



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
ORDER RESERVED ON:13.03.2017
ORDER PRONOUNCED ON:21.04.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANUW.P(MD)No.4690 of 2017andW.M.P.(MD).No.3793 of 2017

M/s.Indian Rare Earths Limited,
Manavalakurichi,
Kanyakumari District,
Pin:629 252,
rep.by its Head

.. Petitioner

Vs.

1.The Secretary to Government,
Industries (MMD1) Department,
Government of Tamil Nadu,
Fort.St.George, Chennai-600 009.

2.The Commissioner of Geology and Mining,
Guindy, Chennai-600 032.

3.The District Collector,
Kanyakumari District,
Nagercoil 629 001.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the third respondent to grant the transport permits to the petitioner as conveyed vide its letter dated MK/HRM-LEG/2017 dated 23.01.2017 in respect of the Mining Leases in G.O.Ms.1114 dated 12.08.1981 and G.O.3(D)6 dated 28.01.2000.

For Petitioner : Mr.Krishna Srinivasan
for M/s.S.Ramasubramanian
Associates

For Respondents : Mr.B.Puzhalendhi
Addl.Advocate General
asst.by Mr.R.Anandharaj
Government Advocate

**ORDER**

By consent, this writ petition is taken up for final disposal.

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2. This writ petition has been filed praying for the issuance of a Writ of Mandamus directing the third respondent to grant the transport permits to the petitioner as conveyed vide its letter dated MK/HRM-LEG/2017 dated 23.01.2017 in respect of the Mining Leases in G.O.Ms.1114 dated 12.08.1981 and G.O.3(D)6 dated 28.01.2000.

3. M/s Indian Rare Earths Limited (in short 'IREL'), are a Public Limited Company incorporated under the Companies Act, 1956. They come under the administrative control of the Department of Atomic Energy. IREL, Manavalakurichi are indulging in the business of production and supply of rare earth minerals to the strategic facilities of the Department of Atomic Energy (UEA) among other sales. The rare minerals are separated from beach sand containing mineral deposits. The Beach sand is obtained from the leased mines executed with the State Government through under the Mines and Minerals (Development and Regulation) Act, 1957. (in short 'the Act').

4. The Act regulates the business activity of mining of minerals. The objective of the Act is to ensure responsible, scientific and sustainable mining operations with adequate safeguard to environment. EIA Notification 2006 stipulates the compliance requirement for issue of EIA clearances for the purposes of allowing mining operations. Mining of Beach minerals shall in addition to the EIA Notification, 2006, shall also comply with CRZ Notification, 2011.

5. IREL were issued mining leases by the Government of Tamil Nadu between the years 1968 and 1998 as detailed below:-

1. G.O.Ms.No.3707 dated 01.11.1968 -
Manavalakurichi:17.44 Acres (7.06 HA) Vattakottai
41.46 Acres (16.78 HA). Renewed vide G.O.3 (D) No 6
dated 28.01.2000 for Manavalakurichi Village (7.06
HA).
2. G.O.Ms.No.1085 dated 21.09.1977-Midalam and
Keezhmidalam area:73.56 Acres-(29.78.12 HA)

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

3. G.O.Ms.No.1114 dated 12.08.1981 - Manavalakurichi,



Lekshmipuram and Colachel Villages - 348.83 Acres
(141.22.69 HA)

4. G.O.3 (D) No 74 dated 17.06.1998 - Manavalakurichi
Village (14.84 HA)

6. Perusal of records indicate that the Lease Deed in the item Nos. 1 to 3 got executed in favour of IREL with the Government of Tamil Nadu as per the GOs, under the provisions of the Act even before the CRZ Notification 1991 and EIA Notification, 2006 under the Environment Protection Act, 1986 came into force. Ever since the execution of the Lease, IREL had been continuously mining from lease item Nos.1 & 3 and occasionally from lease item No.2. As such, as on date, the said lease deeds are commercially operational in further pursuance of the 'deemed extension' provision introduced under Rule 24 A (6) of the MCR and by virtue of the Atomic Mineral Concession Rules, 2016. Lease item 4 is pending execution apparently for want of EIA clearance and CRZ clearance in terms of and EIA Notification SO 1533 dated 14.09.2006 (EIA 2006) and CRZ Notification, 2011 (CRZ 1991)

