

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 6919 OF 2015

and

MP No.1 of 2015

1. M. Devaraj
2. S. Thengavel
3. M. Ramasamy
4. R. Shanmugam
5. M. Selvakumar
6. R. Ganesamoorthy

... Petitioners

Vs.

1. The District Collector,
Tiruppur District,
Tiruppur.
2. The Deputy Director of Town and Country
Planning Corporation Complex,
Dr.Nanjappa Road, Coimbatore.
3. The Block Development Officer,
Palladam Panchayat Union,
Palladam, Tiruppur District.
4. The President,
Kodangipalayam Panchayat,
Kodangipalayam, Palladam Taluk,
Tiruppur District.
5. M/s.Ultimate Alloys Pvt. Ltd.,
rep. by its Director,
C.Venkatachalam,
S.No.138/1 ABC,
Kannampalayam Village,
Sulur Taluk, Coimbatore District.

6. The Commissioner/ Director of
Geology and Mining
Thiru vi ka Industrial Estate
Guindy, Chennai - 32.

... Respondents

PRAYER: This Writ Petition has been filed under section 226 of the Constitution of India to issue an order of Writ of Mandamus, to forbear the respondents 1 to 4 from granting any planning permission to construct any building within 300 mts from quarrying site without getting prior approval from the Director of Geology and Mining and also take appropriate action against the fifth respondent for the unauthorized constructions made in S.No.311/3 and 311/4b of Kodangipalayam Village, Palladam Taluk, Tiruppur District.

For petitioner : Mr. M. Muthappan

For Respondents : Mr. T.N. Rajagopalan, Spl. G.P.
for R1, 2 & 6

: Mr. N. Roofus Abraham,
GA for R3 and R4

: Mr. N. Manokaran for R5

O R D E R

This Writ Petition has been filed seeking to forbear the respondents 1 to 4 from granting any planning permission to construct any building within 300 mts from quarrying site without getting prior approval from the Director of Geology and Mining and also take appropriate action against the fifth respondent for the unauthorized constructions made in S.No.311/3 and 311/4b of Kodangipalayam Village, Palladam Taluk, Tiruppur District.

2. Learned counsel appearing for the petitioner would submit that the first petitioner was granted permission to quarry rough stone/ gravel in patta land comprised in S. No.312/3, 313/1 and 314/2 (part) over an extent of 2.53.0 Hectares in Kodangaipalayam Village, Palladam Taluk, Tiruppur District for a period of 5 years from 01.05.2013 to 30.04.2018 as per District Collector's proceedings in Na.Ka. No. 230/Mines/2012 dated 01.05.2013. The second petitioner was also granted permission to quarry rough stone/ gravel in patta land comprised in S.No.315/2D (part) over an extent of 1.22.0 Hectares in the same village for a period of 5 years from 06.01.2011 to 05.01.2016 as per District Collector's proceedings in

Na.Ka.No.266/Mines/2010 dated 06.01.2011. Learned counsel appearing for the petitioners submitted that the third petitioner was granted permission to quarry in patta land comprised in S.No.314/1A (part), 314/1B (part) and 324/2B over an extent of 3.41.5 Hectares in the same village for a period of 5 years from 28.08.2014 to 27.08.2019 as per District Collector's proceedings in Na.Ka.No.215/Mines/2012 dated 24.07.2014. The fourth petitioner was granted permission to quarry rough stone/ gravel in patta land comprised in S.No.312/4 (part) over an extent of 0.94.0 Hectares in the same village for a period of 5 years from 22.07.2013 to 21.07.2018 as per District Collector's proceedings in Na.Ka. No.309/Mines/2012 dated 22.07.2013. Adding further, he submitted that the fifth petitioner was also granted permission to quarry in patta land comprised in S.No.311/2 (part) over an extent of 0.67.0 Hectares in the same village for a period of 5 years from 10.08.2011 to 09.08.2016 as per District Collector's proceedings in Na.Ka.No. 194/ Mines/2009 dated 10.08.2011. Similarly, for the sixth petitioner also permission was granted for quarry works in S.No.312/2 over an extent of 0.85.0 Hectares in the same village for a period of 5 years from 05.01.2011 to 04.01.2016 as per District Collector's proceedings in Na.Ka.No. 197/ Mines/2009 dated 05.01.2011. Learned counsel further submitted that the quarrying operations are carried out as per Mining Rules as well as Lease conditions.

