



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.11.2019

Pronounced on : 15.11.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

WEB COPY

W.P. (MD) No.5213 of 2019

M/s.PRP Exports,
rep. by its Partner,
Mr.P.Senthilkumar,
Therkkutheru Village,
Melur Taluk,
Madurai District.

... Petitioner

Vs

1.The Superintendent of Police,
Madurai (Rural), Madurai District.

2.The Deputy Superintendent of Police/
Investigation Officer,
Prohibition Enforcement Wing, Madurai District.

3.The Director,
Chennai Port Trust, Chennai.

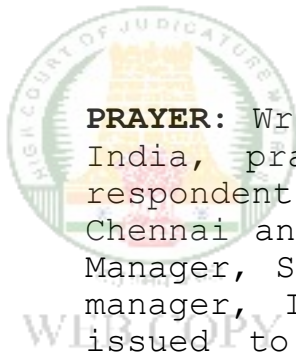
4.The Deputy Director,
V.O.Chidambaram Port Trust,
Thoothukudi District.

5.The Manager,
Indian Bank, Madurai Main Branch,
100 and 101, East Avani Moola Street,
Madurai - 625 001.

6.The manager, Indian Bank
MEPZ Branch, Administrative Block,
MEPZ Block, Kadaperi,
Chennai - 600 045.

7.The Manager,
State Bank of India, Commercial Branch,
6-A, West Veli Street, Madurai. ... Respondents

(R3 to R7 are impleaded vide order dated
19.09.2019 made in W.M.P.(MD) No. 16490 of 2019)



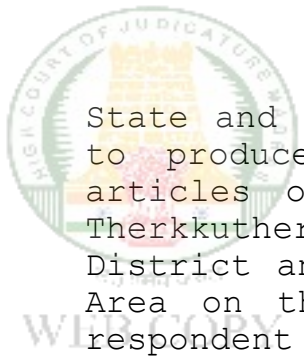
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the 2nd respondent to send clarification letters to the Port authorities of Chennai and Tuticorin and to the Manager, Indian Bank, Madurai, the Manager, State Bank of India, Commercial Branch, Madurai and to the manager, Indian Bank (MEPZ) Chennai, clarifying that the letters issued to the Chennai Port Trust and Tuticorin Port Trust on 21.08.2012 and letters issued to the said banks on 28.08.2012 and 29.08.2019 are pertaining to the quarries situated in Madurai District only and in respect of the specified bank account numbers and also clarifying that there is impediment for the petitioner to operate the bank accounts in respect of the petitioner's business (i) to procure granite blocks from the other leasehold granite quarrying operators within the State and Inter State and (ii) to import granite blocks from foreign countries and to produce dimensional granite blocks, slabs, tiles and other articles of granite in the factory of the petitioner's firm in Therkkuthery and Narasingampatti Village, Melur Taluk, Madurai District and to export and to sell the same in the Domestic Tariff Area on the basis of the petitioner's representation to the 2nd respondent dated 20.08.2018 and in accordance with law.

For Petitioner : Mr.Mohan Parasaran, senior counsel
for Mr.R.Parthasarathy

For Respondents : Mr.A.Natarajan, State PP assisted by
Mr.R.Anandharaj, APP for RR1 and 2
Mr.R.Rajagopal, standing counsel
for R3
Mr.T.Lajapathiroy, for R4
Mr.S.Suresh for M/S.Aiyan & Dolia
for R4
Mr.V.P.Rajan, for R7

O R D E R

This writ petition has been filed for issuance of a Writ of Mandamus, to direct the 2nd respondent to send clarification letters to the Port authorities of Chennai and Tuticorin and to the Manager, Indian Bank, Madurai, the Manager, State Bank of India, Commercial Branch, Madurai and to the manager, Indian Bank (MEPZ) Chennai, clarifying that the letters issued to the Chennai Port Trust and Tuticorin Port Trust on 21.08.2012 and letters issued to the said banks on 28.08.2012 and 29.08.2019 are pertaining to the quarries situated in Madurai District only and in respect of the specified bank account numbers and also clarifying that there is impediment for the petitioner to operate the bank accounts in respect of the petitioner's business (i) to procure granite blocks from the other leasehold granite quarrying operators within the State and Inter



State and (ii) to import granite blocks from foreign countries and to produce dimensional granite blocks, slabs, tiles and other articles of granite in the factory of the petitioner's firm in Therkkuthery and Narasingampatti Village, Melur Taluk, Madurai District and to export and to sell the same in the Domestic Tariff Area on the basis of the petitioner's representation to the 2nd respondent dated 20.08.2018 and in accordance with law.

