

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.06.2018

DELIVERED ON :06.07.2018

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.22433 of 2017
and WMP.Nos.23562 to 23565 of 2017

Varadharajan

...

Petitioner

Vs.

- 1.The District Collector,
District Collector's Office,
Namakkal, Namakkal District.
- 2.The Chief Engineer,
Public Works Department, Namakkal.
- 3.The Assistant Director,
Mines & Minerals Department, Namakkal.
- 4.The Tahsildar,
Namakkal, Namakkal District.
- 5.The State Level Environment Impact
Assessment Authority, 3rd Floor,
Panagal Maaligai,
No.1, Jeenis Road, Saidapet,
Chennai-15.
- 6.The State Level Expert Appraisal Committee,
3rd Floor, Panagal Maaligai,
No.1, Jeenis Road, Saidapet, Chennai-15.
- 7.The Project Director (Sand Mining),
Tamil Nadu.

(Respondents 5 to 7 Suo Motu impleaded
as per order dated 13.11.2017)

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records in proceedings in ROC.No.1198/Mines/2015 dated 12.03.2017 passed by the 1st respondent for the present sand quarry operating by PWD in S.F.No.643/1(p)-Over an extent of 16.18.0 Hect in Oruvanthur Village, Namakkal Taluk, Namakkal District and quash the same.

For Petitioner : Mr.S.Sheik Ismail

For Respondents: Mr.Vijay Narayan,
Advocate General
assisted by
Mr.T.N.Rajagopal,
Government Pleader and
Mr.E.Manoharan,
Additional Govt. Pleader for R1 to R4

Ms.G.Hema.
Central Govt. Standing Counsel for R5

O R D E R

M.SATHYANARAYANAN, J.

The present Writ Petition is filed as a Public Interest Litigation by the petitioner claiming to be an agriculturist.

2. The petitioner, in the affidavit filed in support of this writ petition, would aver as follows:

2.1. The petitioner is in possession of agricultural land admeasuring to an extent of 12 acres comprised in S.Nos.79/1A, 82, 97, 98, 74/2A, 96/1, situated at Mohanur Village, adjacent to Oruvanthur Village, which is located on the banks of the river Cauvery and agriculture is the sole source of livelihood of the petitioner and majority of people residing in the said village.

2.2. In the year 2012, the respondents 1 to 4 had accorded licence to carry on sand quarry in the nearby village, namely, Mohanur, which is situated within 3 kms. from the village of the petitioner, admeasuring to an extent of 18.63 Hectares at S.No.305. At the time of according licence to the said quarry, objections were received to the effect that the operation of the sand quarry would affect the agricultural activities, especially depletion of ground water source. However, an assurance was given that quarrying operations would be restricted to the permitted area and beyond the permissible depth level, sand quarrying would not be done. The respondents 1 to 4, in

violation of the same, had quarried beyond the permitted area of 18.63 hectares and that apart, quarried to the depth of more than 10 meters, which ultimately resulted in severe water shortage both for agricultural and domestic purpose and as a consequence, the entire residents of the village were affected.

2.3. In the year 2015, the Government of Tamil Nadu proposed to set up a new sand quarry in the village of the petitioner in S.No.643/1 at Oruvanthur on the banks of the Cauvery river, which lies very close to the village of the petitioner and it was opposed by the villagers and there were public agitations also. The first respondent, ignoring the objections and sentiments of the public, has passed the impugned order dated 12.03.2017, according permission to quarry river sand.

2.4. The petitioner had given the following details of violations in Oruvanthur Sand mining:

- i. Necessary survey and inspection has not been done and that already sand has been quarried to the depth of more than 10 meters.
- ii. The conditions imposed by the State Level Environmental Impact Assessment Authority [in short "SEIAA"] that there should be a distance of 1 km. between two mining blocks, has been violated for the reason that there is a quarry in S.No.1/1 at Unniyur Village, Thottiyam Taluk, which lies within 1 km. from the present quarry site in S.No.643/1.
- iii. Even as per the mining plan submitted by the second respondent before SEIAA, there are few habitations within 250 meters to the north western side of the sand quarry and it is per se in violation of the conditions imposed by the said authority.
- iv. Even as per the impugned proceedings of the first respondent dated 12.03.2017, on the eastern side of the quarry, there exists "Kattuputhur Vaaikal" [water channel] head sluice located at a distance of 250 meters and as such, quarrying operations cannot be permitted to go on, as the rule prescribes that no permission shall be granted, if there exists a water supply system within 500 meters.
- v. A road has also been located in the midst of the river for about 3 kms. to transport sand from the quarrying site and it would affect the original gradient of the river and also disturbs the turbidity, velocity and flow pattern of the river water and there is every possibility that natural course of water would be altered/affected.

- vi.No demarcation of the boundaries has been done by putting concrete stone or pillars to show the natural bed level and the depth of mining allowed.
- vii. No display board has been erected at the entrance of the village road from the main road as per the conditions imposed by SEIAA before commencing mining operations.
- viii.The Tahsildar, as per the conditions imposed by SEIAA, shall constitute a Taluk Level Task Force to inspect and satisfy that the conditions imposed by SEIAA have been complied with and based on the same, the District Collector, who is the Chairman of the District Level Task Force, shall approve the mining. However, the Taluk Level Task Force is yet to carryout inspection and if necessary inspection is done, it would have been found that the depth quarried had already reached 10 meters and quarrying further would deplete the ground water source, if any and whatever remains would also get dried.
- ix.As per the conditions imposed by SEIAA, around 2 kms. radius from the proposed area, ground water study to be carried out through reputed research institutions before, during and after mining, to assess the ground water table, but no such assessment was carried out.
- x. There were no piezometers installed to monitor the ground water level at the site, as contemplated by SEIAA.
- xi.The project authority should advertise with basic details at least in two widely circulated local newspapers, out of which one should be in vernacular language and however, it has not been done as per the conditions imposed by SEIAA.

