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W.P.Nos.29505 of 2022 & 17333 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.29505 of 2022 & 17333 of 2023
and

W.M.P.Nos. 28876 of 2022, 16472 & 16470 of 2023

W.P.No.29505 of 2022

C.Nallaiyan

.. Petitioner

VS

1.The District Collector,
Salem, Salem District.

2.The Deputy Director of Geology & Mining,
2nd Floor, Collectorate,
Salem – 636 001.

3.The Sub Collector cum DRO
Mettur, Mettur Dam – 1,
Salem District.

4.The Tahsildar,
Omalur Taluk,
Salem District.

.. Respondents

W.P.No.17333 of 2023

C.Nallaiyan

.. Petitioner

VS

1.The District Collector,
Salem, Salem District.

2.The Deputy Director of Geology & Mining,
2nd Floor, Collectorate, Salem – 636 001.

3.The Sub Collector cum RDO,
Mettur, Mettur Dam – 1,
Salem District.



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4.The Tahsildar,
Omalur Taluk,
Salem District.

.. Respondents

Prayer in W.P.No.29505 of 2022 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records relating to proceeding Na.Ka.No.1870/2022/T dated 17.10.2022 passed by the 3rd respondent and quash the same in respect of petitioner alone and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

Prayer in W.P.No.17333 of 2023 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records relating to proceeding Na.Ka.No.1870/2022/T dated 11.04.2023 passed by the 3rd respondent, quash the same in respect of petitioner alone and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Ms.D.Sahitya
for Mr.Elango
(in both writ petitions)

For Respondents : Mr.M.Stalin Abhimanyu
Additional Government Pleader
(in both writ petitions)

COMMON ORDER

The petitioner claims to be the owner of agricultural lands in Salem District. He has made an application before the District Collector, Salem/R1 for quarrying of rough stone and gravel in his lands and had been granted the licence for that purpose.

2. W.P.No.29505 of 2022 challenges the order passed by the Sub Collector cum RDO, Mettur / R3, levying penalty for illegal quarrying and writ petition came up on 08.11.2022 when this Court passed the



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following order:-

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"Heard Mr.M.Elango, learned counsel appearing for the petitioner and Mr.K.M.D.Mukilan, learned Additional Government Pleader, who takes notice for the respondents.

2. Before issuing the impugned order dated 17.10.2022, no notice has been issued by the respondents to the petitioner.

3. In fact, a notice was issued on 01.08.2022 against 4 persons and in this regard, no such notice has been served to the petitioner. However, in the impugned order, penalty has been imposed jointly against one Sivakumar and the petitioner for a tune of Rs.1,03,58,400/-.

4. Even though there is an appeal remedy against the impugned order under Rule 36(c) of the Mines and Minerals Rules, to the District Collector, since the learned counsel for the petitioner canvassed the point that no notice has been given to the petitioner before passing the impugned order, this Court feels that in view of the alleged violation of the principles of natural justice, this Writ Petition can be entertained only in respect of the petitioner alone against the impugned order.

5. In this regard, even though the learned Additional Government Pleader appearing for the respondents submitted that he would verify and report before this Court that if any separate notice or further show cause notice was issued in the name of the petitioner, as on date, since there is no contra document to establish that a show cause notice was issued against the petitioner, this Court, by considering the prima face case, is inclined to pass the following interim order:

(a) There shall be an interim order of stay, only in respect of the penalty imposed against the petitioner, namely Mr.C.Nallaiyan, S/o.Chinnusamy, as per the impugned order dated 17.10.2022, for a period of four (4) weeks.

(b) In the meanwhile, let the respondents verify and report before this Court as to whether any show cause notice was issued to the petitioner before passing the impugned order.

6. Post this matter after four (4) weeks."

3. Interim protection was granted in respect of the penalty



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imposed qua the petitioner. Simultaneous therewith, the respondents were also asked to verify and report as to whether any show-cause notice was issued to the petitioner prior to passing order dated 17.10.2022.

4. No counter has been filed by the respondents but their verification revealed that no show-cause notice had been issued prior to passing of order dated 17.10.2022. Therefore, the respondents proceeded to issue a fresh show-cause notice dated 23.02.2023, to which, a reply was filed by the petitioner on 06.03.2023.

5. In the reply he has proceeded to assail the show-cause on two grounds. Firstly, he would dispute the proposal to levy penalty on the ground that he had not engaged in any illegal quarrying. In this regard, there are various factual averments in the writ petition also implicating third parties, which this Court is disinclined to advert to under Article 226 of the Constitution of India.

6. Secondly, he refers to W.P.No.29505 of 2022 and the stay order obtained. To be noted that, no interim protection has been granted as far as W.P.No.17333 of 2023 is concerned.

7. After a careful consideration of the matter and after hearing the parties, this Court is of the considered view that, as on date, W.P.No.29505 of 2022 is infructuous as nothing survives therein. No doubt, this Court had granted an interim stay of recovery of penalty qua order dated 17.10.2022. However, the cause of action assailed in W.P.No.29505 of 2022 becomes redundant in light of the subsequent proceedings initiated by the respondents culminating in order dated



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11.04.2023. Hence W.P.No.29505 of 2023 is infructuous and is dismissed as such.

8. Coming to W.P.No.17333 of 2023, as stated supra, the levy of penalty under impugned order dated 11.04.2023 is based on various factual assertions by the parties. Hence, it would be appropriate for the petitioner to avail appellate remedy as the appellate authority will be better positioned to look into the facts and come to a considered conclusion as to whether the petitioner had carrying on illegal quarrying or not.

9. Rule 36 of the Tamil Nadu Minor Mineral Concession Rules, 1965 stipulates that any person aggrieved by order of the Joint Director or other officers competent to pass orders levying penalty, may file an appeal challenging the same within 30 days from date of receipt of the penalty order to the District Collector. There is no provision for condonation of delay.

10. However, as W.P.No.17333 of 2023 has been instituted on 07.06.2023 challenging order dated 11.04.2023, in my view, the bar of limitation would not stand in the way of the petitioner filing an appeal. Mr.Stalin Abhimanyu, appearing for the respondents also does not dispute this position.

11. Hence, the petitioner is permitted to file an appeal challenging order dated 11.04.2023 before the District Collector and if such appeal is filed within four weeks from the date of receipt of this order, the same would be held to be within limitation, taken on board by



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the appellate authority and disposed on merits and in accordance with law after hearing the petitioner as well as any others, who are deemed necessary for proper adjudication of the appeal. W.P.No.17333 of 2023 is dismissed with liberty. No costs. Connected miscellaneous petitions are closed.

25.06.2024

Index:Yes/No
Neutral Citation:Yes
ssm

To

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DR. ANITA SUMANTH,J.

ssm

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