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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.07.2021

DELIVERED ON : 08.10.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD)No.2495 of 2021

and

W.M.P. (MD)Nos.2072, 2073 & 6623 of 2021

A.Mary

.... Petitioner

Vs.

1.The District Collector,
Dindigul District,
Dindigul.

2.The Deputy Director of Geology & Mining,
O/o.Deputy Director of Geology & Mining,
District Collectorate,
Dindigul.

3.The Tahsildar,
Nilakottai Taluk,
Dindigul District.

4.The Executive Officer,
Mallanpatti Village Panchayat,
Mallanpatti,
Dindigul District.

5.K.Sivan

... Respondents

(5th respondent impleaded, as per the order of this Court dated 20.04.2021, in W.M.P.(MD).No.5873 of 2021 in W.P.(MD).No.2495 of 2021)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the impugned notification issued by the 1st respondent in Na.Ka.No.40/2021 (Minerals) dated 19.01.2021 published in the District District Gazette on 20.01.2021 and quash the same as illegal and consequently forbear the respondents from getting rough



stone quarry lease in respect of Survey No.302/2, Mallanampatti Village, Nilakottai Taluk, Dindigul District.

For petitioner : Mr.M.Ajmal Khan,
Senior Counsel for
M/s.Ajmal Associates

For respondents 1 to 3 : Mr.P.Thilak Kumar,
Government Advocate

For 4th respondent : Mr.S.Louis

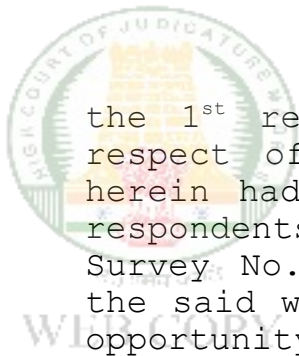
For 5th respondent : Mr.Isacc Mohanlal,
Senior Counsel for
Mr.T.Cibi Chakraborty

ORDER

This writ petition has been filed by the petitioner seeking to quash the notification issued by first respondent calling for tenders for granting rough stone quarry lease in respect of the land in Survey No.302/2, Mallanampatti Village, Nilakottai Taluk, Dindigul District.

2. The learned senior counsel appearing for the petitioner submitted that the petitioner has been carrying on agricultural operation in her 4 acres and 86 cents land in Survey Nos. 282/1, 290/1A3, 290/1A2, 290/1A6, 307/1 and 315/1, situated at Mallanpatti Village, Nilakottai Taluk, Dindigul District. There are residential houses located adjacent to her land. In the year 2011, the District Administration granted quarry lease in Survey No.302/2, which is adjacent to her agricultural land, for a period of five years. However, utilizing the said lease, illegal quarrying had been undertaken destroying the adjacent lands and posing threat to the safety of the adjoining lands and habitation. Therefore, the said property was not subjected to quarrying from 2016 to till date. On coming to know about the proposal of the District Administration to lease out the land in Survey No.302/2 again for quarrying, on 17.02.2020 the 4th respondent Panchayat passed a resolution requesting the District Administration not to grant any quarrying lease within the Panchayat. Based on the same, the Block Development Officer had sent a report dated 28.07.2020 recommending that granting quarrying lease is not feasible and would be against the public interest.

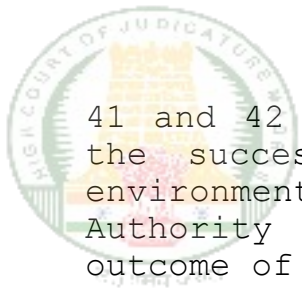
3. The learned senior counsel for the petitioner would further submit that as per Rule 36(1-A) of the Tamil Nadu Minor Mineral Concession Rules, 1959, stone quarrying activity is prohibited within 300 metres from any inhabited sites. The proposed quarry site is located within 300 metres of residential houses. Without giving importance to the public interest and local body resolution,



