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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 29.11.2016

CORAM

The Hon'ble Mr. Justice S.NAGAMUTHU
AND
The Hon'ble Mr. Justice M.V.MURALIDARAN

WP (MD) No.15294 of 2016
and WMP (MD) Nos.11270 and 11271 of 2016
and WMP (MD) No.11995 of 2016

S.Chinnazhagan .. Petitioner

Vs

1. The District Collector,
Madurai District,
Madurai.
2. The District Revenue Officer,
Madurai District,
Madurai.
3. The Revenue Divisional Officer,
Madurai District,
Madurai.
4. The Conservator of Forests, Madurai
Race Course Road, Near Pandian Hotel,
Madurai - 625 002.
5. Mettupatti Panchayat Board,
Represented by its President,
Mettupatti, Madurai.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the records relating to the proceedings of the Impugned notification in Na.Ka.No.345/2016-mineral dated 01.08.2016 published in the Madurai District Gazette dated 02.08.2016, on the file of the first respondent and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondents : Mr.B.Pugalendhi (for R1 to R4)
Additional Advocate General
assisted by Mr.M.Govindan
Special Government Pleader
Mr.M.P.Senthil (for R5)

**O R D E R**

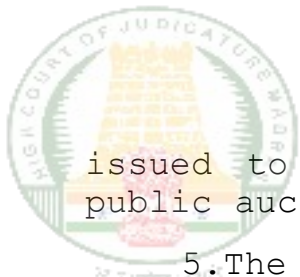
(Order of the Court was delivered by M.V.MURALIDARAN, J)

This writ petition has been filed as public interest writ petition for issuance of Writ of Certiorari calling for the records relating to the proceedings of the impugned Notification in Na.Ka.No.345/ 2016 - Mineral dated 01-08-2016 published in the Madurai District Gazette dated 2.8.16 on the file of the first respondent and quash the same.

2.The Petitioner has come with the writ petition as public interest litigation challenging the impugned notification issued by the first respondent to issue license to quarry stone in the unassessed waste land belong to the Government situated in S.No.418, Mettupatti Village, Vadipatti Taluk, Madurai District stating that the said land is Hillock and the said survey number totally consist of 175.45.0 Hectare land, wherein the villagers are carrying agriculture operation over an extent of 100 acres and the agriculture is the only source of livelihood for the villagers and the petitioner is also doing agriculture operation. Further the Forest Department has planted trees in the rest of the land under Social Forest Scheme, there is no access to the site and the same is through the water channel only and it would be destroyed if vehicles go through it and there are various wildlife, natural medicine etc., further there is no registered women self help group or bonded labourers available as on date but without considering all these, the impugned notification is issued.

3.The further contention of the petitioner is that earlier one M/s.Athees Hard Flooring, doing business in stone crusher approached the government for permission to mine the hillock. The petitioner herein and other agriculturist gave complaint to the 5th respondent and Panchayat council also passed resolution on 6.11.13 requesting not to permit any mining in the said survey number. However, later on he came to know that the said Athees Hard Flooring Firm entered into Memorandum of Understanding with the government for mining lease. Thus, again the petitioner and as well as the 5th respondent Panchayat preferred complaint and in turn, as per the direction of the 1st respondent, the 3rd respondent inspected the land so as find out the feasibility of bringing the above said land for quarrying operation. The 3rd respondent has submitted report on 4.2.16 to the 1st respondent recommending not to proceed for granting of license as there is no access to the quarry site and the agriculture operation may affect.

4.The petitioner has further stated that he sent a representation to the 1st respondent on 22.6.16 enclosing the copy of resolution of the Panchayat and report of the 3rd respondent. But his representation was rejected as the impugned notification



issued to grant license for quarrying in 2.00 hectares in the public auction to be held on 24.08.2016.

5.The 1st respondent herein has filed counter questioning the locus standi as the petitioner has come out the present writ petition as a "Probono Public", on other aspects also there are three stone quarry located adjacent to the proposed quarry site and all the agricultural lands are "B" memo lands and that too they are away from 1000 mts from proposed quarry site. The Thasildhar of Vadipatti conducted enquiry and the villagers did not object for the same. M/s. Athees Hard Flooring under single window system applied for permission to quarry the proposed site with this respondent. But their request was rejected on the ground that no rule provide in the Tamil Nadu Minor Mineral Concession Rules, 1959 for grant of lease to the individuals directly in Poramboke land. As the lease could be given only under public auction, the first respondent directed the 3rd respondent to conduct spot inspection with regard to the feasibility of leasing out the stone quarry situated in S.No.418 of 66, Mettupatti Village.

