

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2016

CORAM

The HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.16333 of 2016

1. P.Gopinath
2.V.Balasubramanian
3.S.Kuppusamy
4.S.Suresh
5.V.Shanmugam
6.R.Selvakumar
7.G.Baskaran
8.K.Duraiaraj
9.S.Iyyanar
Petitioners

Versus

1. The Government of Tamil Nadu
represented by its Secretary,
Department of Public Works Department,
Fort St.George,
Chennai 600 009.

2.The District collector,office of the District Collection,
Villupuram.

3.The Revenue Divisional Officer,
Office of the District Collector,
Villupuram.

4.The Executive Engineer,
Public Works Department,
Villupuram.

5.Assistant Engineer,
Public Works Department,
Villupuram.

6.K.Ramaiya (Licensee)

7.Superintendent of Police
Villupuram District. Villupuram

8.The Inspector of Police,
Valavanur Police Station,
Villupuram.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Mandamus, to direct the respondents not to commit breach of conditions imposed in the District Collector proceedings dated 08.02.2016, and further takes such remedial measures to restore the River bed of the Then Pennai Rive in land S.F.No.499 (P) of Sornavur Keez Paathi Village, Villupuram Taluk and all adjacent areas thereto and further direct the 1st respondent Government to evolve a mechanism by which the River beds in the State of Tamil Nadu can be protected from unscrupulous elements and issue such further or other appropriate orders.

For Petitioners : Mr.V.Prakasam
Senior Counsel
for Mr.PL.Ravikumar

For Respondents : Mr.T.N.Rajagopalan
Spl. Government Pleader
for R.1 to R.5
and R.7 to R.8
Mr. R. Muth Kumarasamy
Advocate Genl. Asst. by

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petitioners have approached this Court seeking recourse to Public Interest Litigation Jurisdiction alleging that there has been indiscriminate quarrying of sand on the riverbed in S.F.No.499 located in Sornavur Keespaathi Village, Villupuram. It is the case of the petitioners that the Thenpennaiyar river flows from Sathanur Dam and the villages affected by the violations are Pagandai Village and the Villages downstream from Pagandai Village viz., Kalijikuppam, Sornavur Keelpathi Village, Viswanathapuram, and Vanpakkam, which are about 4 kilometers downstream from Pangandai Village. It affects more than 500 agricultural families situated on the banks of downstream part of the Thenpennai River Course.

2.The petitioners claimed that they made a representation to the District Collector on 17.02.2016 and also a reminder dated 01.04.2016, but to no avail.

3. The petitioners claim that the upstream area of the river came in for directions by this Court in Writ Petition No.18239 of 2007 passed on 09.08.2007. Inspection was carried out by the Advocate Commissioner and then directions were issued based on the consent of the Government. In substance, the plea is that what is good for the upstream areas should equally apply to the downstream area and the same set of directions should be so made applicable, which are alleged to have been violated. The 6th respondent is the licensee against whom allegations have been made of excessive quarrying.

4.The stand the respondents taken in the petition is that the mining is carried on by the Public Works Department. While the 6th respondent is only a stockist, mining activity was stated to have been stopped for the time being and it was assured that the same will not be carried on without the leave of the court as recorded on 28.04.2016.

5.The affidavit filed by the Public Works Department states that only a fraction of the mining is permitted to have been carried on. One of the main controversies which arose was as to the photographs filed with the petition by the petitioner, which had persuaded us to issue the notice, as the respondent took the stand that the photographs are not of the area, in respect of which grievance is made. We thus asked the respondent to file their set of photographs. The fundamental dispute that arose thus was in respect of the very location of which photographs had been taken by both the sides and in order to resolve the controversy, we directed the Member Secretary, Tamil Nadu State Legal Services Authority, Chennai to obtain a report from the area concerned. The Member Secretary visited the location himself and has filed the report. He requested the Revenue Officials and the Executive Engineers of Public Works Department to assist him.

6. The report filed by the Member Secretary suggests that no place either at spot or its vicinity of place as picturised in the photographs produced by the petitioners have matched with the site of inspection. Thus, the premise on which the petition was filed does not appear to be correct.

7. However, the matter does not rest at this, as the Member Secretary proceeded to inspect the site to verify the extent of mining where mining was actually carried out. With the assistance of the Revenue officials, he fixed the point-A from the Village stone, whereafter Points C and D were located and

thereafter points E and F. After identifying SF.No.499(P), it was found that the mining areas were dug as channels and the sand was heaped in the channel bunds. There were six such channels. The depth of the channels varies from 1.8 meters to 4.3 meters and the height of the heaps are in the range of 5.3 meters to 9 meters. The finding on the basis of the measurement is that the area 'EFGH' in the rough sketch falls outside the property, for which permission was given to mining.

8. In order to understand the controversy, we reproduce the plan filed with the report as under:

9. The 4th respondent / PWD has filed an affidavit in respect of the aforesaid plan and has averred that the points are fixed from the Village stone, whereas the actual boundary stones initially fixed by the department were broken 'by the local public'. The stand in a nutshell is that the actual location for permitted mining is slightly different, though the total measurement may be correct and that marked portion 'CC' - DD' is outside the mining area, while 'EFGH', which has been located as excess mining area, is actually within the mining area. We reproduce the plan as under to appreciate the same:

10. Learned Senior Counsel appearing for the petitioner contended that the village people have nothing to do with the stone and this is only a story spun to defend the mining. He submits that for the purposes of adjudication, the report submitted by the Member Secretary, Tamil Nadu State Legal Service Authority, Chennai, should be the basis and it is only an endeavour being made to shift the location to justify the excess mining. It is also his submission that the direction passed in the earlier writ petition relating to the upstream areas should equally apply to the downstream areas.