7. The question whether the EIA clearance and CRZ clearance in terms of EIA 2006 and CRZ 2011 are required for Leases issued before the commencement of the Environment Protection Act, 1986 (EPA, 1986) is answered in the affirmative by the Hon'ble Green Tribunal in the petitioner's case. Lease item 2 & 4 and the rejection of the CRZ applications of the petitioner is impugned in that case. The petitioner has preferred an appeal before the Hon'ble Supreme Court which is pending disposal. Earlier, MoEF, respondent in a Public Interest Litigation (in short 'PIL') filed before this Court had stated in their affidavit that mining of rare minerals is eligible for CRZ clearance under the CRZ 1991. Based on the above statement, the petitioner, in quest for relief, without prejudice, had applied for EIA and CRZ clearances for all the leases.

8. It is brought on record that the applications in respect of all four leases were processed by the authorities and the Environment Assessment Committee (EAC) had already given its recommendations to issue EIA clearances to all four leases of the petitioner subject to the grant of CRZ clearance. Accordingly, the application for CRZ clearance were pursued by the petitioner. In respect of lease items 1 & 3, the District Coastal Zone Management Authority (DCZMA) had submitted its recommendations for issue of CRZ clearances to the Tamil Nadu Coastal Zone Management Authority (in short 'TNCZMA'). TNCZMA in turn had recommended CRZ clearance to the National Coastal Zone Management Authority (NCZMA) along with a rider that mining is not permitted in the area falling between the high tide line and low tide line in terms



of the CRZ Notification 1991. IREL had resisted the condition on the ground that such restriction is not contemplated under CRZ Notification 1991 and sought to ask for legal opinion on the issue. Seeing merit in their request, MoEF has sought legal opinion from Law Ministry on the issue.

9. In respect of lease item Nos.2 & 4, the DCZMA, in the meeting held on 26-28/06/2013, rejected the applications of the petitioner on the ground of not obtaining consent from the land owners. On the strength of the order of rejection of the petitioner's application by the DCZMA, M/s.VV Minerals challenged the EAC recommendations for EIA clearances given to lease item nos. 2 & 4 before the NGT and it was allowed in Order No 419/2013. The petitioner's Civil appeal Nos.5824 and 5825 of 2014 against the NGT Order is pending before the Hon'ble Supreme Court.

10. Now, the petitioner avers that the MoEF is in the process of amending the CRZ Notification, 1991 to clear the ambiguities relating to allowing of mining in the area between the low tide line and high tide line. It is stated that Legal Opinion was sought from the Law Ministry by the Joint Director, MoEF and that Law Ministry had opined that there is no bar for mining in the area between the low tide line and high tide line as per CRZ 1991. Later, in a meeting held on 22.12.2016, the Director of Environment, Government of Tamil Nadu made a case that ambiguity did exist in the drafting of the CRZ, 1991. He recommended amending of CRZ 1991 to clear the ambiguity regarding the mining of beach sand between the high tide line and low tide line. Accordingly, the petitioner is awaiting the EIA and CRZ clearances pending amendment of CRZ 1991.

11. The processes of issue of environment clearances and the operation of existing legitimate leases of the petitioner were going hand in hand without any hurdle, apparently on the basis of the decision taken in MOM dated 09.01.2015, until the third respondent herein stopped issuing Transport Permits from February, 2017. The permit was denied on the charge that the petitioner failed to produce the necessary environment clearance called for vide their letter dated 29.01.2017. This letter apparently was issued in pursuance of the letter of the second respondent dated 11.01.2017 addressed to the Field Officers enclosing a set of case laws. Faced with severe crisis, the petitioner firm had approached all relevant authorities more specifically the second and third respondents herein with detailed representations for relief with no avail. Accordingly they had filed this Writ Petition.