2.5. In sum and substance, it is the stand of the petitioner that quarrying of river sand in the State of Tamil Nadu is rampant and illegal and no steps have been taken to prevent the illegal sand mining and the operation of the sand quarry by the State Government is to benefit certain individuals and no public interest or common good is involved and if the quarrying operations are allowed to go on, it would definitely result in soil erosion and adverse effect on bio-diversity, depletion of ground water source and that apart, flora and fauna would also be affected and in the event of floods, water may not flow on the river bed freely on account of the rampant sand quarry and that apart, the impugned proceedings of the first respondent in according permission to quarry river sand has been done without any authority whatsoever and contrary to environmental protection and conservation and therefore, prays

for quashment of the same.

3. The Writ Petition was entertained on 06.11.2017 and an interim order was granted till 15.11.2017. The matter was listed on 13.11.2017 and on that day, this Court, taking into consideration the submission made by the learned counsel appearing for the petitioner and the learned Advocate General appearing for the State, had directed impleadment of the State Level Environment Impact Assessment Authority, Saidapet, Chennai-15, State Level Expert Appraisal Committee, Saidapet, Chennai-15 and the Project Director (Sand Mining), Tamil Nadu, as the respondents 5 to 7 and directed the State Level Expert Appraisal Committee to cause inspection of the quarry in question, after putting the petitioner on notice and find out as to whether the general conditions stipulated in the Environmental Clearance dated 10.08.2016 issued by the fifth respondent herein are complied with or not. A report was submitted by the sixth respondent viz., Tamil Nadu State Expert Appraisal Committee (SEAC-TN) and this Court, vide order dated 20.12.2017, has taken the said report on file and granted time to the petitioner to file his objections/response.

4. The second respondent has filed a counter affidavit and in para 2 has culled out the procedure to be followed before starting a sand quarry and in para-wise reply in respect of the averments made by the petitioner, would state as follows:

- i. The sand quarry operated at S.No.305 at Mohanur Village to an extent of 18.63 Hectares is strictly in accordance with the terms and conditions of the clearance accorded by the relevant authority and it was operated in the year 2012 by following all the rules and regulations laid down in the Tamil Nadu Minor Mineral Concession Rules, 1959.
- ii. No sand quarry operation was done more than the depth of 10 meters as the river bed is having rocky form and does not have such deposition of the sand and more over, mining to such a depth of 10 meters will yield rocky masses from the bed and also economically unviable.
- iii. A decision has been taken by the Government of Tamil Nadu to set up a new sand quarry in S.No.643/1 on the banks of the river Cauvery and the local Village Panchayat Council, in its earlier resolution dated 20.04.2012, had also consented to request the Public Works Department and the District Collector to start mining of sand from the said village to augment the revenue and to get employment for the village and they have also mentioned that sand shoals that are obstructing the free flow of water is to be removed from the said area.

- iv. Inspection of the quarry site at S.No.643/1 is done periodically and submitted to the District Collector every month and it has not been quarried upto the depth of 10 meters (approx. 30 ft.).
- v. The distance between 2 blocks in S.No.1/1 at Unniyur Village, Thottiam Taluk and the subject quarry site in S.No.643/1 at Oruvandur Village is 2.2. kms. and as per the conditions imposed by SEIAA, it shall be 1 km and as such, the said condition has been complied with.
- vi. There are no habitation within 250 meters to the north western side of the sand quarry and there are no habitations within the radius of 500 meters to the quarry site.
- vii. The Kattuputhur channel head sluice is located at the distance of 250 meters away from the quarry site and the water regulating structure is no way disturbed to its operations and the head sluice is kept always open with respect to Korambu channel and it's inflow is according to the flow of water in Cauvery river.
- viii. The formation of roads to the quarry site from the banks are designed to remain along the confluence of water flow and hence, it is maintained without any obstructions to the flow pattern, velocity and original gradient.
- ix. Demarcations have been done at the site with pucca stones and red flags on the top of it and display boards with relevant details are permanently kept grouted just before the main approach road and in front of the entry point into the river.
- x. The Government had also constituted Taluk Level and District Level Task Forces consisting of officials at Taluk Level and District Level respectively as per G.O.(MS) No.135, Industries (MMA-1) Department dated 13.11.2009 to monitor and prevent illegal mining and transportation of minerals and to make frequent surprise checks in mining/quarrying filed and on vehicles transporting minerals without any valid authority of transport permits. The said Government Order also empowers the Government to form flying squads and that Taluk Level and District Level task forces are properly functioning in Namakkal District Level and are strictly complying with the above said Government Order.

