

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

C O R A M

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

Writ Petition No.2733 of 2018

Jayashankar Abbaiah

... Petitioner

Vs

1. The District Collector
Collectorate
Collectorate Road
Krishnagiri
Tamil Nadu 635 115.
2. The District Forest Officer
Hosur Division,
Hosur Cattle Farm (P.O),
Mathigiri
Hosur 635 110.
3. S.R.Sampangi
4. P. Arun Reddy
5. S. Madhu
6. C. Narayanappa
7. M/s. Royal Blue Metals
rep by its Partner Mr.M.Bharanitharan
Salem 636 307.
8. G. Ashoka
9. K. Murugesh
10. P. Mallikarjuna
11. K. Govindappa

... Respondents

(R.3 to 11 impleaded as per Court order, dated 5/2/2018
in W.M.P.Nos.32400, 39164, 3967, 39169, 39172,
39174, 39177, 39179 and 39181 of 2018 in
W.P.No.2733 of 2018)

PRAYER: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent culminating in the auction notice in Na.ka.No.72/2017 (Geology) dated 31/1/2018 published in the Dhinamani newspaper on 3/2/2018, quash the same in so far as it relates to the auction of lands in Kammandoddi village mentioned in Serial number 36 to 46 of the notice and direct the respondents 1 and 2 to evolve a conservation plan for the maintenance of elephant corridors in the region.

For petitioner ... Mr.A.Yogeshwaran

For respondents ... Mr.E. Manoharan
Additional Government Pleader
for R.1

Mr.R.Balaramesh
Special Government Pleader
(Education)
for R.2.

Mr.V.Sanjeevi
for R.R.3 to 11.

O R D E R

(Order of the Court was delivered by Subramonium Prasad,J)

Petitioner a resident of Pillai Kothur, Koneripalli Post, Shoolagiri, Krishnagiri, has filed the instant writ petition, challenging an auction notice, in Na.Ka.No.72/2017 (Geology), dated 31/1/2018, and quashing the same, in so far as it relates to auction of lands, in Kammandoddi village, mentioned in S.Nos.36 to 46 of the said notice. Petitioner has also prayed for the a direction to the State Government to evolve a conservation plan for the maintenance of elephant corridors in the region.

2. According to the petitioner, lands in Kammandoddi village, which are now given for auction of lands in villages, falls in the elephant corridor and if quarrying of blue metal is permitted, it would result in fragmentation of landscape,

destruction of elephant habitat and will raise man-animal conflict.

3. Petitioner has submitted that elephants from Bannerghatta National Park, Cauvery Wildlife Sanctuary and Malai Madeswara Hills of Karnataka migrate through Hosur Forest (Karnataka) and Sri Venkateswara Wildlife Sanctuary (Andhrapradesh). He states that movement of elephants to various places, is only due to the availability of water and fodder crops. The herd of elephants after spending some time in Sanamavu and Thorapalli Agraharam Reserved Forest, moves towards North - Eastern direction and reaches Chitore west division and then Venkateswara Wildlife Sanctuary, in the month of February, on the onset of summer, then the elephant migrates back.

4. The petitioner, has filed a communication between the District Collector, Krishnagiri and the District Environmental Engineer, Tamil Nadu Pollution Control Board, Hosur. A perusal of the notice for auction, from S.Nos.36 to 40 would show different areas of land, in Kammandoddi Village, is being offered, for the purpose of quarrying stones.