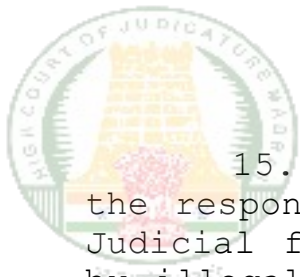
12. Relief was sought by the petitioner on the following



- i. That the three case laws enclosed by the second respondent to the first respondent do not prevent the third respondent from issuing transfer permits in as much as the facts and circumstances of the cases are vastly different and distinguishable. In fact, the sum and substance of the orders support the case of the petitioner.
- ii. That the petitioner had filed all necessary applications for the EIA and CRZ clearance as early as 2012 and had taken every effort to see that the applications are processed by the Authorities concerned.
- iii. The reasonable plea of the petitioner to issue limited permit for transport of already collected sand pending issue of the EIA and CRZ clearances by MoEF is not entertained by the authorities.
- iv. The authorities had overlooked the fact that the leases were executed even before the commencement of the EPA, 1986 and that the petitioner was mining continuously over a long period of time without any guilt of illegal mining.
- v. That monazite extraction was to cater to National strategic interests pursued by the Department of Atomic Energy, GOI.
- vi. Mining operations have come to a grinding halt and that the company faces closure of all commercial operations pushing the company and the livelihood of the employees at stake.
- vii. The issue of grant of transport permits were part of records of the minutes of meeting, held during 2015, for issue of environment and CRZ clearances, wherein it was decided to issue permits till the actual issue of environment clearance.
- viii. That the company cannot be deprived of their legitimate right of business for no fault of them.

13. On the basis of the above grounds, the petitioner had made the limited prayer of directing the third respondent to grant the transport permits to transport the already collected raw sand and to dispatch the finished products in the interim. They had also prayed for a writ directing the third respondents to issue transport permits in respect of Mining leases in GO 1114 dated 12.08.1981 and GO 3(D) 6 dated 28.01.2000 as conveyed to them vide letter MK/HRM-LEG/2017 dated 23.01.2017 and thereby render Justice.

14. The learned Senior Counsels Mr. Krishna Srinivasan and Mr. C. Muthu Saravanan for M/s. S. Ramasubramanian and Associates appearing for the petitioners reiterated each of the grounds raised in the affidavit. They highlighted the precarious situation of the Petitioner, staring at huge financial losses and lock down of the operations of the company for no fault of their own.



15. Conversely, the learned Advocate General appearing for the respondents orally highlighted the concerns raised by various Judicial forums on the rampant damages caused to the environment by illegal miners apart from filing the counter affidavit by the third respondent. The third respondent in his counter affidavit submitted that except the fourth mining lease the other three is in operation and they are under deemed extension category in Kanyakumari Districts. While so, renewal of lease has not been granted by the government since non-fulfillment of environmental clearance / CRZ clearance. In this connection, on 09.01.2015, a Meeting had been conducted at Industries Department under the Chairmanship of Additional Chief Secretary, Industries Department along with the Joint Secretary to government, I&M, DAE-Mumbai and the Chief Managing Director, IREL, Mumbai etc.,

16. During the Meeting, it was decided to issue transport permit to IREL with a condition to submit the Environment Clearance and CRZ Clearance in respect of their mining leases at the earlier. Though in paragraph Nos.7 and 8, the petitioner firm have stated CRZ clearance is not applicable to beach sand mining falls in industrial zone, in paragraph No.13, they have accepted the CRZ condition and filed application before MOEF. Till now, the petitioner firm have not produced the afore-said clearances.

17. In the counter affidavit, it is further averred that pursuant to the NGT order dated 04.05.2016, in the case of **Naresh Zarger Vs. State of Madhya Pradesh and Others**, reported in **Manu/GT/0052/2016**, the State Government is restrained from issuing transport permits without getting environmental clearances certificate from the appropriate authorities concerned. The petitioner firm without getting environmental clearance cannot seek for issuing transport permit to transport the mined minerals and the finished products from the leasehold area and as per the NGT order, the respondents are not in a position to issue transport permit.

18. The petitioner firm granted mining lease within inter tidal zone area and in this place, the mined material and the replenished beach sand minerals could not be identified separately. From mining lease area, the petitioner firm could not lift the raw sand without scooping to their beneficiary plant, it attracts the NGT order dated 04.05.2016.

19. The sum and substance of the counter affidavit of the third respondent is that without getting environment clearances from appropriate authorities concerned they will not be in a position to consider the request of the petitioner firm.

20. Considered the submissions of the learned counsel for the petitioner as well as the learned counsel for the respondent



and perused the materials available on record.