- xi. Failure of monsoon for the last three successive years have resulted in water shortages and as a result, ground water availability as well as surface water flow in Cauvery river was affected consequently and the Public Works Department is having a separate wing for analyzing the ground water potential and to record the ground water table variation throughout the States and the Executive Engineer, PWD has also referred the average depth of ground water table in the lease area of river bed in the report and piezometers were also installed by PWD to monitor the ground water level.
- xii. The Bharadhidhasan University, Trichy has conducted baseline study about sand mining and its effect on bio-diversity in Cauvery river and submitted report for species, flora and fauna in Cauvery River bed.
- xiii. The object of PWD is to remove the excess sand shoals and the permitted depth from the river bed in order to restore the Hydro geological cross section of the river to carryout the maximum capacity of 4,64,000 Cusecs in flood season and the petitioner is making allegations without basic facts and knowledge.
- xiv. Local village people have been appraised with regard to the sand quarry and the view of the stakeholders have also been elicited.
- xv. Sand quarry operations is being done by the Government and not by private parties and as such, there is no illegal or excessive mining which might adversely affect the environment and a new web portal, namely "TN Sand" has come into place, by which level playing field has also been created and there is no element of discretion in the sale of sand and all the conditions imposed by SEIAA have been strictly complied with especially with regard to the depth prescribed in environmental clearance order and there is no excess mining in the sand quarry and as such, there is no adverse effect on bio-diversity.

The second respondent, for the reasons stated above, prays for the dismissal of this Writ Petition.

5. It is to be noted at this juncture that after filing of the report of the Tamil Nadu State Expert Appraisal Committee / sixth respondent herein, the petitioner was afforded with opportunity to file his objections/response, but he did not file the same.

6. The learned counsel appearing for the petitioner, apart from reiterating the ground taken by him in the affidavit filed in support of the writ petition, as extracted above, would contend that no proper and effective monitoring system is put in place and the so called Taluk Level and District Level Task Forces are manned by the officials of the State Government only and since sand quarrying is being done by the Government itself, they are not permitted to take cognizance of the illegal acts as well as violation of the conditions imposed by SEIAA. The learned counsel appearing for the petitioner would further contend that the State of Tamil Nadu is always a water starved State and only during monsoon, there may be some water flow in the rivers and on account of rampant, uncontrolled and illegal quarrying of sand from river beds, natural course of water to flow into the river beds gets affected and sand has been quarried upto the level of 10 meters or more and as a consequence, flow of water get struck once it reaches the said beds and get percolated and as a consequence, it does not reach the other courses especially the end points, which results in affecting the agricultural operations and that apart, ground water table is also not getting charged, resulting in catastrophic consequences such as loss of agricultural operations, suicide of farmers and water scarcity to the villagers who live close to the river Cauvery.

7. It is the forceful submission of the learned counsel appearing for the petitioner that the State, under the guise of sand quarry, has ventured into commercial operations to benefit few individuals, who are operating stock yards as well as transport contractors and no common or public good is involved. It is also the submission of the learned counsel appearing for the petitioner that in order to overcome the shortage of river sand, Mineral Sand is the substitute, which is being used extensively in the State of Maharashtra and other States and since suitable substitute is also available, the State Government may endeavour to start factories for the manufacture of quality M-Sand to meet out the needs of the persons, who are putting up construction as well as Corporates/Real Estate Developers, who are also putting up multi-storied buildings and river sand has become a scarce commodity and illegal and rampant quarrying has already contributed to the ecological disaster and impact on environment and therefore, river sand mining should be totally banned and whatever damage already caused should be repaired and the original condition of the river beds should be restored by the State Government and prays for quashment of the impugned proceedings of the first respondent.

8. Per contra, Mr.Vijay Narayan, learned Advocate General, assisted by Mr.T.N.Rajagopal, learned Government Pleader and Mr.E.Manoharan, learned Additional Government Pleader, appearing

for the respondents 1 to 4, made the following submissions:

- (i) Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 enables the State Government to quarry sand and vires of the said Rule has also been upheld by this Court in the decision in Aminjikaiarai Lorry Owner Welfare Association v. State of Tamil Nadu, [2005 (3) LW66 = 2005 (4) MLJ 523 (Mad)] and as such, the power of the State Government to quarry sand in terms of the said rule, cannot be put to challenge.
- (ii) The Executive Engineer of PWD, Water Resources Department, Sarabanga Basin Division, Namakkal, has submitted an application dated 03.02.2016 along with Form-I, Mining Plan & Pre-Feasibility Report, to obtain environmental clearance for quarrying of sand (Cauvery River) admeasuring to an extent of 16.18.0 Hectares in S.F.No.643/1 at Oruvanthoor Village, Namakkal Taluk and the fifth respondent has considered the said application along with annexures and accorded Environmental Clearance, vide proceedings dated 10.08.2016.

9. This Court has perused the Environmental Clearance accorded by the fifth respondent and it contains the following viz., Conditions to be complied with before commencing mining operations, Specific Conditions and General Conditions etc. The conditions imposed are very exhaustive and there is an in-built mechanism to monitor mining activity and it is also relevant to extract the following conditions:

"2(iii). The katcha roads between the bank of the river and the mining area shall be formed with locally available bio-degradable materials such as Sugar cane leaves etc.

5(xxi). The mined out pits should be backfilled where warranted and area should be suitably landscaped to prevent environmental degradation.

5(xxxv). The SEIAA, TN may cancel the environmental clearance granted to this project under the provisions of EIA Notification, 2006, if, at any stage of the validity of this environmental clearance, if it is found or if it comes to the knowledge of this SEIAA, TN that the project proponent has deliberately concealed and/or submitted false or misleading information or inadequate data for obtaining the environmental clearance.

5(xxxvi). Failure to comply with any of the conditions

mentioned above may result in withdrawal of this clearance and attract action under the provisions of the Environment (Protection) Act, 1986.

5(xL) As CSR activity the project proponent shall take care of the needs of a nearby habitation by providing essential amenities."

The Environmental Clearance accorded by the fifth respondent would also indicate that any appeal against the environmental clearance shall lie with the National Green Tribunal under Section 16 of the National Green Tribunal Act, 2010. The petitioner did not file any appeal challenging the above said environmental clearance.