the 1st respondent was very keen in granting quarrying lease in respect of the land in Survey No.302/2. Hence, the petitioner herein had filed W.P.(MD).No.11527 of 2020 seeking to forbear the respondents from granting rough stone quarry lease in respect of Survey No.302/2. This Court, by order dated 14.09.2020, allowed the said writ petition by directing the 1st respondent to accord an opportunity of personal hearing before taking any decision in the matter of granting rough stone quarry lease in respect of the land in Survey No.302/2 and then, to furnish a copy of the decision that would be taken after hearing the petitioner. However, without according personal hearing to the petitioner and in violation of the order dated 14.09.2020, the 1st respondent issued impugned gazette notification dated 20.01.2020. Challenging the said notification, the petitioner has come up with this writ petition. He would further submit that when this writ petition came up for admission, this Court, by order dated 11.02.2021, directed that the tender process may go on, however, no final order shall be passed insofar as the petition mentioned survey number.

4. The learned senior counsel for the petitioner would further submit that the Hon'ble Supreme Court has categorically held in the decision in Manoharlal vs. Ugrasen, reported in 2010 (11) SCC 557 that any decision taken in violation of an order made by a Court whether interim or final to be declared nullity. As the impugned notification has been issued in violation of the order of this Court dated 14.09.2020, without providing an opportunity of personal hearing to the petitioner and in violation of Rule 36 of the Tamil Nadu Minor Mineral Concession Rules, 1959 and against the interest of the local body, the same may be set aside.

5. The learned Government Advocate appearing for the respondents 1 to 3 submitted that leasing the stone quarries is a routine functioning of the Government under the provisions of Rule 8 of the Tamil Nadu Minor Mineral Concession Rules. It is meant for generation of employment among the unorganized sector, supply of raw materials to the construction industry at competitive rates, earning revenue to Government exchequer, apportionment of the collected lease amount and seigniorage fee to the concerned local bodies viz., Panchayat and Panchayat Unions. The stone quarry in Government Poramboke in S.F.No.302/2 is the oldest one in Nilakottai Taluk, Dindigul District. It had been functioning for the past 40 years and catering the needs of local public and Government works. The report of the Block Development Officer, confirming the objection raised by the villagers were considered by the Tahsildar, Nilakottai and Revenue Divisional Officer, Dindigul, in their reports dated 13.08.2020 and 01.02.2021 respectively. The objections raised by the Villagers and Panchayat were overruled considering that no structures like electric lines, road, ancient monuments, places of worship and water bodies within a safety zone of 50 meters and no layout, inhabited site, etc., are available within a radial distance of 300 meters from the proposed quarry site. As per Rules



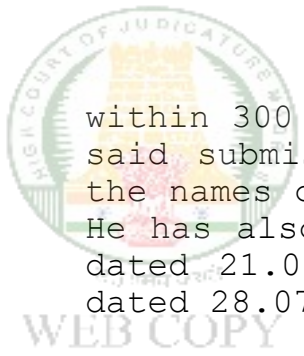
41 and 42 of the Tamil Nadu Minor Mineral Concession Rules, 1959, the successful bidder has to submit approved mining plan and environment clearance. The State Level Environment Impact Assessment Authority is the controlling body for all the environment related outcome of the quarrying activities.

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6. The learned Government Advocate appearing for the respondents 1 to 3 would further submit that as per the direction of this Court dated 14.09.2020 in W.P.(MD).No.11527 of 2020, several notices were sent before and after filing this writ petition to the petitioner ie., on 29.09.2020, 07.01.2021, 22.01.2021, 19.02.2021 and 18.03.2021, for attending personal enquiry. For all the notices, the petitioner did not turn up for personal enquiry. But, she simply sent her reply by post with stereo-type of replies. In the reply dated 22.02.2021, the petitioner sought time to appear for personal hearing stating that she is not well. However, she purposefully filed the present writ petition. He would next submit that on subsequent dates also, the petitioner did not appear before the first respondent. Therefore, the District Collector, by order dated 24.05.2021, rejected the request of the petitioner. He would further submit that in the order dated 28.09.2015 in W.P.(MD).No.558 of 2015, this Court directed the Director of Town and Country Planning, Chennai; the Member Secretary, Dindigul Local Planning Authority and the President of Mallanampatti Village not to grant any planing approval or building permission for any construction or development of any building structures or hut within 300 meters from quarrying site in SF.Nos.304/5, 305/1, 317/2C3, 318/1C2, 319/2B, 318/2, 319/3, 302/2 and 302/1, situated at Mallanampatti Village, Nilakottai Taluk.

