



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2018

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CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MR.JUSTICE **N.SATHISH KUMAR**

W.P. [MD] .Nos.6279 and 6351 of 2018

and

W.M.P. (MD) Nos. 6112 and 6113 of 2018

and W.M.P. (MD) Nos.6199 and 6200 of 2018

In W.P. (MD) No. 6279 of 2018:

S.Poothathan

: Petitioner

Vs.

1.The District Collector,
O/o.Collectorate,
Tirunelveli District.

2.The Assistant Director of Mines,
Mines Department,
Collectorate Complex,
Tirunelveli - 9.

3.The Deputy Director of Forest,
Tiger Reserve,
Mundanthurai Kalakkad Reserve Forest,
Ambasamudram,Tirunelveli District.

4.The Executive Officer,
Mannarkovil Village Panchayat,
Ambasamudram Union,
Tirunelveli District.

: Respondents

In W.P. (MD) No. 6351 of 2018:

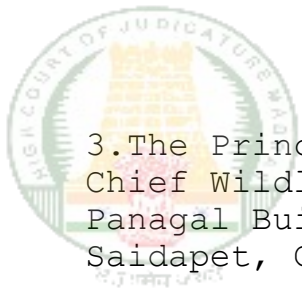
Sudalaikannu

: Petitioner

Vs.

1.The Principal Secretary of Environment and Forest,
State of Tamil Nadu,Secretariat,
Chennai.

2.The Secretary of Industries Department,
State of Tamil Nadu, Secretariat,
Chennai.



3.The Principal Chief Conservator of Forest and
Chief Wildlife Warden, State of Tamil Nadu,
Panagal Building,
Saidapet, Chennai.

4.The District Collector,
Tirunelveli District.

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

: Respondents

PRAYER in W.P. (MD) No.6279 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records with regard to the impugned notification published in gazette in Na.Ka.No.M1/9212/2018 dated 07.03.2018 issued by the first respondent in so far in respect to SI.No. 15, Annexure No.1 of the said Notification and quash the same and consequently to declare Survey No.301 as Hill Reserved Forest Area.

PRAYER in W.P. (MD) No.6351 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the Tender Cum Public Auction gazette notification dated 07.03.2018 in Na.Ka.No.M1/9212/2018 issued by the fourth respondent and set aside the same as illegal and direct the fourth respondent not to grant any lease or license for carrying out stone quarry operations within 10 km from Kalakkad-Mundanthurai Tiger Reserve (Eco Sensitive Zone).

In W.P. (MD) No.6351 of 2018:

For Petitioner : Mr.R.Gandhi
For R1 to R5 : Mr.B.Pugalendhi
Additional Advocate General
Assisted by Mr.A.K.Baskarapandian
Special Government Pleader

In W.P. (MD) No.6279 of 2018:

For Petitioner : Mr.M.S.Sureshkumar
For R1 to R4 : Mr.B.Pugalendhi
Additional Advocate General
Assisted by Mr.A.K.Baskarapandian
Special Government Pleader

**C O M M O N O R D E R***********

[Order of the Court was made by **M.M.SUNDRESH, J.**]

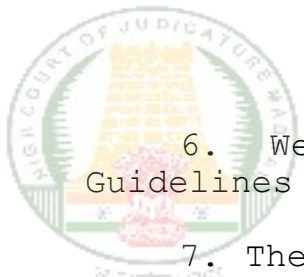
These two Public Interest Litigations are against the proposed mining lease of stone quarries within 10 kms of Kalakad Mundanthurai Tiger Reserve. Admittedly, the proposed mining lease comes within the Echo Sensitive Zone and therefore, permission from the Standing Committee of National Board of Wildlife is mandated apart from other authorities.

2. The only question that arises for consideration in these two writ petitions is as to whether such permission is required before envisaging the mining operation mandated from the notification to be undertaken by the official respondents or after confirmation in favour of the respective licensees to be obtained from them as proponents of project.