10. Be that as it may, since the petitioner claims to be an agriculturist and he has also filed the present Writ Petition as a Public Interest Litigation, which has been entertained also, it may not be proper for this Court to direct the petitioner to invoke the alternative remedy and that apart, for want of members, there is no functioning of the National Green Tribunal, Southern Bench at Chennai.

11. As already pointed out, this Court, vide order dated 13.11.2017, has directed the sixth respondent herein to cause inspection of the quarry in question, after putting the petitioner on notice as to the compliance of the general conditions stipulated in the Environmental Clearance accorded by the fifth respondent and accordingly, a report with annexures have been filed.

12. The Technical Team, which inspected the quarry site, consists of the following members:

1.Dr.K.Thanasekaran - Member, SEAC
B.E. (Civil Engg.), M.E. (Environmental Engg), Ph.D.
(Environmental Engg.); Former Director of the Centre
for
Environmental studies, Anna University, Chennai.

2.Dr.M.Jayaprakash - Member, SEAC
B.Sc. (Geology), M.Sc. (Geology), Ph.D. (Geology)
Associate Professor, Department of Applied Geology,
University of Madras, Chennai.

3.Shri B.Sugirtharaj Koilpillai - Member, SEAC
B.Sc., (Zoology), Certificate Course on Forestry,
Diploma in Wildlife Management, Former Indian Forest

Service (IFS) Officer.

4. Shri P. Balamadeswaran - Co-Opted Member, SEAC
B.E. (Mining Engg), M.Tech (Opencast Mining), Ph.D.
(on-going),
First Class Mines Manager Certificate of competency
(Mental-Restricted)
issued by Directorate General of Mines Safety
(DGMS), Dhanbad,
Recognized Qualified Planner (RQP) issued by Indian
Bureau of Mines
(IBM), Chennai; Assistant Professor, Department of
Mining Engineering,
Anna University, Chennai.

The said Technical Team has conducted inspection on 22.11.2017 in the presence of the officials concerned and it also collected data and made certain observations and it is relevant to extract the same:

"6.0. DATA COLLECTED AND OBSERVATIONS MADE

6.1. The Status of Mining Operation

After getting the EC and the proceedings from the District Collector, the PWD carried out the mining operations on 16.06.2017, 17.06.2017, 29.06.2017, 01.11.2017 to 04.11.2017 and 06.11.2017. A total of 3525.39 cu.m of sand has been mined. There is no mining activity after 06.11.2017.

6.2. The lease area earmarked for mining

As per the Team's technical measurements and calculations, it was ascertained that the area earmarked for the mining is 16.18.0 hec. (Annexure-4).

6.3. Pillars

Pillars were observed at the four corners with red flags and necessary details. Similarly intermediate pillars were seen at every 50m without red flags.

6.4. The depth of sand mined

In the leased area, sand has been mined in five pits. The depth of mining varies from pit to pit (1.15m, 2.50m, 2.40m, 2.30m and 1.45m). As per the EC, the PWD

is advised the removal of the shoal and 1m of sand from the actual bed level. From the above data it could be seen that the sand has been mined in the 2nd, 3rd and 4th pits. The actual depth of sand in the above pits mined is 0.5m, 0.4m and 0.3m. Whereas, the permissible the depth of sand to be mined upto 1m from the actual bed level.

6.5. Ground Water Table

The ground water is observed as 2nd, 3rd and 4th pits. No mining has been done below the ground water table.

6.6. Display Boards

Three display boards were erected around the mine area. One display board showing the details of sand quarry in English language, which is located at the entry of river bank and another board in Tamil Language, is located in the village road to the quarry site. Another board also found in near Oruvandhoor Village.

6.7. Approach road used

From the Mohanur - Kattupudhur major district road (MDR), a village road over a length of 400m leads to a private land through which the road passes and the PWD have leased 350m length of a private land for approaching the Cauvery left bank. From Cauvery left bank, a katcha road has been formed to length of 3.6 km to approach the Oruvandhoor lease area. The katcha road from the bank runs along the river and across river. The katcha road crosses leading channel of Kattuputhur Vaikkal at first 100m where temporary pipe culvert is constructed to ensure free flow of water to Kattuputhur vaikkal.

Out of 3.6 km stretch, 2.3 km length was the approach road used in the Mohanur quarry and this road stretch has been extended by 1.3 km as part of Oruvandhoor mining project. The above road was constructed over the river shoal bed using biodegradable sugarcane leaves.

6.8. Nearest Habitations

The nearest villages, Vadugapatti and Oruvandhoor, are located at distance of 0.7 km and 1 km respectively from the quarry site. Another village, Kumaripalayam is located at a distance of 4 km from quarry site.

6.9. Drinking Water and toilet facilities

Drinking water, toilet facilities and rest shelter have been provided at the entry point of the river.

6.10. Flora & Fauna

About 5 ha of the mining site has been covered with *Prosopis juliflora*, as invasive alien species. No other tree growth was found. No fauna was notified in the site.

6.11. Agricultural activities

The team observed agricultural fields closer to the mining area. Sugar cane, Banana, Paddy, Casuarina etc., have been raised in these fields.

6.12. Mining activity outside the leased area

On the North-western side of the leased area, the Team observed that mining activity has been taken place clearly outside the leased area. Two pits were identified with the average depth of 1.8 meters from the surface. Approximately, 1100 m³ of sand has been mined and stacked near the pits."

