



W.A.(MD) No.622 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A.(MD) No.622 of 2017

and

C.M.P.(MD) No.5155 of 2017

1.P.Murugesan

2.P.K.Ravichandran

... Appellants/Petitioners

Vs.

The District Collector,
Pudukottai District,
Pudukottai.

... Respondent/Respondent

Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated 03.03.2017 in W.P.(MD) No.3159 of 2010.

For Appellants : Mr.E.K.Kumaresan



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For Respondent : Mr.R.Baskaran
Additional Advocate General
assisted by Mr.N.Muthuvijayan
Special Government Pleade

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This appeal is directed against an order of the learned Single Judge of this Court dated 03.03.2017 in W.P.(MD) No.3159 of 2010.

2. The facts are as below:

(a) On 17.08.2002, the appellants herein were granted permission to quarry granite for 20 years in their land in S.No.297/2A of Ammachatram Village, Kulathur Taluk, Pudukottai District. As per the boundary description to this block of land, it is seen, boundary on the west by S.No.297/1 and on north *inter alia* by S.Nos.297/1 and 297/3, the document styled as a “lease agreement” stipulates specifically that the appellants herein shall not encroach into the Government poramboke land in S.Nos.297/1 and 297/3. While so, on 12.02.2008, the Deputy Director of Geology and Mining, had issued a show cause



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notice, wherein it was alleged that the appellants have illicitly quarried in S.No.297/3 (which forms the northern boundary of S.No.297/2A in relation to which permission was accorded for quarrying granite) to an extent of 3906 m³ out of total quarry granite of 19530 m³ and that illicit quarrying of granite in S.No.297/3 came to light during an inspection by the authorities between 03.12.2007 and 06.12.2007;

- (b) The appellants responded to the same with their communication dated 28.02.2008, wherein, they had required the authorities to furnish them a list of documents, which *inter alia* included the inspection report of the authorities concerned. Again on 03.03.2008, they reiterated the same *vide* another communication of them;
- (c) On 15.05.2008, the authorities furnished whatever materials or information, which the appellants required;
- (d) Thereafter on 27.05.2008 the appellants offered their explanation to the show cause notice. In their explanation, they had essentially alleged:
- (a) that no notice of inspection was given at the time of inspection;
 - (b) that the appellants were not present at the time of inspection; and
 - (c) that they had never quarried in S.No.297/3.



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3. They literally reiterated the above stance of theirs in a subsequent communication dated 11.07.2008. Thereafter, the appellants were served with notices for participating in an enquiry, which were scheduled to take place on 16.02.2009 and 20.04.2009, but they did not. Again a notice was issued on them to participate in an enquiry that was scheduled to take place on 04.05.2009. The appellants did participate through their representative and offered their explanation. The core contention taken in this explanation is that the respondents herein ought to first establish that the location of the pits in relation to which the illicit quarrying of granite was alleged must be established and also age of the pit. This, according to the appellants, is a *sine qua non* for holding an enquiry consistent with the principles of natural justice and they again reiterated that they have not engaged in illicit quarrying of granite as alleged in the show cause notice.

4. As regards the quantity of clear granite as assessed to have been illicitly quarried, they explain that the granite is of poor quality, that it would be more impossible to obtain 20% of saleable granite.



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5. The District Collector, *vide* his proceedings dated 31.01.2010 rejected the explanations offered by the appellants, assessed the loss to the State at Rs.8,11,62,774/- and directed the appellants to deposit the same within 15 days.

6. The appellants would now promptly approach this Court with this writ petition in W.P.(MD) No.3159 of 2010 before the authorities and literally have assumed the stands that they have already assumed before the passing of the impugned order.

7. The learned Single Judge, in his order, had rejected the appellants' contention essentially on two grounds:

(a) That the appellants have alternate remedies more so when the authorities have complied with the principles of natural justice fully; and

(b) That in the topo sketch produced by the authorities, number of hearings showed that the poramboke land in S.No.297/3 is landlocked on all



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sides by the patta land of the appellants and that the aforesaid poramboke land could not be accessed except by crossing over the lands of the appellants and hence, any illicit quarrying by a third party could not be possible without the knowledge of the appellants.

8. Heard both sides.

9. Learned counsel for the appellants made valiant effort to persuade this Court to examine the conflict on facts as shared between the parties. Here is the scenario where the respondents allege that there is illicit quarrying in a piece of alleged landlocked poramboke land to which access established only through the property of the appellants and on the other hand, there is a denial of this allegation by these appellants that there has never been any illicit quarrying. They also wanted to establish it through certain documents. Now, notwithstanding certain orders which the previous Bench has directed the respondent to produce, examining them will still involve an investigation on facts. Now the topo sketch appeared to have been sought essentially to confirm whether the poramboke land in question is landlocked. If it is



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landlocked, then the appellants may have a greater task on their own to convince how someone had entered the piece of poramboke land without their notice. That itself is an aspect on facts. If the poramboke property in question is not landlocked, even then whether there was actual quarrying or whether there is preponderating probability that the appellants had engaged in illicit quarrying etc., would be a question on fact, and so far as the calculating penalty is concerned, whether the actual quantity that could be obtained on quarrying is again an aspect on fact.

10. It is hence appropriate for the appellants to pursue their challenge to the order of the District Collector under Rule 36-C(2) of the Tamil Nadu Minor Mineral Concession Rules, 1959.

11. It may have to be underscored here that under Rule 36-C(2) of the said Rules, an appeal against an order of the District Collector may have to be preferred to the Director of Geology and Mines within a period of 30 days. Very apparently, this 30 days time has been lost. But inasmuch as the appellants have chosen a wrong forum to challenge the said order by



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preferring both a writ petition as well as a writ appeal, the same has to be deducted. Now, this Court merely directs the appellants to prefer an appeal against the order of the District Collector, dated 31.01.2010 within a period of 30 days from today (29.04.2024), if they are desirous of challenging it and the Director of Geology and Mines is required to receive the appeal without any reference to limitation and dispose of the same within a period of four months thereafter, after affording requisite opportunity to the appellants to put forward their case.

12. This Writ Appeal is accordingly disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.)

(P.V.M., J.)

29.04.2024

Note: Issue order copy by 30.04.2024.

NCC : Yes/No

Index : Yes/No

Internet : Yes

ABR



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To

The District Collector,
Pudukottai District,
Pudukottai.



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and
P.VADAMALAI, J.

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