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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.24238 of 2017
and WMP No.25616 of 2017

M.David Soundarajan

.. Petitioner

Vs.

1. The District Collector,
Kancheepuram District at
Kancheepuram.

2. The Director,
Mines and Minerals,
Guindy, Chennai - 600 0032.

3. The Tahsildar,
Sholinganallur, Chennai.

4. The Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a writ of mandamus, directing the respondents to pass orders on the representation dated 14.07.2017, seeking initiation of appropriate action from in any manner permitting illegal and quarrying activities in survey No.134, Palavakkam Village, on merits and within a time to be stipulated by this Court.

For Petitioner : Mr.M.Babu Muthu Meeran

For Respondents: Mr.E.Manoharan, (for R1 to R3)
Additional Govt. Pleader

O R D E R

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

Petitioner has filed the instant writ petition for a
writ of mandamus, directing the respondents to pass



orders on the representation dated 14.07.2017, seeking appropriate action not to permit illegal and quarrying activities in survey No.134, Palavakkam Village, on merits and within a time to be stipulated by this Court.

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2. Supporting the prayer sought for, petitioner has made the following averments.

(i) Petitioner is a permanent resident of Palavakkam area, in Perungudi Taluk, with survey No. 134, Palavakkam village. In the said area, there are thousands of residents. Illegal sand quarrying operations are being regularly performed with consequential transportation of the excavated sand during late night and dawn, to be more precise, between 11 PM and 3 AM, by employing almost around 300 lorries for such transportation, and the same causes greatest inconvenience to the residents in and around the said survey number, apart from causing various air and noise pollution, with continuous blasting and quarrying operation in the above mentioned address.

(ii) Petitioner has further submitted that coming to know of the illegal activities of illicit sand quarrying on the raise, the villagers collectively addressed a representation to the competent authorities namely the respondents and also authorized the petitioner herein to seek legal redressal, thwarting the illegal and nefarious activities performed in a routine basis under the direct supervision of the officials, who are to follow and adhere to the rules and regulations and also to comply with the procedure as contemplated in the Minor Mineral Concession Rules. In fact, the official respondents are hand in glove with those who illegally quarry sand, for extraneous consideration towards gratis, as well as illegal enrichment.

(iii) Petitioner has submitted that a contract has been entered into, and as a sequel to the said illegal understanding, it seems that sand to a depth of about 50 meters in 14 acres of land, and to an extent of 3,56,000, M3 of sand have been excavated. Value of the sand as could be assessed as per the Government norms works out to more than 1.25 crores of rupees. At this juncture, it may not be out of place to mention that as per the rules there shall be a permit or license to quarry sand which shall be preceded by a letter of the Indent for quarrying operations. Further, as many as 300 lorries are being utilized with no prior permission much less, license or any right conferred for quarrying and transportation of sand. With reference to the actual happenings the villagers are spectators. They are threatened with dire consequences. The law enforcing authority is a mute spectator.



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(iv) Petitioner has further submitted that on the basis of collective representation by the public and residents of the said Palavakkam village, the petitioner is constrained to file this Public Interest Litigation. The representation addressed on 14.7.2017 and acknowledged on 17.7.2017 is yet to see the light of the day and no action is taken.

3. Representation of the petitioner to the respondents herein dated 14.07.2017 is as follows:

Sub: Quarrying of sand without proper permission - Revenue loss and water sources - affecting of petition.

Respected Sir,

Vanakkam. I am residing at the aforesaid address for a long time. The Brigade Hotel is contemplating the construction of buildings at Perungudi (S.No. 134, Palavakkam Village) within the limits of Palavakkam. The aforesaid company has given contract to the Building constructions Capacite. They have digged a pit to the depth of 15 meters for the construction of the building in the land to the extent of 14 acres. That is they propose to take sand to 3,56,000^{M2}. If it is to be explained clearly, they took sound for about 1,25,09,840 Cu.feet (One crore twenty five lakhs, nine thousand and eight hundred and forty cubic feet) and sell it away. They have not obtained properly the permit from the District Collector. They user to come at 11.00 P.M in the ought as robbers with three hundred lorries along with rowdies and take away the sand. Due to the sound of the lorries doing transportation of sand, the general public elders and children of Perungudi are spending sleepless nights.