The Technical Team has also assessed as to the compliance of the General Conditions imposed in the Environmental Clearance accorded by the fifth respondent and in para 8 it has made the following recommendations:

"8.0. IMPORTANT ISSUES AND RECOMMENDATIONS

The following two recommendations may be implemented by the PWD.

8.1. Issue and Recommendation 1

The PWD uses the katcha road formed for Mohanur quarry operation (now completed) and extended it upto the present quarry site. This road runs across and along the river Cauvery. It is a hindrance to the river flow. Preferably, the PWD should look for alternative route for carrying the mined sand which avoids interference with river flow.

Two Options are available

Option A: A road way may be built along the bank as far as possible and then cut across to reach the quarry site. It appears that permission from the Forest Department is necessary.

Option B: In the present road already formed, the vehicle may take Left Turn in the 1st Left itself instead of the 4th Left as it is being done now. Taking the 1st Left free significant stretch of road from usage.

In either case, as a mine closure activity, the PWD must free the river bed from the approach roads and restore the river bed to ensure free flow. For this the PWD may chart out a plan of action and try to complete restoration work along with the mine closure programme for the Mohanur quarry or earlier.

8.2. Issue and Recommendation 2

It was noticed that the river sand has been mined in the area outside the permitted area. Considerable amount of sand has been mined and stacked and depth of mine pit is well below the Ground Water Table Level. The committee advises PWD, to backfill the aforesaid stacked materials, to the respective pits before commencing the operation of the lease area. The restoration work should be done under the supervision of the Department of Geology and Mines, Government of Tamil Nadu. Upon certification by the Mining Department that restoration has been done, the PWD may start the Mining in the selected area."

The said report would also indicate that the Public Works Department is to put up a katcha road for Mohanur quarry and extend the same upto the present quarry site which runs across the river Cauvery and it is an entrance to the flow of river water and therefore, suggested that preferably, PWD should look for alternative route for carrying the mined sand which avoids interference with river flow. As far as laying the said road is concerned, it gives two options. The Committee also noticed that river sand has been mined in the area outside the permitted area and considerable amount of sand has been mined and stacked and depth of mine pit is well below the Ground Water Table Level and therefore, advised the Public Works Department to backfill the aforesaid stacked material, to the respective pits before commencing the operation of the lease area and it should be done under the supervision of the Department of Geology and Mines,

Government of Tamil Nadu and upon certification by the Mining Department that restoration has been done, PWD may start the mining in the selected area.

13. The second respondent has filed a Compliance Report dated 12.01.2018 and it is relevant to extract the same:

"1. As recommended by the SEAC in recommendation No.8.1, option B, a new pathway to the subject quarry has been formed. As a result of this, the vehicles would make a Left Turn in the 1st Left itself instead of 4th Left as was being done earlier and this pathway was formed on the higher ground level than the previous one and also away from the TWAD intake wells.

2. The pathway in the old Mohanur quarry that were a hindrance to the river flow have been cut-opened at various intervals, so that the water now flows across without any hindrance or impasse.

3. Further, the Assistant Director (Mines) has submitted her inspection report and stated that, as instructed by the SEAC in recommendation No.8.2, the PWD have backfilled the sand mined pits outside the permitted area with the stacked sand."

As per the said compliance report, suggestions made by the said Committee have been complied with and it is pleaded by the learned Advocate General that in the light of the same, interim orders granted in this writ petition may be vacated and the writ petition may be dismissed and also, on instructions, would submit that this Court may also appoint a Committee consisting of experts to monitor sand quarry operations in the said site and submit a periodical report to this Court for the purpose of finding out as to whether all the conditions imposed by the fifth respondent, while according Environmental Clearance, have been complied with.

14. This Court paid it's best attention and anxious consideration to the submissions made by the learned counsel appearing for the petitioner, learned Advocate General and also scanned and perused the entire materials placed before it.

15. This Court can take judicial notice of the fact that the State of Tamil Nadu is always a water starved State and that is why our forefathers had a vision and though fit to construct/create very many artificial lakes, temple tanks to augment the surcharge of ground water level, but unfortunately due to urbanisation and ineffective implementation and enforcement of the relevant Laws, most of such water resources had become plots, especially unapproved plots, encroachment on public lands and very many unauthorized constructions are also allowed to take place under the "WATCHFUL" eyes of the concerned officials. A Government organization of the State of Tamil

Nadu, namely, Tamil Nadu Housing Board, is also guilty of converting water body as house sites and developing housing colonies, after re-classification and that apart, land sharks continue to convert water body into housing plots by dumping debris and other materials and in very many cases, concerned authorities had turned a blind eye to the illegal acts which are taking place. As a consequence, this Court is flooded with very many litigations in the form of Public Interest and other litigations complaining about encroachments, conversion of water bodies into housing plots and unauthorized constructions and precious time of this Court is being spent for disposal of those kind of cases and so far, no effective mechanism is put in place.

16. In *Deepak Kumar and Others v. State of Haryana and Others* [(2012) 4 SCC 629], auction notice was issued by the Department of Mines and Geology, Government of Haryana, proposing to auction the extraction of minor minerals, boulders, gravel and sand quarries and the validity of the auction came up for consideration and it is relevant to extract the following paragraphs of the said decision:

"8. We have no materials before us to come to the conclusion that the removal of minor minerals, boulders, gravel, sand quarries, etc. covered by the auction notices dated 3-6-2011 and 8-8-2011, in the places notified therein and also in the riverbeds of Yamuna, Ghaggar, Tangri, Markanda, Krishnavati River basin, Dohan River basin, etc. would not cause environmental degradation or threat to the biodiversity, destroy riverine vegetation, cause erosion, pollute water sources, etc. Sand mining on either side of the rivers, upstream and instream, is one of the causes for environmental degradation and also a threat to the biodiversity. Over the years, India's rivers and riparian ecology have been badly affected by the alarming rate of unrestricted sand mining which damage the ecosystem of rivers and the safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers, etc.