6.The 3rd respondent filed report to the effect that the government land in question is having social forestry apart from agriculture operation and thus recommended to reject the request. As the report as was objected, the 2nd respondent was directed to inspect and after inspection he filed the report on 17.06.2016. The report says that at the time of inspection no agricultural operations appeared to have been done by the encroachers who were rendered "B" memos and that the said encroachments are located 1000 mt. away from the site, and within 300 meters no archeological monuments or houses, water bodies such as Orani, Kanmai or Well is located and the quarry site can be accessed through the Jungle Odai and that water flows through the same only during the rainy seasons and that there is no possibility of water flowing through the same during the other season. Apart from that there are two other access road available. Therefore in order to augment the income of Government the 1st respondent decided to bring the said unassessed waste land for leasing it to the quarry operation to the self help group by publishing impugned notification. There is no irregularities and infirmities in the impugned notification and the writ is filed only on apprehension as only after compliance of all legal procedures the quarrying operation will commence.

7.We have heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner and Mr.B.Pugalendhi, learned Additional Advocate General assisted by Mr.M.Govindan, learned Special Government Pleader, appearing for the respondents 1 to 5 and Mr.M.P.Senthil, learned counsel appearing for the fifth respondent.



8. We have carefully considered the rival submission of the learned counsel for the petitioner and learned Additional Advocate General assisted by the learned Special Government Pleader and the learned counsel for the impleading petitioner and also gone through the records.

9. When the writ petition came up for hearing before us on 6.9.16, the 3rd respondent has filed a report as per the direction of this Court. In the report it is stated that in S.No:418 no other quarry site is available at 66, Mettupatti Village. Further it is stated that there are two other quarry is in operation in S.No.1, at Rajakallupatti Village, Vadipatti Taluk which is located 350 meters away from the proposed quarry site in S.No.418 of 66, Mettupatti Village.

10. The learned counsel for the petitioner mainly contended that there are social forestry in the proposed quarry site and therefore if quarry operation is permitted all the trees planted by the Forest Department would be affected and it is a danger to the nature. The learned counsel also vehemently contended that the entire agriculture operation would also been affected if the proposed site is leased for mining operation. The learned counsel for the petitioner stated that the 4th respondent had also objection for leasing out any portion of the property in question for quarrying operations. However the learned Special Government Pleader represented that as of now, the fourth respondent has got no objection. As this Court could not understand why the fourth respondent has taken a different stand from earlier one, this Court directed the fourth respondent to file an affidavit explaining as to why did he oppose earlier and later he has withdrawn by saying no objection.

11. On 29.11.2016 when this writ petition was taken up for hearing, the 4th respondent filed report stating that the land in dispute does not come within purview of forest land and it is an unassessed waste land belong Revenue Department and the proposed operation of quarry, which is a small area will not affect the plantation and further the Government will get revenue and thus there is no objection on their part. The Forest Department, which planted trees have sufficiently explained that the proposed operation will not affect and therefore the same cannot be rejected or taken against the view of authority and thus the arguments of the counsel for the petitioner cannot be countenanced.

12. Even though the petitioner averred in his affidavit that at the instance of M/s. Athees Hard Flooring the present impugned notification is issued by making allegation it was not added as party. However the impleading petitioner, who is the proprietor of the firm has filed the petition in W.M.P.No.11995/16 to implead him as 6th respondent in this writ petition. This Court feels that



the impleading petitioner is to be heard in view of the allegations and contra allegations made in the affidavit, touching the locus standi of the petitioner and as well as their personal score, hence we hereby allow the impleading petition and the Registry is directed to make suitable amendment showing him as 6th respondent.

13. According to the 6th respondent, the writ petition has been filed with a malafide intention in order to wreck vengeance against him. The petitioner herein is a land broker and through him he has purchased lands in Mettupatti Village itself. Though the petitioner was paid with his brokerage fee dispute arose between them regarding payment of amount and in order to give trouble and extract money the petitioner has filed the writ petition by abusing the process of law as he is a business rivalry.

14. It is an admitted fact there are three quarries running, may be in other survey number, but very near to the proposed quarry site and the Government waste land is proposed to be auctioned in order to generate the income of Government. The Authorities have found that the land can be utilized for quarrying and the operation will not affect any agriculture operation or the forest planting, the Forest Department concurred with the view of the District Administration. The report of the 2nd respondent was confirmed by the 4th respondent and this Court feels that when the revenue and as well as Forest Department, after appraisal of issues and spot inspection come forward with the proposal that the proposed auction will generate income to the Government it cannot be ignored and the bald statement of the petitioner could not be accepted. The relevant portion of the report of the 4th respondent is extracted hereunder.

