

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No19183 of 2016 &
W.M.P.Nos.16698 & 16699 of 2016

Shri NAGA STONE QUARRY
rep. by its Proprietor D.Rajan
Chennai.. .. Petitioner

Vs

- 1.The District Collector
Kancheepuram.
 - 2.The District Forest Officer
Chengalpet-Kancheepuram Division
Kancheepuram District.
 - 3.The Forest Range Officer
Sriperumbudur Range
Sriperumbudur.
- .. Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of prohibition for prohibiting the respondents from in any manner preventing free vehicular movement and access to the petitioner's property situated in survey Nos.370/1 & 371 to an extend of 1.81.5 hectares in Naduveerapattu Village Sriperumbudur Taluk, Kancheepuram District, through the road connecting State High Way (MDR) running from Tambaram to Somamangalam.

For Petitioner : Mr.E.Vijay Anand

For Respondents : Mr.S.Diwakar - R1
Special Government Pleader

Mr.N.Inbanathan - R2 & R3
Govt.Advocate

C O M M O N O R D E R

Heard Mr.E.Vijay Anand, learned Counsel appearing for the petitioner, Mr.S.Diwakar, learned Special Government Pleader appearing on behalf of the first respondent and Mr.N.Inbanathan, learned Government Advocate, appearing for the respondents 2 & 3 and with the consent of learned counsel

appearing on either side, these Writ Petitions are taken up for final disposal.

2.The petitioner has filed this Writ Petition for issuance of a writ of prohibition, to prohibit the respondents from in any manner preventing free vehicular movement and access to the petitioner property situated in Survey Nos,370/1 & 371 an extent of 1.81.5 hectares in Nanduveerapatgtu Village, Sriperumbudur Taluk, Kancheepuram District, through the road commencing State Highway (MDR) running from Tambaram to Somangalam.

3.The petitioner is engaged in stone quarrying in a private patta land. The petitioner is said to have obtained no objection certificate from all Departments including the Forest Department for effecting stone quarrying. The reason for filing this Writ Petition is that a connecting road which passes through the forest area which according to the petitioner being used for several decades, has been blocked by the respondents 2 & 3 who are District Forest Officer, Chengalpet-Kancheeruram Division and the Forest Range Officer, Sriperumbudur range. The petitioner would contend that on account of the action of the respondents 2 & 3, their right to have free access to their property is curtailed and there is no other alternate route except the connecting road, which is sought to be hindered by the respondents 2 & 3, thereby indirectly seek to curtail vehicular movement.

4.The learned counsel for the petitioner pointed that the First Bench has passed orders in W.A.Nos.1375 of 2012, etc. dated 15.10.2012, [THE STATE OF TAMIL NADU REP. BY ITS SECRETARY, ENVIRONMENT AND FORESTS DEPARTMENT, FORT ST. GEORGE, CHENNAI AND ORS v. K.K.M.CONSTRUCTIONS], wherein somewhat an identical issue came up for consideration and directions were issued in the said case with regard to the pathway to reach the patta land. Therefore, it is submitted that the respondents should consider the petitioner's request for providing unhindered access to their patta land.

5.The second respondent has filed a counter affidavit, stating that the approach road from the petitioner's quarry site to the State Highway, is inside the Nallur Reserve Forest and it is an illegally formed road, in violation of the Tamil Nadu Forest Act 1882, Wildlife Protection Act, 1972 and Forest Conservation Act, 1980. Further, it is stated that in the Gazettee Notification of Nallur Reserve Forest, a Right of way is allowed in portion of Reserve Forest for a width of 12 feet and length of 53 chains. This right of way has been converted as a road of more than 40ft width and this is in violation of section 2 of the Forest Conservation Act, 1980. Further, it is stated that extending the width of the right of way to more than 12 feet would be in violation of the directions issued by the Hon'ble Supreme Court in W.P.No.202 of 1995, dated 12.12.1996. Further, the second respondent

would state that he has inspected the spot on 25.07.2016, in the presence of the petitioner and discussed with him about the blatant violation of rules that he has committed and the petitioner has agreed that he will restrict the vehicular movement to 12 feet and offered to help the Forest Department to take up afforestation work in the area.