5. Petitioner has relied on a communication, dated 22/6/2015, of the District Collector to the District Environmental Engineer, Tamil Nadu Pollution Control Board, Hosur. In the said letter, the District Collector has stated that elephants migrate from Bannerghatta National Park, Cauvery Wildlife Sanctuary to Malai Madeswara Hills of Karnataka through Hosur Forest (Karnataka) and Sri Venkateswara Wildlife Sanctuary (Andhrapradesh). He states that during migration, herd of Elephants enters into Thalli Reserved Forest, Jawalagiri Reserved Forest and migrate through agricultural field and human habitations then it reaches Sanamavu and Thorapalli Agraharam Reserved Forest. Sanamavu Reserved Forest lies on either side of the Hosur - Krishnagiri National Highway and Hosur - Rayakottai State highway. The total area of the Sanamavu and Thorapalli Agraharam Reserved Forest is 2154 hectares. It is further stated that the herd of elephants stays for a considerable period of time at Sanamavu and Thorapalli Agraharam Reserve Forest. Due to the availability of adequate water and fodder crops, the herd of elephants after spending sometime in sanamavu and Thorapalli Agraharam Reserved forest moves towards North - Eastern direction and reaches Chitore west division and then reaches Venkateswara Wildlife sanctuary in the month of February. Due to onset of summer, the Elephants resume return migration. High density of elephant population have been noticed in Sanamavu and Thorapalli Agraharam Reserved Forests from November to February (November, December, January and February).

6. The letter further observes that there are large number of stone quarries situated near the boundary of the Sanamavu Reserve Forest. It is observed that, in these quarries, rough stone quarrying is carried out by using explosives. There is heavy sound and smell of explosives during the process of blasting and smell of explosives, heavy vehicular traffic, through out the night time causing hindrance to the movement of elephants and they get afraid and due to which they got diverted from their usual path way and move to agricultural lands, ponds and lakes situated in Sanamavu, Beerjepalli, Naickanapalli, Ramapuram, Parthakotta, Bodur, Aalialam, Kamandoddi Pannapalli, Ukkalpalli, Upparathammandarapalli, Bernikkal, D. Kothapalli, Bodichipalli, Cinigiripalli, Kommepalli and Anumandhapuram Villages and also moving towards residential areas. When the elephants move away from the reserve forest and enter into the non-forest area, man-animal conflict occurs and his phenomena of man-animal conflict increases every year resulting in substantial human casualties and crop damage by the elephants in more than 500 places.

7. District Collector, Krishnagiri, in the said letter, suggested the following measures:-

- a. Extraction of blue metal by blasting in night hours should be banned
- b. Extraction of blue metal in day time may be regulated with lesser intensity blasting or it may be totally banned.
- c. The jelly crushing unit including sand manufacture from the boulders may also be stopped in the evening and night hours.
- d. Transport of rough stone, 40 MM metal, graded metal and sand from the quarry site to the market during the night hours should be banned, since the unregulated movement of vehicle loaded with stone in the night hours would disturb the migratory movement of the elephants. Collector has also stated that there are eighteen units functioning in the areas adjoining Sanamavu and Thorpalli Agraharam Reserve Forest.

8. This Court, by an order, dated 8/2/2018, issued notice and also passed an order, that the process for obtaining necessary certificates may go on, but the lease should not be issued.

9. Counter affidavits have been filed by the District Collector, Krishnagiri and District Forest Officer, Hosur Division, respondents 1 and 2 respectively.

10. District Collector has stated that the District Forest Officer had given consent to the areas which are suitable for

quarrying and operation which included the areas, found mentioned in S.Nos.36 to 40 of the Notification under challenge. The District Forest Officer has given consent to the proposed quarrying of rough stone, on the following conditions:-

(i). Before the lease deed agreement, the NOC from the Forest Department should be obtained.

(ii). If the quarries are situated within 10 kms radial distance from the Cauvery North Wild Life Sanctuary, prior concurrence of the National Board of Wild life should be obtained.

(iii). If the areas are situated in notified villages of Hill Area Conservation Authority then prior clearance should be obtained from Hill Area Conservation Authority.

(iv). If the areas are classified as KADU in village records, no quarrying should be carried out.

(v). The proposed area are not covered under Notification under Sections 4 and 16 of Tamil Nadu Forest Act, 1882.

(vi). The subject areas are not notified under Section 26 of the Tamil Nadu Forest Act, 1882.

(vii). If the area is situated adjacent to the Reserved Forest area, then a safety distance of 60 meter should be left out from the quarry area as per Section III sub-Section 38 (III) of Standing Orders of the Board of Revenue - Volume I.

(viii). The conditions imposed by G.O.Ms.No.79 Industries Department dated 6/4/2015 should be adhered.