2.The submissions of the learned senior counsel appearing for the petitioner are as follows:

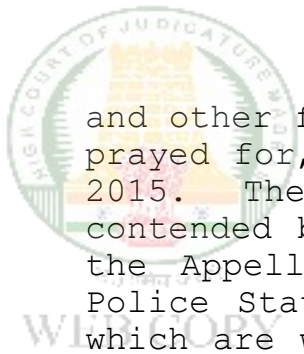
2.1.The petitioner's firm is an export oriented Unit recognized by the Madras Export Processing Zone under the Ministry of Commerce and Industries, Government of India, New Delhi. The petitioner engaged in manufacture of dimensional granite block, slab, tiles, monuments and other articles of granites. They set up a factory for cutting and polishing of granite in Therkkutheru and Narasingampatti village, Melur Taluk, Madurai District since 2005.

2.2.While being so, criminal cases have been registered as against the petitioner in connection with Madurai District granite quarrying issues. In pursuant to the cases, the 2nd respondent directed the Port Trust authorities of Chennai and Tuticorin to withhold all the transport of Carco till the completion of investigation. The letters issued on the strength of FIRs registered in crime Nos.155/12, 157/12, 171/12, 175/12 on the file of Keelavalavu Police Station and crime No.411/12 on the file of Othakadai Police Station, Madurai District. The 2nd respondent also issued letter dated 28.08.2012 and 29.08.2012 to the Manager, Indian Bank, Madurai, The Manager, State Bank of India, Commercial Branch, Madurai, The Manager, State Bank of India, Multi City Cheque, Madurai and The Manager, Indian Bank (MEPZ), Chennai, thereby directed to freeze the petitioner's bank accounts in pursuant to the crime registered against the petitioner.

2.3.The entire cases registered as against the petitioner are only in respect of the alleged quarrying and removal of granite from quarries situated in Madurai District alone and the said investigation is not at all pertaining to the quarries owned by the petitioner in other district. Therefore, there is no prohibition for the petitioner to operate its factory situated in Therkkutheru and Narasingampatti village, Melur Taluk, Madurai District.

2.4.The Government of Tamil Nadu duly granted licence to quarry in other districts in the ryotwari patta lands belonging to the petitioner under Rule 19-A of the Tamil Nadu Minor Mineral Concession Rules, 1959.

2.5.The petitioner had already filed W.P.(MD) No.20227 of 2014 for a direction, directing the 2nd respondent to issue clarification to the concerned authorities to operate its bank accounts



and other facilities. Since this Court granted interim direction as prayed for, the 2nd respondent filed writ appeal in W.A.(MD) No.5 of 2015. The Hon'ble Division Bench of this Court observed that "as contended by the learned Advocate General, we are of the view that the Appellant has stated only the cases relating to Keelavalavu Police Station, Melur Police Station and Othakadai Police Station, which are within the jurisdiction of the Appellant, pending against the Respondents as well as other private limited companies, having office at Madurai". The said writ appeal was allowed and both the parties were directed to maintain status-quo. While dismissing the writ petition, the petitioner was directed to approach the concerned authority and extricate themselves from such prohibitory orders or attachment. As directed by this Court, the petitioner made so many repeated representations to issue necessary clarification to the authorities concerned. However, till today, the 2nd respondent did not pass any orders on their representation.

2.6.The 2nd respondent has no jurisdiction to pass such a blanket order to freeze their accounts and other business activities and it is nothing but violating the fundamental rights of the petitioner to quarry its business and trade. At the same time, the 2nd respondent has no jurisdiction and the direction issued by him per se illegal also without authority and against Article 14 and 19 (1)(g) of the Constitution of India. The 2nd respondent in pursuant to the above said crime, seized 10,157 slabs under five seizure mahazars on 02.03.2014 in the factory premises of the petitioner. The 2nd respondent also seized 4 gang saw machines and 4 wire saw machines from the factory premises of the petitioner on 08.01.2015. Therefore, the petitioner filed petition for return of property in CrI.M.P.No.648 of 2015 before the learned Judicial Magistrate, Melur and by an order dated 11.05.2015, the learned Judicial Magistrate allowed the petition on certain conditions that the machineries should not be used for their business and the petitioner is at liberty to use the said machineries after getting orders from this Court or from the Hon'ble Supreme Court of India.

