

Asharaf Vs. The District Collector

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Court : Kerala

Decided On : Aug-18-2015

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Asharaf

Respondent : The District Collector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN TUESDAY, THE 18TH DAY OF AUGUST 2015 27TH SRAVANA, 1937 WP(C).No. 23593 of 2015 (Y)

----- PETITIONER(S): ----- ASHARAF, S/O.MUHAMMED, PALELAKANDI HOUSE, CHELEMBRA MALAPPURAM DISTRICT. BY ADV. SRI.BABU S. NAIR RESPONDENT(S): -----

1. THE DISTRICT COLLECTOR MALAPPURAM, PIN-676 505.
2. THE REVENUE DIVISIONAL OFFICER TIRUR, MALAPPURAM DISTRICT, PIN-676 101.
3. THE VILLAGE OFFICER CHELEMBRA VILLAGE, CHELEMBRA, MALAPPURAM DISTRICT PIN-673 634. R BY GOVERNMENT PLEADER SMT. C.K. SHERIN THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-08-2015, ALONG WITH WPC. 23656/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 23593 of 2015 (Y)

----- APPENDIX PETITIONER(S)' EXHIBITS
----- EXT. P1- TRUE COPY OF THE SKETCH OF THE
ROAD, WHICH WAS BEING FORMED. EXT.P2- TRUE COPY OF THE SEIZURE
MAHAZAR PREPARED BY THE3D RESPONDENT ON317.2015.
RESPONDENT(S)' EXHIBITS: NIL ----- // TRUE COPY //
P.A TO JUDGE. SB 'CR' K. VINOD CHANDRAN, J.

===== W.P.(C) No.23593 of 2015 - Y and 23656 of 2015 - F
===== Dated this the 18th day of August, 2015

JUDGMENT

Both the writ petitions are concerned with the seizure of vehicles under the Mines and Minerals (Development and Regulation) Act, 1957 (for brevity 'MMDR Act, 1957) and the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules 2015 (for brevity, 'Transportation Rules, 2015).

2. Before looking at the facts; the compelling contention urged on behalf of the petitioners is that the Transportation Rules 2015 having not provided for seizure, of a minor mineral in transportation; herein, specifically ordinary earth. The Transportation Rules, 2015 only authorises seizure and confiscation of minerals when such transportation is made against the provisions of the Act and Rules, argues Counsel. If 2 W.P.(C) No.23593 of 2015 - Y and 23656 of 2015 - F that ground is upheld, then necessarily, the vehicles would have to be released without any conditions.

3. The learned Counsel for the petitioners refer to the definition clause in the MMDR Act, 1957, specifically that of 'mineral' and 'minor mineral' as seen from sub-clause (a) and (e) of Section 3 of the MMDR Act, 1957. Minor minerals being specifically dealt with; only those materials enumerated thereunder and any mineral which the Central Government by notification in the Official Gazette declares to be a minor mineral would fall under such definition and that would be excluded from the definition of "mineral", is the argument.

4. Specific reference is made to sub-section (1A) of Section 4 of the MMDR Act, 1957, which interdicts transportation of storage of any mineral otherwise than in accordance with the provisions of the Act, which again according to the learned Counsel takes in only minerals and not minor minerals. Section 13 of the MMDR Act, 1957 confers power on the Central Government to make rules in respect of minerals and Section 15 of the MMDR Act, 1957 on the State Government with respect to minor minerals, which distinction further highlights the manner in which the two categories have been dealt with differently in the MMDR Act, 1957. Under Section 13 of the MMDR Act, 1957, the Central Government itself has brought in the Mineral Concession Rules, 1960 and under Section 15 of the MMDR Act, 1957, the State Government brought in the Kerala Minor Mineral Concession Rules, 2015 (for brevity KMMC Rules, 2015).

5. Specific reference is made to the old rules; viz: Kerala Minor Mineral Concession Rules 1967 (for brevity, 'KMMC Rules, 1967), wherein Rule 58 dealt with penalties with respect to the quarrying and the transportation otherwise than under the provisions of the Act and Rules, in which sub-rule(1) prescribes the penalty on illegal raising of minor mineral and sub-rule(3) and (4) dealt with confiscation and seizure of any thing used for such quarrying or transportation of minor minerals. The said 4 W.P.(C) No.23593 of 2015 - Y and 23656 of 2015 - F Rule of 1967 were brought out under Section 15(1) of the MMDR Act, 1957. In pari materia provisions are found in the presently enacted KMMC Rules, 2015; in Rule 108, but they deal only with penalty on raising minerals without lawful authority; and does not sanction seizure and confiscation. The provision for penalty for contravention and the liability to seizure of any mineral extracted illegally is provided respectively in sub-rule (1) and (2) of Rule 108. The provision for penalty and seizure as provided in sub-rule(3) and (4) of Rule 58 of the old Rules (KMMC Rules, 1967), is conspicuously absent; is the contention.