11. The District Collector has further stated that the last date and time for the receipt of tender application was fixed on 6/2/2018. Tender-cum-Auction was conducted on 7/2/2018. Several persons participated in the auction and the offer of the highest bidder has been accepted. The District Collector, would state that Kammandoddi Village, is situate 6 Kms away from the Sanamavu Reserve Forests and the village is not in the elephant corridor. He states that the District Forest Officer, in his letter, dated 8/2/2018, had stated as follows:-

(i). The areas proposed are not part of the Reserve Forest notified by the Government of Tamil Nadu Forest Act, 1882.

(ii). The areas does not come under Elephant corridor. There are only three elephant corridors in Hosur Forest Division and Cauvery North Wildlife Sanctuary which are of great concern for wildlife management, viz.,

- a. Thlly - Jawalagiri Corridor
- b. Nandimangalam - Ulibanda Corridor
- c. Anebiddahalla - Kovaipallam corridor

(iii). The proposal for Eco Sensitive Zone for the Cauvery North Wild Life Sanctuary was recommended by the District Committee for Krishnagiri and Dharmapuri as a distance of 1.00 km to 1.75 kms from the boundary of the sanctuary which is also

accepted by the State Board of Wild life and area does not come within the prohibited distance.

(iv). The land in question is not classified as forests in any revenue records, and has classified as Un-processed Waste (UAW) in the revenue records.

(v). The said lands in Kammandoddi Village falls at a distance of 6.00 kms from Sanamavu Reserve Forests, which is not a part of the Wildlife Sanctuary, and the total extent is about 5- - 60 hectares, which is not ideal, to house any size of elephant population.

(vi). Any movement of elephant beyond North of Sanamavu and eastwards to the splinter forest blocks will only aggravate the problem of man-animal conflict.

(vii). The land is a hillock with outcrop and is a sheet rock, which is not fit for any aforestation activities.

12. The Collector, would therefore, state that land has been identified only after coming into the conclusion that there will be no man-animal conflict and there will be no detrimental effect on the ecology. The Collector states that in the existing quarries, blasting is carried out, with Nano-blasting technology and by adopting preventive and regulatory measures, and conditions imposed in the Environment Clearance.

13. The Collector would further submit that what has been challenged is only a Notification, calling for submission of tenders for auction of Government lands, for quarrying blue metals. The Collector would submit that successful bidders will have to make necessary application, under the EIA Notification, 2006 and get prior clearance for the said activity, from the Ministry of Environment and Forest. After getting the clearance from the EIA Notification, 2006, consent from the Tamil Nadu Pollution Control Board, will have to be obtained and lease would be granted, only after the consent. The Collector, therefore, submitted that at this juncture, the writ petition is completely premature.

14. The District Forest Officer, in his reply has confirmed that there are only three elephant corridors in Hosur Forest Division and Cauvery North Wildlife Sanctuary, which are of great concern for wildlife management, and they are

- a. Thally - Jawalagiri Corridor
- b. Nandimangalam - Ulibanda corridor and
- c. Anebiddahalla - Kovaipallam corridor.

15. The District Forest officer has stated that Kammandoddi village does not lie close to Sanamavu Reserve Forests and is about 4 - 5 kms, from Sanamavu Reserve Forests. He would state

that the mining operation stops between 6.00 p.m., and 6.00 a.m. It is sufficient to safeguard and it is not necessary to completely prohibit quarrying.

16. Heard Mr.A.Yogeshwaran, learned counsel for the petitioner, Mr.E.Manoharan, learned Additional Government Pleader for the first respondent, Mr.R.Balaramesh, learned Special Government Pleader (Education) for the second respondent and Mr.V.Sanjeevi, learned counsel for the respondents 3 to 11.

