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W.P(MD)No.20880 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD)No.20880 of 2019

and

W.M.P(MD)Nos.17463 to 17465 of 2019

Simon Raj

... Petitioner

Vs.

1.The Secretary to the Government,
Public Works Department and Water Resources Department,
Secretariat,
Chennai.

2.The District Collector cum Chairman,
District Level Environmental Assessment Authority
and District Level Task Force,
Pudukkottai District.

3.The District Revenue Officer cum Member,
District Level Task Force To Prevent Illegal Mining,
Pudukkottai District.

4.The Superintendent of Police cum Member,
District Level Task Force To Prevent Illegal Mining,
Pudukkottai District.

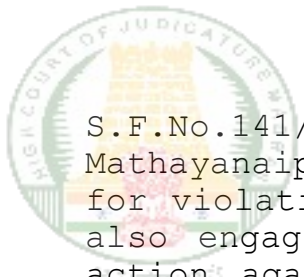
5.The Tahsildar cum Convenor,
Taluk Level Task Force To Prevent Illegal Mining,
Viralimalai Taluk,
Pudukkottai District.

6.The Executive Engineer,
Water Resources Department (Public Works Department),
Mining and Monitoring Division,
Trichy.

... Respondents

Prayer : Petition filed under Section 226 of the Constitution of India, praying for issuance of a writ of Mandamus to direct the respondents 2 to 5 to cancel the sand quarrying permission granted to the sixth respondent herein in the lands comprising in

<https://hcservices.ecourts.gov.in/hcservices/>



S.F.No.141/19 and 105/1 situated within Perambur River of Mathayanaipatti Village, Viralimalai Taluk, Pudukkottai District, for violating the conditions stipulated in the permission order and also engaging in illegal lifting of sand and also take necessary action against the fifth respondent and other persons whoever in connection with the above said illegal mining based on the representation given by the petitioner dated 15.03.2019.

For Petitioner : Mrs.A.Banumathy

For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader

* * * * *

ORDER

(Order of the Court was made by **T.S.SIVAGNANAM, J.**)

Heard Mrs.A.Banumathy, learned Counsel appearing for the petitioner and Mr.A.K.Baskarapandian, learned Special Government Pleader accepting notice on behalf of the respondents.

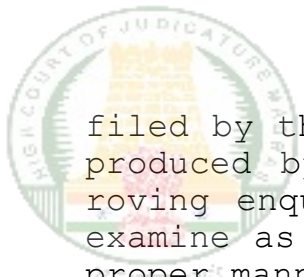
2. With the consent of the parties, this writ petition is taken up for final disposal.

3. The petitioner is before this Court praying for a direction upon the respondents 2 to 5 to cancel the permission granted by the Public Works Department to the sixth respondent for quarrying sand in S.F.No.141/19 and 105/1 situated within Perambur River of Mathayanaipatti Village, Viralimalai Taluk, Pudukkottai District. The allegation made by the petitioner is that they are violating the conditions stipulated in the order granting permission.

4. The learned Counsel for the petitioner has referred to the representation made by the petitioner as well as the photographs filed in the typed set of papers and submitted that there is indiscriminate quarrying and the depth of the quarrying is to a very great extent and in gross violation of the permission granted.

5. The learned Special Government Pleader appearing for the respondents, on instructions from the Officers who are present in the Court, submitted that the photographs enclosed at page Nos.30 to 33 of the typed set of papers do not pertain to the quarry in question, but it is some other location of which the sixth respondent is not aware.

6. On going through the photographs filed by the petitioner and the photographs produced by the sixth respondent, we find that one of the photographs at page No.30 of the typed set of papers



filed by the petitioner is the same as that of the first photograph produced by the sixth respondent. In any event, he cannot make a roving enquiry into the issue nor can we appoint a third party to examine as to whether the Public Works Department is quarrying in a proper manner by abiding the conditions of the permission granted.

