

(2015) 03 MAD CK 0409

In the Madras High Court

Case No : W.A. (MD) Nos. 1470 to 1473, 1476 to 1490, 1492 to 1496, 1505 to 1521 of 2014

P.L. Padikasu

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 16-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Mines and Minerals (Development and Regulation) Act, 1957 — Section 18-A, 21(5)

Citation : (2015) 03 MAD CK 0409

Hon'ble Judges : Sanjay Kishan Kaul, C.J;M.M. Sundresh, J

Bench : Division Bench

Advocate : Veera Kathiravan, for the Appellant; A.L. Somayaji, Advocate General assisted by T.N. Rajagopalan, Special Government Pleader and S.T.S. Moorthy, Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—These appeals are against the common order passed by the learned single Judge dismissing the writ petitions filed challenging the impugned show cause notices issued to the appellants.

2. Facts in Brief:--

"2.1. The appellants have been granted mining lease by the District Collector, Madurai, (hereinafter referred to as the "respondent"). As numerous complaints have been received from the general public by the respondent, taking note of the nature of the complaints qua number of lessees, he constituted a Special Team comprising of officials from the Departments of Revenue, Survey and Geology and Mining to carry out a comprehensive inspection of the leasehold areas. Accordingly, a detailed report was filed pointing out several infirmities against lessees including the appellants.

2.2. On a consideration of the report filed, the respondent in exercise of the

power conferred under Section 21(5) of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "the Act") called upon the appellants to appear for personal hearing to show cause as to why the said report shall not be accepted and acted upon. Along with the show cause notices issued, a copy of the Inspection cum Evaluation Report with Sketch was duly furnished. Challenging these show cause notices issued, all the appellants before us have filed writ petitions before the learned single Judge.

2.3. The learned single Judge, by an elaborate common order, dismissed the writ petitions holding that there is no pre-determination or pre-conception in issuing the impugned notices. The other contentions raised were also duly considered and rejected by the learned single Judge. Being aggrieved against the said common order passed, these writ appeals have been preferred by the appellants."

3. Submissions of the Appellants:--

"The learned counsel appearing for the appellants submitted that the impugned notices are liable to be set aside being preconceived and prejudged. Since the respondent has pre-determined the entire issues, there is no point in appearing before him. The impugned notices ought not to have been issued based upon the report of the Special Team, which was made behind the back of the appellants. The respondent cannot fix 90% recovery as against the decision taken earlier. After the issuance of the impugned notices, the respondent has filed criminal cases and therefore, in view of the said subsequent developments, they are liable to be set aside. Under Section 18-A of the Mines and Minerals (Regulation and Development) Act, 1957, a separate mechanism is provided towards appropriate investigations. The said methodology has not been adopted in the present case. There is no power available to the respondent to invoke Section 21(5) of the Act. In support of the submissions, the following judgments have been relied upon.

1. Siemens Ltd. Vs. State of Maharashtra and Others, (2007) 207 ELT 168 : (2006) 12 SCC 33 : (2006) 9 SCR 925 Supp : (2007) 5 STR 3 ;

2. ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others, (2011) 266 ELT 422 : (2010) 12 JT 35 : (2010) 11 SCALE 554 : (2010) 13 SCC 427 : (2010) 10 UJ 5381 : (2010) AIRSCW 7105 ."

4. Submissions of the Respondent:--

"The learned Advocate General appearing on behalf of the respondent submitted that there is no pre-determination involved. Based upon the report of the Special Team alone the respondent has initiated the proceedings. What has been recorded therein is only prima facie. As complaints have been received from different quarters, Special Teams have been constituted and based upon the report given, action is sought to be taken. The report, being a piece of evidence, a final decision would be taken only after considering the relevant materials, including the reply to be given by the appellants."

5. Discussion:--

5.1. As rightly submitted by the learned Advocate General, the report of the Special Team is only a piece of evidence. In other words, it is not binding on the respondent. The respondent, after going through the report, merely initiated proceedings. It is only a prima facie view. It is not, as if, a decision has already been taken. A perusal of the orders impugned would show that the respondent has looked into the report and thereafter, called for explanation from the appellants. The show cause notices were issued to the appellants only to show cause as to why the report of the Special Team shall not be accepted. There is absolutely no indication in the notices that the respondent has pre-determined the entire issue.

5.2. Section 18-A of the Act operates in a different sphere. It does enable the Government to investigate. However, it does not mean that the respondent cannot act upon any other material, which is available before him. In other words, de hors any report, the respondent can act upon any other material, which is made available to him in his possession. Thus, the report is only a material to initiate action. Therefore, the submission on the said provision cannot be countenanced.

5.3. The plea of jurisdiction has not been raised before the learned single Judge, as could be seen from the common order passed. Even otherwise, the respondent has only initiated action based upon the report, which inter alia states that the appellants have violated the law. The report also states that the terms and conditions of the lease deeds have been breached. Therefore, we do not find any error in the action initiated by the respondent under Section 21(5) of the Mines and Minerals (Regulation and Development) Act, 1957.

5.4. Coming to the issue of the criminal action having been taken, we do not have any material on the same. The appellants have not raised this plea before the learned single Judge. Even otherwise, those proceedings cannot be a bar to the proceedings initiated earlier by way of issuance of the impugned show cause notices.

5.5. The learned Senior Counsel appearing for some of the appellants raised a new plea contending that as per the decision of the Supreme Court in *Threesiamma Jacob and Others Vs. Geologist, Dptt. of Mining and Geology and Others*, AIR 2013 SC 3251 : (2013) 4 CTC 744 : (2013) 3 EFLT 652 : (2013) 10 JT 470 : (2014) 1 RCR(Civil) 20 : (2013) 9 SCALE 1 : (2013) 9 SCC 725, the minerals having belonged to the appellants, the respondent cannot take any action. The said submission raised for the first time cannot be countenanced. Admittedly, the lease deeds have been executed under the Mines and Minerals (Regulation and Development) Act, 1957 on the request made by the appellants. The respondent has also initiated action under the said Act. Hence, the submission made in this regard is rejected.

5.6. It is settled law that power of judicial review under Article 226 of the

Constitution of India is both extraordinary and discretionary. Such a power has to be exercised with circumspection while dealing with a show cause notice. A show cause notice cannot be read on a technical ground, but on a reasonable one. The decisions relied upon by the learned counsels actually reiterated the settled position on the jurisdiction of this Court. Interference was made in those cases as final determination was made by the authority concerned even while issuing the show cause notice. Thus, those decisions are distinguishable on facts.

5.7. On a reading of the judgment, we find that the learned single Judge has dealt with all the aspects. Thus, we do not find any error warranting interference.

5.8. Though the show cause notices have been issued two years before, the appellants have been successful so far in dragging on without submitting their reply to the respondent. Thus, considering the facts and circumstances of the case, we deem it fit to impose costs. Accordingly, the appeals are dismissed by imposing costs of Rs. 10,000/- (Rupees ten thousand only) each on the appellants payable to the Mediation and Conciliation Centre, High Court Campus, within fifteen (15) days from today. The appellants are permitted to appear before the respondent within two weeks from the date of receipt of a copy of this order and thereafter, submit their replies. Taking note of the delay caused, the respondent is directed to conclude the proceedings and pass final orders on merits within a period of two months thereafter, without being influenced by any of the observations made in our order."