



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON: 05.04.2017
ORDER PRONOUNCED ON: 13 .07.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.16693 of 2016
and
W.M.P. (MD) .No.12146 and 12147 of 2016

M.K.Thavamani

.. Petitioner

Vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Deputy Director of Mines & Minerals,
Ramanathapuram District.

3.Mr.Syed Mohammed,
The Tahsildar,
Paramakudi,
Ramanad District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondents 1 & 2 herein to appoint any independent/Special Inspection Officials to have physical verification of the gravel quarry to the petitioner in S.No.209/1, 213/9, 228/1, 210/1A, 210/2A & 211/1B in Sudiyr Village, Paramakudi Taluk, Ramnad district, measuring a total extent of 4.76.5 hectares, subject matter of the quarry lease in favour of the petitioner by proceedings of the 1st respondent in Na.Ka.No.799/G & M.2/2014 dated 23.05.2016 and consequently direct the respondents 1 & 2 to permit the petitioner to conduct the quarry operation as per the terms and conditions of lease dated 23.05.2016 with grant of transport permit etc., to the petitioner.



For Petitioner : Mr.M.Subash Babu
For R.1&2 : Mr.R.Anandharaj
Government Advocate
For R.3 : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

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ORDER

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

2. This writ petition has been filed praying for the issuance of a Writ of Mandamus directing the respondents 1 & 2 herein to appoint any Independent/Special Inspection Officials to have physical verification of the gravel quarry to the petitioner in S.Nos.209/1, 213/9, 228/1, 210/1A, 210/2A & 211/1B in Sudiyr Village, Paramakudi Taluk, Ramnad district, measuring a total extent of 4.76.5 hectares, subject matter of the quarry lease in favour of the petitioner by proceedings of the first respondent in Na.Ka.No.799/G & M.2/2014 dated 23.05.2016 and consequently direct the respondents 1 & 2 to permit the petitioner to conduct the quarry operation as per the terms and conditions of lease dated 23.05.2016 with grant of transport permit etc., to the petitioner.

3. The petitioner would aver among other things that that he is holding patta lands in S.Nos.209/1, 213/9, 228/1, 210/1A, 210/2A and 211/1B in Sudiyr Village measuring a total extent of 4.76.5 hectares and he applied for quarrying gravel in his patta lands as per Rule 8 of the Tamil Nadu Minor Mineral Concession Rules, 1959 (in short 'the Rules') and after conducting inspection and verifying the availability of gravel by the respondents, the respondents passed the proceedings No.Na.Ka.No.799/G&M/2/2014 dated 15.07.2014 holding that the petitioner could be considered for grant of mining lease, only after getting appropriate permission like approval of Mining Plan, clearance from the State Level Environmental Impact Assessment Authority and from the Tamil Nadu Pollution Control Board and even then, the respondents had delayed the grant of mining lease to the petitioner and therefore, the petitioner filed W.P.(MD).No.8275 of 2016 seeking for a Writ of Mandamus to permit the petitioner to conduct removal of gravel sand in his patta lands and after filing of the writ petition, the first respondent granted permission for carrying out quarry operations by his order dated 23.05.2016.

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3.1. It is further alleged that the third respondent and the brother of petitioner's son-in-law had given false reports to

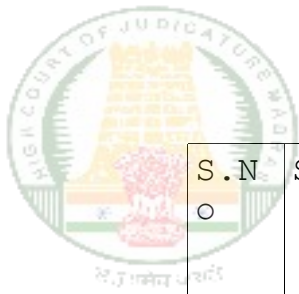


the media as if the petitioner was doing illegal quarry operations after the working hours. The transport permits were periodically issued by the official respondents. The gravel sand is used for the development of National Highways by the contractor Madan & Co and the quarry operation is made without any violation, whatsoever. However, the third respondent who is inimical terms with the petitioner had sent false report as if illegal quarry was conducted and therefore, the transport permit was stopped by the respondents. Similarly, the petitioner would make so many allegations in the form of averments against the third respondent herein, in his personal capacity, who is impleaded as one of the respondents. With the above background, the petitioner has come forward with the present writ petition for the relief stated supra.