2.7.Due to freezing of bank accounts, the Port Trust authorities had not permitted to lift stones of the petitioner and as such, the entire business operations have been crippled since August 2012. He further submitted that there is absolutely no prohibition or illegal proceedings restraining to operate the factory of the petitioner and there is no prohibition to market the granite blocks, slabs and tiles both in the Domestic and International market. Even then, now, the petitioner is not able to operate the cutting and polishing factory situated in Melur Taluk.

2.8.After issuing freezing letter, the 2nd respondent did not follow the procedures contemplated under Section 102(3) Cr.P.C. It is mandatory that the 2nd respondent shall inform the same to the concerned Judicial Magistrate in respect of the freezing of bank



their utility value and as such, he prayed to direct the 2nd respondent to issue clarification letters.

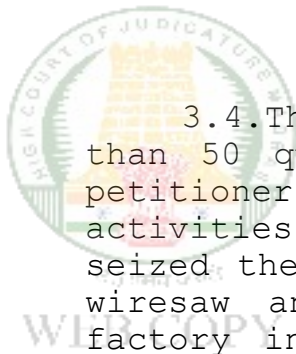
3. Per contra, the learned State Public Prosecutor filed counter on behalf of the respondents 1 and 2 and put forth his submissions as follows:

WEB COPY

3.1. Already the petitioner approached this Court by way of writ petitions in W.P.(MD) Nos.12441 and 12442 of 2012 for declaration and also for interim direction. This Court, in their direction petition, passed an order directing the respondents therein to permit the petitioner for quarry operation with the leased property and released the bank accounts so as to the petitioner can carry forward his business in accordance with law. Insofar as the restrained order of export and import is concerned, the same was ordered to be quashed and directed the respondents not to interfere with the export and import by the petitioner. As against which, the respondents preferred writ appeals in W.A.(MD) Nos.906 and 907 of 2012 and the Hon'ble Division Bench of this Court set aside the order passed by the learned Single Judge and issued some directions. As against which, the petitioner approached the Hon'ble Supreme Court of India in S.L.P.No.18662 - 18663 of 2013 and the same was also dismissed.

3.2. The learned State Public Prosecutor submitted that in respect of the illegal quarrying by using explosive substances by the petitioner, the respondents registered totally 53 cases on the file of various police stations as against the petitioner as well as its other sister concerns and others, in which, except 5 cases, all the cases have been charge sheeted and pending for trial.

3.3. The petitioner cannot run any business in the factory premises at Therkkutheru, since the entire factory was constructed in the lands belong to the Government, where, the water flow goes directly from Periyar Main Channel to Kadampankulam kanmai and Narasingampatti Malaivetti kanmai. The petitioner, without any prior permission from the Government, constructed the factory and as such, FIR has been registered in crime No.743 of 2012 on the file of the Melur Police Station for various offences as against the petitioner and others including the employees of PWD. The allegations are very serious that the accused persons damaged the water channel for about 718 meter and levelled the above property with the machineries and constructed the factory. In fact, the Inspector of Police, Melur Police Station completed the investigation and also filed final report. In all the 53 cases registered as against the petitioner and others, the Directorate of Enforcement has attached all the movable and immovable properties of the petitioner under Prevention of Money Laundering Act, 2002 in O.C.No.671/2017 in PAO No.22/2016 and it is pending before the CBI Court in C.C.No.10 of 2018.



3.4.The petitioner illegally quarried the granites for more than 50 quarries and transported all the granites stones to the petitioner's factory and their factory was used for illegal mining activities. All the investigating Officers during the investigation seized the granite slabs, granite blocks and machineries including wiresaw and gangsaw machines, containers and vehicles from the factory in many cases. Therefore, the petitioner cannot use the above machineries to run the factory in future, because all the above properties including machineries have to be confiscated at the end of the trial. The properties and the machineries have to be marked before the trial Court during the trial. Therefore, the investigating officers have sent letters to the banks to freeze the bank accounts of the petitioner. They also sent letters to the Port Trust authorities to withhold the transport of Carco of Chennai and Tuticorin.

3.5.In fact, the petitioner already filed writ petitions in W.P (MD) Nos.20226 and 20227 of 2014 and the Division Bench of this Court dismissed the writ petition by an order dated 16.03.2018. The present writ petitions were filed for the very same relief after dismissal of the said writ petitions. Therefore, he prayed for dismissal of the present writ petition.