3. Whiles, the 5th respondent purchased a land comprised in S. No. 311 and the same is sub divided as S. No.311/3 having an extent of 0.88.50 hectares and S.No.311/4B over an extent of 0.72.0 hectares in Kodangipalayam Village, Paladam Taluk from one K. Natarajan and another person by name K. Rathinasamy, under the registered sale deed dated 17.12.2014. In these background the grievance of the petitioners is, when the stone quarrying permission has been granted in favour of K. Rathinasamy as per the proceedings of the District Collector in Na.Ka. No.655/Mines/2010 dated 26.02.2011 for a period of five years, commencing from 26.02.2011 to 25.02.2016, when the said area was subjected to quarrying operations for the period from 16.08.2005 to 15.08.2010 and the 5th respondent herein, while purchasing the area also stated that he is going to continue the quarrying operations in the said land, all of a sudden he commenced construction activities on the said land. On further enquiry, it was found that the 5th respondent, without obtaining any planning permission from the competent authorities tried to put up construction for industrial establishment. As per Rule 36 (1-A)(c) of the Tamil Nadu Minor Minerals Concession Rules, 1959 no new layout/ building plans, falling within 300 mts from any quarry, should be given approval by any agency unless prior clearance of the Director of Geology and Mining is obtained. Adding further, he would

submit that even as per Rule 36 (1-A) (a) no lease shall be granted for quarrying stones within 300 mts., from any inhabited site. Therefore, finding that the 5th respondent without getting prior permission from the competent authority had started the construction in the said area for Industrial site, which leads to problem for conducting the quarrying operation to the petitioners, made a representation to the respondents 1 to 4 to take necessary action against the 5th respondent, for commencement of unauthorised construction but till date no action has been taken. Aggrieved by the inaction of the respondents 1 to 4, the petitioners have come before this Court.

4. Learned counsel appearing for the petitioners drawing the attention of this Court to Rule 36 (1-A) (a) and (c) would submit that when the said provisions are very clear that no lease shall be granted for quarrying stones within 300 mts. from any inhabited site and that no new layout or building plans falling within 300 mts from any quarry should be given approval by any agency unless prior clearance of the Director of Geology and Mining is obtained, the 5th respondent should be injuncted from carrying out any constructions within 300 mts., from the quarrying site. Concluding his argument he would submit that when the petitioners have already taken the quarrying operations in the quarrying sites and continuing the quarrying operations as per Rule, the 5th respondent who had recently purchased the land in S. No. 311/3 & 311/4b of Kodangipalayam village which is also a lease hold area of stone quarrying operation shall not be allowed to put up any construction as that would create more problem to him, as well as to the petitioners and also to the persons who is going to live or stay therein.

5. In reply a detailed counter affidavit has been filed by the Block Development Officer, the third respondent herein. Paragraph 11 of the counter states that the respondents 1 to 4 had not given any permission to the 5th respondent for construction in the area since the said area was granted lease for stone quarrying. Further, the counter also states that the 5th respondent has recently purchased the said land in S. No. 311/3 & 311/4b of Kodangipalayam village which is also a lease hold area of stone quarrying operation.

6. Mr. N. Manokaran, learned counsel appearing for the 5th respondent, on filing the counter would submit that the 5th respondent has purchased the land covered in S. No. 311/3 & 311/4b having an extent of 3.96 acres situated at Kodangipalayam village Palladam Taluk from one K. Natarajan and another person under a sale deed dated 17.12.2014 and as such he has made the said purchase for industrial purpose along with two electricity connections in S.C.

Nos. 750 and 753 for 25 HP. Adding further, he submitted that even on the date of his purchase, there were constructions over an extent of 1500 sq.ft. and the same was also used as a shelter for workers, therefore, it is not proper on the part of the petitioners to complain that he has put up construction after the purchase of the property. Adding further, he would submit that the petitioners, as an after thought have filed this Writ Petition, for the reason that there were the rival parties to purchase the land covered in S. Nos. 311/3 and 311/4B. Since the 5th respondent had purchased the land, to wreck vengeance, the 5th petitioner who has failed in his attempt to own the land through purchase, with mala fide intention wrongly filed the writ petition, by presenting the complaint before the respondents 1 to 4. Adding further, he would submit that the writ petition has been filed without verifying the fact that there was already a construction put up by his vendor, over an extent of 1500 sq.ft. Hence, the prayer sought for in the writ petition should be refused, he pleaded.

7. Continuing his argument, he would submit that the quarrying site of the petitioners 1 to 4 and 6 are located far away. Only at the instigation of the 5th respondent the present writ petition has been filed and therefore the same is liable to be dismissed. Replying to Rule 36 (1-A) (a) and 36 (1-A) (c) of the Tamil Nadu Minor Minerals Concession Rules 1959, he would submit that the above provision makes it clear that the grant of quarrying lease within 300 meters of inhabited site is prohibited and no new layout or building plan falling within 300 meters from quarrying site should be approved without prior clearance of the 6th respondent. Therefore, the petitioners should establish the fact that the land in question in which the 5th respondent should not put up the construction are village site, town site or a house site as approved by the Town and Country Planning or Metropolitan Authority, which authority is empowered to approve it as a house site or a layout area. When there is nothing on record to show that the subject matter of survey numbers, as claimed by the petitioners, are either a village site or town site or house site, the petitioners cannot ask for any injunction, more particularly, when there are power loom units just 200 feet away from the quarry site of the 5th petitioner. Therefore the petitioners are motivated maliciously only against the 5th respondent as he has purchased the land in question.

