



Crl.O.P.(MD)No.6201 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	28.07.2023
Delivered on	.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.6201 of 2023

A.Bhaskar

... Petitioner

Vs.

The District Collector,
Madurai District. Madurai.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the impugned complaint filed in Spl C.C No. 141/2021 on the file of the Special District Judge, Special court to deal with the cases of offences in contravention of the provisions of Mines and Minerals (D & R) Act 1957 for offences under Section 4 (1-A) r/w. 21(1) of the Mines and Minerals (Development and Regulations) Act, 1957 and quash the same so far as against the petitioner is concerned.



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For Petitioner : Mr.A.Ramesh
Senior Counsel
for M/s.D.Shanmugaraja
Sethupathi

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

ORDER

According to the prosecution that the petitioner/A2 has committed the offences punishable under Section 4(1-A) of the Mines and Minerals (Development and Regulations) Act, 1957 (hereinafter referred to as "the Act").

2. The contents of complaint filed by the District Collector, Madurai, in brief are as under:-

(a) The lands in Survey Nos.80/2C, 80/2D, 80/2E, 80/3, 80/4A, 80/4B, 80/5B, 80/5A, 80/5C, 80/5D originally belonged to accused No.1 by name G.Gopala Krishnan. He has alienated the said lands in favour of the petitioner/2nd accused vide sale deed dated 27.07.2023 registered as Document No.1779/2013.



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(b) There were 89 pieces of granite stones stored in the said land.

The petitioner/2nd accused knowing fully well that the granite stones were stocked on the said land had purchased the said land from Accused No.1.

(c) The District Collector, Madurai has informed the Directorate of Geology and Mines, Chennai that granite stones were stocked in the said land. *Vide* proceedings No.R.C.6843/MM2/2012 dated 19/3/2013, surveyors and other officers went to the said land and found 89 pieces of granite stones of various colours were illegally stocked without any permission and measurement of the total granite stones found to be 861.81.1 Cubic Metres.

(d) After receiving of a report from the District Collector, as per G.O.Ms.No.1664 dated 08.12.1981 under Section 21(4) of the Act, the District Collector has issued orders to seize the granite stones that were illegally stocked. Accordingly, all 89 pieces of granite stones were seized from the land belonging to the petitioner/2nd accused. Since the pieces of granite stones are of huge in size, and there was difficulty in



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transporting them, the seized granite stones were kept there itself and being monitored daily through the Village Administrative Officer and Village Assistants.

(e) The District Collector has filed a complaint against A1 and A2/petitioner seeking to punish them under Section 21(1) of the Act for illegal stocking of 89 granite stones. The said complaint was taken cognizance by the Special Court constituted to deal with the cases for the offences in contravention of the provisions of Mines and Minerals (D & R) Act 1957 as Special C.C.No.141 of 2021.

3. Aggrieved by the same, this petition is filed under Section 482 of Cr.P.C. seeking quashment of Special C.C.No.141 of 2021.

4. Learned Senior Counsel for the petitioner/A2 Mr.A.Ramesh, submits that petitioner/A2 to be exonerated from criminal liability as the excavation of 89 granite stones were done not by him but by the accused No.1 who was the previous owner and stocked them and that he has simply purchased the land and not the granite stones thereby he is no way



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concerned with the granite stones which are available on the land purchased by him through sale deed dated 13.01.2010.

5. These submissions of the petitioner/2nd accused are not convincing. The petitioner cannot be ignorant of the fact that granite stones are stocked on the land as on the date of purchase. It is true that there is no record to show that he has purchased the land along with the granite stones stored on the land, however at the time of purchasing of the land, he must have inspected the land and could have seen that 89 pieces of granite stones stored on the said land. The storage of granite was continued even after the purchase of the land by the petitioner/2nd accused. As on the date when the revenue and mining officials have inspected the land, the petitioner was the owner of the land and the granite stones were stored. If at all the petitioner is really innocent at the time of purchase, he should have asked his predecessor-in-title i.e. Accused No.1 to removed those boulders from the land as the condition precedent to purchase the land or at the time of purchase, the petitioner/2nd accused should have transported boulders out of the land or at least the petitioner/2nd accused should have informed the complainant



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and officers of Mines and Minerals prior to his purchase about the storing of the said boulders. Therefore, the petitioner cannot contend that he cannot be made liable in respect of storage of the granite stones.

