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W.P(MD)No.28378 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.28378 of 2024

and

W.M.P(MD)Nos.24091 & 24093 of 2024

P.M.R.Ajeesh Raja,
S/o.Rajaganesh

... Petitioner

Vs

1.The Sub Collector,
Cheranmahadevi,
Tirunelveli District.

2.The Assistant Director of Geology and Mining,
Tirunelveli District,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order of the first respondent bearing Na.Ka.No.A4/8909/2024(2) dated 28.10.2024 quash the same.

For Petitioner : Mr.A.L.Somayaji
Senior Counsel
for Mr.V.Sanjeevi

For Respondents : Mr.D.Gandhi Raj
Special Government Pleader



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ORDER

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This Writ Petition has been filed by the petitioner challenging the order passed by the first respondent, dated 28.10.2024 thereby imposing penalty at 10 times of seigniorage amount under Sections 21 & 23-C of the Mines and Minerals (Development and Regulation) Act, 1957 (in short hereinafter referred to as 'the Act, 1957') for the contravention under Section 4(1) and 4(1A) of the Act, 1957 and under Rule 36-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 (in short hereinafter referred to as the Rules, 1959).

2.The petitioner was granted lease by the proceedings dated 28.04.2023 for quarrying rough stone and gravel from the land owned by the petitioner comprised in S.F.No.891(P) to an extent of 4.95.0 Hectares situated at Kumbikulam Village, Radhapuram Taluk, Tirunelveli District for a period of 3 years from the date of execution of the lease deed. Even prior to the grant of the lease, the petitioner obtained the mining plan approval followed by the Environmental Clearance issued by the State Level Environment Impact Assessment Authority (SEIAA), Tamil Nadu. As



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per the lease agreement, the total permitted volume of rough stone and gravel is 9,45,000 cu.m and 76,212 cu.m respectively. The lease deed was executed on 10.05.2023 between the petitioner and the second respondent for a period of 3 years commenced from 10.05.2023 to 09.05.2026. Pursuant to the representation of the petitioner, the lease period of 3 years was extended to 5 years. Therefore, the lease period is valid upto 09.05.2028. From the date of the lease, the petitioner commenced the quarry operation and transporting rough stones and gravel after getting a transport permit from the Department of Geology and Mining, Tirunelveli, on payment of seigniorage fee, 10% DMF and 10% Green Fund, as per the Rules, 1959 and the lease deed conditions.

3.While being so, the petitioner was served with a notice dated 14.10.2024 calling upon the petitioner to appear for an enquiry to be held on 18.10.2024. The petitioner was also issued a show cause notice to show cause as to why the penalty shall not be imposed for quarrying and transporting the excess volume of 23,027 cu.m of mineral over and above the permit issued for the leasehold area. The petitioner appeared for enquiry on 18.10.2024 and submitted a written explanation. It was initiated on the reports



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submitted by Tvl. Globe Tech Company and the Tamil Nadu Government Unmanned Aerial Vehicle Corporation. Thereafter, the first respondent passed an order dated 28.10.2024, thereby imposing the penalty of Rs.2,32,52,665/-.

4.Mr.A.L.Somayaji, learned Senior Counsel appearing for the petitioner would submit that the enquiry was conducted based on the inspection report dated 25.07.2024 submitted by the Tamil Nadu Government Unmanned Aerial Vehicle Corporation. The inspection was conducted by its agent Tvl.Globe Tech Company dated 20.03.2023, that too, without notice to the petitioner before survey and measurement. The drone survey was not conducted in the presence of the petitioner. That apart, the drone technology is accurate only when the surface is rectangular or square, stone quarries are undulating terrain and not even surface, hence the rays of reflection are not even and the possibility of actual volume will differ. Further, the learned Senior Counsel contended that the first respondent imposed a penalty of 10 times of seigniorage fee and other charges for the excess volume of 23,027 cu.m of mineral, that too without giving an opportunity of hearing to the petitioner. The Act, 1957, a plenary legislation, does not authorize to levy



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10 + 1 time of seigniorage fee for the excess quantity. Further, it is not the case of the respondents that there is any illicit or unlawful mining in terms of Section 21(5) of the Act, 1957. Except the inspection report, there is no proof to show that the petitioner had violated Section 4(1) and 4(1A) of the Act, 1957 or the Rules framed under Section 23-C of the Act, 1957.

