



W.P(MD)No.16453 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16453 of 2014

and

M.P(MD)No.1 of 2015

Remibai Jeppiar

*(Petitioner is substituted vide order
of this Court dated 04.07.2023 in
W.M.P(MD)No.7042 of 2023)*

... Petitioner

Vs

1.The District Collector,
Collectorate,
Nagercoil,
Kanyakumari District – 629 001.

2.The Revenue Divisional Officer,
Padmanabapuram,
Kanyakumari District.

3.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

4.S.Nagarajan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, to call for the records



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comprised in proceedings No.ROC No.283/G&M/2014 on the file of the Collector, Kanyakumari District at Nagercoil dated 20.09.2014 in confirming the order of the RDO, Padmanabhapuram as made in his proceedings No. A1/5308/2012 dated 08.03.2014 and to quash the same and consequently forbear the respondents from initiating any action against the petitioner in regard to illegal mining in respect of Survey No. 498/2 situate in Velimalai Village , Kalkulam Taluk, Kanyakumari District.

For Petitioner : Mr.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.S.RA.Ramachandran
Additional Government Pleader
for R.1 to R.3

No Appearance for R.4

ORDER

Heard the learned Senior Counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the official respondents.

2. The case of the petitioner is as follows:

One C.Thangaraj owned petition mentioned lands. He was issued with mining lease dated 30.11.2006 to quarry rough stones in Survey No.498/2. It was followed by execution of lease deed dated 16.03.2007 for five years.



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C.Thangaraj executed a registered sale deed dated 30.10.2008 in favour of M/s.Jeppiaar Fishing Harbour Muttom Private Limited. M/s.Jeppiaar Fishing Harbour Muttom Private Limited sold the property in favour of M/s.JET Associates. M/s.JET Associates entered into lease agreement with C.Thangaraj so as to enable him to continue his quarrying operations. The lease period expired on 15.03.2012.

3. While so on 13.09.2012, mining officials received information that even after the expiry of the lease period quarrying operations were illegally continuing. Two Taurus lorries bearing Registration Nos.TN 21/AD 0717 and TN 21/AC 9806 belonging to Jeppiaar Blue Metals Private Limited were seized. An inspection was conducted in Survey No.498/2. The authorities came to the conclusion that 21,201 units (60,000 cubic meter) of rough stones had been illegally quarried. Crime No.217 of 2012 was registered on the file of Kottricodu Police Station for various offences. The second respondent without issuing any show cause notice passed order dated 07.11.2012 called upon Thiru.Jeppiaar to pay Rs.3,53,76,750/- (Rupees Three Crores Fifty Three Lakhs Seventy Six Thousand Seven Hundred and Fifty only). It was challenged in W.P(MD)No.14796 of 2012. The writ petition was allowed on 10.09.2013 in the following terms:

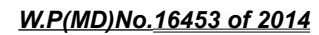


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“6.Of-course, it is true that in general, this Court will not entertain a writ petition, when there is an alternative remedy available for the party aggrieved. But, at the same time, it is a settled law that if the order impugned in the writ petition had been passed in gross violation of the principles of natural justice i.e., without affording any opportunity to the aggrieved, then this Court will entertain such a writ petition (Vide a Division Bench judgment of this Court in V.Kottaiveeran Vs. The District Collector, Madurai District, Madurai, reported in 2012(1) CWC 451).

7.In the case on hand, admittedly a copy of the letter of the Deputy Director of Geology and Mining, dated 26.09.2012, was not furnished to the petitioner and no show cause notice was issued to the petitioner and no opportunity whatsoever was afforded to the petitioner, in respect of above allegations of illegal mining. Thus, undoubtedly, the impugned order has been passed in gross violation of principles of natural justice. Therefore, the said order cannot be sustained.

8.In view of the above, the writ petition is allowed and the impugned order is set aside and the matter is remanded back to the second respondent, who shall issue an appropriate show cause notice, afford sufficient opportunity to the petitioner, supply a copy of the order of the Deputy Director, dated 26.09.2012 and then, pass appropriate orders, strictly in accordance with law, within a period of six months.



Pursuant to the direction given by this Court, show cause notice dated 10.10.2013 was issued. Notice was issued to Thiru.Jeppiaar in his capacity as Managing Director of M/s.Jeppiaar Blue Metals Private Limited. The said company submitted reply dated 28.10.2013. Memo dated 11.11.2013 was also submitted pointing out that relied upon documents have not been furnished. Not satisfied with the explanation given by the petitioner, the Revenue Divisional Officer, Padmanabhapuram issued proceedings dated 08.03.2014 confirming the demand set out in the show cause notice. Aggrieved by the same, the petitioner filed W.P(MD)No.6693 of 2014. The said writ petition was dismissed on 22.04.2014 on the ground that the petitioner can very well avail the alternative remedy of appeal. Thereupon Thiru.Jeppiaar filed an appeal before the District Collector. The appeal was dismissed vide order dated 20.09.2014. Aggrieved by the same, the present writ petition has been filed.

