



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON :08.08.2017
PRONOUNCED ON:05.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.6846 of 2016

and

W.M.P. (MD) .No.5882 of 2016

Rajendran

.. Petitioner

Vs.

- 1.The Government of Tamil Nadu,
rep.by its Principal Secretary,
Geology and Mining Department,
Fort.St.George, Secretariat,
Chennai-600 009.
- 2.The Director of Geology and Mining,
Chennai.
- 3.The District Collector,
Kanyakumari District at
Nagercoil.
- 4.The Assistant Director,
Department of Geology and Mining,
Collector's Office,
Kanyakumari District.

5.T.Kumaresan

... 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 to 4 to forbear the 5th respondent from doing quarrying operation in S.No.221/1 and 214/1C2 of Painkulam Village, Vilavancode Taluk, Kanyakumari District as the same is situated within 300 meters of the petitioner's house bearing S.No.221/5 and thereby violating the Rule 36(1)(1-A) of the Tamil Nadu Mines and Mineral Concession Rules, 1959.

For Petitioner : Mr.N.C.Ashok kumar
For R.1 to 4 : No appearance

For R.5 : Mr.Issac Mohanlal,
Senior Counsel for
M/s.T.Cibichakarbarthy



ORDER

This Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of mandamus directing the respondents to forbear the fifth respondent from doing quarrying operation in S.No.221/1 and 214/1C2 of Painkulam Village, Vilavancode Taluk, Kanyakumari District as the same is situated within 300 metres of the Petitioner's house bearing S.No.221/5 and thereby violating Rule 36(1)(1A) of Tamil Nadu Mines and Mineral Concession Rules, 1959.

2. The petitioner avers that he resides in Painkulam Village for several generations in the house bearing door no 7/56 A situated in S.No.221/5. They allege that the quarry operation of the fifth respondent in S.Nos.221/1, 221/2 & 214/1C2 have caused damages to their home and injured many villagers. They allege that several representations were given to the respondents 1 to 4 and the authorities cancelled the quarrying license given in respect of S.No.221/2. They also mention that the public and vehicles using the road between survey no 221/2 and 222/2 were also injured in stone blasting operations of the quarry.

3. The petitioner avers that his residence and that of a few other villagers are situated within 50 metres from the quarrying sites in S.No.221/1 & 214/1C2 and the fourth respondent had found the petitioner's house is situated within 100 metres of the quarry site as evident from his letter dated 11.06.2008 and 05.08.2015. They contend that despite quarrying operations is prohibited within 300 metres of inhabitation, respondents 2 to 4 are allowing respondent 5 to carry out the operations. They allege that the quarrying operations continue despite the order dated 05.08.2015 of the fourth respondent and that the representations dated 12.02.2015, 13/04/2015, 25.05.2015 and 06.07.2015 were made in vain.

4. They relied on the following grounds in support of their petition. That having held the proceedings dated 11.08.2008 and 05.08.2015 the respondents ought to have stopped quarrying operations; That the respondents ought to have seen that the petitioner's house is within a distance of 50 metres from the quarry site and that the respondents ought to have seen Rule 36 (1) (1-A) of TNMMCR, 1959, that is a mandatory provision, prohibits quarrying operations within 300 metres of inhabitation. Therefore, they contend that the act of the 1st to 4th respondents allowing quarrying the site by the 5th respondent is ex-facie illegal and unsustainable.

5. The third, fourth and fifth respondents have filed separate counters. The 3rd & 4th respondents deny the allegations and contends that the writ petition is not maintainable as the order dated 16.02.2010 of the Division Bench of this Hon'ble Court had in the Review Application (MD) No.3/2010 in WP(MD).No.2560 of



2009 filed by the fifth respondent herein had held that the impugned quarry site is located beyond 300 metres. It mentions that the lease was granted to the 5th respondent and executed on 17.04.2015 in pursuance of the directions of this court in order dated 25.11.2011 in WP(MD)No.13463 of 2011. It further avers that based on the representation of the petitioner herein made to the DRO during the earlier lease that included S.No.221/2, the impugned sites were inspected on 07.07.2009 and the DRO recorded a finding that S.No.221/2 is within a distance of 87 metres. Subsequent to the findings, in the proceedings of the 3rd respondent vide Roc.No.735/G&M/2008 dated 04.08.2009 had deleted the said S.No.221/2 from the lease order and directed the 5th respondents to stop all quarrying activities at the said S.No.221/2. The quarry lease in respect of the impugned sites are in tact.

