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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2016

CORAM:

THE HONOURABLE MR. JUSTICE **M. VENUGOPAL**

W.P. (MD) No. 7122 of 2016

and

W.M.P. (MD) .Nos. 6037 and 7266 of 2016

Mahendran

...Petitioner

Vs.

1. The District Collector,
Sivagangai District.
2. The Revenue Divisional Officer,
Devakottai,
Sivagangai District.
3. The Assistant Director,
(Mines and Mineral),
Collector's Office,
Sivagangai and District.
4. The Thasildar,
Taluk Office,
Devakottai and Taluk,
Sivagangai District.
5. The President,
Village Panchayat,
Aaravayal,
Devakoatti Taluk,
Sivagangai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the Respondents or any men claiming under them from excavating gravel in Perattukottai Kanmai, Perttukottai Village, Devakottai Taluk, Sivagangai District.

For Petitioner
<https://hcservices.ecourts.gov.in/hcservices/>
For Respondents

: Mr.G.Thandayuthapani
: Mr.S.Sades Kumar
Additional Govt. Pleader

O R D E R

Heard the Learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

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2. According to the petitioner, the Perattukottai Kanmoi is situated in Survey No.86 of Perattukottai Village and it has got an ayacut about 320 acres of lands. He is one of the Ayacudars of the aforesaid Kanmoi and many families solely depend upon the aforesaid agricultural lands.

3. The stand of the petitioner is that he came to know that the Fifth Respondent/President, Village Panchayat, Aaravayal, Devakottai Taluk, Sivagangai District, had passed a resolution enabling certain persons to excavate gravel in the above stated Kanmoi. Also, it is understood that the First respondent/District Collector, Sivagangai and Revenue Divisional Officer, Devakottai had ratified the resolution to excavate gravel in Perattukottai Kanmoi by passing illegal orders.

4. The grievance of the petitioner is that he had requested the fifth respondent to furnish the details of the resolution passed pertaining to the removal of gravel in the aforesaid Kanmoi. However, the fifth respondent declined to furnish any details of resolution. Therefore, he send a petition under RTI Act, 2005, on 17.03.2016, making a request to the fifth respondent to furnish the copy of the resolution passed for removal of gravel in Perattukottai Kanmoi etc.

5. The categorical plea taken on behalf of the petitioner is that on 08.04.2016, at about 4.00 p.m., Tarus Tipper Lorries bearing Registration Nos.TN63 AY-9979, TN63 AY-4957 and TM38 AI8249 came to the Perattukottai Kanmoi and an attempt was made to excavate the gravel with the help of excavator machine. Immediately, a complaint was filed before the Aaravayal Police Station by one of the Ayacudars of the aforesaid Kanmoi viz., Kumar, S/o.Ganesan, Perattukottai Village. However, no action was taken on the complaint.

6. The petitioner, in the Writ Petition, proceeds to make a significant mention that even on 10.04.2016, excavations are made hurriedly with the help of excavator machine to the depth of more than 7 feet in the aforesaid Kanmoi and the gravel is carried by lorries bearing Registration Nos.TN63 AY-9979, TN63 AY-4957 and TM38 AI8249 through the the nearby road. He made a complaint before the Aaravayal Police Station, but the police declined to take action on the ground that it is civil in nature. The learned
<https://hcservices.mca.gov.in/hcservices/> the petitioner urges before this Court that the petitioner submitted a representation dated 07.04.2016, to the respondents 1, 2 and 4, requesting them to take suitable



preventive action to stop illegal removal of gravel in Perattukottai Kanmoi, but no action has been taken in the subject matter in issue. The learned counsel for the petitioner contends that the Government of Tamil Nadu enacted Tamilnadu Farmers Management of Irrigation System Act, 2000, empowering the Water Users Association for maintenance of irrigation system in water sources. As per Section 22 of the aforesaid Act, only the Water Users Association is empowered to regulate the use of water among the various sluices. The maintenance of irrigation system and removal of encroachment in tanks vest with the Water Users Association only.

7. The prime grievance projected on the side of the petitioner is that the Respondents 1 to 4 have not considered his representation dated 07.04.2016

8. It transpires that on 04.05.2016, this Court, in W.P. (MD).No.7122 of 2016, had passed the following order:

"Notice to the respondents is accepted by Mr.S.Satheeshkumar, learned Additional Government Pleader.