21. From the above, it is clear that Four Leases were granted to the petitioners during the period between 1968 and 1998. Of this, 3 leases were granted and executed prior to the enactment of EPA, 1986 in satisfaction and fulfillment of MMDRA, 1957. The commercial mining of the three leases were carried out in the three mines uninterrupted. It continued even after the issue of CRZ Notification 1991. The execution of the fourth lease is delayed and therefore the mine is not active.

22. The petitioner faced the first challenge in the peaceful enjoyment of mining rights until a PIL in WP.No.5678 of 2007 came to be filed before this Court during 2007 by Coastal Environment and Ecological Conservation Committee against indiscriminate beach sand mining with MoEF and others as respondents. The PIL was closed by this Hon'ble Court vide its Order dated 20.01.2015 on the reason that the petitioner agreed for filing necessary EIA and CRZ Clearances for all the four mining leases.

23. The petitioners agreed to file application for EIA and CRZ clearances consequent to MoEF, who are a respondent in the PIL, had submitted to this Court that there was no bar in the mining activity of the petitioner under the environment laws vide their letter dated 09.10.2010 addressed to the ASG copy marked to the TNCZMA. Consequently, this court had directed the respondent MoEF to consider and dispose of the EIA application of the petitioner under law within a period of six months and closed the PIL.

24. While considering the applications for issue of EIA and CRZ clearance, the EAC, after completing the due process of law, had recommended issue of EIA clearance for all four leases under EIA, 2006 subject to clearance under CRZ in the 8th meeting of the Reconstituted Committee of the EAC held from 26-28/6/2013. Subsequently, while considering the applications for CRZ clearance filed by the petitioner, the DCZMA had, after due processes, had recommended the issue of CRZ clearance to Lease 1 & 3. They rejected the application for CRZ clearance for leases 2 & 4 on the ground that they had not obtained consent from the land owner.

25. The next authority in the hierarchy viz. TNCZMA had recommended for issue of CRZ clearance to Lease 1 & 3 to the petitioner with a condition that mining operations is not permitted between the high tide line and low tide line in terms of CRZ, 1991. The petitioner had objected to this condition fearing faulty interpretation of the CRZ, 1991 and requested MoEF to seek legal opinion. The MoEF, seeing merit in the contention of the petitioner had sought for legal opinion on the issue from the Ministry of Law and Justice. The Law Ministry had opined that



there is no bar for mining beach sand minerals between the high tide line and low tide line. From the subsequent correspondences of very senior officials of the relevant ministries, it could be seen that an unanimous decision is taken to bring in an amendment to the CRZ, 1991 to clear the little ambiguity left in the notification and lend clarity on the issue. Understandably, the process of carrying out the amendment to CRZ, 1991 is pending.

26. With this back ground, I had considered the rival contentions. Admittedly, the application for EIA and CRZ clearances were made by the petitioner as early as 2012. The claim of the petitioner, that they had discharged all obligations under EIA 2006 and CRZ 1991 for issue of clearances, is not assailed by the respondents. The transport permits were continued to be issued by the respondents despite the above circumstances apparently on the basis of the decision taken in MOM dated 09.01.2015 to issue transport permits until the EC applications are disposed of. The petitioner claims of the decision in MOM dated 09.01.2015 is also not contested or denied by the respondents. There seems to be no change of circumstances or decision in MOM dated 09.01.2015 warranting to alter the *status quo* of the activities undertaken by the petitioners.

27. The letter dated 29.01.2017 of the third respondent calling for filing the environment clearances by the petitioner appears a sham for halting the mining operations of the petitioner in as much as the process of application of clearance is undertaken through their office. It further appears that the letter dated 11.01.2017 of the second respondent created panic in the minds of the third respondent by design or default. The petitioner alleges that the transport permit was denied on the basis of that letter. The respondents are yet to respond to this charge. Therefore, the contents of the said letter warrant a thorough examination.

28. The letter dated 11.01.2017 of the second respondent communicates three Orders viz. Hon'ble Supreme Court Order in the case of **Deepak Kumar etc vs State of Haryana and others** etc, reported in **2012 (4) SCC 629** the Hon'ble NGT Orders, in the case of **Jatinder Singh vs Union of India**, reported in **Manu/GT/0026/2016** and in the case of **Naresh Zargar vs Madhya Pradesh and Others**, reported in **Manu/GT/0052/2016** directed the third respondent therein to ensure compliance of the same. There is no specific reference for stopping issue of mining permits. Therefore it was necessitated to apprise the impugned orders.