3. There is no difficulty in appreciating the fact that the Apex Court while passing the final order in **Goa Foundation Vs. Union of India** in **W.P. No.460 of 2004** has stated that there is no blanket bar in undertaking a mining operation though it might be carried on within the 10 kms to Echo Sensitive Zone. Therefore, the Apex Court has left it to the wisdom of the Standing Committee to decide it.

4. The learned counsel appearing for the petitioners would submit that by applying the Rule of precautionary principles such decision ought to have been taken by the official respondents before embarking to lease the quarries. Mining of '17', which according to the learned Additional Advocate General, is reduced to '14' in view of the objection raised on three of them.

5. The learned Additional Advocate General, placing reliance upon the guidelines and the memorandum issued by the Ministry of Environment and Forests, Government of India, submits that such permission has to be obtained by the project proponent alone. This is for the reason, such a entity alone can provide the measures taken or to be taken. As per Rules 41 and 42 of the Taminadu Minor Minerals Concessions Rules, 1959, a mining plan has its own in-built mechanism in respect of the mandatory conditions qua environmental concerns. For the compliance of Rule 36(1) of the Taminadu Minor Minerals Concessions Rules, 1959, an inspection was made through the Revenue officials. The Forest Department has also been asked about the existence of the quarries available. Even in the Notification itself, it has been indicated that the requisite permission is mandatory from the Standing Committee of National Board of Wildlife. Therefore, the writ petitions are premature.



6. We have perused the records produced including the Guidelines governing.

7. The core facts are not in dispute. The fact is that Kalakad Mundanthurai Tiger Reserve is declared as Echo Sensitive Zone. The documents produced by the learned Additional Advocate General would show that merely an opportunity was sought for from the Forest Department for some of the quarries are situated in the zone. From the record, it further appears that part of the quarries would come under Kanyakumari Wildlife Sanctuary. Thus, there is no difficulty about the existence of Echo Sensitive Zone.

8. One has to see the intendment of the order of the Apex Court. If we apply the precautionary principles, the owners are certainly official respondents. After all they are the protectors of environment and forest. There is absolutely nothing on record to show that the Forest Department has been consulted before the decision was made by the Notification to auction 17 quarries. Secondly, they are not aware of the nature of activity that is likely to be carried on by the successful bidders.

9. All the 17 quarries are stone quarries. The Tamilnadu Minor Mineral Concession Rules, 1959 imposes certain conditions for carrying stone quarries. Therefore, the mining of excavation of stone is well known. Proposed methods may differ from one licensee to another. We would like to make it clear that the officials respondents ought to have satisfied themselves from the Forest Department and obtaining clearance from the Standing Committee of National Board of Wildlife before making a decision to auction the right to indulge in stone quarrying. This will be in consonance with the precautionary principle. The paramount duty of the official respondents is to protect the forest.

10. The question of development would come at later point of time. Development can never be at the cause of environment. In a case where both can be allowed to sail, they can be permitted to do so accordingly. However, in a case where the proposed development would invariably have a effect on the environment, then it might require the total ban. Hence, there is difference between not allowing the industry which is otherwise polluted and allowing it subject to compliance. This depends upon the sensitivity of the area and nature of the industries. Therefore, a public authority has to take a decision first as to whether the area can be permitted to be utilized for a particular purpose. Thereafter, the question of compliance of conditions imposed would arise. Exactly, for this purpose, clearance from the Standing Committee of National Board of Wildlife is mandated.



11. We say so for the reason if a clearance is not obtained then it will be clear to every other person that the area has to be preserved and maintained as a Echo Sensitive Zone and therefore, cannot be utilized for commercial activity of any nature. After all the object of protecting the Echo Sensitive Zone is linked a buffer zone between the forest core area which is habitated. Unless this huddle is crossed, the question of permitting an industry with conditions preceded by decision would not arise.

