

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.2.2019

CORAM:

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

W.P.No.27861 of 2018 and
W.M.P.No.32392 of 2018

M.Ramakrishnan

... Petitioner

Vs.

1. The Commissioner
Department of Geology and Mining
Thiru.Vi.Ka Industrial Estate
Guindy, Chennai - 600 032
2. The Deputy Director
Department of Geology and Mining
Collectorate
Krishnagiri - 635 001
3. The District Collector
Krishnagiri District
Krishnagiri
4. The Superintendent of Police
Krishnagiri District
Krishnagiri
5. The Revenue Divisional Officer
Hosur
Krishnagiri District
6. The Chairman
Environment Impact Assessment Authority
Collectorate Buildings
Krishnagiri & District
7. M/s.Kongan Aggregates Private Limited
No.9/119A, Kollimalai Main Road
Kalpanayakkanpatti Post
Namakkal - 637 104

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for a writ of mandamus, directing the official respondents to prohibit any stone quarry operation with blasting operations with explosives in the revenue land in S. No.130, Basthalapalli Village, Sulagiri Taluk, Krishnagiri District, based on the representation submitted by the petitioner and the consequent enquiry initiated by the 5th respondent vide proceedings in Na.Ka.1962/2018(P2) dated 12.7.2018.

For Petitioner : Mr.G.Sankaran

For Respondent : Mr.E.Manokaran,
Addl. Govt. Pleader for R1 to R5
Mrs.J.Parimalam for R7

ORDER

(delivered by SUBRAMONIUM PRASAD, J)

Claiming himself to be a public interest litigant, the petitioner has filed this writ petition directing the official respondents, to prohibit any stone quarry operation with blasting operations with explosives, in the revenue land in S. No.130, Basthalapalli Village, Sulagiri Taluk, Krishnagiri District. In this regard, the petitioner claims that he has made a representation to the concerned.

2. Though the prayer is one to prohibit any stone quarry operation with blasting operations with explosives in the revenue land in S. No.130, Basthalapalli Village, Sulagiri Taluk, Krishnagiri District, perusal of the writ petition would show that, it is primarily directed against grant of quarry permission, in favour of the 7th respondent, M/s.Kongan Aggregates Private Limited. Paragraph Nos.3, 5, 9 and 12, reflects the intention and the reason to file the instant writ petition, reads as under:

"3. I submit that I am filing this Writ Petition as Public Interest Litigation against granting of Stone Quarry in favour of 7th respondent vide proceedings of 2nd respondent dated 9.3.2018 by which the 7th respondent is permitted with Stone Quarry in S. No.130 pt to an extent of 4.66.0 hectares Basthalapalli Village, Sulagiri Taluk, Krishnagiri District which land is located within the prohibited distance of habitation of Basthalapalli Village as well as the quarry site is closure to an historical temple Arulmigu Angusagiri Thimmavaraya Swamy Temple, Sri Anjaneya Swamy Temple and Om Sakthi Temple located within 150 mtrs from

quarry site. That apart, the Muniswaran Temple is located in the adjoining hillock comprised in S.No.89.

5. I submit that therefore, the villages of Basthalapalli village are aggrieved against the quarry operations based on the permission granted by the 2nd respondent dated 9.3.2018 in favour of 7th respondent as well as the quarry operation is endangering to the famous temple called Arulmigu Angusagiri Thimmavaraya Swamy Temple located at 150 mtrs distance from the quarry site. The temple is attracting devotees from three States viz., Tamil Nadu, Karnataka and Andhra Pradesh and there will be devotees from all sides on every auspicious day. The temples are belonging to villagers of 42 nearby villagers, performing poojas, functions, virtuals ceremonies in all events. In the said circumstances, the stone quarry is endangering to the public and it would completely damage the temples located nearby.

9. I submit that while that being so, the 2nd Respondent issued orders dated 9.3.2018 granting quarry lease in favour of 7th respondent by which the land in S. No.130 pt to an extent of 4.66.0 hectares is allotted for stone quarry for a period of 10 years. Whereas the permission is granted in gross violation of the provisions of Minor Minerals Concession Rules, 1959 as per which no lease shall be granted for quarrying stone within 300 mtrs from inhabitants site. Apart from that the Stone quarry is located within the prohibited distance of Arulmigu Angusagiri Thimmavaraya Swamy Temple and other temples. any blasting operations with explosive will completely damage the temple apart from causing threat to the life of people.

12. I submit that in the said circumstances, there were large scale objections, demonstrations against the quarry operation in the land in S. No.130 by adjoining villages. Since their request not being considered, they indulged in road roko with plea to stop quarry operations immediately to save the lives of public and buildings and temples. Eventually the 7th respondent stopped quarry operations for some time, but however taking further steps to continue quarry operations in collusion with official respondents. In the said circumstances, the petitioner and other villages have submitted representation to all the respondents seeking their indulgence and to prevent any quarry operations in the land in S. No.130 with explosive and blasting materials. However, the representation is not being

considered and no action has been taken by the official respondents till date. On the other hand, the 7th respondent proceed to install machineries and blasting materials in order to carry on blasting operations with explosives. In the said circumstances, I am having no other alternative, efficacious, speedy remedy except to approach this Hon'ble High Court under Article 226 of the Constitution of India, for the appropriate reliefs as prayed for.