4. *Per contra*, a counter affidavit has been filed by the third respondent, wherein, the third respondent would specifically aver that the writ petitioner, while quarrying the gravel sand was illegally doing quarry operations in the adjacent area and only after conducting spot inspection, it was reported to the competent authority and as the petitioner had smelt that the Report filed by the third respondent was against him, he filed frivolous writ petition, which is clear abuse process of law. The third respondent would further aver that the son-in-law of the petitioner has threatened him to file a report in his favour and in this regard, a police complainant was lodged and the same was registered which culminated into C.C.No.393 of 2016 and the same is pending. It is also stated by the third respondent that the first respondent has granted mining lease permit to quarry the gravel as per the proceedings in Roc.799/G/tm/R/2014 dated 15.07.2014 for the following survey numbers owned by the petitioner in Sudiyoor Village in Paramakudi Taluk.

S.No.	Survey Number	Extent
1.	209/1	1.44.50
2.	210/1A	0.2.00
3.	210/2A	0.67.50
4.	211/1B	0.64.00
5.	213/9	0.98.00
6.	228/1	1.00.50
	Total extent	4.76.50

5. However, the petitioner had illegally quarried in various others survey numbers which are given below:-



S.N. o	Survey No	Extent	Dept. of gravel taken (in metre)	In Metre Cubic
1.	208/5, 8A, 8B	8700 Sq.m	1.5	12600
2.	210/2B, 210/2 C	6000 Sq.m	3	18000
3.	210/1B, 1C Part	208.0 x 46.8	3	2923
4.	210/2E	194.4 x 33.8	1	6570
5.	210/1C	37.0x31.0	3	3441
6.	210/1C	37.0x30.0	3	3330
7.	210/1C	60.0x33.2	3	5976
8.	211/1A	15.1X134.4	3	6314.82
9.	215.1	60.0 x 40.0	1.5	3600
			Total	89034.82

6. That apart, the petitioner has quarried at the depth of 2, 3 & 6 meters in utter violation of the conditions and caused huge revenue loss to the government. Instead of quarrying the gravel at the permitted place given to the petitioner, he had illegally quarried other survey numbers unauthorizedly. Further, it is seriously alleged that the petitioner used the very same permit given to him for so many trips by using a magic pen. It is further averred in the counter affidavit that the first respondent vide his letter dated 28.07.2016 has directed the third respondent to file a report. In the said letter itself, the first respondent had taken cognizance of the illegal activities of the petitioner and infact, the first respondent vide his letter dated 05.08.2016 has once again directed the third respondent to file a report, expeditiously. Only on the direction issued by the first respondent, the third respondent inspected the spot in question and filed a detailed report and it is for the first respondent to accept or reject the report of the third respondent. Since the report is against the writ petitioner, the present writ petition has been filed to over-come the frivolous allegations made against the third respondent. If such trend is allowed, no government officials would be allowed to do their job peacefully. The act of the petitioner is an abuse process of law.

7. Even on 13.07.2016, at 11.30 p.m, when the third respondent has inspected the quarry with the Revenue Inspector, Panchabandur along with the Village Administrative Officer, the writ petitioner was loading gravel in the tipper lorries illegally



and try to transport it. At that time, the third respondent has seized 29 tipper lorries, two motor vehicles, one jeep and two kithachi machines on the spot inspection with the help of Parthibanur police officials. Consequently, the tipper lorry drivers and one Mareeswaran, Junior Engineer of the concern have agreed to pay the penalty for the illegal gravel quarrying. The writ petitioner has violated the following conditions:-

- (I) To quarry the grave illegally from unauthorized survey number in 210/1B, 1C to an extent of 1.58.5 hecatres.
- (II) By violating the time of quarrying from 6.00 a.m to 6.00 p.m the writ petitioner has quarried at midnight time also.
- (III) Violating the depth by deepening to 3, 6 & 8 meters.
- (IV) The writ petitioner has used multiply times of magic pen and loss of revenue to the government.