6. The 3rd and 4th respondents aver that a detailed enquiry was carried out while issuing the impugned quarry. The Tahsildar, Vilavancode had reported that the impugned site stands registered in the name of the 5th respondent under Patta No.1345 and that there is no inhabitation within a radius of 300 metres around the site. The President of Payankulam Village Panchayat had given no objection for granting the lease. The 4th respondent had inspected the site and reported that the area does not come under the purview of HACA and that there is no habitation within 300 meter radius. The 5th respondent was directed to obtain necessary environment clearances from SEIAA as mandated by the Hon'ble Supreme Court. The quarry lease was granted upon complete compliance by the 5th respondent including the submitting of the mining plan. The lease deed was executed after imposing the mandatory conditions. It averred that representations were duly acted upon and the grounds raised by the petitioners are factually incorrect and not maintainable. That the lease was granted only upon satisfaction that the site is located beyond the radius of 300 metres of the inhabitations. It alleged that the petitioner had approached this court with an ulterior motive in as much as the Division Bench of this Hon'ble Court has already passed an order with a finding that the site is beyond 300 meters distance from inhabitations. It contended that the quarry lease was granted as per the statutes in force and in consonance with the checks and balances formulated by the Hon'ble Supreme Court that strike a balance between development and environment hazards.

6.A. The 5th respondent avers that he is the owner of the land comprised in survey no 214/1C and 221 admeasuring 4 acres. Survey No.221 had two sub divisions 221/1 and 221/2 admeasuring 1.22 and 1.83 acres respectively. That he started operating crushing unit in R.S.No.221/2 after due license from competent authorities since 1998. Later, in 2000 he applied for license for R.S.No.214/1C and 221/2 and obtained quarry lease in the 3rd respondent's proceedings in Rc.No.478/G&M/2000 dated 18.02.2006.



Thereafter, the 3rd respondent extended the lease upto 15.04.2011 in R.S.No.214/1C2, 221/1 and 221/2 vide proceedings in Rc.No.735/G&M/2008 dated 16.04.2019. He avers that though he had permission for the area comprised in all the three R.S.Nos, the quarry operation was carried out only in one acre comprised in R.S.No.214/1C2 and 221/1.

7. The 5th respondent avers that a civil suit in O.S.No.554 of 2005 came to be filed by the petitioner and one Smt.Palammal, who is a relative of the petitioner, before the District Muncif court, Kuzhithurai along with I.A.No.1082 of 2005 seeking ad-interim injunction restraining the blasting in the plaint schedule properties. He avers that the District Muncif had dismissed the interlogutory application, against which no appeal was preferred by the petitioner. Later, the suit was also dismissed as not pressed vide order dated 07.01.2010.

8. It is averred that the said Palammal had set up her son Mr.Rathish and another relative Mr.Anish to file WP(MD)No.2560 of 2009 in this court for the same relief by suppressing the civil suit. The petition sought to stop pollution to the environment including a direction to stop renewal or grant consent or license for running any crusher in S.Nos.214/1C, 221, 231 and 232 of Painkulam Village, Vilavancode Taluk. During the pendency of the Writ Petition, the 3rd respondent vide proceedings in Roc.No.735/G&M/2008 dated 04.08.2009 had cancelled the quarrying license operations for R.S.No.221/2. It is averred that the Pollution Control Board had also issued stop work notice wide proceedings dated 09.07.2009.

9. The 5th respondent states that the Writ Petition was allowed vide order dated 08.10.2009 on the basis of a report of the Joint Commissioner dated 09.09.2009 that houses existed within 300 metres from the boundaries of the site taking into account all the R.S.Nos 214/C2, 221/1 and 221/2. It is stated that the report of the Joint Environment Engineer dated 09.09.2009 was arrived at on the basis of the area survey sketch. The measurements were taken from the boundaries and not from the actual work site. The pending civil suit was also not placed before or considered by the Hon'ble Court. The subsequent proceedings of the Tahsildar, Vilavancode, dated 05.11.2009 communicating the amended map for R.S.No. 214/1C2 and 221/1 to the 4th respondent and the proceedings of the 4th respondent in Na.Ka/736/PuMaSu/2008 dated 18.11.2009 that stated that no house sites, schools, graveyards, mosques and permanent structures within 300 metres of 214/1C2 and 221/1 were nor part of the proceedings in the Writ Petition.