5.The first respondent imposed penalty under Rule 36-A of the Rules, 1959. Now it has been held that no fine can be imposed under Rule 36-A of the Rules, 1959, since the Rules cannot override the Act and the respondents ought not to have imposed the penalty of 10 times.

6.On instructions, Mr.D.Gandhi Raj, learned Special Government Pleader appearing for the respondents would submit that the petitioner was issued a show cause notice and was given an opportunity of hearing on 18.10.2024. Thereafter, the first respondent passed the order and imposed penalty, as per the inspection report submitted by the Tamil Nadu Government Unmanned Aerial Vehicle Corporation.



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7. Heard the learned counsels appearing on either side and perused the materials placed before this Court.

8. The Tamil Nadu Government Unmanned Aerial Vehicle Corporation found that there was a difference between the quarry rough stone and gravel from the stock of rough stone and gravel. Accordingly, the petitioner excessively quarried and transported to the volume of 23,027 cu.m of mineral. But the petitioner was permitted to quarry rough stone to the tune of 9,45,000 cu.m and permitted to quarry gravel to the tune of 76,212 cu.m. Therefore, the petitioner was imposed the penalty under Rule 36-A of the Rules, 1959. It is relevant to extract Rule 36-A of the Rules, 1959, hereunder:

'36-A. Penalties: (1) Whenever any person contravenes the provisions of subsection (1) and (1-A) of section 4 of the Act in any land, enhanced seigniorage fee upto a maximum of fifteen times the normal rate subject to a minimum of twenty five thousand rupees shall be charged and recovered from that person by the District Collector or the District Forest Officer, as the case may be, or in the alternative, he shall liable to be punished as provided in sub-section (1) of section 21 of the Act.'



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9.It speaks about penalties. It has to be construed only for the purpose of compounding the offence committed and it is based on a seigniorage fee subject to the minimum amount. It has to be read in consonance with Section 23-A of the Act, 1957. It is relevant to extract the provision under Section 23-A of the Act, 1957 hereunder:

'23-A.Compounding of offences.-

(1) Any offence punishable under this Act or any rule made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify:

Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith.'



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10.It can be exercised by the authority taking note of the prosecution before the Court. Therefore, the Rule cannot override the Act. Though the petitioner submitted an explanation on the enquiry dated 18.10.2024, it was not discussed in the order impugned in this Writ Petition. However, the petitioner is liable to pay cost of excess quarrying and charges under the other heads.

11.On perusal of the explanation submitted by the petitioner dated 18.10.2024 would reveal that the contravention under Sections 4(1) and 4(1A) and Section 21 of the Act, 1957 are not at all attracted to the case of the petitioner. It attracts only the person, who indulged in illegal quarrying without any permission from the competent authority is liable to be penalised. Admittedly, the petitioner obtained permission and indulged in the quarrying of rough stone and gravel. The allegation as against the petitioner is that he has excessively quarried than the permitted quantum. It is relevant to extract the provision under Section 21(1) of the Act, 1957, hereunder:

'21.Penalties.-

Whoever contravenes the provisions of sub-section (1) or sub-section (1-A) of Section 4 shall



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be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.'

12. Accordingly, the contravention of the provisions under Sections 4(1) and 4(1-A) of the Act, 1957 is punishable with the said penalty. Therefore, the first respondent ought not to have imposed penalty of 10 times the value of excessively quarrying minerals of seigniorage charge. Hence, the penalty cannot be imposed by 10 times of seigniorage fees for the excess quarry. In view of the above, the impugned order passed by the first respondent, dated 28.10.2024, imposing of penalty in serial No.5 of paragraph 6 alone cannot be sustained and the same is liable to be quashed.

13. Accordingly, the impugned order passed by the first respondent dated 28.10.2024 in serial No.5 of paragraph No.6 alone is quashed. Insofar as other serial numbers of paragraph No.6 ie., (1) to (4) are concerned, they are sustained and the petitioner is also ready to pay the seigniorage charge for the excess quarrying. The petitioner shall pay one-time value of seigniorage towards the



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charge of excessive quarried mineral, 10% DMF charge towards seigniorage amount, TDS at 2% from the seigniorage amount and 10% towards green fund of the seigniorage amount under the heads of accounts as mentioned in the impugned order, dated 28.10.2024, within a period of four weeks from the date of receipt of a copy of this order.

14. With the above directions, this Writ Petition is partly allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC : Yes / No
Index : Yes / No
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To

- 1.The Sub Collector,
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- 2.The Assistant Director of Geology and Mining,
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G.K.ILANTHIRAIYAN, J.

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