

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7/3/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.1215 of 2019
a n d
W.M.P.No.1368 of 2019

P. Rathinam

...

Petitioner

Vs

1. The State of Tamil Nadu
rep. By its Chief Secretary
Secretariat
Chennai 600 009.
2. The Secretary
Home Department
Government of Tamil Nadu
Secretariat
Chennai 600 009.
3. The Secretary to Government
Highways Department
Secretariat
Chennai 600 009.
4. The Secretary to Government
Mines and Minerals Department
Secretariat
Chennai 600 009.
5. The Joint Director
Mines and Minerals Department
Thiruvannamalai District
Thiruvannamalai.
6. The Director General of Police
Government of Tamil Nadu
Police Headquarters
Chennai 600 004.

7. The District Collector
Thiruvannamalai District.
8. The District Collector
Villupuram District
Villupuram.
9. The Revenue Divisional Officer
Cheyyar
Thiruvannamalai District.
10. Kothandaramaswami Charitable Trust
rep. By its Trustee
Mr.Dr.Sadananda
Bangalore. Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus

a. directing the respondents 1 to 9 to stall the movement of the heavy vehicle carrying a single large rock from Korakottai Village, vandavasi Taluk, Thiruvannamalai District, to Bangalore by the tenth respondent, Kothandaramasamy Charitable Trust represented by its Trustee Dr.B.Sadananda

b. directing the respondents 1 to 9 to take appropriate steps to get back the large single rock removed from the hill situated in Korakottai Village, Vandavasi Taluk, Thiruvannamalai District by the tenth respondent for utilising the same to prepare the statute of Buddha to install within Tiruvannamalai District.

For petitioner Mr.P.Rathinam
Party-in-Person

For Respondents ... Mr.E.Manoharan
Additional Government Pleader
for R.R.1 to 9

Mr.S.N.Ravichandran for R.10

O R D E R

(Order of the Court was made by S.Manikumar, J)

Mr.P.Rathinam, Party-in-Person, a practising advocate has filed the instant writ petition for a mandamus,

a. directing the respondents 1 to 9, to stall the movement of the heavy vehicle, carrying a single large rock from

Korakottai Village, vandavasi Taluk, Thiruvannamalai District, to Bangalore, by the tenth respondent, Kothandaramasamy Charitable Trust, represented by its Trustee Dr.B.Sadananda

b. directing the respondents 1 to 9, to take appropriate steps, to get back the large single rock removed from the hill situated in Korakottai Village, Vandavasi Taluk, Thiruvannamalai District, by the tenth respondent, for utilising the same to prepare the statue of Buddha to install within Tiruvannamalai District.

2. Petitioner has also averred that Government have issued G.O (D) No.167, Industries (MMB.2) dated 28/10/2014, according permission to the tenth respondent, for quarrying 460 cubic metre of charnokite rock over an extent of 0.42.0 hectares out of 1.86.5 hectares of Government poramboke land, in S.G.No.253/1B, in Korakottai Village, Vandavasi Taluk, Tiruvannamalai District, for the purpose of renovation work, including construction and sculpture/engraving work for Sri Kodanandha Ramasamy Temple, Bangalore, subject to certain conditions.

3. Record of proceeding shows that after noticing an order passed in W.P.No.16974 of 2017, a Hon'ble Division Bench of this Court, in the instant Writ Petition No.1215 of 2019, dated 18/1/2019, has ordered as hereunder:-

The present writ petition is styled as a Public Interest Litigation by a practising Lawyer alleging that the Government of Tamil Nadu, vide G.O[D] No.167, Industries [MMB.2] Department, dated 28.10.2014, had accorded permission to the 10th respondent for quarrying Charnokite stone for the purpose of renovation work of Sri Kothanda Ramaswami Temple at Bengaluru including construction of sculpture and accordingly, the relevant quantity of stone has been quarried and the face of the Deity alone has been sculpted and it is being transported by a specially designed multi-axle vehicle to Bengaluru.

2 The grievance expressed by the petitioner is that though the petitioner/party-in-person is not against the grant of permission by the Industries Department vide the above said Government Order and also not interested in claiming compensation with regard to the alleged damages to the structure in the course of such transportation, without any valid transport permit and in violation of conditions No.8 and 9, of the said Government Order, the transportation of the said material has been done and therefore, he is constrained to approach this Court, by filing the present writ petition.