9. Extraction of alluvial material from within or near a stream bed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, instream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering

these habitat characteristics can have deleterious impacts on both instream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.

10. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3-6-2011 and 8-8-2011 have permitted quarrying, mining and removal of sand from instream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and perennial rivers and riverbeds and sand extraction may have an adverse effect on biodiversity as well. Further, it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life."

The Hon'ble Supreme Court in the said judgment has suggested certain measures/recommendations and it is relevant to extract some of the recommendations:

"19...

4.6. Creation of separate corpus for reclamation/rehabilitation of mines of minor minerals

Mining of minor minerals, in our country, is by and large an unorganised sector and is practised in haphazard and unscientific manner. At times, the size of the leasehold is also too small to address the issue of reclamation and rehabilitation of mined out areas. It may, therefore, be desirable that before the concept of mine closure plan for minor minerals is adopted, the existing abandoned mines may be reclaimed and rehabilitated with the involvement of the State Government. There is thus, a need to create a separate corpus, which may be utilised for reclamation and rehabilitation of mined out areas. The respective State Governments may work out a suitable mechanism for creation of such corpus on the 'polluter pays' principle. An organisational structure may also need to be created for undertaking and monitoring these activities.

4.7.Depth of mining

Mining of minerals, whether major or minor have a direct bearing on the hydrological regime of the area. Besides affecting the availability of water as a resource, it also affects the quality of water through direct run off going into the surface water bodies and infiltration/leaching into groundwater. Further, groundwater withdrawal, dewatering of water from mine-pit and diversion of surface water may cause surface and subsurface hydrologic systems to dry up. An ideal situation would require that quarrying should be restricted to unsaturated zone only above the phreatic water table and should not intersect the groundwater table at any point of time. However, from the point of view of mineral conservation, it may not be desirable to impose blanket ban on mining operation below groundwater table.

It is, therefore, recommended that detailed hydrogeological report should be prepared in respect of any mining operation for minor minerals to be undertaken below groundwater table. Based on the findings of the study so undertaken and the comments/recommendations of the Central Groundwater Authority/State Groundwater Board, a decision regarding restriction on depth of mining for any area should be taken on case-to-case basis.

4.9.Riverbed mining

4.9.1. Environment damage being caused by unregulated riverbed mining of sand, bazaris and boulders is attracting considerable attention including in the courts. The following recommendations are therefore made for the riverbed mining:

(a) In the case of mining leases for riverbed sand mining, specific river stretches should be identified and mining permits/lease should be granted stretchwise, so that the requisite safeguard measures are duly implemented and are effectively monitored by the respective Regulatory Authorities.

(b) The depth of mining may be restricted to 3m/water level, whichever is less.

(c) For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone should be worked out on case-to-case basis, taking into account the structural parameters, locational aspects, flow rate, etc. and no mining should be carried out in the safety zone so worked out.

21. Further, it was also recommended that the States, Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of mined out areas. Mining plan should take note of the level of production, level of mechanisation, type of machinery used in the mining of minor minerals, quantity of diesel consumption, the number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in the 2010 Rules. A proper framework has also to be evolved on cluster of mining of minor minerals for which there must be a Regional Environmental Management Plan. Another important decision taken was that while granting of mining leases by the respective State Governments, location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need to be duly noted.

25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive instream sand and gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics. "

17. There should be inclusive growth of the economy, but it cannot be at the sacrifice of the environment.

18. In Narmada Bachao Andolan v. Union of India [(2000) 10 SCC 664], the Hon'ble Supreme Court of India observed that "Environmental and ecological consideration must, of course, be given due consideration but only with proper channelization of developmental activities ecology and environment can be enhanced.... Water is the basic need for the survival of human being and is part of the right to life and human rights as

enshrined in Article 21 of the Constitution of India and can be served only by providing source of water where there is none..."

19. There must be a sustainable or balanced development and balance is to be struck between continuous evaluation and development. There must be preservation of valued resources and protection from unnecessary abuse of environmental and natural resources and there must be a balance approach as to the sustainable development.

20. In *Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group and Others* [(2006) 3 SCC 434], the Hon'ble Supreme Court of India, in paras 251 and 277, had observed as follows:

"251...The harmonization of the two needs has led to the concept of sustainable development, so such that is has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply but, is a process in which development can be sustained over generations... Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs.

277. Consideration of ecological aspects from the Court's point of view cannot be one sided. It depends on the fact situation in each case. Whereas the Court would take a very strict view as regards setting up of an industry which is of hazardous nature but such a strict construction may not be resorted to in the case of country planning."

21. In *Deepak Kumar's case* (cited supra), the Hon'ble Supreme Court of India has also directed that all the States and Environment Ministry of Forest, shall ensure strict compliance of the directions given by it. Therefore, it is obligatory to obtain Environmental Clearance from the competent authority in accordance with law before commencing mining operations and such clearance is also necessary to analyze and determine whether or not a particular developmental activity, which is proposed to be carried out, creates serious/irreversible threat to the environment. Thus a balance has to be struck between the environment and ecological aspect and industrialization which includes mining.

