

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.13053 of 2017
and WMP.Nos.13929 and 13930 of 2017

R.Rajendran

Vs.

... Petitioner

1.Govt. of Tamil Nadu,
Rep. By the Commissioner,
Department of Geology and Mining,
Thiru.Vi.Ka.Industrial Estate,
Alandur, Guindy, Chennai-600 032.

2.The State Level Environment Impact
Assessment Authority,
Rep. by its Managing Director,
3rd Floor, Panagal Maaligai,
No.1, Jennis Road, Saidapet,
Chennai-600 035.

3.The District Collector,
Nagapattinam District,
District Collectorate,
Public Office Road,
Nagapattinam-611003.

4.The Assistant Director,
Department of Geology and Mining,
Collectorate, Nagapattinam-637 001.

5.R.Iyyappan

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the concerned records relating to the quarrying permission bearing R.C.No.397/(G&M)/2016 dated 29.08.2016 (Ex.A) passed by the 4th respondent Authority in favour of the 5th respondent for a period of two years and to quash the same as being illegal, arbitrary

and violative of Article 21 of the Constitution of India and for a consequential mandamus forbearing the respondents herein, their agents or servants from granting any quarrying permission in Pillaiperumalnallur Village, Tharamgambadi Taluk, Nagapattinam District without calling for objections from the concerned villagers.

For Petitioner : Mr.M.R.Jothimanian
for Mr.K.Balu

For Respondents: Mr.R.Udhayakumar,
Additional Govt. Pleader for R1 to R4

Mr.S.Sithirai Anandam for R5

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)
By consent, this Writ Petition is taken up for final disposal.

2. This Writ Petition styled as a Public Interest Litigation is filed by a resident of Pillaiperumalnallur Village, Tharagambadi Taluk, Nagapattinam District, alleging that the fifth respondent had applied for grant of quarrying lease for quarrying and transporting "Savudu Earth" admeasuring to an extent of 0.57.5 Hectares (1.408 acres) in R.S.No.451/2 & 451/3A in the said village for a period of two years under Rule 19(1) and 22 of the Tamil Nadu Minor Mineral Concession Rules, 1959. It is further averred by the petitioner that necessary recommendation has been made by the jurisdictional Tahsildar and it has also been accepted by the Revenue Divisional Officer, Mayiladuthurai and before causing inspection, objections were raised by residents of the villagers as to the location of the said quarry site within 500 meters from the water body and however, the objections have not all been considered. In this regard, the petitioner has submitted representations dated 15.03.2017 and 24.04.2017 to the respondents requesting them not to accord any permission to quarry from the patta lands of the fifth respondent and despite that, the Assistant Director of Geology, vide communication dated 29.08.2016 has approved the mining permission and therefore, came forward with this Writ Petition making a challenge to the said order.

3. Mr.M.R.Jothimanian, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents especially the Google Map and photographs and would submit that water body in the form of temple tank as well as temple is located within 500 meters from the quarrying site and in the event of quarrying allowed to continue, ground water

table in and around in the said place will get reduced and agricultural operations definitely gets affected and would further pray that in the light of the environmental and ecological issues coupled with the fact that the residents of the said villages are agriculturists and they are eking out their livelihood by carrying on agricultural operations, the impugned order allowing the mining operations may be set aside and the matter may be remanded to the third respondent with a direction to conduct public hearing to elicit their response and thereafter to pass appropriate orders in accordance with law.

4. Per contra, Mr.R.Udhayakumar, learned Additional Government Pleader appearing for the respondents 1 to 4 has invited the attention of this Court to the counter affidavit of the third respondent with annexures and would submit that before according approval, all the procedural formalities have been scrupulously complied with and the environmental clearance accorded to the fifth respondent contains very many conditions and that apart, Tamil Nadu Pollution Control Board has also accorded clearance and would further add that as regards the allegations made by the petitioner is concerned, except the averments made in the affidavit, there are no supporting documents filed to substantiate the same and would further add that periodical and proper maintenance will be done as to the compliance of the conditions imposed by the second respondent while according environmental clearance and therefore, prays for dismissal of this writ petition.