2. The learned Additional Government Pleader appearing for the respondents has produced a written instruction of the District Collector dated 30.05.2015, from which, it is seen that the Public Works Department has granted permission for deepening the tank for which purpose authorized the removal of gravel and this permission is valid as on date.

3. The allegation made in the Writ Petition is that indiscriminate removal of gravel is being done, which resulted in diminishing the surface level and the same has caused prejudice to the agriculturists. However, at this stage of the matter, the correctness of the submission made by the learned counsel for the petitioner cannot be gone into, for which purpose, this Court directs the District Collector either herself or by authorizing the Senior Officer to conduct a discreet inspection or surprise inspection and to file a report along with counter affidavit by the next hearing date. It is made clear that the inspection should be conducted within one week from today.

4. Registry is directed to list the matter on 09.06.2016."

9. In response, the Learned Additional Government Pleader for the Respondents 1 to 5 submits that in obedience to the order passed by this Court on 04.05.2016, in W.P.(MD).No.7122 of 2016,

the Assistant Director of Geology and Mining, Sivagangai was directed by the first respondent/District Collector to inspect the subject quarry and to file a report before this Court. As a matter of fact, the subject area was inspected by the Assistant Director of Geology and Mining, Sivagangai on 07.05.2016 along with the Assistant Executive Engineer, WRO, PWD, Manimutharu Basin Sub Division, Devakotttai and the Assistant Geologist (Mines), Sivagangai had furnished his report as under:

"During the time of inspection, it is noticed that gravel has been removed from the lease hold area in three pits and one pit outside the permitted area. The pit dimensions were taken as tabulated below.

a) Pits within the permitted area.

Pit	Length (m)	Width (m)	Depth (m)	Quantity removed (m³)
1	$\frac{52+64+47}{3}=54.333$	$\frac{29+35+42+18}{4}=31.00$	$\frac{1.2+1.7+2.2}{3}=1.70$	2863
2	$\frac{66+55}{2}=60.5$	$\frac{32+42+38}{3}=37.33$	$\frac{1.2+1.65}{2}=1.4252$	3218
3.	$\frac{27+39+30}{3}=32$	$\frac{29+41+33}{3}=34.33$	$\frac{2.1+1.5}{2}=1.8$	1977
		Total		8058m ³

b) Pit outside the permitted area.

Pit	Length (m)	Width (m)	Depth (m)	Quantity removed (m³)
1	$\frac{36+48}{2}=42$	$\frac{22+35}{2}=28.5$	$\frac{0.8+1.3}{2}=1.70$	1257
		Total		1257m ³

10. It is revealed from the report of the Assistant Director of Geology and Mining, Sivagangai, that the lessee has committed the following violations.

"1) The lessee has quarried and transported 5583 cubic meter (or 620 tipper loads of each 9 cubic meter) of gravel excessively from the lease hold area in S.F.No.86 of



Peratukottai Village, Devakottai Taluk, Sivagangai District.

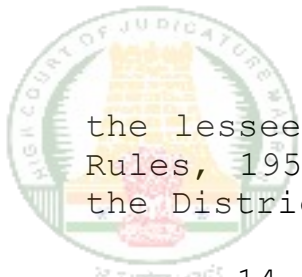
2) The lessee has illicitly quarried and transported removed 1257 m3 (or 140 tipper loads of each 9 cubic meter) of gravel outside the permitted area.

3) The lessee has carried out quarrying operation beyond the permitted depth of 0.9 meters (i.e. the average depth of quarrying falls between 1.425 meter to 1.8 meter).
"