6. The Transportation Rules cannot be relied upon for penalty and seizure of the equipments, vehicles etc. since the same is brought out under Section 23C of the MMDR Act, 1957; which again deals with only minerals. The penalty provision under the MMDR Act, 1957 is Section 21 and sub-section (4A) thereof provides

only for confiscation of any mineral, tool, equipment, vehicle or any other thing seized under 5 W.P.(C) No.23593 of 2015 - Y and 23656 of 2015 - F sub-section (4), which deals with; again, the transportation without lawful authority of any mineral from any land. Rule 17 of the Mineral Concession Rules, 1960 is also pointed out to indicate that sand used for certain purposes is not to be treated as a minor mineral. These provisions according to the learned Counsel for the petitioners clearly distinguishes minerals and minor minerals as understood in the Act and the use of words is exclusively of one in contradistinction to the other.

7. Transportation Rules of 2015 has been brought out under sub-section (1) of Section 23C of the MMDR Act, 1957. Section 23C of the MMDR Act, 1957 specifically confers power on the State Government to make rules for preventing of illegal mining transportation and storage of minerals. Since, the word employed is "minerals" in Section 23C of the MMDR Act, 1957, the rules framed thereunder cannot lead to a confiscation or seizure with respect to transportation of 'minor minerals', is the seemingly attractive contention raised by the petitioners. 6 W.P.(C) No.23593 of 2015 - Y and 23656 of 2015 - F8 The learned Government Pleader however would contend that the definition clauses itself would indicate that minor minerals though defined separately, would be included in the all inclusive definition of 'minerals'. The specific reference to 'minerals other than minor minerals' at various places, in the MMDR Act, 1957 would indicate that Section 23C of the MMDR Act, 1957 when referring to 'minerals' take in 'minor minerals' too. Specific reference is made to Section 14 of the MMDR Act, 1957 where Section 5 to 13 have been declared to be not applicable to minor minerals, which again indicates the all inclusive definition of the term "minerals". Section 15 of the MMDR Act, 1957 carves out the category of minor minerals from Section 13 to confer power specifically on the State Government with respect to minor minerals, is the argument.

9. The definition clause at sub-section (a) of Section 3 of the MMDR Act, 1957 "includes all minerals except mineral oils". If the legislature did not intend to include minor minerals, 7 W.P.(C) No.23593 of 2015 - Y and 23656 of 2015 - F then there would have been an exemption provided with respect to minor minerals therein itself. The specific exclusion provided is only of mineral oils and the

definition has to be understood as including minor minerals also. Minor minerals have been given a separate definition to specify the items, which would fall under it as per the legislative intention and it also includes any mineral, which is notified as a minor mineral by the Central Government.

10. It has to be noticed that the definition clause at sub-sections (d), (h) and (ha) of Section 3 of MMDR Act, 1957 dealing respectively with the mining operations, prospecting operations and reconnaissance operations, employ only the word "mineral". It cannot be said in such circumstance, that the said operations which are sought to be regulated by the Act would be confined to 'minerals' and not 'minor minerals'. Section 4 of the MMDR Act, 1957, which deals with prospecting, mining and reconnaissance operations also cannot be said to be confined to minerals, which as per the Act, specifically Section 13; is placed 8 W.P.(C) No.23593 of 2015 - Y and 23656 of 2015 - F under the exclusive domain of the Central Government.

11. Sub-section (1A) of Section 4 of MMDR Act, 1957 also has to be considered to be taking in every mineral including minor mineral; the transportation and storage of which is prohibited otherwise than in accordance with the provisions. Specific reference can be made to Section 4A of the MMDR Act, 1957, wherein the Central Government has been conferred with the power to request the State Government to make a premature termination of a prospecting licences or minor lease in respect of any mineral other than minor mineral, for reasons of expediency stated in sub-section (1) of Section 4A of MMDR Act, 1957. Sub-section(2) of Section 4A of MMDR Act, 1957, confers the power on the State Government itself to so terminate prematurely any prospecting or mining lease for minor mineral again for grounds of expediency enumerated in the said sub- section (2) of Section 4 of the MMDR Act,1957. This is enacted so, quite conscious of the law that the authority conferred with 9 W.P.(C) No.23593 of 2015 - Y and 23656 of 2015 - F granting permits for any mineral other than minor mineral is on the Central Government and that of minor mineral is the State Government. If the word 'mineral' did not include 'minor minerals', there was absolutely no purpose in sub-section (1) of Section 4A of MMDR Act, 1957 to have used the term mineral, with an exclusion of the minor minerals.