29. The Hon'ble Supreme Court decision in the case of **Deepak Kumar etc vs State of Haryana and others etc** cited supra seeks to issue directions to the State Governments to frame necessary regulations for quarry mining to implement the set of recommendations made by MoEF that was not acted upon. The context of the case was illegal sand mining and boulders and gravels from



river beds and misuse of the exemption from obtaining environment clearances from MoEF for small mines below five hectares by resorting to artificial fragmenting of lease areas. It orders the States and union territories to issue mining leases including renewals only after getting environment clearances from MoEF. In effect, the Hon'ble Supreme Court holds that no prospective mining leases shall be issued or renewed without the issue of EIA clearance by MoEF and that the recommendations of MoEF has to be given effect by the State Governments by framing regulations to stop misuse of exemption from Environment clearance for under five hectares mining leases.

30. The facts and circumstances of the case is very different from that of the petitioner in the Writ Petition. The petitioner is already in possession of mining leases. Neither is the petitioner applying for fresh mining lease nor applying for renewal. The petitioner has undergone the process of obtaining environment clearance and the applications were pending from 2012. The correspondences from senior officials of the relevant ministries indicate that the EIA and CRZ clearance for the petitioner is in the advance stages of issue.

The Hon'ble NGT Order in the case of **Naresh Zargar vs State of Madhya Pradesh and others**, reported in **Manu/GT/0052/2016** cited supra issued directions in respect of mining of minor minerals. It quashed the circular issued by the State of Madhya Pradesh that allowed scope for continuous operation of mines circumventing the environmental laws and Judicial Orders.

31. It further restrained the State Government from issuing fresh circulars that allowed scope to disregard/circumvent the various Orders of the Hon'ble NGT and make the environmental laws mute. As a tough measure to put an end to abuse of environment, it ordered shutting down of all the mines that failed to apply for EC as on 31.03.2016 in violation of various Orders of the Tribunal. It issued a deadline for disposal of all the applications for environment clearances before the SEIAA, DEIAA and DEAC. The Applicants who filed incomplete and deficient applications were granted a period of one week to validate their applications. Upon compliance, the deficient applicants continue to enjoy the relief given to applications made on or before 31.03.2016.

32. All state governments were directed to transparent upload the application status to enable stakes holders to comply with the Order. In essence, the Order assailed the blatant disregard to the earlier orders of the Tribunal and directions to address the concerns raised on indiscriminate mining of Minor minerals impacting/ damaging the environment in utter disregard for the Environment Laws. It has also registered its displeasure on the huge pendencies and delay in disposing of the EIA



application by the concerned authorities and imposed a timeline for disposing of the applications. By implication, even while taking a tough stance, the Hon'ble Tribunal had sought to extend relief to miners who were genuinely willing to comply with the environment laws. The petitioner has filed the application for environment clearance as early as 2012 and is pending for an inordinately long period of time. The petitioner had genuinely participated in the compliance process prescribed for obtaining environment clearance. Therefore, I am of the firm view that the above order comes to the rescue of the petitioner rather than holding back the petitioner.

33. The Hon'ble Order of NGT in the case of **Jatinder Singh etc vs Union of India** cited supra was passed in consonance of the directions of the Hon'ble Supreme Court in WP.No.688 of 2013 wherein it was held that the constitutionality and vires of EIA Notification 2011 is in order. Meanwhile, it had formulated Central Empowerment Committee (CEC) to make recommendations on the question of State Government participation in the disposal of Environmental Clearances raised in the Writ Petition, after hearing the comments of MoEF. The core concern sought to be addressed in the Order is the indiscriminate mining of natural resources with a specific reference to the need for efficient regulation and enforcement of mining leases of sizes less than five hectares. It also sought to fill the lacunae in the statutory scheme of things in the timely issue of EC for genuine projects.