4.This Court, vide order dated 19.09.2019, impleaded the respondents 3 to 7 and they also filed counter and submitted that as directed by the 2nd respondent, the bankers have frozen the accounts of the petitioner. Accordingly, the respondents 3 and 4 withhold from transport of Cargo belongs to the petitioner. Though they were added as parties to the proceedings, they are nothing to do with the prayer sought for in this petition.

5.Heard both sides and perused the materials available on records.

6.The petitioner firm set up a factory for cutting and polishing of granite in Therkkuthuru and Narasingampatti village, Melur Taluk and Madurai District. The Government of Tamil Nadu granted several granite quarrying leases under Article 19-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 in favour of the petitioner in respect of the petitioner's land situated in various districts of Tamil Nadu including Madurai District.

7. In the year 2012, several FIRs have been registered as against the petitioner and others with the allegation that they illegally quarried the granites by using explosives substances from the Government lands and also damaged the Government land. Further, it is alleged that the petitioner constructed factory building in the land belongs to Government comprised in S.F.Nos.717/8, 718/4, 719/4, 736/2, 737/2, 739/7, 739/9, 740/3, 741/4 and 741/8 situated at Periyar main channel, 10th branch, 17th sluice, where the water
<https://hdservices.e-governance.india.nic.in> directly from Periyar main channel to the Kadambankulam



kanmai and Narasingampatti malaivetti kanmai. The petitioner also constructed its factory building without prior permission from the Government.

8. During the investigation, the 2nd respondent issued letters dated 21.08.2012 to the Chennai Port Trust and Tuticorin Port Trust stating that during the investigation, it revealed that the above said quarries committed theft of quarrying granite blocks illegally and it should be recovered after arresting the accused. Hence, the 2nd respondent requested that the above theft blocks shall withhold from transport of Cargo till the process of investigation is over. The 2nd respondent also issued letters dated 28.08.2012 and 29.08.2012 to the Indian Bank, State Bank of India and Indian Bank (MEPZ) Chennai requesting that further operation should not be permitted in the accounts belongs to the petitioner in pursuant to the cases registered and any operation of accounts or deposit of accounts to be frozen immediately in respect of the accounts. It is further requested that last one month transaction statement for the accounts of the petitioner to be furnished.

9. On perusal of records would reveal that the petitioner already filed writ petitions in W.P. (MD) Nos. 12441 and 12442 of 2012 with the interim prayer of direction, directing the 1st and 2nd respondents herein to handover all the account books, records, remove seal on the factory and on the factory premises, vehicles and equipments, so as to enable the petitioner to run the factory situated in Therkkuthery & Narasingampatti village, Melur Taluk, Madurai District and not to interfere in the day to day operations of the petitioner's factory without due process of law pending disposal of the above writ petition and also with a prayer for declaration, declaring that the actions of the 3rd and 4th respondent in sealing the petitioner's factory, factory premises, vehicles and equipments and abruptly suspending quarrying operations in all the 55 quarries for which leases are subsisting are null and void. This Court, vide order dated 02.11.2012 disposed the said writ petitions with following directions.

"Therefore, in order to settle equity, these writ petitions are disposed of with the following directions:-

1. The respondents shall permit the petitioner to continue the quarry operations over the leased property strictly in terms of the lease, which is admittedly in force. It shall be, however, open to the respondents to take appropriate action by following due process of law under the Mines & Minerals (Development & Regulation) Act, 1957 and the Rules framed thereunder, if so advised;

2. The respondent shall henceforth release the bank accounts and to allow the petitioner to carry on his



business in accordance with law. However, it shall be the duty of the petitioners to submit fortnightly Statement of Accounts to the Investigating Officer;

3.that the order restraining the export and import by the Investigating Officer is ordered to be quashed and it is directed that the respondents shall not interfere in the export and import on valid documents by the petitioner.

4.that the seal of the administrative building be opened, after the Investigating Officer takes in possession of the documents, the computers, hard discs, etc., required for investigation. (As agreed between the parties, the petitioner is directed to depute two persons along with an expert, if so advised to be present at the administrative building on 07.11.2012 (Wednesday) at 10.00 a.m., for handing over the computers, hard discs, documents, available in the sealed building, after transferring the datas from computers and making copies of the documents, which are required for running of business). It is made clear that the petitioner will be entitled to get copies of the documents lying within the premises and permit the Investigating Officer to take away the Computers, Hard discs and other documents, which are required for the Investigation. This process shall be completed in three days and it should be completed on or before 09.11.2012 (Friday).

