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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 18.08.2021

Orders Pronounced on : 06-09-2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Writ Petition Nos.4711 and 4717 of 2019

1. M. Ramesh
2. R.Ambika .. Petitioners in WP No.4711/2019
1. I.Babu Soundaraj
2. Sathyavani .. Petitioners in WP No.4717/2019

Versus

1. The Chief Secretary
Government of Tamil Nadu
The Secretariat, Fort St. George
Chennai - 600 009
2. The Secretary to the Government of Tamil Nadu
Department of Mines and Geology
The Secretariat, Fort St. George
Chennai - 600 009
3. The Director of Geology and Mining
Guindy, Chennai - 600 032
4. The District Collector
Vellore District
5. The Tahsildar
Anaicut Taluk
Vellore District .. Respondents in both the
Writ Petitions

WP No. 4711 of 2019:- Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents to take action on the communication dated 06.06.2018 under Rc.No.3665/MM11/2018 sent by the third respondent to the fourth respondent, based on the petitioners representation dated 09.04.2018 and to compensate the petitioners by paying a sum of Rs.25 lakhs to them for the negligence of the respondents, which had resulted in the death of their son R. Gideon on 15.05.2017 by drowning in the



Government quarry situated in Pallikuppam Village, Anaikut Taluk, Vellore District.

WP No. 4717 of 2019:- Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents to take action on the communication dated 22.06.2018 under Rc.No.3793/MM11/2018 sent by the third respondent to the fourth respondent, based on the petitioners representation dated 09.04.2018 and to compensate the petitioners by paying a sum of Rs.25 lakhs to them for the negligence of the respondents, which had resulted in the death of their son B. Moses on 15.05.2017 by drowning in the Government quarry situated in Pallikuppam Village, Anaikut Taluk, Vellore District.

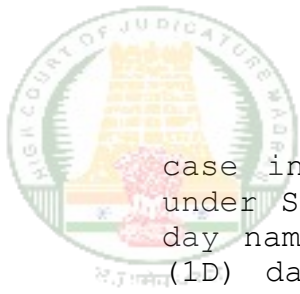
For Petitioner : Mr. S. Anil Sandeep
in both the Writ Petitions

For Respondents : Mr. Stalin Abimanyu
Government Counsel
in both the Writ Petitions

COMMON ORDER

The petitioners in these two writ petitions are parents of the deceased R.Gideon and S. Moses, aged 15 and 17 respectively, who have died due to drowning on 15.05.2017 in the abandoned Government quarry situated in Pallikuppam Village, Anaicut Taluk, Vellore District. These writ petitions are filed by the petitioners praying to direct the respondents to pay a sum of Rs.25 lakhs each as compensation for the death of their sons on the ground that their death had occasioned due to negligence and carelessness on the part of the respondents in maintaining the quarry with minimum safeguards and/or protection.

2. The facts leading to the filing of these two writ petitions are not in dispute. On the fateful day of 15.05.2017, the sons of the petitioners along with their friends have gone to the abandoned Government quarry situated in Pallikuppam Village, Anaicut Taluk, Vellore District to take a bath. Little did they realise that it would cost them their life on that day. It is stated that the sons of the petitioners drowned and their bodies could not be retrieved for a long time. When intimation was given to the Fire and Rescue Service Personnel, they made an attempt to fish out the bodies, but it went in vain. Subsequently, the National Disaster Management Team reached the spot and after a herculean search, the bodies of the sons of the petitioners could be retrieved from the abandoned stone quarry. In connection with the death of the sons of the petitioners, a



case in Crime No. 206 of 2017 was registered for the offence under Section 174 of the Code of Criminal Procedure on the same day namely 15.05.2017. Subsequently, the Government, vide G.O. (1D) dated 548, Revenue and Disaster Management Department has disbursed a sum of Rs.50,000/- as solatium to the respective petitioners and it was also received by the petitioners on 10.07.2019. These facts are not in dispute and they are admitted by the respondents in this case.