34. Therefore, the Order does not seem to adversely impact the case of the petitioner. On the contrary, the order attempts to address the concerns of the petitioner about the inordinate delay in disposal of EC applications. The sum and substance of the above three orders communicated by the second respondent seek to address the environmental hazards of rampant unscientific indiscriminate mining more specifically of minor minerals exploiting the loop hole of exemption from EIA clearances for that category of small leases of five hectares and below by artificial fragmentations.

35. They attempt to strike a balance between the genuine concerns of delay in issue of EIA clearances by the competent authorities vis a vis the deliberate traction by the lessees by not filing the requisite documents in time. They also recognised the need for an efficient uniform and a robust system in place for issue of ECs and the enforcement of its conditions in view of the over reach of certain authorities leading to more environmental concerns and exploitations. Nevertheless the aggregate of the orders impugned in the letter of the second respondent holds an unanimous view that allowing of mining without EIA clearances irrevocably damage the environment which can not be allowed and



therefore seek to create a robust system for implementing the environment safeguards efficiently and uniformly that will negate illegal and unscientific indiscriminate mining. Therefore, it appears that the second respondent letter dated 11.01.2017 is wrongly interpreted by the third respondent to deny transport permits to the petitioner.

36. While this court appreciates the concerns of the learned Advocate General regarding the urgent need to enforce the Environmental laws strictly in view of rampant indiscriminate mining irrevocably damaging the environment, I do not agree with the learned Advocate General on the use of transport permits as a tool to deny the statutory rights conferred under due process of law particularly when the EIA application of the petitioner is pending for the past several years. I agree with the learned Senior Counsels appearing for the petitioner that in the extra ordinary facts and circumstances of the petitioner's case, the balance of convenience is in favour of them. Rightly, the Judicial concerns expressed and directions issued to fix the wrong doers, dodgers and abusers of the environmental laws can not be interpreted to deny legitimate rights.

37. Moreover, I am curiously drawn to the treatment of atomic minerals in the environment protection policy of the Government of India. MMDRA, 1957 recognises atomic minerals as distinct entities from other minerals. In CRZ 1991, a separate mention is made of atomic minerals to exclude them from the prohibited activities in the coastal regulatory zone. A separate Atomic Minerals Concession Rules, 2016 is framed and notified in the year 2016 in the midst of the environmental activism and awareness, concerns and litigations. In the context, the fact that the rare minerals mined by the petitioner cater to the strategic interest of the State assume significance. Therefore, I do not find the rigors of the case laws communicated in the second respondent's order dealing more specifically the abuse of exemption of small leases by the sand miners affect the case of the petitioner.

38. The petitioners have presented a compelling case of their operations having a direct connection to the upkeep of the strategic assets of the Nation. The inter ministerial letter dated 14.02.2017 and 27.02.2017 of the Department of Atomic Energy addressed to Secretary level Officers affirm this position. Therefore, I take a serious note of the urgency and the compelling strategic interests of the State and view this case unique and merit writ interference.

39. In the circumstances, I am of the view that the prayer of the petitioner that already collected sand in the mines and the finished products from the factory be allowed transportation is just and reasonable and allow the relief. The



respondent authorities are at liberty to oversee the operations of the petitioners relating to the transport permit issued to them in pursuance of this Order with regard to environmental safeguard without causing hindrance.

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40. Regarding the prayer for issuing transport permit from lease 1 & 3 as conveyed in the MK/HRM-LEG/2017/317 dated 23.01.2017, in as much as the applications were filed in 2011 and EAC has given a favourable recommendation and CRZ clearance is in the advanced stages of issue pending with the ultimate authority viz. MoEF and in view of the extra ordinary circumstances of the case, I am inclined to allow the Writ Petition with a direction to MoEF to dispose of the applications dated 25.01.2011 and 14.02.2011 of the petitioner firm within a period of two months from the date of receipt of a copy of this order.

In the result, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To,

1.The Secretary to Government,
Industries (MMD1) Department,
Government of Tamil Nadu,
Fort.St.George, Chennai-600 009.

2.The Commissioner of Geology and Mining,
Guindy, Chennai-600 032.

3.The District Collector,
Kanyakumari District,
Nagercoil 629 001.

+1cc to Mr.S.Ramasubramaniam&Associates, SR.53399

+1cc to SPL.GOV.T.PLEADER SR.NO. 53917

W.P(MD)No.4690 of 2017
21.04.2017

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