10.The 5th respondent avers that, in the circumstances, he was constrained to file a Review Petition seeking review of the Order dated 08.10.2009 in WP(MD)No.2560 of 2009. The Hon'ble Court <https://hsc.judges.ecourt.gov.in/cases/> dated 16.02.2010 allowed the review petition upholding the right to quarry in R.S.Nos.214/1C2 and 221/1. The operative portion of the Order was replicated in the counter.



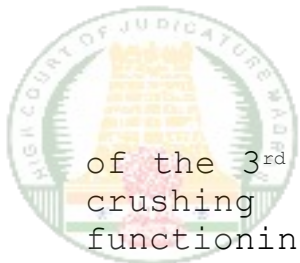
Thereafter, the lease ended on 15.04.2011. The fresh application dated 14.10.2011 of quarry license in R.S.Nos 214/1C2 and 221/1 was met with no response from the 3rd respondents and therefore, WP.No.13463 of 2011 was filed before this court. This Hon'ble Court was pleased to direct the 3rd respondent District Collector to consider and dispose of the application dated 14.10.2011 within a period of 12 weeks.

11. It is averred that several authorities visited the impugned site and recommended for permission. The Tahsildar, Vilavancode had inspected the site and recommended the same vide proceedings in A33180/2012 dated 19.02.2012. The 4th respondent also had verified the presence of house sites within the prohibited distance of 300 metres from the actual quarrying operations and recommended for grant of permission vide report dated 05.06.2012. The Commissioner of Geology and Mining, Chennai had recommended grant of permission vide proceedings in 9482/MM2/2014 dated 13.01.2015. The Member Secretary, SEIAA had granted environmental clearance for the quarry project vide proceedings in Lr.No.SEIAA-TN/F.No.3254/EC/1(a)/2014 dated 01.04.2015. On the basis of the above recommendations, the 3rd respondent District Collector granted quarry permission for the impugned site in proceedings Rc.No.735/G&M/2008 dated 16.04.2015.

12. The 5th respondent avers that the petitioner has filed incorrect facts and has not approached this Court with clean hands. That the petitioner had not chosen to disclose the material facts of civil suit on the same subject matter in O.S.No.554 of 2005 in the District Muncif Court, Kulithurai and the order dated 16.02.2010 of this court in Review Application (MD) No.3 of 2010 in WP(MD)No.2560 of 2009. It is averred that I.A.No.1082 of 2015 in the above said civil suit seeking ad-interim injunction restraining the defendants from rock blasting was also dismissed vide Order dated 23.08.2006. No appeal is filed against the said order. The Original Suit also came to be dismissed as not pressed vide Order dated 07.01.2010.

13. The 5th respondent states that Smt.Palammal, the plaintiff in the civil suit had set up her son Mr.Rathish and another relative Mr.Anish to file the writ petition (MD) No 2460 of 2009 by suppressing the civil suit. Now again the petitioner has come up with the present Writ Petition with similar prayer after concealing the above facts deliberately. The allegations that villagers and vehicles are hit by stones during blasting operations were specifically denied as false and baseless.

14. The 5th respondent avers that the quarries located in R.S.Nos.214/1C2 and 221/1 impugned in the petition are located beyond the prohibitory zone and the area under RS.No.221/2 of the 5th respondent was one within the zone and quarrying has stopped in the said R.S.No ever since the prohibitory order dated 04.08.2009



of the 3rd respondent District Collector. It further adds that the crushing unit was operating from 1998 and the quarry was functioning from 2006 and the 300 metres yardstick is not applicable to existing quarries. It relies on the proceedings of the Tahsildar dated 05.11.2009 and that of the 4th respondent Assistant Director dated 18.11.2009 in support of his case and the scrutiny of all the authorities in the grant of lease for a period of 5 years in the proceedings in RC.No.735/G&M/2008 dated 16.04.2015. It assails the petition as false and motivated and without merits and sought dismissal.

15. A reply to the counters of the 3rd to 5th respondents was filed by the petitioner. The petitioner alleges collusion of the 5th respondent with the officials for quarrying from sites that are less than 300 mtrs distance from the inhabitations that is obtained under fraud. It is averred that the present writ petition is filed after the inspection of the site by the authorities on 05.06.2015 based on the representations filed by the public. It averred that damages were caused to the house of the petitioner and other villagers due to heavy blasting operations conducted by the 5th respondent in the illegal quarrying site comprised in R.S.No.214/1C2 and 221/1.