6. Another main contention raised by learned counsel for the petitioner is in respect of authorization of the District Collector in filing the complaint.

7. Section 22 of the Act runs as under:-

"No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government."

8. On going through the above provision, it is clear that unless the complaint is filed by a person in writing who is authorized specifically either by the Central Government or State Government, the Court shall not take cognizance of the offence.



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9. Therefore, it is to be examined as to whether the District Collector who has filed the complaint has got the authorization to file such complaint under Section 22 of the Act. The respondent/complainant has mentioned in the complaint that he is authorised to file complaint as per the orders of the Government in G.O.No.3026 dated 19.07.1966 which was published in the official gazette dated 07.09.1966.

10. Mr.A.Ramesh, learned Senior Counsel appearing for the petitioner submits that on 19.07.1966 when G.O.No.3026 was issued and on 07.09.1966 when said Government Order was published in the official gazette, storing and transporting of granite was not an offence. It is true that Section 1-A of the Act was inserted by way of an amendment in the year 1999 by Act 38 of 1999 which came into force with effect from 18.12.1999. Which means storage of granite was not the offence prior to 18.12.1999.

11. Accordingly, the authorization given to the District Collector prior to 18.12.1999, when the storage become punishable, is not applicable to the offence under Section 1-A of the Act. Whatever



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authority given to the District Collector on 19.07.1966 applies to the penal provisions which were in the statute as on that date but not the offences that were introduced subsequent to issuance of G.O.No.3026 dated 19.07.1966. Which means subsequent to insertion of Section 4(1-A) of the Act, no authorisation given in favour of the District Collector thereby the authorization given on 19.07.1966 is not applicable to the offence which was introduced on 18.12.1999.

12. Learned Additional Public Prosecutor submits that though there is no specific authorisation subsequent to insertion of Section 4(1-A) of the Act on 18.12.1999, the Government has issued orders vide G.O.12 on 02.02.2009 delegating the powers to file complaint in respect of offences under the Act. He has filed a copy of the said G.O. which would go to show that under Section 22 of the Act in supersession of earlier G.Os., the Governor of Tamil Nadu authorises the District Forest Officer and the Police personnel not below the rank of Inspector of Police to make a complaint in writing before the Court in respect of any offences under this Act. Learned Additional Public Prosecutor tried to convince this Court that since the powers were delegated as per G.O.12



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dated 02.02.2009 and by which time Section 4(1-A) of the Act has already been introduced on 18.12.1999, the delegation of powers under G.O.12 are also applicable even to the offences punishable under Section 4(1-A) of the Act.

13. As rightly submitted by learned Additional Public Prosecutor as on the date of issuance of G.O.Ms.No.12 dated 02.02.2009 since Section 4(1-A) of the Act has already been introduced, the powers delegated under G.O.12 applicable to all offences under the Act including Section 4(1-A) of the Act.

14. But still there are two issues, firstly the complaint is not filed by the District Forest Officer or Police Officer not below the rank of Inspector of Police, but the complaint is filed by the District Collector. The second issue is the District Collector who has specifically mentioned in the complaint that he is authorized to file the complaint as per G.O. 3026 dated 19.07.1966. Therefore, the question arises is how the prosecution would get benefit under G.O.12 dated 02.02.2009.

15. It is submitted by learned Senior Counsel appearing for the



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petitioner that on both the counts the complaint filed by the District Collector should not have been taken cognizance as he has no authority to file the complaint. On the other hand, learned Additional Public Prosecutor submits that G.O.12 can be extended in such a way that it covers all the offences including the alleged offences committed by the accused.

16. On careful perusal of G.O.12, it is clear that powers were delegated to certain officers of certain department. It does not mean that the powers which were originally vested with the District Collector were taken away by the amendment. That means either the District Collector or the District Forest Officer or the Police Officer as mentioned in G.O. 12 can file the complaint thereby the District Collector is not incompetent to file the complaint. Therefore, even after issuing of G.O. 12, the District Collector is continues to hold the power to file the complaint. Had the complaint filed by the District Forest Officer or Police Officer as mentioned in G.O.12, the complaint would have been in order, however, the complaint was filed by the District Collector.