5. Mr.S.Sithirai Anandam, learned counsel appearing for the fifth respondent has drawn the attention of this Court to the typed of documents and would submit that permission was accorded only to quarry "Savudu Earth" in his patta lands in S.No.451/2 and 451/3A and the quantity permitted to be quarried is also very minimal for the reason that he has been permitted to quarry only 5228 cu.meters of "Savudu Earth" with the permitted depth of 2 meters and all the conditions imposed by the second respondent will be strictly complied with in letter and spirit and the fifth respondent himself is a native of the said village and therefore, he would not do anything which would harm environmental and ecological nature of the lands as well as its surroundings and therefore, prays for dismissal of this Writ Petition.

6. In response, the learned counsel appearing for the petitioner would submit that an Advocate Commissioner may be appointed and he may be directed to cause inspection of the quarrying site along with a qualified Surveyor and to submit a report and depending upon the result of the same, this Court may pass appropriate orders.

7. This Court has considered the rival submissions and also perused the entire materials placed before it.

8. The second respondent has accorded Environmental Clearance Certificate to the fifth respondent, vide communication/clearance dated 26.09.2016 and it contains 37 conditions to be complied with before commencing quarrying operations and also 25 General Conditions. In the considered opinion of the Court, such a clearance has been accorded by the Statutory Authority, after taking note of all the aspects.

9. It is also brought to the knowledge of this Court by the learned counsel appearing for the fifth respondent that though there is no interim orders in operation, the fifth respondent has been prevented from quarrying on account of pendency of this writ petition. The primordial submission made by the learned counsel appearing for the petitioner is to the location of water body in the form of Temple Tank and Temple within 500 meters from the quarrying site and however, the counter affidavit along with annexures filed by the third respondent would disclose that it is not so. The petitioner, apart from making averments in the affidavit, has not filed/placed any tenable material as to the location of temple tank or other structures within the prohibited distance. It is also to be noted at this juncture that a statutory authority has accorded Environmental Clearance and this Court cannot presume that the conditions imposed by the said authority have not been scrupulously adhered to by the fifth respondent and it is open to the fourth respondent to cause surprise inspection.

10. This Court, taking note of the apprehension expressed by the petitioner, directs the Chairman of the District Level Services Authority, Nagapattinam District, with the aid and assistance of Revenue and Mining Department Officials, to cause surprise inspection in respect of the quarrying operations being done in S.Nos.451/3A, 451/2, 451/7A, admeasuring to an extent of 0.57.5 Hectares of patta lands belonging to the fifth respondent and the respondents 3 and 4 shall accord necessary cooperation and help to the said official to do so, as ordered by this Court. No doubt, agricultural operations sought to be going on in the said village is to be protected, but at the same time, this Court has to strike a balance between environmental/ecological issues and industrialization/commercial ventures and therefore, it cannot presume that the Environmental Clearance accorded by the second respondent is without due and proper application of mind.

11. In the result, this Writ Petition is dismissed, subject to the above observations. No costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm
To

- 1.The Commissioner,
Govt. of Tamil Nadu,
Department of Geology and Mining,
Thiru.Vi.Ka.Industrial Estate,
Alandur, Guindy, Chennai-600 032.
- 2.The Managing Director,
The State Level Environment Impact Assessment Authority,
Rep. by its Managing Director,
3rd Floor, Panagal Maaligai,
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- 3.The District Collector,
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District Collectorate,
Public Office Road,
Nagapattinam-611003.
- 4.The Assistant Director,
Department of Geology and Mining,
Collectorate, Nagapattinam-637 001.

Copy to:
The Chairman,
District Legal Services Authority,
Nagapattinam District.

+1cc to Mr.Balu, Advocate sr.no.40269
+1cc to Mr. Mr.S.Sithirai Anandam, Advocate sr.no.40029
+1cc to Government Pleader in sr.no.41465

W.P.No.13053 of 2017

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nr 29/06/2018