7. The learned Government Advocate would next submit that the petitioner's land is located 421.4 meters away from the Government Poramboke SF.No.302/2. Therefore, the petitioner cannot be stated to be affected person. All the lands, surrounding the Government Poramboke SF.No.302/2 are rugged and unfit for cultivation. The petitioner's daughter had installed Solar Power Plant in her land situated at a distance of 200 meters from quarrying pit available in patta land of Mallanampatti Village and she has not obtained clearance from the Director of Geology and Mining under Rule 36 (1-A)(C) of the Tamil Nadu Minor Mineral Concession Rules, 1959. Only in order to facilitate her daughter, the petitioner has purposefully filed this writ petition and she has been dragging on the matter. He would further submit that as per the interim order of this Court dated 11.02.2021 in this writ petition, only tender process is completed by the respondents 1 to 3 and no finding or decision in granting lease to anybody is considered. Thus, he prayed to dismiss this writ petition.

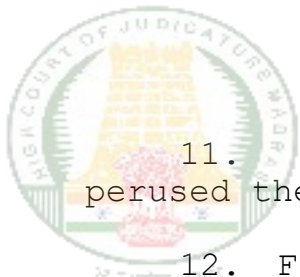
8. The learned counsel appearing for the 4th respondent reiterated the submission of the learned counsel for the petitioner. He would further submit that there are about 29 houses situated



within 300 metres of quarry site of S.F.No.302/2. In support of the said submission, he has produced a list of certificate containing the names of the residence within 300 metre of proposed quarry site. He has also produced resolution passed by the Panchayat Grama Shaba dated 21.02.2020 and proceedings of the Block Development Officer dated 28.07.2020. Thus, he prayed to allow this writ petition.

9. The learned senior counsel appearing for the 5th respondent submitted that the District Collector floated tender for grant of lease of Government land measuring an extent of 0.64.5 hectares (1.58 acres in Survey No.302/2, Mallanampatti Village Nilakottai Taluk, for five years vide impugned Tender notification in Na.Ka.No.40/2021 dated 19.01.2021, published in the Dindigul District Gazettee on 20.01.2021. The said tender notification invited applications only from 2 categories of people i.e, members of the Swarnajaynti Gram Swarojgar Yojana (SGSY) and members of the Released Bonded Labour Association (RBLA). The last date for submitting the applications was set as 08.02.2021. However, the official respondent did not receive any application from the said two categories. Hence, the first respondent published a fresh notification calling for tenders from general public vide., Tender Notification in Dindigul District Special Publication No.4, dated 09.02.2021. The 5th respondent is the highest tenderer. The petitioner did not take any steps to challenge notification dated 09.02.2021. Therefore, the present writ petition, which has been filed challenging the notification dated 19.01.2021, published in the gazette dated 20.01.2021, has become infructuous. He would further submit that the petitioner cannot maintain this writ petition as the petitioner's agricultural land is situated 421.4 meters away from the quarry site in question and she is not an aggrieved party.

10. The learned senior counsel appearing for the 5th respondent would next submit that according to the petitioner, she has been doing agricultural activities in her land. The agricultural activities are not covered under Rule 36 of the Rules. A verification of Revenue records show that the petitioner had purchased the alleged agricultural lands at Mallanampatti Village in S.Nos.290/1, 282/1, 307/1 and 315/1 very recently ie., on 26.02.202, 29.05.2020 and 09.07.2020 and they are all vacant lands (Tharisu nilam) as per revenue records and the petitioner is not doing any agricultural activities in those lands till date. The petitioner's daughter also purchased lands in S.Nos.283/1 and 283/3 at Mallanampatti Village, Nilakottai Taluk, Dindigul District on 09.07.2020 which are adjacent to the lands of the writ petitioner and then, constructed a Solar Power Generation Plant in those lands without any valid permission. Only in order to ensure that the quarrying operations in Survey No.302/2 do not cause any hindrance to the running of their solar power plant and to drag on the matter, the present writ petition has been filed. Thus, he prayed to dismiss



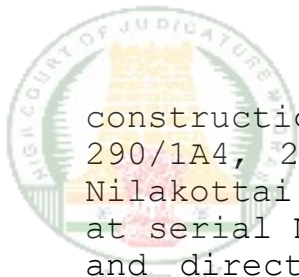
11. Heard the learned counsel appearing for parties and perused the records carefully.