16. The reply alleges that the 5th respondent obtained illegal quarry permit in 214/1C and 221/2 in collusion with the officials and based on the false reports submitted to the District Collector for a period of three year between 2006 and 2009 and did extensive quarrying. Thereafter extension was granted for a period of two years on 16.04.2009. The reply avers that the Civil suit was filed to stop the illegal stone blasting in survey no 232 and R.S.Nos.214/1 and 214/2 and the same was withdrawn only in view of the Order passed by this Hon'ble court in WP(MD)No.2560 Of 2009. It mentions that the civil suit was filed before the grant of permission by the District Collector to the 5th respondent from 18.02.2006. It sought to clarify that the WP(MD)No.2560 of 2009 was filed by one Anish and Ratheesh seeking to restrain the 5th respondent from running the crusher unit at S.Nos.214/1C, 221, 231 and 232 on the ground that they were located within 300 metres of the residential houses of the petitioners thereon. It points out that the said Writ Petition was allowed after a spot inspection by the Joint Environmental Engineer under orders of the court found that the residences of the writ petitioners were situated within 300 metres of the quarry site.

17. It alleges that the Review Application against the above writ petition was allowed based on a memo dated 04.08.2009 purportedly signed by the District Collector directing stopping of quarrying operations in R.S.No.221/2 on the basis of a purported survey report of the District Collector. It further sought to rely on the FMB sketch filed



before this Court by the 5th respondent himself that indicated that the farthest distance from S.No.221/5 and the quarry site comprised in R.S.No.221.1 and 214/1C2 is within 300 metres. It further alleges extensive quarrying in R.S.No.221/2 with a depth of 70 metres and without leaving safe distance from the road. It also submitted an elaborate list of residents living in the prohibited distance with the measure of the distance from the quarry. It alleges continuous illegal quarrying at R.S.No 221/2 even after 2009.

18. The reply contends that the report dated 05.08.2015 of the 4th respondent in proceedings in file 735/KUMASU/2008 vindicates the stand of the petitioner that the entire quarry operations conducted by the 5th respondent is illegal and obtained on the basis of collusion with the officials through false reports. It also relied on a Certificate dated 07.08.2017 issued by a qualified AutoCAD engineer certifying the farthest distance of the quarry site from the petitioner's house is 250 metres. It states that the respondents have not denied or clarified in their counter about the visit and report of the Assistant Director dated 05.08.2015 regarding the existence of human habituations and residence within a distance of 300 metres and prayed for allowing the Writ Petition.

19. I have carefully gone through the submissions of all the parties and the records in the Writ Petition including the counter affidavits and the reply to the counter affidavits. The 5th respondent had undertaken quarrying operating crushers at various sites comprised in R.S.Nos viz. 214/1C, 221/1, 221/2, 231, 232 etc. at different points of time from the year 1998. The petitioner herein and certain residents had raised objections to the quarrying operations citing fear of injury and damages to their houses. Representations were made to the respondent authorities to look into the irregularities in granting lease permits from time to time. In the process a civil suit in O.S.No.554 of 2005 was filed before the District Muncif Court, Kuzhithurai against quarrying R.S.No.232, 214/1 and 214/2 that was later dismissed as not pressed. An IA No.1082/2005 was also filed seeking ad-interim injunction to restrain the 5th respondent from carrying out blasting operations in R.S.No.232 that came to be dismissed. They also succeeded in a Writ Petition No.2560 of 2009 restraining the 5th respondent from undertaking quarry operations in the leased area that vindicated their stated position at the relevant point of time. The bone of contention between the disputing parties in all the litigations is the question of the distance of their habitation from the quarry site.

20. In the end, in the Review Application (MD) No.3 of 2010 <https://hcservices.courts.gov.in/hcservices> 5th respondent against the Order in WP.No.2560 of 2009, this hon'ble Court had partially allowed the 5th respondent with the absolute right of quarrying in RS.No.221/1 and 214/1C2.



The order dated 16.02.2010 in the above Review Application was not appealed against and have attained finality. In the review application, the 5th respondent herein had restricted the prayer of relief only to the site comprised in R.S.No.221/1 and R.S.No.214/1C2 after carving out the non-violative area of the quarry site upon amendment in the lease license by design or default to remove the vice of the quarry lease established in the order dated 08.10.2009 of this court in WP(MD).2560 of 2009.

