

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.27905 of 2011
and
M.P.Nos.2 & 3 of 2011

O.Ulaganathan
S/o.R.Obli Chetti
Recreation Club Road
Mettur Dam, Mettur Taluk
Salem District - 636 401. .. Petitioner

..Vs..

1.Tamil Nadu Hill Areas Conservation
Authority
Rep by its Member Secretary - cum -
Director of Town and Country Planning
No.807, Anna Salai
Chennai - 600 002.
2.The Director of Town and Country Planning
No.807, Anna Salai
Chennai - 600 002. ... Respondents

(R2 impleaded as per order dated 22.09.2014
in W.P.No.27905/2011)

Prayer

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Madamus to call for the records pertaining to the respondent's letter bearing Roc No.838/2010/HSBA dated 06.05.2010 quash the same and direct the respondent to grant clearance for grant of granite quarrying lease in respect of the petitioner's patta lands totally measuring 3-07-0 hectares comprised in S.F.Nos.1021/3C2, 1023/3, 1026/1, 1028/1A and 1029/1A1 situated in BURGUR 'B' Village, Bhavani Taluk, Erode District.

For Petitioner : Mr.K.Ramakrishna Reddy

For Respondents: Mr.S.Diwakar, Spl.G.P.,

ORDER

Heard Mr.K.Ramakrishna Reddy, learned counsel appearing for the petitioner and Mr.S.Diwakar, learned Special Government Pleader appearing for the respondents.

2.The petitioner in this writ petition has challenged the decision of the first respondent which is an authority which has been constituted for hill area conservation called the Hill Area Conservation Authority consisting of various Secretaries of the Departments of the Government of Tamil Nadu with technical representatives who will examine the impact of the applications given for grant of quarrying permission or for putting up construction on environment. The petitioner applied for grant of lease to quarry granite from patta lands totally measuring 3-07-0 hectares comprised in S.F.Nos.1021/3C2, 1023/3, 1026/1, 1028/1A and 1029/1A1 situated in BURGUR 'B' Village, Bhavani Taluk, Erode District.

3.Since the area for which the petitioner has applied for lease comes under the purview of the first respondent authority, necessarily the application had to be forwarded to the first respondent at the very inception and only thereafter, that too based on the recommendations of the first respondent, a decision has to be taken. The first respondent by the impugned order dated 06.05.2010 has taken a decision refusing to grant permission to quarry black granite from the land in question by observing that "the residential area are located within 120 to 150m and it is essential to conserve the nature".

4.The contention raised by the petitioner are broadly four folds.

(a).Firstly, it is contended that the distance rule mentioned therein is incorrect, as the rule which is applicable to a granite quarry is Rule 36 of the Tamil Nadu Minor Mineral Concession Rules, 1959 which prescribes only a distance of 50 metres.

(b).Secondly, it is contended that the petitioner has been discriminated in as much as the application submitted by another party in respect of the patta lands in the same village comprised in Survey Nos.915/1,2,3, 1021/1B and 1022/2 measuring an extent of 1.125 Hectares has been approved by the first respondent authority.

(c).Thirdly, it is contended that inspite of the specific clarification/recommendation given by the District Collector, Erode District dated 20.05.2010 to the second respondent, that too, based on a request made by the second respondent to the District Collector and the communication of the Commissioner of Geology and Mining, dated 07.04.2010, wherein the Commissioner,

the competent authority under the provisions of the Rules, exercising all powers for implementation of the rules has certified that the report of the District Collector, Erode clarifying that 50 metres is the safety distance for the residential building for granite quarry site can be accepted has also been brushed aside.

(d).Fourthly, it is contended that the after the earlier writ petition filed before this Court in W.P.No.14379/2010 was disposed of by an order dated 16.08.2010 by directing the first respondent herein to consider the petitioner's representation, the second respondent has now taken a stand that the matter has been referred to the Government and the same will be placed before the first respondent after receiving orders from the Government. Thus, it is submitted by the learned counsel for the petitioner that the impugned order is wholly unsustainable.

5.The learned Special Government Pleader appearing for the respondents referred to paragraph 9 of the counter affidavit explaining the role of the first respondent authority and the purpose for which it was constituted and the object which it seeks to achieve. Further, it is stated that even though leaving of 300 metre safety distance is provided to quarrying of stone under Rule 36(1-A) of the Rules, the first respondent took a decision as per the orders of the Chief Engineer, Agricultural Engineering Department, Chennai dated 14.03.2007, which stated that within about 120 to 150 metres distance, residences are existing in the eastern side of the applied area and therefore, a decision was taken to refuse the application.

6.After hearing the learned counsels for the parties and perusing the materials placed on record, it appears that the respondents have now cleared themselves of the fact that the distance rule which is applicable for the granite quarry is Rule 36 and not Rule 36(1-A). This is so because in the counter affidavit they now seek to refer to the proceedings of the Chief Engineer, Agricultural Engineering Department to state that within a distance of 120 to 150 metres, if the residential area is located, the application for quarrying should not be considered. This, ofcourse is a new contention raised for the first time, that too making it clear from the counter affidavit.

7.Thus, the respondents having accepted that Rule 36 alone will apply, it should be seen as to whether they are justified in rejecting the petitioner's application for the reasons assigned in the impugned decision. Admittedly, the decision is in the nature of a resolution passed in the matter and it is not a speaking order. Thus, if the first respondent proposed to rely upon some other criteria, other than the provisions contained under the rules, then obviously they have to pass a speaking order.

8. That apart, the petitioner has pointed out that in respect of the application submitted by another party in respect of the patta lands in the same village comprised in Survey Nos. 915/1, 2, 3, 1021/1B and 1022/2 measuring an extent of 1.125 Hectares, permission has been granted. This aspect of the matter has also to be gone into.

9. Further, in the earlier writ petition filed by the petitioner, there is a direction to the first respondent authority herein to consider the representation given by the petitioner dated 25.05.2010 and 15.06.2010. Therefore, if the first respondent do not consider the said representation, then it would amount to disobedience of the order passed in the earlier writ petition.

10. In the light of the above facts, the impugned decision taken by the first respondent has to be necessarily set aside. Accordingly, the writ petition is allowed and the impugned order is set aside. The matter is remitted to the respondents for fresh decision who shall take note of all the above observations as well as the position under the Rules and take a fresh decision in the matter, uninfluenced by the reasons which weighed with the first respondent to take the impugned decision. The said exercise has to be carried out by the respondents within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Member Secretary - cum -
Director of Town and Country Planning
Tamil Nadu Hill Areas Conservation Authority
No. 807, Anna Salai, Chennai - 600 002.
2. The Director of Town and Country Planning
No. 807, Anna Salai Chennai - 600 002.

+1cc to Mr. K. Ramakrishna Reddy, Advocate, S.R.No. 45101

SVI (CO)
EU (29/08/2016)

W.P.No. 27905 of 2011
and
M.P.Nos. 2 & 3 of 2011