12. It is a case of putting a cart before the horse. This will create the unnecessary third party right leading to litigation. To be noted, there is no Clause in the Notification about the returning of all the deposited money, which is inclusive of mandatory payment of various deposits, in the event of successful proponent unable to get a clearance from the Standing Committee of National Board of Wildlife.

13. Apart from public interest, it does not even make any common sense as every one including the public authorities would be affected. Therefore, we are of the view that the guidelines and official memorandum issued by the Ministry of Environment and Forests, Government of India are to be read to mean that a public authority before issuing a Notification or permitting the proponent to start a project has to satisfy itself both by assessing necessary material from their own Forest Department and get a clearance from the Standing Committee of National Board of Wildlife whenever the same is mandated by law. After all there is a logic and reason in keeping the distance qua a echo zone.

15. On the submissions made by the learned Additional Advocate General with respect to the permission to be obtained by successful bidder from the Standing Committee, the said requirement will not absolve the official respondents from getting clearance or permission for undertaking the exercise of granting any permission to a third party. As stated above, both stand on different footing. The permission to be acquired by the official respondents with respect to very utilization of the land and the permission to be obtained by the licensee with respect to the nature of usage and the mining in which it should be done by satisfying with the measures undertaken.

16. The observations of the Apex Court in **Goa Foundation Vs. Union of India** in W.P. No.460 of 2004, paragraph No.85 and 87.5 are extracted hereunder:

87.4. Until the order dated 4.8.2006 of this Court is modified by this Court in I.A.No.1000 in T.N.Godavarman Thirumulpad . Union of India there can be no mining activities within one kilometre from the boundaries of



national parks and sanctuaries in Goa.

87.4. By the order dated 04.12.2006 in Goa Foundationn V.Union of India, this Court has prohibited mining activities within 10 kilmetres distance from the boundaries of the national parks or wildlife sanctuaries.

87.5 It is for the State Government to decide as a matter of policy in what manner mining leases are to be granted in future but the constitutionality or legality of the decision of the State Government can be examined by the Court in exercise of its power of judicial review.

17. Therefore, we are inclined to strike down the aforesaid proceedings and accordingly hold that in a case of this nature, the impugned respondents will have to obtain a clearance of permission from the Standing Committee of National Board of Wildlife. We are conscious of the fact that the the Ministry of Environment and Forests, Government of India is not before us. However, we are of the view that the said authorities are not required, since it will not be prejudiced by the order as we are not dispensing with the requirement of getting permission but only held that who would require such permission. In this process, we merely add the take holder namely, the official respondents to seek permission before contemplating inaction to auction the natural resources.

18. These writ petitions are disposed of accordingly. However, we make it clear that after getting appropriate permission it will be open to the official respondents to proceed with in accordance with law which may also include issuing of notification. We also clarify that this order is passed only with regard to Echo sensitive zone alone. We do not want to extend to other cases. Thus, we leave the said issue open to decide the other cases as and when the same arise for consideration.

19. We are of the view that the aforesaid modality would be better since the official respondents would be in a better position to give requisite materials to the satisfaction of the Standing Committee National Board of Wildlife and then project proponents who can adjust to the measures undertaken by them alone would take care of the environment concerns.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS-I)



To

1.The District Collector,
O/o.Collectorate, Tirunelveli District.

2.The Assistant Director of Mines,
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7.The Principal Chief Conservator of Forest and
Chief Wildlife Warden,
State of Tamil Nadu,
Panagal Building, Saidapet, Chennai.

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

+1 CC To MR.R.GANDHI, Advocate SR. NO.83390
+1 CC To MR.SURESHKUMAR, Advocate SR. NO.83315
+1 CC TO The Special Government Pleader SR.NO. 83700

ORDER MADE IN
W.P. [MD] .Nos.6279 and 6351 of 2018
and
W.M.P. (MD) Nos. 6112 and 6113 of 2018
and W.M.P. (MD) Nos.6199 and 6200 of 2018
10.09.2018

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TR/RSK/SAR-I (15.10.2018) 7P 12C