Due to the digging to the depth of about 40 feet in the entire 14 acres of land, the ground water around the area had been affected to a large extent. It would result in acute water shortage. Owing to the usage of JCB Machines to deep, the building around the area develop cracks and the old buildings sustain demolition and loss of life.

As the transportation of sand is being done without the permission of the District Collector no royalty is paid to Government and it results in loss of Revenue for several lakhs of rupees to the Government. According to us 62000 lorry loads are necessary for transportation of 1,25,09,840 Cu.ft (One crore, twenty five lakhs nine thousand eight



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hundred and forty cubic feet) and the tune of loss sustained to the Government can be imagined, we are aware that sands could be quarried only during day times. They commence work against law at 10.00 P.M and continue till dawn, when we approach them and point out the revenue loss to Government in transportation of sand at the nights without permit the difficulties experienced by the public and the loss sustained in the water course, they refuse to give proper reply and threaten us through rowdies. I on my behalf and on behalf of the General Public request that necessary action may be taken against them to prevent loss of revenue to Government and the law and order problem.

Yours,
Sd/-xxx
M.David Sundarrajan
and
General Public-Sd/-xxx

4. On notice District Collector, Kanchipuram, the 1st respondent has filed a counter affidavit and the same reads thus.

(i) Tvl. Perungudi real Estates, Chennai has made an application dated 20.06.2017 to the District Collector, Kancheepuram with a request to grant permission to remove 1,60,000 M³ (26,666 Lorry loads) of muck from the patta lands owned by them in S.Nos. 134/1A2A, 134/2A for the foundation work of the proposed IT / ITES, SEZ building. The said application was forwarded to the Tahsildar, Sholinganallur and the Revenue Divisional Officer, Tambaram, with a direction to inspect the subject land and to send the land availability report.

(ii) Accordingly, the Tahsildar, Sholinganallur inspected the area and furnished his report stating that the subject lands are patta lands comprised in S.Nos.134/1A2A and 134/2A1 over an extent of 4.28.0 hec. stands registered in the name of M/s. Perungudi Real Estates (Private) Limited in patta No.13329 of Palavakkam Village, Sholinganallur Taluk. The subject lands are lying vacant and the applicants had proposed to build a multi-storeyed building and for the purpose of laying foundation, huge quantity of muck has to be excavated and since there is no sufficient space to stock the excavated overburden / earth, the applicants proposed to remove the excavated muck from the subject lands. Hence, the Tahsildar / Sholinganallur has recommended to

<https://hcservices.ecourts.gov.in/hcservices> permission to excavate and remove 26,666 lorry



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loads of over burden / earth from the subject land and subject to collection of appropriate fee due to the Government. Based on the recommendations of the Tahsildar, Sholinganallur vide his report in Rc. No. 1005 / 2017 / A4 dated 01.01.2017, the Revenue Divisional Officer, Tambaram has also recommended to grant permission to excavate and remove 26,666 lorry loads of over burden / muck from the subject lands due to the reason that there is no sufficient space to stock the excavated over burden / mucks within the area, where the multi storeyed building was to be constructed.

(iii) Based on the above recommendation, the District Collector, Kancheepuram, has granted permission under Rule 18 of the Tamil Nadu Minor Mineral Concession Rules, 1959 to remove 26,666 lorry loads of overburden / muck from the subject lands to Tvl. Perungudi Real Estates (Private) Limited for a period of 120 days vide District Collector, Kancheepuram Proceedings No. 746 / Q3 / 2017 dated 10.07.2017. The details of appropriate seigniorage fees and other fees collected from the applicant's are as follows:

SI No .		Amount in Rupees	Remitted on	@ Bank
1	Application fee	1,500	11.07.2017	State Bank of India, Kancheepuram.
2	Seigniorage fee	40,00,000		
3	Area Assessment fee	500		
4	District Mineral Foundation Fee	Rs.4,00,000	18.07.2017	By way of Demand draft of Syndicate Bank, Kancheepuram

(iv) In accordance with the permission granted the applicants excavated and removed the over burden / muck from the subject land.

(v) During the currency of the permission granted, one Thiru.M.David Soundarajan filed a Writ Petition before this Hon'ble High Court in W.P. No. 24278 / 2017 with the following prayers:

To pass an order of ad-interim injunction restraining the respondents from in any manners permitting or allowing illicit sand quarrying operation and transportation of the same from

S. No. 134, Palavakkam Village pending



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finalization of the above Writ Petition.

