

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.3546 of 2019
and WMP No.3865 of 2019

M.Boopal

... Petitioner

vs.

1. The Union of India,
Represented by Secretary,
Ministry of Mines,
Shastri Bhavan,
Dr.Rajendra Prasad Road,
New Delhi - 110 001.

2. The State of Tamil Nadu,
Represented by its Chief Secretary,
Secretariat,
Chennai - 600 009.

3. The Secretary,
Home Department,
Government of Tamilnadu,
Secretariat,
Chennai - 600 009.

4. The Secretary to Government,
Highways Department,
Secretariat,
Chennai - 600 009.

5. The Secretary to Government,
Mines and Minerals Department,
Secretariat,
Chennai - 600 009.

6. The Joint Director,
Mines and Minerals Department,
Thiruvannamalai District,
Thiruvannamalai.

7. The Director General of Police,
Government of Tamil Nadu,
Police Headquarters,
Chennai - 600 004.

8. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.

9. The District Collector,
Villupuram District,
Villupuram.

10. The District Collector,
Krishnagiri District,
Krishnagiri.

11. National Highways Authority of India,
Represented by its Project Director,
DP-34, Sri Towers South Phase,
3rd Floor, Guindy,
Chennai - 600 032.

12. Kothandaramaswami Charitable Trust,
Represented 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, directing the respondents as:

a. directing the 2nd and 5th respondents to assess the damage caused to the properties of the innocent members of the public due to the commissions and omissions of the 12th 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 12th respondent.

b. directing the 2nd and 5th 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 12th respondent for the heavy damage caused to his 2 storied building. Similarly the advance payment of compensation to be paid to Mr.Natarajan, Son of Chinnakannu, residing at No.66, Sethupattu, Thiruvannamalai Main Road, Kaplampadi Village, Melmalayanur Tluk, Villupuram District. Similarly, the 2nd and 5th respondents have to make advance payment of compensation to Mrs.Shanthi, Wife of Venkatesan, residing at No.67, 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.

For Petitioner : Mr.V.Prakash, Senior Counsel
for Mr.G.Paventhan

For Respondents : Mr.K.Srinivasamurthy (for R1)
Sr. Panel Counsel
Mr.E.Manoharan, (for R2 to R10)
Additional Government Pleader

ORDER

(Order of the Court was made by S.MANIKUMAR)

A practicing advocate has filed the instant public interest litigation for a mandamus, directing the Chief Secretary, the State of Tamil Nadu, Secretariat, Chennai - 600 009 and the Secretary to Government, Mines and Minerals Department, Secretariat, Chennai - 600 009, respondents 2 and 5 herein respectively, to assess the damage caused to the properties of the innocent members of the public due to the commissions and omissions of the 12th respondent viz., Kothandaramasamy Charitable Trust, Bangalore while transporting a 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 12th respondent.

2. Petitioner has also sought for a direction to the Chief Secretary, the State of Tamil Nadu, Secretariat, Chennai - 600 009 and the Secretary to Government, Mines and Minerals Department, Secretariat, Chennai - 600 009, respondents 2 and 5 herein respectively, to make an advance payment of compensation to (1) Mr.Guberan, Son of Karuppayya, 402, Chetty Street, Vellimedupettai, Tindivanam Taluk, Villupuram District, Rs.3 lakhs, as agreed to by the 12th respondent, for the heavy damage caused to his 2 storied building, (2) Mr.Natarajan, Son of Chinnakannu, residing at No.66, Sethupattu, Thiruvannamalai Main Road, Kaplampadi Village, Melmalayanur Taluk, Villupuram District, (3) Mrs.Shanthi, Wife of Venkatesan, residing at No.67, 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.

3. On the 2nd prayer sought for, petitioner has also filed

three supporting affidavits of Mr.Kuberan, Mr.Natarajan and Mrs.Shanthi, dated 20.01.2019, stating that they have suffered damages due to the transportation of the huge single stone for the purpose of renovation work of Sri Kothandaramaswamy Temple, Bangalore, including construction and sculpture.

4. Mr.V.Prakash, learned Senior counsel submitted that when a massive stone is being transported, it has caused damage to roads, houses and other properties of public and in such circumstances, public interest litigation, should be entertained. He also invited the attention of this Court to an earlier order passed by this Court in W.P.No.1215 of 2019 and in particular paragraph No.4 of the order dated 18.01.2019, by which this Court, thought it fit to consider the subsequent developments that has taken place, after the order dated 09.03.2018 in W.P.No.16974 of 2017. Learned senior counsel further submitted that in W.P.No.16974 of 2017, respondents 4 and 5 therein have been directed to file a status report as to the development regarding permission accorded to transport the quarried block to Bangalore to Respondent No.10 therein.