3. The learned counsel for the petitioners would vehemently contend that the respondents are vicariously liable for the death of the sons of the petitioners, due to drowning. According to the learned counsel for the petitioners, the land in Survey Number 277/1 (part) where the abandoned lake exists, was originally leased out to a company called Hi-tech Rock Products and Aggregates Limited for three years from 18.07.2011 to 17.07.2014. During the subsistence of lease, the aforesaid company has excavated the land deeply. However, after the lease period expired, the company had abandoned the leased land without erecting any fence, sign board or caution board to warn away the villagers from venturing into the quarrying site. During rainy season, water got collected in the deep pit and the quarried site looked like a pond. This has attracted the sons of the petitioners and his friends to take a bath without realising that it would cost them their life.

4. The learned counsel for the petitioners placed heavy reliance on the Order dated 19.04.2021 passed by the Division Bench of this court in Writ Petition No. 33517 of 2018. In that case, one Ashok Kumar, husband of the petitioner therein had taken shelter under the sunshade of a toilet constructed in the Palladam Bus Stand to avoid being drenched in the rain. The roof of the sunshade of the toilet collapsed and caused the instantaneous death of the husband of the petitioner in that writ petition. Contending that the respondents are vicariously liable to pay compensation for the death of her husband, the aforesaid WP No. 33517 of 2018 was filed before the Division Bench of this Court. The Division Bench of this court, by the order dated 19.04.2021, directed the respondents therein to pay a sum of Rs.27 lakhs as compensation to the petitioner therein. Aggrieved by the order dated 19.04.2021, the Commissioner of Palladam Municipality has preferred a Special Leave to Appeal (C) No. 7793 of 2021 before the Honourable Supreme Court. By Order dated 02.07.2021, the Honourable Supreme Court confirmed the order passed by the Division Bench of this Court and refused to accept the plea that the toilet shed collapsed due to the act of God and the Municipal authorities cannot be made liable to pay compensation. The learned counsel for the petitioners therefore submit that following the order passed by the Division



Bench of this Court, which was affirmed by the Honourable Supreme Court, the respondents have to be directed to pay compensation of Rs.25 lakhs each to the petitioners herein for the death of their sons.

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5. Opposing the relief sought for in the writ petitions, the learned Government Counsel, by placing reliance on the counter affidavit filed on behalf of the third and fourth respondents, would vehemently contend that the death of the sons of the petitioners has to be treated as an accident and no negligence is attributable on the part of the respondents. The sons of the petitioners ought to have been prudent and careful while taking bath especially it is not earmarked for human bath, rather, it is an abandoned government quarry site. It is a prohibited area where bathing is legally not permitted. The sons of the petitioners and his friends are fully aware of the dangers and risk involved in taking bath in the abandoned government quarry, however, they, on their own risk, have ventured to take a bath. The Government, considering the death of the sons of the petitioners at a younger age, have released a sum of Rs.50,000/- under the Chief Minister's Public Relief Fund and it was also received by the petitioners. It is also submitted by the learned Government Counsel that the writ petitions filed by the petitioners seeking payment of compensation are not maintainable. The acts of negligence, allegedly attributable on the part of the respondents, cannot be gone into by this court based on the affidavits filed by the petitioners herein and those allegations are required to be proved by letting in oral and documentary evidence. In any event, the Government has already disbursed a sum of Rs.50,000/- each to the petitioners. While so, the petitioners are not entitled for any further amount and therefore, the learned Government Counsel prayed for dismissal of the writ petitions.

6. This Court heard the learned counsel for the petitioners and the learned Government Counsel appearing for the respondents. At the outset, it has to be examined as to whether in a Writ Petition under Article 226 of The Constitution of India, this Court can issue a direction to the respondents to pay compensation of Rs.25 lakhs each to the petitioners, as prayed for, by fixing negligence on the part of the respondents in not properly maintaining the abandoned government quarry where the sons of the petitioners died due to drowning.