22. In *Indian Council for Enviro-Legal Action and Others v. Union of India and Others* [AIR 1996 SC 1446], the Hon'ble Supreme Court of India has noted with reference to failure on the part of the State and seriousness exhibited by them with

regard to implementation of the environmental laws.

23. The underlining principle runs from the said decisions is that there must be a balance between reformation, development, environmental and ecological issues.

24. Let this Court also look into certain enactments. The Hon'ble Supreme Court of India in *State of Tamil Nadu v. M/s. Hindu Stone* [1981 (2) SCC 205] has observed that the object of The Mines and Minerals (Development and Regulation Act) 1957 is to conserve the minerals and the prudent and discriminative exploitation of minerals, especially in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies.

25. The Tamil Nadu Minor Mineral Concession Rules, 1959 came into being in exercise of powers conferred under Section 15 of the above said Central Act and it is relevant to extract the following Sections:

"38-A. Quarrying of sand by the State Government:- Notwithstanding anything contained in these Rules, or any order made or action taken hereunder or any judgment or decree or order of any Court, all existing leases for quarrying sand in Government lands and permissions/leases granted in ryotwari lands shall cease to be effective on and from the date of coming into force of this Rule and the right to exploit sand in the State shall vest with the State Government to the exclusion of others. The proportionate lease amount for the unexpired period of the lease and the unadjusted seigniorage fee, if any, will be refunded.

42. Submission of environment clearance for the grant of quarry lease for minor minerals including Granite.-

(i) The approved mining plan shall be forwarded to the applicant for obtaining environment clearance from the State Level Environment Impact Assessment Authority or the Ministry of Environment and Forests, as the case may be.

(ii) On submission of approved mining plan and environment clearance from the said authorities, the Government or the District Collector, as the case may be.

(iii) Where quarrying operations for Minor Minerals including granites have been undertaken before the commencement of these rules without environment clearance, such holder of minor mineral including granite leases shall submit the environment clearance within six hundred and thirty days from the date of

commencement of these rules.

(iv) When the existing holders of Minor Mineral leases including granite failed, to submit the environment clearance within the stipulated period, the District Collector or the Government, as the case may be, shall cancel the lease after giving an opportunity of personal hearing."

26. It is the stand of the State Government that under Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, they are having power to quarry sand. As already pointed out, Environmental Clearance has also been accorded by the fifth respondent. This Court has also pointed out that the validity of the said Rule has already been upheld in Aminjikarai Lorry Owner Welfare Association case (cited supra).

27. In the Division Bench decision of this Court dated 01.04.2005 made in W.P.No.1833 of 2005 etc. batch [S.Ramamirtham v. The State of Tamil Nadu and Others], the implementation of New Veeranam Extension Project, to extract sub-surface water by tapping the same from Kollidam river bed and taking to Chennai, in order to provide drinking water to the people, which is the primary need of the people, was put to challenge in the form of Public Interest Litigation. In the said decision, the Division Bench of this Court has also placed reliance upon the decision rendered by the Hon'ble Supreme Court of India in Balco Employees' Union v. Union of India [2002 (2) SCC 333], wherein it is observed that "The Courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself". Ultimately, the Division Bench of this Court has held that there is no illegality in the above said policy decision taken by the Government and upheld the project.

28. Under Section 114 of the Indian Evidence Act, 1862, the Court may presume as per Illustration (e) that the judicial and official acts have been regularly performed.

29. A careful scrutiny and analysis of the entire materials placed would indicate that the State Government is having power to operate a sand quarry under Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 and also obtained Environmental Clearance from the fifth respondent, which also imposed very many conditions for such quarrying operation. An in-built mechanism has also been put in place as per Condition No.5 (xxxvi) stipulated by SEIAA which states that "failure to comply with any of the conditions mentioned above may result in

withdrawal of this clearance and attract action under the provisions of the Environment (Protection) Act, 1986". However, it is very pertinent to note at this juncture that in compliance of the order passed by this Court, a Technical Team of the fifth respondent, namely SEIAA has carried out inspection and noted certain infractions especially with regard to the depth of the sand mined and put up a katcha road which cause hindrance to river water flow and also noted that river sand has been mined in the area outside the permitted area and considerable sand has been mined stacked and the depth of mine pit is below the Ground Water Table Level.

30. It is the stand of the second respondent that as per the Compliance Report filed dated 12.01.2018, the defects/infractions pointed out have been complied with. It is to be remembered that it is the State Government which is carrying on sand quarry operations and it is expected to comply with all the conditions of the Environmental Clearance accorded by the fifth respondent, strictly and scrupulously. However, it appears from the Inspection Report submitted by the sixth respondent that some of the conditions have not been complied with especially with regard to the depth of the quarry operation, flow of natural course of river and stacking of the quarried material. It is very well within the knowledge of the respondents 1 to 4 as to how such a kind of infractions are allowed to take place.

31. The learned Advocate General would also admit that in the past, such kind of violations/infractions took place and took great pain to point out that an I.A.S. Officer has been appointed as the Project Director, Sand Mining, who is also suo motu impleaded as the seventh respondent herein and in order to ensure fair play and transparency, a Web Portal has also been created, wherein persons, who are in requirement of sand, can apply through on-line. It is the further submission of the learned Advocate General that CCTVs are installed in the quarry site and that apart, excavators and lorries used for mining and transportation have been GPS tagged and there will be continuous monitoring of the quarrying operation and transportation and further that effective and sincere steps have also been taken to prevent illegal quarrying of sand in the State. It is also pointed out by the learned Advocate General that on account of various interim orders in operation, the sand quarry operations almost come to a grinding halt and as a natural corollary, construction activities have also come to a stand still, which in-turn resulted in unemployment of workers engaged in construction activities and Real Estate Building operations are also affected and it may not augur well for the State economy and it is also not fair to halt the entire sand quarry operations on account of certain infractions.