4. The learned Senior Counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. His primary ground is that issuance of notice to Thiru.Jeppiaar alone was bad in law. The facts on record indicate that the land was owned by M/s.JET Associates. The seized lorries belonged to M/s.Jeppiaar Blue Metals Private



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Limited. The limited companies are in law separate and distinct from the shareholders or directors. The learned Senior Counsel emphasized that proper notice was not been given. His second argument is that the foundational documents on which the authorities have placed reliance have not been furnished. It is a clear violation of principles of natural justice. Thirdly, the impugned orders do not specify as to how the illicitly quarried quantity was arrived at. He therefore submitted that the impugned orders deserve to be set aside.

5. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. He submitted that the mining lease was originally issued in favour of C.Thangaraj only. He could not have sold the property in violation of the terms and conditions. In any event, the mining lease period expired on 15.03.2012 itself. The illicit activities came to light in September 2012. The involvement of the original writ petitioner is become evident on account of seizure of lorries belonging to M/s.Jeppiaar Blue Metals Private Limited.

6. The learned Additional Government Pleader submitted that in such cases this Court should apply the doctrine of lifting the veil. He submitted that all the relied-on documents have been supplied to the petitioner and that there



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is no violation of the principles of natural justice. He would also add that the petitioner can very well file an appeal before the Government. He pressed for dismissal of the writ petition.

7. I carefully considered the rival contentions and went through the materials on record.

8. When the petitioner suffered an order at the hands of the Revenue Divisional Officer, he came to this Court and the matter was remanded for fresh consideration. That was on the grounds of violation of principles of natural justice. But when Revenue Divisional Officer passed an adverse order on the second occasion and the petitioner moved this Court by filing W.P(MD)No. 6693 of 2014, a learned Judge of this Court declined to intervene and relegated the petitioner to move the District Collector by availing the statutory remedy. I could have non-suited the petitioner on the very same grounds by calling upon the petitioner to move the Government. But then, for almost nine years the writ petition has been pending. At the final hearing stage, I would not be justified in non-suiting the petitioner on the ground of non-exhaustion of alternative remedy.

9. Now, let me deal with the objections of the learned Senior Counsel one by one. The land belongs to M/s.JET Associates. Thiru.Jeppiaar was its



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Managing partner. Therefore, notice was rightly issued to him. Of course, now

Thiru.Jeppiaar is no more and his wife has come on record.

10. The writ petitioner is directed to intimate the Revenue Divisional Officer, Padmanabhapuram within a period of three weeks from the date of receipt of a copy of this order, the partnership details of M/s.JET Associates during the relevant time (2012). Since two lorries belonging to M/s.Jeppiaar Blue Metals Private Limited were seized it is reasonable to *prima facie* conclude that the said company can also be fastened with liability. The petitioner is directed to furnish the address for service of M/s.Jeppiaar Blue Metals Private Limited and the person authorized to receive the notice. The second respondent is directed to issue notice to all the parties concerned.

11. The entire case against the petitioner rests on the inspection report. In the audit note it is mentioned that inspection was conducted on 13.09.2012 in Survey No.498/2 by the Tahsildar, Kalkulam Taluk, the Surveyor as well as the Assistant Geologist. Obviously based on their inspection notes and reports, the quantity of quarried mineral would have been arrived at. This report has to be necessarily furnished to the petitioner herein.



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12. I also find considerable force in the contention of the learned Senior Counsel appearing for the petitioner that the authorities have not explained as to how the quantity of 21,201 units of rough stones was arrived at. This burden is on the Department. Since I come to the conclusion that the impugned orders suffer from the aforesaid twin defects they are set aside. The matter is remitted to the file of the second respondent. The second respondent shall fix the first enquiry date on **21.08.2023** at **11.00 a.m.** The first respondent shall in the meanwhile issue notices to all the persons mentioned above. The petitioner through her counsel gives an undertaking that all the noticees shall appear before the second respondent either in person or through counsel or any authorized representative. The second respondent shall conduct enquiry and pass appropriate order on merits and in accordance with law within a period of three months after the first enquiry date. I make it clear that I have not gone into the merits of the matter. All the defenses of the noticees are left open.

13. The matter cannot rest there. On 18.10.2012, Crime No.271 of 2012 was registered on the file of Kottricodu Police Station for the offences under mining laws as well as TNPPDL Act. The matter was charge sheeted and taken on file in PRC.No.6 of 2003 on the file of the learned Judicial Magistrate, Padmanabhapuram. Thiru.Jeppiaar filed CrI.O.P(MD)No.6257 of 2013 and



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vide order dated 25.07.2014, the petition was allowed and proceedings in PRC.No.6 of 2013 on the file of the learned Judicial Magistrate, Padmanabhapuram was quashed. It was observed in the said order that the benefit of the order will extend not only to the petitioner but also to C.Thangaraj who was shown as A.2, even though he was not a party before the Court and that is why the proceedings were quashed in their entirety. Of course, the said order has become final and the matter cannot be reopened as against Thiru.Jeppiaar or C.Thanga Raj. If the second respondent at the end of the enquiry comes to the conclusion that there was illicit quarrying, it is open to the second respondent to lodge a fresh criminal case against the persons who had actually carried out the illegal quarrying.

14. This writ petition is allowed on the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

20.07.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To
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Collectorate,
Nagercoil, Kanyakumari District – 629 001.



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