7. In D. Matsa Gandhi Vs. Tamil Nadu Slum Clearance Board, reported in 2000 (III) CTC 24, this Court held that in cases where there is denial of tortious liability, writ petitions cannot be maintained. However, when negligence per se is visible, the same has to be construed as violation of right to



life and liberty guaranteed under Article 21 of the Constitution of India and the High Court has jurisdiction to grant compensation under Article 226 of the Constitution of India. At paragraph 10, this Court held as follows:-

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"10. In the course of argument it is brought to my notice the recent decision of the Hon'ble Supreme Court reported in *Nath Bros., Exaim International Ltd., v. Best Roadways Ltd.*, 2000 (4) S.C.C. 553 and power of this Court under Article 226. No doubt, the Hon'ble Supreme Court has not accepted the action of the High Court in granting compensation to the family of the victim who died by electrocution in a writ petition filed under Article 226. It is equally true that when disputed questions of fact arises and if there is clear denial of tortious liability remedy under Article 226 of the Constitution may not be proper. However, in the very same judgment their Lordships after saying so, in paragraph 10 have observed. ".... However it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution." In such circumstance and in view of the factual conclusion as referred to above, I am of the view that the petitioner is entitled reasonable compensation from the respondent for the death of her daughter and in the interest of justice this Court would be justified in considering the relief prayed by the petitioner.

8. After considering the above decision and also the objections raised by the Tamil Nadu Electricity Board as regards the maintainability of the writ petition and the fact as to whether the petitioner therein should be driven to a Civil Court, on the facts and circumstances of the case, a learned single Judge of this Court in an unreported decision in *R. Saroja Vs. The Chairman, Tamil Nadu Electricity Board, Chennai*, and two others (W.P.No.6437 of 1998 dated 16.04.2008) held thus,

"The factum of electrocution and the death of the petitioner's husband is not denied either by the 1st respondent or by the 2nd respondent, I am of the considered view that it is not proper at this point of time, especially, when the accident took place in the year 1997 and the writ petition was filed in the year 1998 and the same has been pending for the past



10 years to drive the parties to Civil Court. Such course will only cause further injury to the family of the deceased."

9. In M.S. Grewal Vs. Deep Chand Sood, reported in AIR 2001 SC 3660 = 2001 (8) SCC 151, the issue before the Hon'ble Supreme Court was regarding the direction given by the High Court to pay a sum of Rupees Five lakhs as compensation to the parents of each of the children who died on account of drowning while they were in the custody of the school authorities. While considering the maintainability of the Writ Petition for payment of compensation, the Hon'ble Supreme Court indicated the march of law on the subject of public law remedy thus:

"28. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system - affectation of the people has been taken note of rather seriously and the judicial ' concern thus, stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil Court's obligation to award damages. As a matter of fact the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of "justice-oriented approach." Law Courts will lose their efficacy if they cannot possibly respond to the need of the society - technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

10. In Susanta Samanta and others Vs. WBSEB and others, reported in AIR 2004 Calcutta 200, death was due to electrocution. A writ petition was filed for compensation. Public law remedy was opposed. Negligence was also attributed against the deceased. On the objections to the maintainability of the writ petition, it was contended as follows:-

"8. Mr. Sumit Panja learned Lawyer appearing for the respondents contends that there is no dispute that the Court has ample power under Article 226 in the public law field to award compensation on the established and admitted case of negligence on the part of the respondent No. 1. In this case it is totally incorrect to allege that the said deceased



died owing to negligence of the respondent No. 1. The Criminal case was dropped and this shows there was no fault not to speak of negligence, and it was mere an accident which might have occurred due to his own fault. In view of this serious disputed question of fact this Court cannot award any compensation unlike Apex Court under Article 142. What the Apex Court can do under Article 142 cannot be done by the High Court even overstretching power under Article 226 of the Constitution of India. He submits that the decision cited by the learned Lawyer for the petitioner of the Supreme Court is not a binding precedent and it was rendered on taking special facts and circumstances into consideration and the Apex Court had explained expressly not to treat this judgment as a precedent. He submits the Supreme Court explained in fairly recent decision under what circumstances the High Court can grant compensation in the public law field under Article 226 of the Constitution of India. In support of his submission he has relied on the decision of the Supreme Court reported in 2000 (4) SCC 543 = AIR 2000 SC 1603, AIR 1996 Kerala 337, 1994 (2) SCC 630 = AIR 1994 SC 1808 and 1999 (9) SCC 40 = AIR 2000 SC 3638.