8. It is also the case of the third respondent that the petitioner's son in law, namely, one Duraipandian has involved in various criminal cases in Crime No.145/2012 and 200/2012 in Parthibanur police Station and Paramakudi Town police Station in Crime Nos.145/2014 and 393/2016. It is noted that the Sub-Collector, Parmakudi in his proceedings dated 16.07.2016 has levied penalty amount of Rs.8,30,395/- and the same was also paid by the respective lorry owners and therefore, he prays for the dismissal of the writ petition with exemplary costs.

9. Though no counter affidavit has been filed on behalf of the first and the second respondents, learned Government Advocate, during the course of the arguments, has produced a few records for perusal of this Court, wherein, the third respondent had issued show cause notice to the petitioner, who in turn, had given his reply stating that due to his illness, he could not attend the enquiry. Further, he would submit that a perusal of the records, on the face of it, would make it clear that the petitioner had illegally quarried in the adjacent area and only after the inspection by the competent authority, the petitioner started quarrying another area and that sand has been used for filling up of the adjacent land, where, the petitioner quarried illegally. Therefore, the petitioner has violated the conditions and in fact, the District Collector has stated there are blatant violations and the Sub-Collector, in his proceedings, dated 16.07.2016 has levied penalty amount of Rs.8,30,395/- and the same was also paid by the respective lorry owners and that itself is an evident to show that the petitioner admitted his illegal quarrying. The third respondent has further averred that as an inspecting authority, he has inspected the spot in question and filed a report before the first respondent and it is for him to pass final orders and therefore, he prayed for the dismissal of the writ petition.

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10. Considered the submissions made by the respondents



and perused the materials available on record.

11. A perusal of the records would *prima facie* show that the petitioner has contravened the provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959, lease conditions and excavated minerals in the sites not permitted under the leases granted to him. When there is *prima facie* evidence of contravention of the Rules and the conditions of lease, causing huge loss, without prejudice to the action under Rules 36-A(1) and 36(5) (h) of the the Tamil Nadu Minor Mineral Concession Rules, 1959, the competent authority shall always withhold issuance of transit permits or dispatch slips, as the case may be.

12. In the case on hand, admittedly, the respondents have sent a show cause notice to the petitioner, but the petitioner has not come forward to participate in the enquiry stating his illness. When an authority is conferred to issue transport permits and despatch slips, he is also empowered to withhold the transport permits or cancel the lease, if there are violations against the statutes. Here, since the petitioner had encroached the adjacent lands illegally and continued his quarry operations, the respondents thought it fit to stop the issue of transport permit to him. As per the Act, the authorities are empowered to prosecute the offenders besides levying penalty. The question of alleged excavation of gravel of sand have to be ascertained and appropriate action has to be taken, thereafter. The specific power of giving transport permit granted to the authorities only to have check and balance on the illegal quarrying. Here, in the present case, if minerals can be quarried in unauthorized places are allowed to be transported under valid permits and it would give rise to a contentions that once the minerals are transported under valid dispatch slips or transit permits, no action can be taken.

13. Considering the overall aspects and in particular, the *prima facie* opinion arrived at by the inspecting officers, this Court is not inclined to issue any Mandamus which can be issued only lawful activities are carried on. Therefore, I do not agree with the learned counsel for the petitioner for appointing independent agency/special agency as a tool to circumvent the root of the matter in question.

14. In the result, this writ petition is dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)



To,

1.The District Collector,
Tirunelveli, Tirunelveli District.

2.The Assistant Director of Geology and
Mines,
Tirunelveli, Tirunelveli District.

+1 cc to M/s.Ajmal Associates , Advocate in SR.No. 65106
+1 cc to Mr.M.Subash Babu , Advocate in SR.No. 65389

ssm

AE/JC/SAR1/24.07.2017/7P/5C

Pre-delivery order made in
W.P(MD)No.16693 of 2016
13.07.2017