3 A perusal of the typed set of documents would also disclose that one Munikrishnan, S/o.Velu, No.153, Mettu Street, Erunkal Village, Chenkadu Post, Cheyyar Taluk, Tiruvannamalai District, has filed WP.No.16974/2017, praying for issuance of a writ of mandamus, directing the official respondents 1 to 9 therein, to restrain the 10th respondent from transporting the rocks from Korakottai Village, Vandavasi Taluk, Tiruvannamalai District to anywhere, by considering his representation dated 09.03.2018 and pass such further or other orders and the Hon'ble First Bench of this Court had disposed of the said writ petition, vide order dated 09.03.2018 and it is relevant to extract the same:-

"ORDER

[Order of the Court was made by the Hon'ble Chief Justice]

After hearing the respective parties, we direct the District Collector to take a decision on the application of the tenth respondent for transport permit within one week from the date of communication of this order after giving the petitioner an opportunity of representation. Needless to mention that on receipt of the requisite permits and permissions, the tenth respondent will be able to transport the idol in question.

2 The writ petition is disposed of with the above direction. No costs. Consequently, the connected WMP is closed."

In the light of the submissions made by the petitioner/party-in-person and also the above cited Government Order, this Court is inclined to order notices to the respondents 1 to 10.

4 Accordingly, notices to the respondents 1 to 10 through Court as well as privately returnable on 14.02.2019, only with regard to the subsequent development that took place after the order dated 09.03.2018 in WP.No.16974/2017..

5 Mr.E.Manoharan, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 9 and seeks time to get instructions.

6 The respondents 4 and 5 shall file a Status Report as to the development regarding permission accorded to transport the quarried rock to Bengaluru by the 10th respondent.

7 Call on 14.02.2019.

4. Judicial notice is taken in W.P.No.3546 of 2019. Petitioner therein has sought for the following reliefs:-

a. directing the second and fifth respondents to assess the damage caused to the properties of the innocent members of the public due to the commissions and omissions of the twelfth respondent Kothandaramasamy Charitable Trust, Bangalore while transporting the large size stone in a heavy vehicle from Korakottai village, Vandavasi Taluk, Thiruvannamalai District to Bangalore, on the basis of the permission granted in G.O.(D) No.167, Industries (MMB.2) Department dated 28/10/2014 and to collect the amount being paid to the victims from the twelfth respondent.

b. directing the second and fifth respondents to make advance payment of compensation to Mr.Guberan, Son of Karuppayya, 402 Chetty Street, Vellimedupettai, Tindivanam Taluk, Villupuram District, Rs.3 lakhs as agreed by the twelfth respondent for the heavy damage caused to his 2 storied building. Similarly the advance payment of compensation to be paid to Mr.Natarajan, S/o. Chinnakannu, residing at No.66, Sethupattu, Thiruvannamalai Main Road, Kaplampadi Village, Melmalayanur Taluk, Villupuram District, as the three affected persons have filed their supportive affidavit narrating the background of their shocking experiences.

5. After considering the orders made in W.P.No.1215 of 2019 and W.P.No.16974 of 2017 dated 9/3/2018, we dismissed the writ petition and rejected the prayer sought for, vide order, dated 6/2/2019 in W.P.No.3546 of 2019.

6. As directed by the Hon'ble Division Bench, vide, order, dated 18/1/2019, in W.P.No.1215 of 2019, the District Collector, Tiruvannamalai, District, has filed a status report, dated 9/2/2019.

7. It is trite law that when an administrative/executive order is issued, the same requires to be challenged, on tenable grounds, for the issuance of a writ of certiorari. Petitioner is aware of the order of granting permission, in G.O.(D) No.167, Industries MMD-2, dated 28/10/2014. Mandamus cannot be equivalent to certiorari. Besides, permission has been granted in the year 2014 and that the rock is being transported from Vandavasi Taluk to Bangalore through the road proposed by the tenth respondent.

8. According to the District Collector, Tiruvallur District, all precautionary measures with the help and guidance of the officials of Revenue Departments in their respective jurisdictions, are being taken.

9. In the light of the status report filed by the Collector, Tiruvannamalai District and for the reasons stated supra, mandamus cannot be issued and accordingly, writ petition is dismissed. Status report filed by the collector, Tiruvannamalai District, shall form part of the record. No costs. Consequently, the connected Miscellaneous Petition No.1368 of 2019 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Chief Secretary
State of Tamil Nadu
Secretariat
Chennai 600 009.
2. The Secretary
Home Department
Government of Tamil Nadu
Secretariat
Chennai 600 009.
3. The Secretary to Government
Highways Department
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4. The Secretary to Government
Mines and Minerals Department
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Chennai 600 009.
5. The Joint Director
Mines and Minerals Department
Thiruvannamalai District
Thiruvannamalai.

6. The Director General of Police
Government of Tamil Nadu
Police Headquarters
Chennai 600 004.

7. The District Collector
Thiruvannamalai District.

8. The District Collector
Villupuram District
Villupuram.

9. The Revenue Divisional Officer
Cheyyar
Thiruvannamalai District.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.21420

+1cc to Mr.P.Rathinam, Advocate, S.R.No.21165

+1cc to the Government Pleader, S.R.No.21796

W.P.No.1215 of 2019

RSI (CO)
SSM(01/04/2019).



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