11. After considering the decision in Tamil Nadu Electricity Board Vs. Sumathi, reported in 2000 (4) SCC 543, a learned single Judge of the Calcutta High Court in Susanta Samanta's case at paragraph 10 held as follows:-

10. Therefore, it is clear from the aforesaid decision of the Supreme Court that it is not a bar to grant relief in the public law field in exercise of jurisdiction under Article 226 in case of the deprivation of life due to negligence on the part of the State, which includes statutory authority. The only decision cited by the learned Lawyer for the petitioners cannot be accepted to be precedent in view of the expressed pronouncement of the Supreme Court itself in the penultimate sentence of the last paragraph.

12. In this case, though it is argued on the side of the respondents that the writ petitions are not maintainable, when the facts are disputed, this court is not inclined to accept the same. As the deceased have died as a result of the negligence on the part of the officials, they are bound to pay compensation to the victims' family for the loss suffered by them.



13. The Division Bench of this Court in the case of The Commissioner, Corporation of Chennai, Rippon Buildings, Chennai vs. State of Tamil Nadu, represented by the Secretary to Government, Municipal Administration and Water Supply Department, Fort St. George, Chennai had an occasion to consider a case where a tree planted and maintained by the Corporation fell on a car resulting in loss of life. The Division Bench, while holding that the death of the deceased has not caused by an "Act of God" but due to the negligence of the Corporation in not maintaining the trees planted by them properly, directed payment of Rs.29.26 lakhs as compensation to the family of the deceased. There are several such cases in which this Court entertained the plea for compensation by considering existence of prima facie evidence to show negligence on the part of the respondents/authorities, who are instrumentalities of the Government as adumbrated under Article 12 of The Constitution of India.

14. The learned counsel for the petitioners relied on the order passed by the Division Bench of this Court on 19.04.2021 in WP No. 33517 of 2018 (A. Saraswathy vs. The Secretary to Government, Municipal Administration and Water Supply Department, Fort St. George, Chennai and others). In that case, as mentioned above, when the husband of the petitioner therein had taken shelter under the sunshade of a public toilet in Palladam Bus Stand, due to heavy rain, the roof of the sunshade came crushing and fell on the husband of the petitioner, due to which he died instantaneously. Even though the Municipality had taken the plea that the death is, as a result of an "Act of God", the Division Bench of this Court refused to accept such plea, which was also affirmed by the Honouable Supreme Court in the appeal filed by the Commissioner of Palladam Municipality by order dated 02.07.2021. Therefore, the plea of the respondents in these writ petitions that the writ petitions are not maintainable and that the petitioners have to be directed to establish negligence on the part of the respondents, by letting in oral and documentary evidence, cannot be sustained. As mentioned above, there is no dispute with respect to the facts of the case on hand. It is admitted by the respondents that the sons of the petitioners have died due to drowning and the Government also released solatium of Rs.50,000/- each to the petitioners. While so, the maintainability of the writ petitions cannot be questioned by the respondents.

15. There is no codified law for arriving at the quantum of compensation in cases of this type. The enactments like Motor Vehicles Act, 1988; Workmen Compensation Act, 1948; and Fatal Accidents Act, 1855 may be applied for arriving at the just compensation. In the decision reported in (1969) 3 SCC 64



(C.K.Subramania Iyer v. T.Kunhikuttan Nair) the Supreme Court held that there is no exact uniform rule for measuring the value of human life and the measure of damages cannot be arrived at precisely.

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16. In Nilabati Behera v. State of Orissa [1993 (2) SCC 746], the Hon'ble Apex Court held thus:-

"Award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention. A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution." Dr. A.S.Anand J., (as he then was) in his concurring judgment elaborated the principle thus :- " The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by the Supreme Court or under Article 226 by the



High Courts, for established infringement of the indefeasible right guaranteed under Article 21 is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law."

17. In *State of Rajasthan v. Vidhyawati* reported in 1962 Supp (2) SCR 989, it has been held that viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such as any other employer.

18. In *Rabindra Nath Ghosal Vs. University of Calcutta*, reported in AIR 2002 SC 3560 = 2002 (7) SCC 478, the Hon'ble Apex Court indicated the obligation of Courts to meet the social aspiration of people, as under:

"9. The Courts having the obligation to satisfy the social aspiration of the citizens have to apply



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the tool and grant compensation as damages in public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 225 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against, public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties, unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act."