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17. Thereby, the other limb of the issue comes into picture as to on account of issuance of G.O.12 dated 02.02.2009 whether the complaint filed by the District Collector can be said to be in order. Admittedly, there is no authorisation issued subsequent to G.O.3026 dated 19.07.1966 authorising the District Collector to file the complaints. The Government should have issued an authorisation subsequent to amendment of Section 4(1-A) of the Act on 18.12.1999 so that the authorisation so given to the District Collector also includes all the offences under the Act including the offence under Section 4(1-A) of the Act, which resulted that the District Collector has no authorisation to file complaint in respect of Section 4(1-A) of the Act.

18. If at all the complaint is filed either by District Forest Officer or the Police personnel not below the rank of Inspector of Police, the complaint should have been in order similarly if authorization given subsequent to 18.12.1999 in favour of the District Collector, even then the complaint could have been in order. Finally, if the respondent Complainant has not mentioned anything as to under which Government Order he draws the power to file the complaint to some extent an attempt



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can be made to interpret that basing on G.O.12 which was issued subsequently to insertion of Section 4(1-A) of the Act on 08.12.1999, the District Collector has power to file the complaint. But, in the case on hand, the District Collector has specifically mentioned that he is drawing the power to file the complaint only basing on G.O.3026 dated 19.07.1966 which is gazetted on 07.09.1966. As already observed above, under G.O.3026, the District Collector has no power to prosecute the petitioner, since as on the date of the Government Order, storing of granite stones is no offence. Therefore, the powers given by the Government to the District Collector under the said Government Order is not in respect of filing of prosecution for storing of the granite stones. Therefore, technically the District Collector has no powers even as of today to file any complaint against anybody in violation of Section 4(1-A) of the Act.

19. Learned Senior Counsel appearing for the petitioner/2nd accused submits that the Court cannot go beyond the statute and interpret the legislation to the effect that G.O.12 can be introduced to authorise the District Collector to file the complaint. He has relied upon the judgment



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of the Hon'ble Apex Court in the case of ***Union of India v. Deoki***

Nandan Aggarwal, reported in *(1992) Supp (1) SC*, wherein it has held

as under:-

"We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as "more than five years" and as "more than four years" in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. Vide *P.K. Unni v. Nirmala Industries*, 1990 1 SCR 482 at



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488; Mangilal v. Suganchand Rathi, [1965] 5 SCR 239; Sri Ram Ram Narain Medhi v. The State of Bombay, [1959] Supp. 1 SCR 489; Smt. Hira Devi & Ors. v. District Board, Shahjahanpur, [1952] SCR 1122 at 113 1; Nalinkhya Bysack v. Shyam Sunder Haldar & Ors., [1953] SCR 533 at 545; Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdaor Sabha, [1980] 2 SCR 146; S. Narayanaswami v. G. Pannerselvam & Ors., [1973] 1 SCR 172 at 182; N.S. Vardachari v. G. Vasantha Pai & Anr., [1973] 1 SCR 886; Union of India v. Sankal Chand Himatlal Sheth & Anr., [1978] 1 SCR 423 and Commissioner of Sales Tax, U.P.v. Auriaya Chamber of Commerce, Allahabad, [1986] 2 SCR 430 at 438. Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme, will not also come under the principle of affirmative action adopted by courts some times in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power."

20. Section 22 of the Act is very clear which starts with negative phrases "*No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government*". It is very clear from above provision that the Court shall not take cognizance



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22. Originally, when the act has been passed by the Parliament, the framers might not have thought that illegal mining would be so rampant, thereby suitable mechanism to meet the challenges have not been contemplated under the Act. It is high time that all the offences shall be made cognizable where police officer without any authorisation can register FIR and proceed with investigation immediately.

23. In view of the discussion made above, it is clear that on account of the fact the District Collector is not having authorisation to file the complaint, taking cognizance on the complaint filed by the District Collector against the petitioner under Section 4(1-A) of the Act is irregular.

24. Accordingly, the proceedings in Spl C.C No. 141/2021 are required to be quashed. However, respondent complainant is at liberty to file a fresh complaint by the competent officer concerned having authorisation as per G.O.12 dated 02.02.2009 if he can file fresh complaint as per the procedure established under the law.



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20.09.2023

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NCC : Yes / No
Index : Yes / No
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PKN/mvs.

To

1. The District Collector,
Madurai District, Madurai.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

PKN/mvs.

Pre-delivery order made in
Crl.O.P.(MD)No.6201 of 2023

Dated: 20.09.2023