



WP(MD)No.21111 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.21111 of 2022

and

WMP(MD)No.15324 of 2022

Devapriyan @ Duraiyappa

... Petitioner

v.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Revenue Divisional Officer,
Srivaikundam Taluk,
Thoothukudi District.

3.The Tahsildar,
Srivaikundam Taluk,
Thoothukudi District.

4.The Assistant Director of Geology and Mining,
Department of Geology and Mining,
Thoothukudi District,
Thoothukudi.



WP(MD)No.21111 of 2022

5. The Inspector of Police,
Srivaikundam Police Station,
Thoothukudi District.
[Crime No.35 of 2018]

6. The District Registrar,
Palayamkottai,
Tirunelveli District.

... Respondents

[Respondent No.6 suo motu impleaded
vide order dated 13.10.2022]

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records pertaining to the impugned order in Na.Ka.No.Aa2/526/2020 dated 27.05.2022 passed by the 2nd respondent and quash the same as illegal, arbitrary and non-application of mind.

For Petitioners : Mr.V.Angusamy
For Respondents : Mr.M.Sarangan,
Additional Government Pleader

ORDER

The petitioner has filed this writ petition with a grievance that the respondents have imposed a penalty without conducting any enquiry and without providing an opportunity of hearing, as contemplated under Rule 36A of the Tamil Nadu Minor Mineral Concession Rules, 1959.



WP(MD)No.21111 of 2022

2.The learned Additional Government Pleader, based on the instructions provided by the Sub Collector, Thoothukudi submitted that no notice was issued to the petitioner. He further submitted that the Act and Rules do not contemplate any such notice before passing any order under Rule 36A of the Tamil Nadu Minor Mineral Concession Rules.

3.This Court paid it's anxious consideration to the rival submissions made on either side.

4.The main grievance of the petitioner is that the penalty was imposed without conducting any enquiry and without providing them an opportunity of hearing. Though there is no provision available under the Tamil Nadu Minor Mineral Concession Rules for an enquiry / personal hearing before imposing penalty under Rule 36A, in cases where certain factual ascertainment is required in order to find out whether the person has actually involved in the illegal quarrying, an enquiry / personal hearing is mandatory.



WP(MD)No.21111 of 2022

5.The Hon'ble Supreme Court considered this principle in ***Siemens Ltd. v. State of Maharastra and Others*** [(2006) 12 SCC 33] and following the same, this Court in ***G.Selvaraj and Another v. District Collector, Villupuram*** [(2023) 6 MLJ 465] has held as follows:-

“14.This Court placed reliance upon the earlier judgments of the Apex Court and it was held that personal hearing or enquiry ought to have been conducted in order to ascertain as to whether the delinquent actually indulged in illicit quarrying. Even though Rule 36-A does not specify personal hearing or enquiry, in a case where factual ascertainment is required in order to find out whether the concerned persons actually involved in illicit quarrying, such enquiry / personal hearing will become mandatory, failing which the concerned persons will not be in a position to prove their defence.”

6.In the case on hand penalty has been imposed on the petitioner for certain violations in his quarry. Before passing such order, reasonable opportunity ought to have been provided to the petitioner, which, admittedly, was not provided. Therefore, the order impugned in this writ petition 27.05.2022 is set aside. The matter is remitted back to the respondents for



WP(MD)No.21111 of 2022

fresh consideration. The respondents shall conduct an enquiry by providing an opportunity of hearing to the petitioner and thereafter, pass appropriate orders. In the event if the petitioner disputes the quantum, it is open to the respondents to conduct drone survey to identify the extent of quarry conducted by the petitioner and proceed further in accordance with law. This exercise has to be completed within a period of six months.

7. Accordingly this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
NCC : Yes / No
dsk

26.09.2023



WP(MD)No.21111 of 2022

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WP(MD)No.21111 of 2022

B.PUGALENDHI, J.

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WP(MD)No.21111 of 2022

26.09.2023