19. As regards the quantum of compensation, the amount of money as reparation for the results of tortious conduct for which the law holds the wrong doer responsible is determined by applying as far as possible the general principle of restitution integrum. In many cases, however, a perfect compensation is hardly possible and would even be unjust. The court in doing justice between the parties considers the general rules as to damages with some liberality and does not apply them rigidly, and, thus, the damages are in difficult case normally limited to a sum which can in the circumstances be considered as a reasonable amount of compensation. Courts should not also in such cases allow a calamity to turn into a windfall. In ascertaining the pecuniary loss caused to the dependents, it must be borne in mind that these damages are not to be given as solatium for the loss of a son or daughter, wife or husband, father or mother, not on sympathetic or sentimental consideration, but only with reference to pecuniary loss.

20. In this case, it is apparent that the sons of the petitioners have gone to take a bath in the abandoned Government



quarry. It is also admitted that the site was earlier given on lease to a company called Hi-Tech Rock Aggregates Products and the said company had excavated the land to several feet of depth. After the period of lease expired, neither the said Company had taken any steps to fence the land or to erect a caution board to wean away the villagers from venturing into the site, nor the respondents have questioned the above said Company for not taking steps to ensure minimum protection so that no untoward incident takes place. It is also admitted that huge water had collected in the site during rain season making it appears like a pond. In the absence of any sign board or any prohibition imposed by the respondents, the sons of the petitioners, along with their friends, have ventured to take a bath. Unfortunately, the sons of the petitioners died due to drowning and their death has a definite nexus with the negligence attributable on the part of the respondents. Therefore, this Court comes to a conclusion that the respondents are statutorily and vicariously liable to compensate the petitioners for the death of their sons.

21. During the course of hearing, the proceedings bearing Na.Ka.No. 36/2019 (Kanimam) dated 15.07.2021 of the fourth respondent was produced before this Court in which it was observed that M/s. Hi-Tech Rocks Products and Aggregates Limited, the erstwhile lease holder of the site in question deposited a sum of Rs.25,31,250/- with the respondents towards security deposit on 06.06.2011. It is also stated that after expiry of lease period, the said Company did not fence the site in question as a measure of protection and therefore, the sum of Rs.25,31,250/- has been forfeited and retained by District Administration. This stands testimony to the fact that the aforesaid company, to which lease was granted, has failed to provide minimum safety measures by fencing the quarried land and abandoned it. In such view of the matter, this Court is of the view that the amount of Rs.25,31,250/- which is in possession of the District Administration, shall be directed to be paid to the petitioners, equally, together with accrued interest, as compensation for the death of their sons due to drowning, which would meet the ends of justice.

22. Human lives are precious and loss of a life is not capable of evaluation in terms of money. Death of human lives is certain but when it will occur is uncertain. All who are born will certainly die. However, in cases of death due to the negligence of others, the tort-feasor has to be made liable to pay compensation to the family of the victim. An unexpected death of one of the members in the family will traumatise the family members besides it will leave a vacuum. In such cases,



though the payment of compensation cannot restore the lost lives, it will certainly serve as a balm to the pained hearts.

23. In the above facts and circumstances of this case, the first respondent - Chief Secretary to the Government of Tamil Nadu is directed to issue necessary appropriate instruction as are necessary to the District Collectors and other authorities in the State to ensure that after expiry of the period of lease, the lease holders must fence the site and provide other safety parameters so that no such untoward incident will occur in future.

24. Accordingly, both the writ petitions are allowed. No costs. The fourth respondent is directed to disburse the amount of Rs.25,31,250/- with accrued interest, equally to the petitioners as compensation, within a period of four weeks from the date of receipt of a copy of this order, notwithstanding the sum of Rs.50,000/- each already paid to the petitioners.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Secretary
Government of Tamil Nadu
The Secretariat, Fort St. George
Chennai - 600 009
2. The Secretary to the Government of Tamil Nadu
Department of Mines and Geology
The Secretariat, Fort St. George
Chennai - 600 009
3. The Director of Geology and Mining
Guindy, Chennai - 600 032
4. The District Collector
Vellore District



5. The Tahsildar
Anaicut Taluk
Vellore District

+4CCs to Mr.S.Anil Sandeep, Advocate, Sr.Nos.45242, 45243

Pre-delivery common order in
WP Nos.4711 & 4717/2019

GSM (CO)
K.RK. (05.10.2021)