3. Reading of the above, makes it clear, as to why the petitioner has chosen to file the instant writ petition and why the prayer in the writ petition is against the grant of quarry lease, in favour of the 7th respondent.

4. On notice, official respondents represented is Mr.E.Manoharan, learned Additional Government Pleader. No counter affidavit has been filed. But M/s.Kongan Aggregates Private Limited/7th Respondent has entered appearance and filed a counter affidavit. Paragraph Nos.4 to 7 of the counter filed by the respondent No.7, reads as under:

"4. It is submitted that this respondent obtained the grant of quarry by the proceedings dated 26.6.2018 in S. No.123 part to an extent of 2.30.00 hectares and the said quarry is situate 300 meters away from the habitat site. This respondent also obtained consent from the Tamil Nadu Pollution Control Board which is valid up to 1.3.2022. Apart from that there are no schools, heritage building, temples, habitation, State or National Highways near the quarry site. The said property also do not come under Adi Dravidar Welfare Scheme. It is respectfully submitted that one Arulmigu Thimmavaraya Swamy Temple and its wedding hall is situate 600 meters away from the quarry site. It is further submitted that on 26.6.2018, the said quarry site was inspected by the Tahsildar, Sulagiri Taluk, Police Officials and the people of the village. During inspection the quarry site was measured in their presence and it was found that the habitation is situate 300 meters away from the quarry site. The running of quarry will not cause any damage to the Temple nor the residents.

5. It is humbly submitted that this respondent was also present during the inspection when the statement of Tahsildar was recorded. This respondent also stated that in Sulagiri Taluk Patta No.92/2 to an extent of 1.59.0 hectare, is owned by M/s.Kongan Aggregates Private Ltd. In Sulagiri District,

Basthalapalli village patta No.48/1A, to an extent of 2.16.5 hectares is owned by this respondent and in the said site there is a Banyan Tree. In order to create a record, the public put up a fence and started worshipping under the Banyan tree very recently i.e. only a month ago. In fact the said tree is there for many years but just to trouble this respondent the villages started worshipping under the Banyan tree very recently in order to show that it is a temple of worship. It is pertinent to point out here that the land in patta No.48/1A originally belonged to the petitioner and he subsequently sold it to one V.Muniraj in the year 2006 and from the said V.Muniraj this respondent purchased the property and the sale deed is registered as Doc. No.3598/2017. Even for running of crusher, consent from Tamil Nadu Pollution Control Board has been obtained and the same is valid till date. Therefore the grievance of the petitioner is not with regard to the welfare of the residents of the village but the same is vindictive in nature in order to prevent this respondent from operating his quarry and crusher.

6. It is further submitted that even the VAO's statement was recorded during inspection and the same goes to prove that due to the quarrying operations there is no damage to the residents of Basthalapalli village who are situated 380 meters away from this respondent quarry. Therefore the allegations contained in the present writ petition is false and fabricated in order to tarnish the reputation of this respondent and prejudice the authorities concerned. In fact an enquiry was conducted in the presence of villagers, Tahsildar, VAO and police officials and their statements were recorded in their presence. Even the petitioner was also present.

7. It is humbly submitted that this respondent is following all the prescribed procedures for blasting operations and no damage is caused so far and will not be caused in future due to quarrying operations. Further allegations contained in the affidavit are beyond truth and the allegations are frivolous and vexatious."

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

6. As stated earlier, writ petition is directed against the grant of quarry business to respondent No.7. Having regard to law of precedents as to when a writ of certiorari, to be filed and mandamus, we are of the view that the petitioner, should

have, therefore filed a writ of certiorari to quash the grant of quarry to respondent No.7. Writ of mandamus is distinct from a writ of certiorari. Writ of mandamus is therefore not maintainable for the relief as claimed by the petitioner.

7. There are innumerable judgments, explaining the scope of writ of mandamus and writ of certiorari. Public Interest Litigation is in the nature of mandamus, to enforce statutory duties, whereas a writ of certiorari is directed against a particular order passed by an official respondent. That apart, on the facts and circumstances of this case, the present writ petition, by no stretch of imagination, can be claimed to be a Public Interest Litigation. Taking note of the counter filed by the 7th respondent, which shows that adequate care and protection has been taken to ensure that no damage is caused by the quarrying operation, and for the above reasons writ petition is dismissed. No Costs. and connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

asr

To

1. The Commissioner
Department of Geology and Mining
Thiru.Vi.Ka Industrial Estate
Guindy, Chennai - 600 032
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Krishnagiri District

6. The Chairman
Environment Impact Assessment Authority
Collectorate Buildings
Krishnagiri & District

+1 cc to M/s.J.Parimalam, Advocate, S.R.No.9629

+1 cc to Mr.G.Sankaran, Advocate, S.R.No.9554

+1 cc to the Government Pleader, S.R.No.9458

W.P.No.27861 of 2018

SAI (CO)
SSM(09/04/2019).



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