32. It is also brought to the knowledge of this Court that a Single Bench of this Court in the decision in MRM Ramaiya Enterprises Private Limited, rep. by its Managing Director v. The District Collector, Thoothukudi District and Others in W.P. (MD).No.20020 of 2017 [2017 (6) CTC 673] has given direction to stop all sand quarry operations within six months, vide order dated 29.11.2017 and the State Government shall not open any new sand quarries in future. The said order was put to challenge in W.A.(MD).No.1454 of 2017 and confirmed by a Division Bench of this Court, vide order dated 19.01.2018 and challenging the same, Special Leave Petition has been filed and it was entertained and interim order of stay was granted subject to certain conditions and as such, there may not be any blanket order or restraint order, restraining the State Government from operating sand quarry and it is being done purely in public interest and common good.

33. This Court has also taken note of the submission of the learned Advocate General, on instructions, that this Court may also appoint an independent monitoring agency to monitor and cause surprise inspection as to whether any infraction is taking place and illegal sand quarry operation is going on in the site in question. No doubt, the counter affidavit of the second respondent would disclose that as per G.O.(MS).No.135, Industries (MMA-1) Department dated 13.11.2009, Taluk Level and District Level Task Force are to put in place and however, it is to be noted that it is manned by State Government officials and since quarrying operations is being done by the State Government through Public Works Department, effectiveness of the said force in carrying out their affairs is also somewhat doubtful.

34. The Expert Body, namely the fifth respondent, after analysis and taking note of the materials placed by the third respondent, took a decision to accord Environmental Clearance subject to very many conditions and in the light of the decision rendered by the Hon'ble Supreme Court of India in Balco Employees' Union v. Union of India [2002 (2) SCC 333], it cannot be interfered with lightly. However, it is mandated on the part of the respondents 1 to 4 to scrupulously adhere/comply with all the conditions stipulated in the said Environmental Clearance and infraction of the same would definitely lead to invocation of Clause 5(xxxvi) of the Environmental Clearance.

35. This Court, in the light of the ratio laid down by the Hon'ble Supreme Court of India in the decisions cited supra, has struck a balance between environmental and ecological aspect and economic development which include industrialization and cannot presume that sand quarry operations being done by the State Government would result in illegal and over exploitation of

natural resources and however, necessary check and balance is to be put in place.

36. The first respondent, after taking note of the Environmental Clearance, has accorded necessary permission to start a new sand quarry in S.No.643/1, Oruvandur Village for a period of two years subject to the conditions imposed by the Joint Committee and it cannot be faulted with in the absence of any legal and tenable grounds. However, this Court is of the considered view that the Taluk and District Level Task Forces may not be in a position to carryout the duties and responsibilities, especially in the light of the fact that the quarrying operations is being done by the State Government and therefore, an independent monitoring agency is to be put in place to oversee the said operations and submit a periodical report to this Court. Therefore, a Monitoring Committee is constituted with the following members:

- (i) Dr.A.Arun Thamburaj, I.A.S.,
Project Director (Sand Mining),
Tamil Nadu.
- (ii) Mr.Mohan,
Professor and Head of the Department,
Department of Environment and Water Studies.
Indian Institute of Technology (I.I.T),
Sardar Patel Road, Opp. to C.L.R.I.,
Adyar, Chennai-600 036.
- (iii) Dr.S.Ganapathy Venkata Subramaniam,
Professor, Department of Environment Studies,
Anna University,
Opp. to Gandhi Mandapam,
Sardar Patel Road, Guindy, Chennai-600 025.
- (iv) Dr.V.Pugazhendi,
Senior Hydro Geologist (Retd.)
TWAD Board, Chennai.

37. In the result, this Writ Petition is dismissed, subject to the above directions. No costs. Consequently, connected miscellaneous petitions are closed. Call on 03.08.2018 for submission of the report with annexures by the Monitoring Committee.

38. Since two of the Monitoring Committee members are already in service, necessary honorarium/expenses and other incidental expenses relating to their visits shall be borne by the Public Works Department. Insofar as the fourth respondent, namely Dr.V.Pugazhendi, who is a retired TWAD Board personnel, Rs.15,000/- (Rupees Fifteen Thousand Only) per visit, apart from travelling and other incidental expenses, shall be paid. The said Committee is also entitled to make periodical surprise visits to the quarry in question and submit periodical Status Report, as ordered by this Court in this order.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

jvm

To

- 1.The District Collector,
District Collector's Office,
Namakkal, Namakkal District.
- 2.The Chief Engineer,
Public Works Department, Namakkal.
- 3.The Assistant Director,
Mines & Minerals Department, Namakkal.
- 4.The Tahsildar,
Namakkal, Namakkal District.
- 5.The State Level Environment Impact
Assessment Authority, 3rd Floor,
Panagal Maaligai,
No.1, Jeenis Road, Saidapet,
Chennai-15.
- 6.The State Level Expert Appraisal Committee,
3rd Floor, Panagal Maaligai,
No.1, Jeenis Road, Saidapet, Chennai-15.
- 7.The Project Director (Sand Mining),
Tamil Nadu.

Copy to:

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Project Director (Sand Mining),
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TWAD Board, Chennai.

+1cc to the Government Pleader, S.R.No. 44587

Order in
W.P.No.22433 of 2017

NA (CO)
TR(19/07/2018)

सत्यमेव जयते

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