8. In support of his submissions, he has also taken reliance from the order of this Court in the case of A. Velusamy vs. The District Collector, Coimbatore reported in 2010 (3) CTC 57, and would further submit that the question of passing an order of injunction would apply if he is going to put up construction within

300 mts., from the quarrying area comes within the inhabited site as found in the explanation to Rule 36 (1-A) (a), (b) and (c) of the Tamil Nadu Minor Mineral Concession Rules, 1959. Therefore, when the petitioners have miserably failed to show before this Court or before the respondents 1 to 4, that the area in question wherein the petitioners have undertaken the quarrying operation is an inhabited site, the prayer sought for in the present writ petition is not maintainable.

9. Heard the parties for both sides.

10. It is not in dispute that the petitioners are granted permission to quarry rough stone/ gravel in the patta lands of the petitioners for a period of five years as per the District Collector's proceedings and that the quarrying operations have been carried out. It appears that the 5th respondent had purchased the land comprised in S. No. 311 which is sub divided as S. No.311/3 having an extent of 0.88.50 hectares and S.No.311/4B over an extent of 0.72.0 hectares in Kodangipalayam Village, Paladam Taluk from one K. Natarajan and an other person by name K. Rathinasamy, under the registered sale deed dated 17.12.2014. When the petitioners, apprehending the construction of industrial site by the 5th respondent, presented representation to the respondents 1 to 4 to take appropriate action against him for the commencement of unauthorized construction. But, till date, as per the counter affidavit filed by the third respondent, it is clear that no permission has been granted to the 5th respondent for construction in the area purchased by him. Therefore, the respondents 1 to 4 have admitted that they have not granted permission to put up any construction since the said area was granted lease for stone quarrying operation. Being so, no new construction can be put up without prior permission from competent authority.

11. As per Rule 36 (1-A) (a) and (c) the 5th respondent cannot put up any construction without seeking appropriate permission from the Director of Geology and Mining. It is appropriate to extract Rule 36 (1-A) (a) and (c) hereunder :-

" 36. (1-A) (a) No lease shall be granted for quarrying stone within 300 metres (three hundred metres) from any inhabited site:

Provided that the exiting quarries which are subsisting under current leases shall be entitled for continuance till the expiry of the lease period. The lessees whose quarries lie within a radius of 300

metres from the inhabited site shall undertake blasting operations only after getting permission of the Director of Mines Safety, Oorgaum.

Provided further that the new and existing units of quarries shall also be required to comply with the Pollution Control Measures (i.e) dust control measures) besides complying with the other conditions in regard to Pollution Control Measures.

(c) No new layout, building plans falling within 300 metres from any quarry should be given approval by any agency unless prior clearance of the Director of Geology and Mining is obtained. On receipt of proposals for according clearance, the Director of Geology and Mining shall decide upon the continuance or closure, as the case may be of any quarry which is situated within 300 metres from the now layout, building sought for such "clearance".

1. Provided that notwithstanding anything contained in any law for the time being in force or any provision in any lease deed or agreement already executed under these rules, there shall be no quarrying of sand in any river bed or adjoining area or any other area which is located within 500 metres radial distances from the location of any bridge, water supply system, infiltration well or pumping installation of any of the local bodies or Central or State Government Department or the Tamil Nadu Water Supply and Drainage Board head works or any area identified for locating water supply schemes by any of the above mentioned Government Departments or other bodies."

Nodoubt, learned counsel appearing for the 5th respondent contended heavily that unless the area in question is inhabited area, the petitioners cannot press for any negative order against the 5th respondent. But reading of the above provision clearly shows that no new layout or building plans falling within 300 metres from any quarry should be given approval by any agency unless prior clearance of the Director of Geology and Mining is obtained. It must be kept in mind that as mentioned above, when all the petitioners have been granted quarrying license by the District Collector, it goes without saying that the area cannot be a inhabited site.

12. Therefore, the 5th respondent cannot put up any construction without getting legal clearance from appropriate authorities, as per Rule 36 (1-A) (a) and (c) of Tamil Nadu Minor Minerals Concession Rules, 1959. It is needless to mention that if any such application is filed by the 5th respondent, it is for the authorities to consider and pass orders, as per the provisions mentioned above.

13. With the above direction, all the Writ Petitions are disposed of. Consequently, the connected M.P is closed. No order as to costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

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To

Sub Assistant Registrar

1. The District Collector,
Tiruppur District, Tiruppur.
2. The Deputy Director of Town and Country
Planning Corporation Complex,
Dr.Nanjappa Road, Coimbatore.
3. The Block Development Officer,
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4. The President,
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Kodangipalayam, Palladam Taluk,
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5. The Commissioner/ Director of Geology and Mining
Thiru vi ka Industrial Estate
Guindy, Chennai - 32.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.21775
+1cc to Mr.M.Muthappan, Advocate, S.R.No.21758
+1cc to the Government Pleader, S.R.No.21812

W.P.NO. 6919 OF 2015 and
MP No.1 of 2015

SSI (CO)
CA(19/05/2015)