11. We put to learned Advocate General whether the suggestion to apply the norms prevalent for the upstream areas in terms of the earlier direction can be applied to the downstream areas at least to prevent the problem occurring in future. On instruction, learned Advocate General states that there is no difficulty in this behalf.

12. On the conspectus of the aforesaid matter, we are of the view that though undoubtedly there is some discrepancy between the report filed by the Member Secretary, Tamil Nadu State Legal Services Authority, Chennai and what the 4th respondent pleads, the same is arising out of the point from which measurement has been taken. The total area is not different inasmuch as, as per the plan submitted by the 4th respondent, 'CC' - DD' --

could be excluded from the mining area and it should be 'EFGH' area which should be included. In a proceeding of the nature which we are adjudicating, it may not be possible for us to opine one way or the other on this issue and thus, we would go by the stand of the Government in this behalf.

13. To our mind, what is relevant is that the grievance of the petitioners would really not arise in future, if norms fixed for the upstream areas are equally applied to the downstream areas and that would solve the controversy, something to which learned Advocate General on instruction is agreeable.

14. We thus take this stand on record and issue directions that the District Collector would ensure that the directions which are forming subject matter of W.P.No.18239 of 2007 relating to the upstream areas would equally apply to the downstream areas.

15. We thus dispose of the writ petition accordingly, leaving the parties to bear their own costs. Consequently, connected miscellaneous petitions are closed.

16. A Cheque dated 14.11.2016 bearing No.'380362', drawn on State Bank of India for Rs.20,000/- by the first petitioner has been handed over to the Member Secretary, TNSLSA, Chennai.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ksr

To

1. The Secretary,
Department of Public Works Department,
Fort St.George, Chennai 600 009.

2.The District collector, Villupuram.

3.The Revenue Divisional Officer,
Office of the District Collector, Villupuram.

4.The Executive Engineer, Public Works Department, Villupuram.

5.Assistant Engineer, Public Works Department, Villupuram.

6.Superintendent of Police, Villupuram District.

7.The Inspector of Police, Valavanur Police Station, Villupuram.
1.

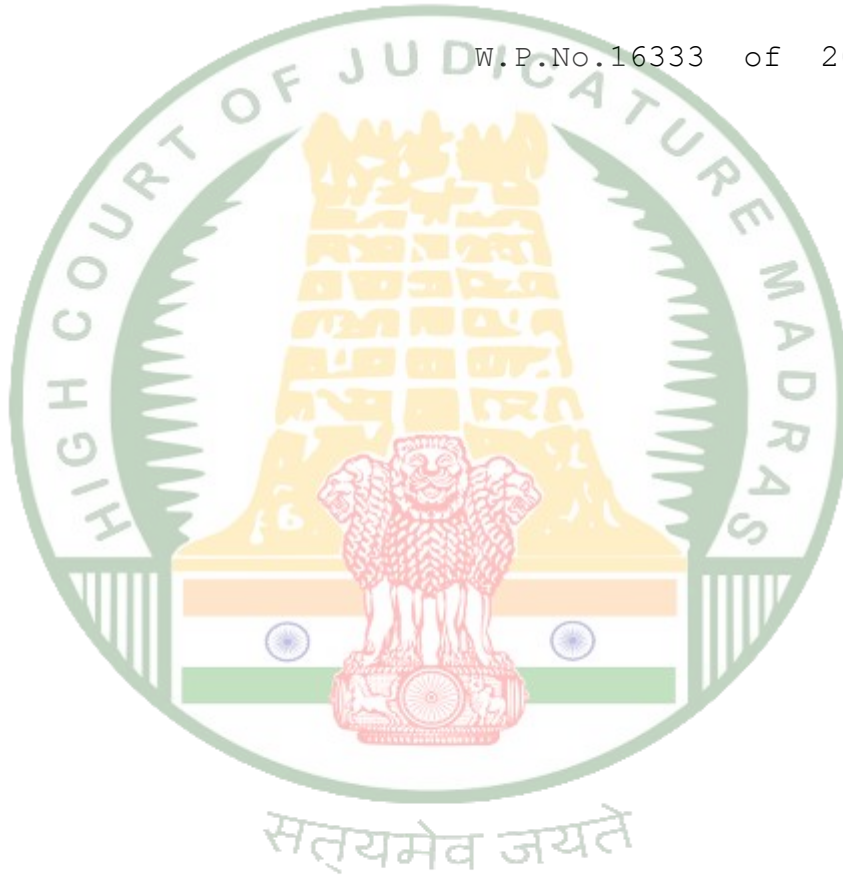
+1cc to Mr.K. Sudalaikannu, Advocate, S.R.No.65582

+1cc to the Government Pleader, S.R.No.65504

sai(CO)

md(30/11/2016)

W.P.No.16333 of 2016



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