
(2004) 10 MAD CK 0071
In the Madras High Court
Case No : Writ Petition No. 11502 of 1997

Vairasundaram

APPELLANT

Vs

The District Collector and The Tahsildar

RESPONDENT

Date of Decision : 11-10-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2005 Mad 107

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : A. Ilango, for the Appellant; G. Kavitha, Government Advocate, for the Respondent

Judgement

A.K. Rajan, J.—The writ petition is for the issue of writ of Certiorari to call for the records of the first respondent in R.C.106/95.S& M dated 28.4.1995 and the consequential order passed by the second respondent in RC.4494/95/B9 dated 20.6.1997 and quash the same.

2. The petitioner is alleged to have quarried silica from his land without proper licence and he has sold the same to the public. Therefore, the authorities conducted an enquiry and in the enquiry, the petitioner appeared and confessed that he has removed the sand. According to him, he removed the sand for making the land cultivable and the sand was sold for the purpose of construction. Ultimately, he wanted to compound the offence and the first respondent has passed an order on 28.4.1995 fixing the compounding fee at Rs.24,100/-. Challenging the same, the petitioner has filed the above writ petition.

3. Learned counsel for the petitioner submitted that the impugned order dated 28.4.1995 is not legally sustainable inasmuch as no show cause notice was issued to the petitioner before conducting an enquiry.

4. Learned Government Advocate appearing for the respondents submitted that when the petitioner appeared before the concerned District Collector and

participated in the enquiry, the question of issuing show cause notice does not arise. Learned Government Advocate further submitted that the order impugned is an appealable order and the petitioner has a right to prefer an appeal before the Director of Geology and Mining and also further appeal before the Government. Instead, the petitioner has approached this court by way of writ petition.

5. Considering the fact that the petitioner has appeared before the first respondent District Collector and participated in the enquiry, the submission of the learned counsel for the petitioner that the respondents should have issued a show cause notice before passing the impugned order, is not sustainable. Inasmuch as the petitioner has confessed before the authorities and also requested for compounding the offence, other rights of the petitioner could be deemed to have been waived. Therefore, the impugned order passed by the first respondent District Collector, fixing the compounding fee at Rs.24,100/- can only be challenged by way of appeal, with respect to quantum. In that view of the matter, the petitioner is permitted to file an appeal before the Director of Geology and Mining within a period of three weeks from today. If any such appeal is filed, the Director of Geology and Mining shall take the appeal on file and consider and dispose of the same on merits as expeditiously as possible, without raising the point with regard to limitation. With the above observation, the writ petition is disposed of. No costs. Consequently, W.M.P.No.18440 of 1997 for injunction is closed.