"It is respectfully submitted as directed by Honourable Madurai Bench of Madras High Court, Madurai in interim order dated 26.09.2016, in W.P (MD) NO. 1529 of 2016, District Forest Officer, Madurai had inspected the proposed quarry site in survey number 418 of Metupatty Village on 07.11.2016.

It is further submitted that as per the Mettupatty Village "A" register, the area where quarry notification has been issued, is classified as "unassessed Waste Land". The land is under the control of Revenue department. Also the land is not a forest land since it is not covered under Section 4, Section 16 or Section 26 of Tamilnadu Forest Act 1882, and also since the existing vegetation is TAP Plantation (Tamilnadu Afforestation Project) and not the natural or spontaneous growth, the provisions of Forest Conservation Act 1980, will not be applicable in the case.

It is further submitted that since the District Administration has already issued the Gazette notification for



quarry of stones, and the inspection by the District Forest Officer revealed that in the proposed site there is only scrub and bushy growth of tree, I am of the opinion that there is no objection from the forest point of view to grant no objection for the proposed quarry by taking into consideration of the revenue it is likely to generate to the Government with specific condition by the District Level Forest Committee".

As per the report, the 4th respondent has no objection to lease the proposed quarry. Further the land is not a forest land since it is not covered under Section 4, Section 16 or Section 26 of Tamilnadu Forest Act 1882, and also since the existing vegetation is TAP Plantation (Tamilnadu Afforestation Project) and not the natural or spontaneous growth, the provisions of Forest Conservation Act 1980, will not be applicable to the present case.

15. We have also considered Rule 36 of Tamil Nadu Minor Minerals Concession Rules, 1959 and Rule 41 of the Tamil Nadu Minor Mineral Concession Rules, 1959 stipulates for mining plan as a prerequisite to the grant of lease for minor minerals other than Granite and in Clause (iii) of sub rule 10 of Rule 41 mandates mining plan as a requirement for the quarries. Similarly vide Rule 42 the Environmental Clearance is made as one of the requirement for grant of quarry lease for minor minerals including granites and sub rule (iii) of Rule 42 stipulates for Environmental Clearance for minor minerals for the quarries. Thus there are many check valves to safeguard the interest of everyone. After complying all legal requirements only the lease agreement will come into play. Thus the contention of the petitioner is purely apprehension, which cannot be taken at this stage. This Court finds that there is no violation of Rule 36 of Tamil Nadu Minor Minerals Concession Rules, 1959.

16. In view of the above this Court feels that the grievance eared by the petitioner does not seem to be in the interest of public as the petitioner did not bring the material factum of running of three more stone quarry with the permission of the authorities. There is no impediment for the authority to proceed with the action of the proposed quarry. The very contention of the petitioner that the people in the village paid tax under "B memo" reveals that the intention of the petitioner is not to protect any best interest of society but to obstruct the utilization of the unassessed waste land belong to the Government and to score his personal motive against the 6th respondent. The Hon'ble Supreme Court in **Kalyaneshwari v. Union of India, (2011) 3 SCC 287** has held as follows:- at page 304 :

39. Every litigant, who approaches the Court, owes a duty to approach the Court with clean hands and disclose complete facts.

A petition which lacks bona fides and is intended to settle



business rivalry or is aimed at taking over of a company or augmenting the business of another interested company at the cost of closing business of other units in the garb of PIL would be nothing but abuse of the process of law.

40. Presumably, and as contended, the direct impact of banning of activities of mining/manufacturing relating to asbestos shall result in increase in demand of cast iron/ductile iron production as they are some of the suitable substitutes for asbestos. It is not in dispute that ESCL is one of the largest manufacturer of iron and allied products in India and there was a professional and/or other connections between ESCL and B.K. Sharma on the one hand and B.K. Sharma and Shanti Swarup on the other who, admittedly at present, is involved with the activities of NGO for a considerable time. Thus, it would be a reasonable conclusion to draw that the writ petition has been hardly filed in public interest but is a private interest litigation to give rise to business opportunities in a particular field.