12. Further section 13 of the MMDR Act, 1957 having conferred the Central Government with the power to grant permits, licences etc in respect of minerals, Section 14 specifically excluded application of sections 5 to 13 of the MMDR Act, 1957 to minor minerals. After so excluding the minor minerals, the power to make rules in respect of minor minerals has been conferred on the State Government by Section 15 of the MMDR Act, 1957. When the definition clauses are so construed, then, definitely under the penalty clause, under Section 21 of the MMDR Act, 1957 any reference to mineral will necessarily take in minor mineral also and the same would be 10 W.P.(C) No.23593 of 2015 - Y and 23656 of 2015 - F applicable in toto to the Transportation Rules of 2015 by virtue of Rule 29 of the said Rules.

13. The Mineral Concession Rules, 1960 made by the Central Government is under Section 13 of the MMDR Act, 1957, where as the Minor Minerals Concession Rules 1967, as it then existed, framed by the State Government was under Section 15 of the MMDR Act, 1957, which powers are quite distinct and by Section 14 of the MMDR Act, 1957 the two categories of minerals are distinctly dealt with. The rules of 1967, framed under Section 15 of the Act dealt with the minor mineral concessions and the transportation of minor minerals. As far as minerals, within the exclusive domain of the Central Government as per Section 13 of the Act, the penalty provision in the Act had to be resorted to. It could only be so, since Section 23C of the MMDR Act, 1957 was not available in the Act when the Rules of 1967 was made. Section 23C of the MMDR Act, 1957 was incorporated in 1999 by Act 39 of 1999. 11 W.P.(C) No.23593 of 2015 - Y and 23656 of 2015 - F14 In the year 2015, the State thought it fit to bring out two different set of rules one for the minor mineral concessions and one in prevention of illegal storage and transportation of minerals. The power to so bring out the storage and transportation Rules for minerals has to be necessarily drawn from Section 23C of MMDR Act, 1957 and not from Section 15. The power under Section 15 is available only for regulation of minor minerals and that under Section 13 for regulation of minerals is with the Central Government. The introduction of Section 23C in 1999 hence is with a specific purpose; upon which the State Government drew power from, to bring out the Transportation Rules of 2015 providing for comprehensive prescriptions, preventing illegal mining, storage and transportation of minerals, as understood under the MMDR Act, 1957 and Section

23C; which includes minor minerals.

15. In this context, it is pertinent to notice that the 12 W.P.(C) No.23593 of 2015 - Y and 23656 of 2015 - F Mineral Concession Rules, 1960 having been brought out by the Central Government, the operation of the same and the machinery to carry out the provisions, is on the State Government, as notified under the Rules of 1960. The power for grant of permits, licences and leases have been dealt with separately under Sections 13 and 15 of the MMDR Act, 1957, treating minerals and minor minerals as two different categories, specifically by virtue of Section 14. There is only one conferment of power for making rules for preventing illegal mining transportation and storage of minerals, which is under Section 23C of the MMDR Act, 1957. The Union Parliament has quiet consciously made the said provisions fully with the knowledge that the provisions of the Act and the Rules brought out by the Central Government and the State Government are regulated, operated upon and implemented by the authorities of the State. The contention raised of lack of power is specious and totally unsustainable. 13 W.P.(C) No.23593 of 2015 - Y and 23656 of 2015 - F16 However, considering the compounding provision in the Transportation Rules 2015, with respect to the JCB, the compounding fee shall be Rs.75,000/- and with respect to the tipper lorry the compounding provisions shall be Rs.50,000/- and twice the amount of tax, royalty and value of the ordinary earth, which the lorry had capacity to carry. If the petitioners apply for compounding, the same shall be allowed only on the above conditions, as has been held in W.P.(C) No.14605 of 2015 and connected cases, dated 26.06.2015. However, if no compounding is applied for, then necessarily, the vehicle shall be produced before the jurisdictional Magistrate at the earliest. On the above reasoning, the contentions raised on behalf of the petitioners are found to be unsustainable and quite untenable and the writ petitions would stand dismissed with the above observations. No costs. Sd/- K. VINOD CHANDRAN, JUDGE SB // true copy // P.A to Judge.

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