5. Learned senior counsel also drew the attention of this Court that when permission was granted to transport, clause 7 imposes a specific condition that no hindrance should be created to the nearby pattadars and other residents who are living along the transport way. Despite the same, damage is caused to innumerable public.

6. Learned Senior counsel emphasised that the Court must ignore the prayer and should look at the spirit behind the Public Interest Litigation while granting relief and for the reasons stated supra, prayed to issue notice.

7. Heard Mr.V.Prakash, learned Senior Counsel appearing for the petitioner and perused the materials available on record.

8. Government have issued G.O.(D) No.167, Industries (MMB.2) Department dated 28.10.2014, granting permission to acquire dimensional stone over an extent of 0.42.0 hectares out of the total extent of 1.86.5 hectares of Government poramboke land in S.F.No.253/1B of Korakottai Village, Vandavasi Taluk, Thiruvannamalai District for a period of 11 months as per rule 3 of Tamil Nadu minor Mineral Concession Rules, 1959 (OR) quarrying of 460 CBM, subject to certain conditions. Clause / Condition No.7, pointed out by the learned Senior counsel, is that no hindrance should be created to the nearby pattadars and other residents, who are living along the transport way.

9. Order of the Hon'ble Division Bench dated 18.01.2019 referred to by the learned Senior Counsel, is extracted 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."

10. As stated supra, supporting affidavit of three persons dated 20.01.2019 stated to have suffered damage during the transportation of the stone, has already been referred to in the foregoing paragraph.

11. There could be damage, during transportation of such a huge block, to roads and property belonging to public. Though, Mr.V.Prakash, learned senior counsel emphasised that the purpose of filing the Public Interest Litigation is to ensure that poor and marginalised sections of the society, cannot at every stage approach the Court, for relief, when there is damage to their property or infringement of rights and in that context, requested to issue notice to the respondents, question is whether the writ Court should issue a direction to the Government to conduct a detailed enquiry to find out as to who are all the persons, who suffered damages, during transportation.

12. Material on record discloses that the rock is being transported from Vandavasi Taluk, Thiruvannamalai District, to Bangalore. Damage if any, suffered during transportation by any individual, to his property, is a question of fact, giving rise to a common law remedy by filing a suit. Fact that a person has suffered damage has to be pleaded and proof be laid before the Civil Court. Assessment cannot be made without any adjudication of fact and an opportunity has to be given to the respondents / defendants, if any suit is lodged.

13. Prayer (a) in the writ petition is for all the innocent members of the public and prayer (b) is restricted to three persons. Prayer is to assess the damage enroute from Korakottai Village, Vandavasi Taluk, Thiruvannamalai District to Bangalore, collect the amount from Kothandaramasamy Charitable Trust, Bangalore, the 12th respondent, to be paid to the public. Such a omnibus prayer cannot be granted.

14. In the light of the above discussion, we are of the view that both the prayers cannot be granted. Instant Writ petition fails and the same is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Union of India,
Ministry of Mines,
Shastri Bhavan,
Dr.Rajendra Prasad Road,
New Delhi - 110 001.

2. The Chief Secretary,
State of Tamil Nadu,
Secretariat,
Chennai - 600 009.

3. The Secretary,
Home Department,
Government of Tamilnadu,
Secretariat,
Chennai - 600 009.

4. The Secretary to Government,
Highways Department,
Secretariat,
Chennai - 600 009.

5. The Secretary to Government,
Mines and Minerals Department,
Secretariat,
Chennai - 600 009.

6. The Joint Director,
Mines and Minerals Department,
Thiruvannamalai District,
Thiruvannamalai.

7. The Director General of Police,
Government of Tamil Nadu,
Police Headquarters,
Chennai - 600 004.

8. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.

9. The District Collector,
Villupuram District,
Villupuram.

10. The District Collector,
Krishnagiri District,
Krishnagiri.

11. The Project Director,
National Highways Authority of India,
DP-34, Sri Towers South Phase,
3rd Floor, Guindy,
Chennai - 600 032.

12 The Trustee,
Kothandaramasamy Charitable Trust,
Bangalore.

+1cc to Mr. G.Pavendhan, Advocate, S.R.No. 10655
+1cc to Mr. K.Srinivasa Murthy, Advocate, S.R.No. 10144
+1cc to the Government Pleader, S.R.No. 10556

WP.No.3546 of 2019
and WMP No.3865 of 2019

KS(CO)
GN(13/03/2019)