To issue Writ of Mandamus or any other appropriate Writ or order or Direction in the nature of a Writ directing the respondents to pass orders on the representation dated 14.07.2017 seeking initiation of appropriate action from in any manners permitting illegal sand quarrying activities in Survey No. 134, Palavakkam Village on merits and within a time to be stipulated by this Hon'ble court, and to pass such further or other orders as this Hon'ble Court may fit and proper in the circumstances of the case.

(vi) District Collector, Kanchipuram, has further stated that the petitioner's allegation that illegal sand quarrying is being regularly performed is not true since Tvl. Perungudi Real Estates (Private) Limited was granted due permission to excavate and remove 26,666 lorry loads of over burden / mucks (and not sand) from the lands owned by them in S.No.134/1A2A and 134/2A1 to an extent of 4.28.0 hectares of land of Palavakkam, vide Order in Proceedings No. 746 / Q3 / 2017 dated 10.07.2017. It is also submitted that the Tahsildar, Sholinganallur who inspected the area on 14.09.2017 has reported that Tvl.Perungudi Real Estate Private Limited are excavating and removing muck only from the permitted area; that since the permitted area is highly traffic congested area, excavation and removal of over burden / muck be done during night time, in order to avoid traffic congestion; that so far 90,000 cubic meters of muck has been excavated and removed upto the depth of 12.5 metres. Hence, the allegation that excavation and transportation of sand in causing inconvenience to the residents is not sustainable.

(vii) The District Collector, Kanchipuram, has further stated that there is no illegal quarrying in the subject lands, since due permission was granted by him under Rule 18 of Tamil Nadu Minor Mineral Concession Rules, 1959 to Tvl. Perungudi Real Estates Private Limited for excavation and removal of 26,666 lorry loads of over burden / muck from the lands in S.Nos. 134/1A2A and 134/2A1 owned by the above unit.

(viii) District Collector, Kanchipuram, 1st respondent has further stated that the quarrying operation was intermittently inspected by the Revenue and Mines officials to ensure that there is no violation. The petitioner has wantonly filed this petition under the guise of Public Interest Litigation only with an evil motive of threatening the respondents.



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(ix) It is the contention of the District Collector, Kancheepuram that due permission was granted by him under Rule 18 of the Tamil Nadu Minor Mineral Concession Rules, 1959, to excavate and remove 26,666 lorry loads of over burden / muck from the land in S.No. 134/1A2A and 134/2A1 in an extent of 4.28.0 hectares of lands owned by Tvl. Perungudi Real Estates Private Limited. Permission was granted by imposing appropriate conditions to safeguard the interest of the nearby residents of the area and appropriate fee to the government was also collected from the applicant before granting permission. The period of permission granted finally extended for 30 days as per the order of this respondent dated 22.02.2018 and it expired on 23.03.2018 and as of now, no quarrying is being done in the subject lands and hence the Writ Petition deserves no consideration at this stage.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. From the counter affidavit of the District Collector, Kancheepuram, it is evident that the contention that there is illegal quarrying and transportation, is incorrect. Petitioner has not ascertained from the competent authorities, as to whether permission under the rules, has been granted or not. Without verifying, he has made bald allegations. Permission has been granted by the District Collector, subject to certain conditions. He has also given reasons as to why permission was granted and why transportation was permitted during night. Inspection has been done on 14.09.2017 and found that quarrying has been done only in the permitted area, and the District Collector, has also given the details of the extent of muck excavated and transported. According to him, periodical inspection has been done. Fee has been collected from the applicant. Period granting permission has expired on 23.03.2018. Counter affidavit is explanatory. Going through the material on record, we hold that the writ petition filed as a Public Interest Litigation, does not satisfy the requirements of a Public Interest Litigation. Allegations are not only substantiated, but also baseless.

7. In the light of the above, writ petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar



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To

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1. The District Collector,
Kancheepuram District at
Kancheepuram.

2. The Director,
Mines and Minerals,
Guindy, Chennai - 600 0032.

3. The Tahsildar,
Sholinganallur,
Chennai.

4. The Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.

+1 cc to Government Pleader Sr.No. 58316

W.P.No.24238 of 2017
and WMP No.25616 of 2017

gp (CO)
A.SK(13/08/2019)