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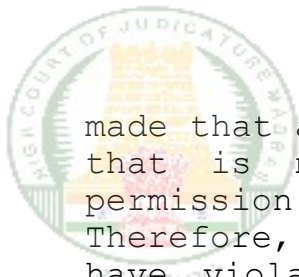
7. Earlier, similar issues had arisen before this Court and in one such writ petition in W.P.(MD)No.11785 of 2019, [**R.Subramani v. The Principal Secretary, Public Works Department, Secretariat, Namakkal Kavingar Maligai, Chennai and 8 others**], the Honourable Division Bench of this Court considered the matter and appointed a Monitoring Committee consisting of the following High Level Officials:

- "(i) Dr.A.Arun Thamburaj, I.A.S.,
Project Director (Sand Mining),
Tamil Nadu.
- (ii) Mr.Mohan,
Professor and Head of the Department,
Department of Environment and Water Studies,
Indian Institute of Technology (I.I.T.),
Sardar Patel Road, Opp. To C.L.R.I.,
Adyar, Chennai-600 036.
- (iii) Dr.S.Ganapathy Venkata Subramaniam,
Professor, Department of Environment Studies,
Anna University,
Opp.to Gandhi Mandapam,
Sardar Patel Road, Guindy,
Chennai-600 025.
- (iv) Dr.V.Pugazhendi,
Senior Hydro Geologist (Retd.),
TWAD Board, Chennai."

8. This Monitoring Committee has been constituted in an earlier writ petition in W.P.No.22433 of 2017, vide order dated 06.07.2018. In our considered view, if there is no violation of the conditions of permission which was granted to the Public Works Department and then, the Department need not have any apprehension for an inspection to be conducted by the High Level Monitoring Committee.

9. The learned Special Government Pleader appearing for the respondents submitted that the sensitivity of the issue needs to be considered because only a few quarries have been permitted to operate in the State of Tamil Nadu as there is an order of injunction granted.

10. We have come across cases where there is an allegation



made that a private licensee is indiscriminately quarrying, however, that is not the fact situation in this writ petition since permission has been granted to the Public Works Department. Therefore, we do not suspect that the Public Works Department would have violated the conditions of permission. However, the Public Works Department has to engage contractors to carry out the work, who will, in turn, deploy men and machinery. Undoubtedly, there would be some supervisor appointed by the Public Works Department not at the senior level, but at lower level. If any violation is done by the contractors, ultimately, the blame will be shifted to the Public Works Department. Therefore, we are of the view that the Public Works Department should be open for an inspection by the Monitoring Committee.

11. The concern of the learned Special Government Pleader appearing for the respondents is that if the Court passes any order injuncting the quarrying operations, then it will hamper the availability of sand in the State as only a few quarries are operating in the State.

12. By suspending the quarrying operations for a couple of days or even for a week, we are of the view that no irreparable damage will be occurred. In respect of the orders passed by this Court prohibiting sand quarrying in rivers, ponds and other water bodies, still there is nothing on record that there is a scarcity in the availability of river sand. Simultaneously, the State Government is permitting the use of alternative materials, such as, M-Sand, which is gaining much popularity.

13. Therefore, in our view, the Public Works Department should not take this writ petition as an adversarial one assuming that there is some motive behind this writ petition, but should be agreeable for inspection to be conducted by the High Level Monitoring Committee constituted by this Court.

14. The learned Special Government Pleader appearing for the respondents submitted that there are four members in the Monitoring Committee headed by the Project Director (Sand Mining), Tamil Nadu, who is an I.A.S., Officer and two other persons are Academicians and the fourth member is a Retired Senior Hydro Geologist from the services of TWAD Board, Chennai and all the Committee Members have to meet and it may take some time. This concern expressed by the learned Special Government Pleader appearing for the respondents can be adequately addressed by fixing a date within which the Monitoring Committee should visit the quarry. Since there is a duty cast upon the State to preserve water bodies and ensure that proper procedure is adopted in quarrying, if a direction is issued by this Court to the Monitoring Committee to expedite the inspection, we have no doubt that the Members of the Monitoring Committee will comply with the directions in letter and spirit despite their other official commitments.



15. In the light of the above, we direct the Monitoring Committee as constituted by this Court vide order dated 06.07.2018 passed in W.P.No.22433 of 2017, shall cause inspection of the subject quarry on or before 03.10.2019. Till then, the Public Works Department shall suspend the quarrying operations and subject to the opinion to be rendered by the Monitoring Committee, they can proceed further in accordance with law.

16. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Secretary to the Government,
Public Works Department and Water Resources Department,
Secretariat,
Chennai.
- 2.The District Collector cum Chairman,
District Level Environmental Assessment Authority
and District Level Task Force,
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- 3.The District Revenue Officer cum Member,
District Level Task Force To Prevent Illegal Mining,
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Senior Hydro Geologist (Retd.),
TWAD Board, Chennai."

+1 cc Ms. A.BANUMATHY ,Advocate, SR.No. 16603
+1cc to M/s.Special Government Pleader,SR.No. 66654

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