21. The petitioners emphasize on the findings of this court in the WP(MD)No.2560 of 2009 to grant an order of injunction against quarrying activities by the 5th respondent arrived at on the basis of the inspection of the site by the Joint Environmental Engineer conducted under orders of this court, that had categorically held that the quarry site is 87 metres from the petitioner's house therein and seek prosecution of the 5th respondent for the irregularities. Among other allegations, they had also submitted a list of 43 houses and their distance from the impugned quarry site claiming to be within the prohibitory distance and seek an Order of injunction. The petitioner also seeks to place the reliance on the report dated 07.08.2017 of a third party CAD Engineer and a report of the fourth respondent dated 05.08.2015 in his proceedings in 735/KUMASU/2008 in support of their case.

22. The respondent authorities had limited their counter to the legality of the quarry lease in the impugned dispute comprised in R.S.No.221/1 and 214/1C2. They relied on the various proceedings of the competent authorities recommending the lease permit to the 5th respondent for the site comprised in R.S.No.221/1 and 214/1C2. They had also highlighted the environmental clearances obtained by the 5th respondent and the Mining Plan submitted for the site and the directions of this Court in WP(MD). No.13463 of 2011 filed by the 5th respondent directing the authorities to consider his application of permit for the impugned license and the Order dated 16.02.2010 of this Hon'ble Court in the Review Application regarding the impugned quarry site comprised in R.S.Nos.221/1 and 214/1C2.

23. The 5th respondent, among other things, contends that the impugned quarry lease is granted within the bounds of law and under the directions of this Hon'ble Court owing to the huge investments made by him for setting up the quarry. He had elaborated the process of award of lease grant as narrated by the respondents 3 & 4 including the statutory environmental compliances endured by him. He rebuts the allegations of collusion as false and unsubstantiated. The counsel for the 5th respondent vehemently emphasizes that all the allegations made in this writ petition are made by related parties/family members working in service of the respondent and the same are already considered and disposed of in the litigations in the various fora.



24. On a careful perusal of all submissions, I am of the view that the question that arises to be considered by this court in this writ petition is purely a question of fact. The question precisely is whether the site comprised in R.S.No.221/1 and 214/1C2 is within 300 metres from the houses or housing sites to invite the wrath of the provisions of the TNMMR, 1959. I consider so because the numerous allegations and counter allegations of collusion and bias leveled by the disputing parties regarding the legitimacy of the quarry permits and operations of the 5th respondent at the quarry sites comprised in varying survey nos were already considered and settled in the litigation cases discussed above. Therefore, any consideration of the third party certificates or reports contrary to the conclusions of this Court in the Review Petition will be a futile exercise.

25. On a careful perusal of the Order dated 16.02.2010 of this hon'ble Court in Review Application No 3/2010 in WP(MD)No 2560 of 2009, it is seen that the question raised in this Writ Petition in respect of quarry rights in R.S.No.221/1 and 214/1C2 is squarely considered and covered in the run up to the order in the Review Application. The petitioner herein had neither impleaded himself in the Writ Petition or Review Application nor appealed against the above said order in Review Application. The claim of the 5th respondent that the rival parties of the 5th respondents in all the litigations are related parties working in tandem is also not rebutted by the petitioner. The petitioner had also admitted to have withdrawn the O.S.No.554 of 2005 consequent to the favorable directions in the WP.No 2560 of 2009, that he was not a party to. Therefore it is not open for the petitioner to reopen the issues settled in an order of this Court that has attained finality.

26. The Order dated 16.02.2010 in Review Application have unequivocally arrived at the conclusion that the impugned quarry site comprised in R.S.No.221/1 and 214/1C2 is clear of the prohibitory distance of 300 metres from inhabitations. Such a finding not having been challenged and the order having attained finality, I do not find it correct for this court to reopen the same again. And I do not find it appropriate to sit in judgment over a question that is already considered and decided by a Hon'ble Bench of this Court. In view of the above, the Writ Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

/True Copy/



To,

1.The Principal Secretary to Government,
Geology and Mining Department,
Government of Tamil Nadu,
Chennai-600 009.

2.The Director of Geology and Mining,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai-32.

3.The District Collector,
Kanyakumari District at
Nagercoil.

4.The Assistant Director,
Department of Geology and Mining,
Collector's Office,
Kanyakumari District.

+1cc to M/S.N.C.Ashok kumar, Advocate SR.No. 76751

+1cc to M/S.T.Cibichakarbarthy, Advocate SR.No. 76845

order made in
W.P (MD) No.6846 of 2016
05.09.2017

ssm

JM/SKN RSK/SAR 2/12.09.2017/10P/7C