the jurisdiction of the said authority to cause the inspection. The petitioner, having accepted the inspection carried out by the Assistant Director of Geology and Mining at the earliest point of time and accepted the report even before this Court in the earlier round of litigation and had raised only the issue of violation of principles of natural justice, in that the report not having been given to the petitioner to submit his detailed representation, after more than a decade and a half, the petitioner is estopped from questioning the lack of jurisdiction of the authority, who caused the inspection, as the petitioner has accepted the inspection carried out by the said authority.

35. The petitioner cannot be allowed to pick and choose his time to raise the plea every now and then and it is to be pointed out that ignorance of law cannot be a defence, as the petitioner has solicited the services of a legal practitioner, who is bound to give proper legal advice. The petitioner, in the appeal as well as the second appeal, as aforesaid, had solicited the services of a legal practitioner, but the issue of lack of jurisdiction of the Assistant Director of Geology and Mining has not been raised in either of the appeal.



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Further, it is also to be pointed out that even in the writ petition, the question of lack of jurisdiction has not been raised as a ground and only in the submissions advanced by the learned counsel before this Court, the issue has been taken up.

36. As pointed out by this Court above, once the petitioner has accepted the report and had acted on it by submitting his explanation, more so, by knocking the doors of this Court and seeking a copy of the report to submit his detailed explanation, it does not lie in the mouth of the petitioner to question the lack of jurisdiction of the authority who had caused the inspection, when the petitioner had already accepted the said report and acted on the same. If the Court allows a litigant to advance contention as his convenience, there would be no end to a litigative process and the litigants would choose the contentions to be raised in a litigation and failure of a particular ground, would once again result in the filing of another writ petition raising another ground, thereby there would be no end to the litigative process.



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37. The petitioner was in the position to raise the plea of lack of jurisdiction at the earliest point of time. When the petitioner had not opted to take the said plea, the petitioner is estopped from taking the said plea and *constructive res judicata* comes into operation and the plea, which the petitioner has not taken at the earliest point of time, the petitioner cannot take the same plea against the same persons at a later point of time. Therefore, the stand of the petitioner that the inspection conducted by the Assistant Director of Geology and Mining is without jurisdiction cannot be taken in aid of by the petitioner in the present petition to assail the impugned order.

38. The petitioner has relied on the decision in *Chiranjilal case (supra)* to buttress his contention that when a statute does not confer jurisdiction on a Tribunal, no court can confer jurisdiction on it even on the basis of consent of the parties. This Court is not averse to the said decision but being in full agreement with the said decision, would only like to point out that the facts in the present case would not attract the applicability of the said decision.



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39. It is to be pointed out that consent is different from acceptance. In consent, parties, on mutual agreement, consent to adopting a particular course; whereas in acceptance, the party, on his own volition, accepts a particular course.

40. In the case on hand, as aforesaid, the petitioner, who is aggrieved, had accepted the report on his own volition, but raised grievance only with regard to the said report not being furnished to him. The petitioner was not opposed to the report. Rather, the petitioner was only aggrieved that the inspection was not done in his presence and the subsequent acts of imposition of penalty were clouded with violation of principles of natural justice. Only in that backdrop, this Court, in the earlier round of litigation, had made a categorical mention that the only ground on which the petitioner has premised the writ petition is on violation of principles of natural justice and not on any other basis. Such being the case, the petitioner cannot now come before this Court and claim that lack of jurisdiction renders the inspection report illegal. The contention cannot be accepted at the eleventh hour by this Court, when the petitioner had all the time at his disposal, even during the



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first round of litigation to raise the very same grievance. Therefore, the contention with regard to lack of jurisdiction, though acceptable, but gets defeated on the very act of the petitioner in accepting the report filed by the Assistant Director of Geology and Mining and, therefore, he cannot now turn back, after failing in his endeavour to get a favourable order, by questioning the jurisdiction of the Assistant Director of Geology and Mining.

41. Insofar as the contentions relating to violation of principles of natural justice is concerned, the petitioner having been furnished with a copy of the inspection report and had also been afforded with an opportunity of personal hearing in addition to submitting his written submissions by the appellate as well as the second appellate authority, as has been directed by this Court in W.P. No.10215/2003, is barred from canvassing the same plea once over. When the original authority, based on the materials has taken a conscious decision to impose seigniorage fee, value of sand and fifteen times penalty, as provided for under the Act, after granting opportunity to the petitioner, which has been concurred with by the appellate and second appellate authorities, there being no *mala fide* attributed to the said



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authorities or any violations of procedure or illegality in the conduct of the hearings, merely because the very same order has been passed once over by the 3rd respondent, cannot be a ground for this Court to interfere with the said order on mere *ipsi dixit* of the petitioner_in the absence of any credible material.

42. For the reasons aforesaid, the impugned order passed by the 3rd respondent, as confirmed by the 2nd and 1st respondent does not suffer the vice of any illegality, irregularity, arbitrariness or perversity and the same does not call for any interference at the hands of this Court. Accordingly, this writ petition fails and the same is dismissed. Consequently, connected miscellaneous petitions are also dismissed. There shall be no order as to costs.

17.04.2023

Index : Yes / No
GLN

To

1. The Secretary
Industries Department



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Fort St. George, Chennai 600 009.

2. The Commissioner of Geology & Mining
Thiru Vi. Ka. Industrial Estate
Guindy, Chennai 600 032.

3. The District Collector
Nagapattinam District
Nagapattinam.

4. The Revenue Divisional Officer
Mayiladuthurai Taluk
Nagapattinam District.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.19044 OF 2018**

**Pronounced on
17.04.2023**