6.The learned counsel for the petitioner submitted that subsequent to the inspection, the third respondent has issued a notice dated 01.07.2016, and submits that the same may be recorded and the matter can be disposed of. However, the petitioner seeks for a right of way more than 12 feet or in other words, would seek for a width of at least 40 feet for heavy vehicles to pass through. In my view, the petitioner/others had blatantly violated the provisions of the Act and the orders of the Hon'ble Supreme Court and formed an illegal road in Forest land. The petitioner has no vested right to insist on a particular width of the right of way. The Forest Department who are enjoined with the duty to preserve forest reserve, shall be the only competent authority to decide as what would permissible without damage to ecology. Hence, no specific direction can be issued by this Court regarding the width of the right of way.

7.In the light of the subsequent development which has culminated in the issuance of the notice dated 01.07.2016, the respondents 2 & 3 are directed to provide right of way by restricting the width to 12 feet and take an undertaking from the petitioner that at no point of time, the width will be increased and he will be held liable for the acts committed by any of the lorry owners or drivers or his employees, if there is any violation. That apart, the respondents 2 & 3 shall conduct surprise inspections at frequent intervals to ensure that the width of the right of way is not increased beyond 12 feet. In the event of any violation, the respondents 2 & 3 can take appropriate action.

8.With the above observations, the Writ Petition is disposed of with a direction to the respondents 2 & 3 to proceed further, pursuant to the memo dated 01.07.2016, for the purpose of providing a right of way to the width of 12 feet only. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Rpa

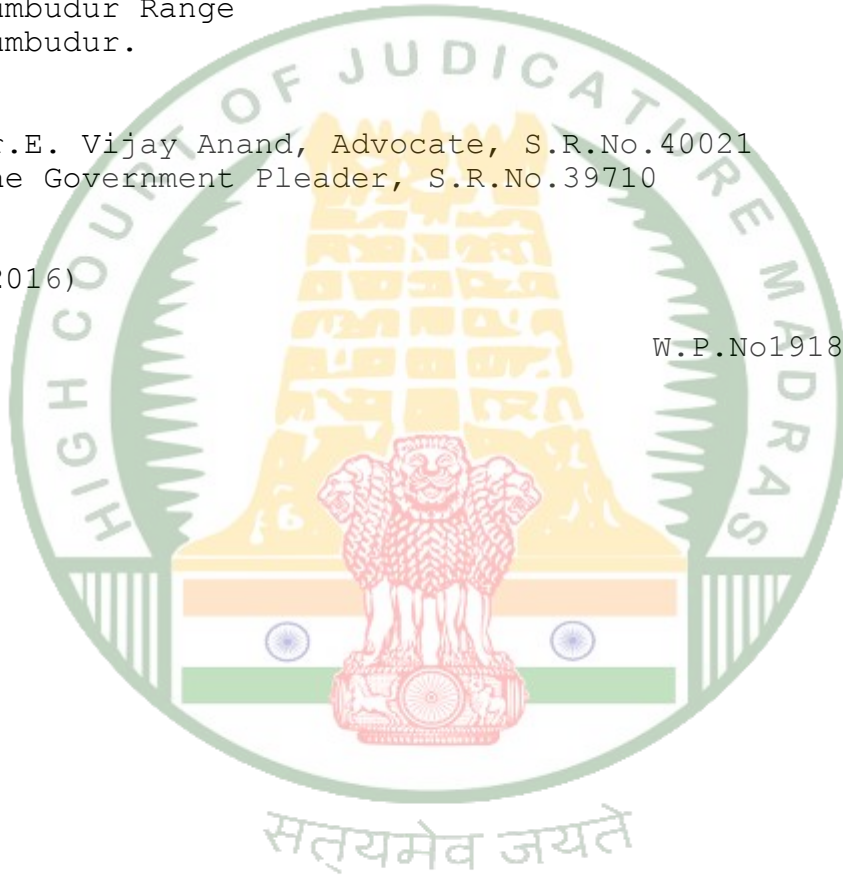
To

- 1.The District Collector
Kancheepuram.
- 2.The District Forest Officer
Chengalpet-Kancheepuram Division
Kancheeruram District.
- 3.The Forest Range Officer
Sriperumbudur Range
Sriperumbudur.

+1cc to Mr.E. Vijay Anand, Advocate, S.R.No.40021
+1cc to the Government Pleader, S.R.No.39710

AD(CO)
EU(03/08/2016)

W.P.No19183 of 2016



WEB COPY