5.The Investigating Officer shall permit the petitioner to carry on their business.

6.With regard to the vehicles, equipments and other accessories seized by the authorities under the Motor Vehicles Act, or in criminal cases, it shall be open to the petitioner to take appropriate remedy in accordance with for reasons thereof."

10.As against which, the 2nd respondent filed writ appeals in W.A. (MD) Nos.906 and 907 of 2012 and the Hon'ble Division Bench of this Court, by order dated 15.02.2013 has held as follows:

"31.In view of the aforesaid reasons, we have come to the irresistible conclusion of setting aside the order of the Writ Court, except a portion of the direction given in Direction No.1, Accordingly, the order of the Writ Court made in WP(MD) No.s12441 and 12442/2012 dated 02.11.2012 is set aside except the following the Writ Court, viz.,

It shall be however open to the respondents to take appropriate action by following due process of law under the Mines and Minerals (Development and Regulation) Act, 1957 and the rules framed thereunder,



if so advised."

and the writ appeals are disposed of with the following directions:

"(a) The earlier reliefs granted by this Court to the respondents herein/writ petitions in the orders dated 06.11.2012 and 08.01.2013 shall be continued pending departmental proceedings as well as the criminal proceedings.

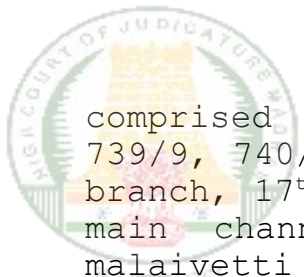
(b) In respect of item No.(i) in paragraph 10 of the order dated 08.01.2013, viz., payment of monthly wages to the employees, workers, both killed and unskilled and for payment of arrears towards wages, if the respondents/writ petitioners are willing to pay continuously after payment of arrears, they have to furnish the list of employees, workers, both skilled and unskilled with respective payments to be made to them every month to the authorities order to enable them to de-freeze the Bank accounts for that specific purpose.

(c) The appellants shall proceed with the departmental proceedings as well as the investigation in the criminal proceedings in accordance with law."

11. Aggrieved by the same, the petitioner filed SLP before the Hon'ble Supreme Court in S.L.P.(Civil) Nos.18662-18663 of 2013 and the Hon'ble Supreme Court of India dismissed the SLPs by an order dated 13.12.2013. However, for the very same relief, the petitioner, again filed W.P.(MD) Nos.20226 and 20227 of 2014. This Court, by order dated 22.12.2014 issued interim direction as prayed for and the same was again challenged by the 2nd respondent in W.A. (MD) Nos.4 and 5 of 2015 and the same was allowed by order dated 29.01.2015. Finally, the Hon'ble Division Bench of this Court, by an order dated 16.03.2018 dismissed the writ petitions in W.P.(MD) Nos.20226 and 20227 of 2018. While dismissing the writ petitions, this Court observed that it is for the petitioner to approach the concerned authority and extricate themselves from such prohibitory orders or attachment.

12. As observed by this Court, the petitioner sent representation dated 20.08.2018 requesting the 2nd respondent to issue clarification orders to the Chennai Port Trust, Tuticorin Port Trust and the concerned bankers, clarifying that the letters dated 21.08.2012, 28.08.2012 and 29.08.2012 are pertaining to quarries situated in Madurai District only and in respect of the specified bank account numbers and also clarifying that there is no impediment for the petitioner to operate the bank accounts in respect of the petitioner's business.

13. On perusal of records, it reveals that the petitioner's factory is constructed in the land belongs to the Government



comprised in S.F.Nos.717/8, 718/4, 719/4, 736/2, 737/2, 739/7, 739/9, 740/3, 741/4 and 741/8 situated at Periyar main channel, 10th branch, 17th sluice, where the water flow goes directly from Periyar main channel to the Kadambankulam kanmai and Narasingampatti malaivetti kanmai. The extract of adangal shows that the above survey numbers are classified as water channel and the same was encroached by the petitioner. The classification of the said land is also confirmed in the 'A' register. The entire factory premises has been constructed without any prior permission from the Government. In this regard, the Inspector of Police, Melur Police Station registered the case in crime No.743 of 2012 for the offences under Sections 120B, 447, 430 I.P.C and 3(i)(ii) of TNPPDL Act, 1992 read with 109, 114 and 149 I.P.C., in which, investigation has been completed and it is pending trial before the concerned Court.