41. In *Ashok Kumar Pandey v. State of W.B(5)*, this Court took a cautious approach while entertaining public interest litigations and held that public interest litigation is a weapon, which has to be used with great care and circumspection. The judiciary has to be extremely careful to see that no ugly private malice, vested interest and/or seeking publicity lurks behind the beautiful veil of public interest. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief.

42. In *Rajiv Ranjan Singh 'Lalan' v. Union of India*, this Court reiterated the principle and even held that howsoever genuine a case brought before a court by a public interest litigant may be, the court has to decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose bona fides and credentials are in doubt; no trust can be placed by the court on a mala fide applicant in a public interest litigation.

43. The courts, while exercising jurisdiction and deciding a public interest litigation, have to take great care, primarily, for the reason that wide jurisdiction should not become a source of abuse of process of law by the disgruntled litigant. Such careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose true facts and approach the Court with clean hands. Thus, it is imperative that the petitions, which are bona fide and in public interest alone, be entertained in this category. Abuse of process of law is essentially opposed to any public interest. One who abuses the process of law, cannot be said to serve any public interest,



much less, a larger public interest. In the name of the poor let the rich litigant not achieve their end of becoming richer by instituting such set of petitions to ban such activities.

17. This Hon'ble Court has also held that the parties are not entitled to settle their personal score in the public interest litigation and the same shall be deprecated vide 2011 (3) CTC 386. This Hon'ble Court in a case of *S. Shenbagavalli -Vs- The District Collector and another* has reiterated the scope of public interest litigation, by relying upon the Judgment of the Hon'ble Apex Court which are extracted hereunder:

"11. In a recent decision *Holicow pictures Private Limited .vs. Prem Chandra Mishra and others* reported in (2008) 1 MLJ 1075, the Supreme Court has again reiterated the principles to be followed by courts in dealing with Public Interest Litigations. The Apex Court has defined the scope and extent of the exercise of jurisdiction in dealing with such litigations. At Paragraph 10,17,18,20 the Supreme Court has held as follows:

10...Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or Politics interest litigation". If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure or knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction...."

17. It is depressing to note that on account of such trumped up proceedings initiated before the Courts, innumerable days are wasted, the time which otherwise could have been spent for disposal of cases of the genuine litigants..."

"..the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and



resultantly they loose faith in the administration of our judicial system."

18. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public oriented or founded on personal vendetta. As indicated above, Courts must be careful to see that a body of persons or member of public, who approaches the Court is acting bonafide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

"20. The Court has to be satisfied about (a) the credentials of the applicant:(b) the Prima facie correctness or nature of information given by him:(c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests: (1) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance it does not encroach upon the sphere reserved by the constitution to the executive and the Legislature. The court has to act ruthlessly while dealing with impostors and busy bodies or meddlesome interlopers impersonating as public-spirited holy end. They masquerade as crusaders of justice. They pretend to act in the name of Probono Publico, though they have no interest of the public or even of their own interest."

<https://hcservices.ecourts.gov.in/hcservices/>

18.It is clear that the petitioner, under the banner of Public Interest Litigation, with malafide and private motive has filed



the present writ petition and the objection of the petitioner is not bonafide. No public interest is involved in this Writ Petition. The Principles laid down by the Supreme Court is squarely applicable to the facts of this case. As rightly contented by the 1st respondent herein, this is only a Probono Public interest writ petition and the petitioner herein has no locus standi to file the present writ petition. The petitioner can't poke his nose into the leasing of government land for quarry. It is for the government to decide, to lease any unassessed waste land or not and not the petitioner herein.

19. In the result, the above writ petition is dismissed. Consequently all the connected miscellaneous petitions are closed. There is no order as to cost.

Sd/
Assistant Registrar(A.E.,)

/TRUE COPY/

Sub Assistant Registrar

To

1. The District Collector, Madurai District, Madurai.
 2. The District Revenue Officer, Madurai District, Madurai.
 3. The Revenue Divisional Officer, Madurai District, Madurai.
 4. The Conservator of Forests, Madurai
Race Course Road, Near Pandian Hotel, Madurai - 625 002.
- +1cc to M/s.M.P.Senthil, Advocate, in SR No.74157.
- +1cc to M/s.V.B.Sundhareshwar, Advocate, in SR No.74418.
- +1cc to M/s.G.Prabhu Rajadurai, Advocate, in SR No.74174.
- +1cc to Special Government Pleader in SR.No.74221.

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and WMP(MD)Nos.11270 and 11271 of 2016
and WMP(MD)No.11995 of 2016
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msm/ss3/07.12.16/p10/9c(IT)