11. The Learned Additional Government Pleader appearing for the respondents brings it to the notice of this Court that based on the report of the Assistant Director(Mines), Sivagangai, the first respondent/District Collector had suspended the quarrying operation on 07.05.2016 itself and quarrying operation in the subject area was stopped from 07.05.2016. Moreover, a show cause notice to the lessee was issued requiring him to appear before the first respondent/District Collector on 23.05.2016 and to offer his explanation as to why the lease granted for quarrying and transportation of gravel over an extent of 4.95.5 hectares, in S.F.No.86 (Part) of Peratukottai Village, Devakottai Taluk, should not be cancelled as per Rule 36(5)(h) of Tamil Nadu Minor Mineral Concession Rules, 1959, for having involved in quarrying and transportation of 5583 cubic meter (or 620 tipper loads of each 9 cubic meter) of gravel excessively from the leasehold area without remitting necessary charges to the Government and carried out quarrying operations beyond the permitted depth of 0.9 meter and involved in illicit quarrying of 1257 cubic meter (or 620 tipper loads of each 9 cubic meter) of gravel outside the permitted area by violating the conditions of lease vide Rc.No.M2/173/2015, dated 07.05.2016.

12. Added further, the Learned Additional Government Pleader submits that the lessee had offered an explanation and the said explanation was found not satisfactory, because of the reason that it is the bounden duty of the lessee to carry out quarrying operation within the permitted area and within permitted depth and to abide the lease deed conditions. Therefore, the permission granted for removal of gravel in favour of Thiru.KR.Periyasamy, over an extent of 4.95.5 hectares out of the total extent of 43.50.50 hectares in S.F.No.86 classified as Perattukottai Kanmoi of Perattukottai Village, Devakottai Taluk, Sivagangai District, was terminated on 29.05.2016, as per Rule 36(5)(h) of Tamil Nadu Minor Mineral Concession Rules 1959, vide District Collector's Proceedings in Rc.No.M2/173/2015 dated 29.05.2016.

13. On behalf of the Respondents, it is also stated that the Sub Collector, Devakottai was requested to take action against



the lessee under Rule 36-A of Tamil Nadu Minor Mineral Concession Rules, 1959, as per Letter Rc.No.M2/173/2015, dated 29.05.2016 of the District Collector, Sivagangai.

14. At this juncture, this Court is of the considered view that the petitioner, in the main Writ Petition, has sought for passing of an order by this Court in directing the Respondents or any men claiming under them from excavating gravel in Perattukottai Kanmai, Perttukottai Village, Devakottai Taluk, Sivagangai District.

15. In view of the detailed counter filed by the first respondent/District Collector, Sivagangai and also by means of the report of the third respondent/Assistant Director (Mines and Mineral), Collector's Office, Sivagangai District, it is quite evident that the quarrying operation in the subject area was immediately suspended and subsequently, the gravel quarry permission granted in favour of Thiru.KR.Periyasamy, was also terminated under Rule 36(5)(h) of Tamil Nadu Minor Mineral Concession Rules 1959. Besides that, the Sub Collector, Devakottai was directed to take action against the Lessee as per Rule 36-A of Tamil Nadu Minor Mineral Concession Rules, 1959.

16. Be that as it may, in view of the fact that the relief sought for by the petitioner in the main Writ Petition is in the nature of an injunction viz., to forbear the Respondents or any men claiming under them from excavating gravel in Perattukottai Kanmai, Perttukottai Village, Devakottai Taluk, Sivagangai District, this Court is of the considered view that the quarrying operation in the subject area was immediately suspended from 07.05.2016 etc., and as such, this Court opines that nothing survives for further adjudication in the Writ Petition. Viewed in that perspective, the Writ Petition stands disposed of. No costs. Before parting with the case, this Court, pertinently points out that the first respondent/District Collector, Sivagangai will follow up the action directed to be taken by the Sub Collector, Devakottai against the lessee as per Rule 36-A 'Penalties' of Tamil Nadu Minor Mineral Concession Rules, 1959. The connected Miscellaneous Petitions are closed.

Sd/

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar



To

1. The District Collector,
Sivagangai District.
2. The Revenue Divisional Officer,
Devakottai,
Sivagangai District.
3. The Assistant Director,
(Mines and Mineral),
Collector's Office,
Sivagangai and District.
4. The Thasildar,
Taluk Office,
Devakottai and Taluk,
Sivagangai District.
5. The President,
Village Panchayat,
Aaravayal,
Devakoatti Taluk, Sivagangai District.

+1cc to Special Government Pleader in SR.NO.29761

+1cc to Mr.K.Balasubramaniam, Advocate in SR.NO.29233

SDR/DB/22.06.2016/7P/8C

W.P. (MD) No. 7122 of 2016
09.06.2016