14. There are totally 53 cases have been registered as against the petitioner and others for various offences, in which, except 5 cases, all the cases have been charge sheeted and pending trial before the concerned jurisdictional Court. In all the cases, the Directorate of Enforcement has attached all the movable and immovable properties of the petitioner under the Prevention of Money Laundering Act, 2002, in O.C.No.671/2017 in PAO No.22/2016 and it is pending before the CBI Court in C.C.No.10 of 2018.

15. The Government and the District Administration received several complaints with regard to illegal quarrying in the Madurai District. The District Collector inspected various quarries and submitted a preliminary report, wherein, it has been stated that the District Administration conducted a comprehensive and scientific survey in all the 175 granite quarries functioning in the Madurai District. On the strength of the comprehensive and scientific survey, the Deputy Director and the Assistant Director of Geology and Mining submitted an evaluation report on 88 granite quarries. Among them 16 quarries belong to the petitioner. They could not carry out the inspection in 22 granite quarries due to water logging and among that 18 quarries belong to the petitioner. The report further revealed that the petitioner firm has not carried out the quarrying operations as per their mining plan and encroached upon the adjoining roads, tanks, channels and water bodies and illicitly quarried granites in the adjacent non-leasehold areas also and thereby, they violated Section 4-(1) and 4-(1A) of the Mines and Minerals (Development and Regulation) Act, 1957. Therefore, the Government suspended the mining operation in respect of 78 granite quarries of Madurai District and among the same, 20 quarries belong to the petitioner's firm.

16. In this regard, the Hon'ble Supreme Court of India held in S.L.P.Nos.18662-18663 of 2013 arising out of W.A.(MD) Nos.906 and 907 of 2012 as follows:

"12. We find it difficult to accede to that request

made by the senior counsel, at this stage, especially



in the wake of the report of the District Collector dated 19.5.2012 as well as the report of the Deputy Director of Geology and Mining dated 23.11.2012. In the affidavit filed by the third respondent, it is pointed out, that the volume of illegal transportation from petitioners' 16 quarries is around 1207863.164 Cubic Meters and show case notices have been issued to the petitioner firm under Section 21(5) of the Mines and Minerals (Development and Regulation) Act, 1957 for recovery of the cost. It is stated that the value of the illicit quarry in the 16 quarries alone comes around 4124.14 crores. Further, it was also pointed out that other quarry operators have also indulged in similar illegal quarry operations is estimated around Rs.12390.460 crores. Further, it was also pointed out that several criminal cases are also pending for carrying on illegal quarrying operations in the government land.

13.We are of the view that, since several writ petitions are pending consideration before the High Court, at this stage, it would not be appropriate to pronounce upon the various contentions raised by learned senior counsel on either side on merits of the case, especially in the light of the materials leading to the issuance of the suspension orders dated 14.12.2012 and the show cause notices dated Nil.12.2012. We also notice that the Division Bench of the High Court has issued some equitable directions taking into consideration the interest of the workers and also for honouring some statutory obligations of the petitioner firm. We, therefore, find no reason to interfere with the impugned judgment dated 15.2.2013 and the special leave petitions filed against those orders stand dismissed."

17.Accordingly, the petitioner transported illegally from its quarries around 1207863.164 Cubic Meters. The value of the illicit quarry in the 16 granites alone comes around 4124.14 crores. Therefore, in these circumstances, the direction sought by the petitioner cannot be considered, since already, the Division Bench of this Court dismissed the W.P.(MD) Nos.20226 and 20227 of 2014 by order dated 16.03.2018 seeking the same relief sought by the petitioner. Further, the Hon'ble Supreme Court of India also dismissed the SLP(civil) Nos.18662-18663 of 2013 by an order dated 13.12.2018 for the very same relief sought by the petitioner. Therefore, there is absolutely no change of circumstances and this writ petition is devoid of merits and the same is liable to be dismissed.



WEB COPY

18. Accordingly, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar (CS-II)

To

1. The Superintendent of Police,
Madurai (Rural),
Madurai District.
2. The Deputy Superintendent of Police/
Investigation Officer,
Prohibition Enforcement Wing,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.R.PARTHASARATHY, Advocate (SR-98510[F] dated 15/11/2019)
+1 CC to M/s.DR.R.RAJAGOBAL, Advocate (SR-98666[F] dated 15/11/2019)

Order made in
W.P (MD) No.5213 of 2019
15.11.2019

Arul

ES/SAR 2/15.11.2019/12P/7C