17. Apart from filing the communication, dated 22/6/2015, between the District Collector, Krishnagiri and the Tamil Nadu Pollution Control Board, Hosur, petitioner has not filed any material. The said letter does not say that Kammandoddi Village is a part of elephant corridor. In the absence of any material stating that Kammandoddi Village comes within the elephant corridor, this Court, cannot accept the mere ipse dixit of the petitioner. Letter of the District Collector has stated that as per the report of the District Forest Officer, Hosur, eighteen stone crusher units are situated in Hosur Forest Division and in the villages surrounding Sanamavu and Thorapalli Agraharam Reserve Forests, which includes Kammandoddi Village also. Letter only states that due to heavy sound and using explosives, during the process of blasting through out the night, movements of elephants gets hindered and they get diverted from the usual path to move the agricultural lands, ponds and lakes around the area. The said letter also gives the measures which should be taken to avoid man-elephant conflict. Suggestions given by the District Collector, which is based on the District Forest Officer, must be accepted. The petitioner does not controvert the statement that Kammandoddi village is about 5 to 6 kms., away from Sanamavu forest.

18. Learned counsel for the petitioner, at the time of hearing has relied on a letter, dated 9/2/2011, written by the Deputy Inspector General (Wild Life), to all the Chief Wildlife Warden, in all the States/Union Territories. Letter states that in pursuance to the decisions taken by the National Board for Wildlife, all the States/Union Territory, Governments have been requested for forwarding site specific proposals for declaration of Eco Sensitive Zones around National Parks and Wildlife Sanctuaries. Letter further states that the Ministry, after careful consideration, has decided to frame guidelines to facilitate the States/Union Territory, Governments for declaration of Eco-Sensitive Zones around National Parks and Wildlife Sanctuaries. The said letter also states that commercial mining must be banned in Eco-sensitive Zones.

19. Petitioner has not given any material to substantiate that the present area, where mining is being proposed to be carried on, falls in ecologically sensitive zone. In the absence of any material, this Court, cannot pass any directions, quashing the Notification. In any event, calling for tender and accepting the bid is not the final step. Highest bidder has to make a mining plan and send it to the Ministry of Environment and Forest, which after studying the impact, on the ecology, to approve the mining plan or not. After the plan is approved, the same is then submitted to the Pollution Control Board, which grants permission. The writ petition is therefore, completely premature. The Ministry of Environment and Forest will take a very close look about the mining plan, as to whether mining activity should be permitted in the area, its impact, on the ecology etc. Petitioner has not shown any material other than the quarries and EIA Notification, clearance from any other department, is also necessary.

20. Auction was conducted on 7/2/2018. The bidders have already deposited a sum of Rs.2,32,70,000/- as 10% of the bid amount, on 7/2/2018 itself. The entire lease amount also stands deposited. As stated earlier, in the absence of any material that the area is a part of reserved forest, or it is the part of elephant corridor or it is a part of Cauvery Wildlife Sanctuary, which is covered under the Forest Act and keeping in view of the fact that the land is classified as Unassessed Waste Poramboke Lands, there is no impediment, at this stage, for the successful bidders, to approach the Ministry of Environment and Forests, by submitting a mining plan, for approval. It is however made clear that all the precautions that are necessary to be taken and which finds mention, in the letter, dated 22/6/2015, sent by the District Collector, Krishnagiri, to the District Environmental Engineer, Hosur, should be adhered to very strictly. Needless to state that the Ministry of Environment and Forest will take into account, all the relevant facts including the fact that there are about 18 quarries operating in the area. It is for the expert body to decide as to whether consent to establish the mines should be granted or not. High Court while dealing with a petition under Article 226 of the Constitution of India, should not dwell into disputed questions of facts. Further when there are expert bodies to deal with technical issues. High Court should normally refrain from exercising jurisdiction under Article 226 of the Constitution of India, when alternate and efficacious arrangement is provided under the Act.

21. With the view of the above description and observations, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition Nos.3375 and 3376 of 2018 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The District Collector
Collectorate
Collectorate Road
Krishnagiri
Tamil Nadu 635 115.

2. The District Forest Officer
Hosur Division
Hosur Cattle Farm (P.O)
Mathigiri
Hosur 635 110.

+1 cc to The Government Pleader, Sr.No. 34266

KS (CO)
CSL/13.05.2019

W.P.No.2733 of 2018

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