12. First of all, as rightly stated by the learned senior counsel appearing for the 5th respondent, this writ petition has become infructuous, in view of the fact that the petitioner has challenged only the notification in Na.Ka.No.40 of 2021 (Minerals), dated 19.01.2021, published on 20.01.2021, which has become outdated and not the fresh notification dated 08.02.2021 by taking steps to amend the prayer. However, stick on technicality, this Court is inclined to go into the merits of the case.

13. As per Rule 36(1-A) of the Tamil Nadu Minor Mineral Concession Rules, 1959, no stone quarrying lease can be granted within 300 metres from any inhabited sites. According to the official respondents, the stone quarrying operation in S.F.No.302/2 of Mallanampatti Village had been carrying on for the past 40 years. It is seen that since some of the owners of the lands situated within 300 metre radius of quarry sites in SF.Nos.304/5, 305/1C, 317/2C3, 318/1C2, 319/2B, 318/2, 319/3, 302/2 and 320/1, at Mallanampatti Village, Nilakottai Taluk, attempted to plot out their lands and to create residential ares in violation of Rule 36 of the above Rules, a quarry lease holder had filed a writ petition before this Court in W.P.(MD).No.558 of 2015 for a direction not to permit any construction within 300 metres radius of the said quarry sites and this Court, by order dated 28.09.2015, has specifically directed the Director of Town and Country Planning, Chennai; the Member Secretary, Dindigul Local Planning Authority, Dindigul District and the President of Mallampatti Village, Nilakottai Taluk, not to grant any permission for construction of building or hut within 300 metres of the abovesaid quarry sites.

14. In the affidavit filed in support of the petition, the petitioner stated that she has been carrying on only agricultural operation in her site and she never said that she has been residing in her land by putting up any construction or hut. She has also not stated that her lands are situated within 300 metre radius of the quarry site in Survey No.302/2. According to the respondents 1 to 3, the lands of the petitioner is situated 421.4 meters away from the Government Poramboke S.F.No.302/2 and as per the revenue records, all the lands surrounding the Government Poramboke SF.No.302/2 are rugged and unfit for cultivation. According to the 4th respondent, there are about 29 residence within 300 metre radius of the quarry site in Survey No.302/2 and in support of the same, he has produced certificate with the name and address of the said 29 persons in the typed set of papers. A perusal of the said certificate annexed in the typed set of papers filed by the 4th respondent shows that there is no signature or seal as to who issued the said certificate and there is no date as to when it was issued.

<https://hsepsc.courts.gov.in/hcscservices/> a case of the petitioner that she has put up any

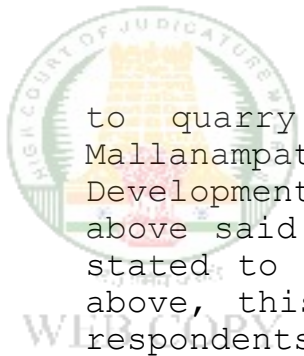


construction or hut in her site in Survey Nos.282/1, 290/1A3, 290/1A4, 290/1A2, 290/1A6, 307/1 and 315/1, Mallanampatti Village, Nilakottai Taluk, it is not known as to how her name has been placed at serial No.22 by the 4th respondent. When there is a specific rule and direction of this Court, it is not known as to how the 4th respondent gave permission for residential houses within the radius of 300 metres of quarry sites. The questions as to when, who, how the permission was granted to put up construction, is a larger issue to be decided and the same cannot be gone into in this writ petition. It is for the official respondents to take into consideration.

15. At the same time, the Tahsildar, Nilakottai Taluk and the Revenue Divisional Officer, Dindigul, after field inspection, submitted their respective reports dated 13.08.2020 and 01.02.2021 respectively to the District Collector to the effect that there are no permanent structures present in a radius of 50 meters from the quarry site in Survey No.302/2 and there are no habitations or approved lay outs within the distance of 300 meters from the site in question and recommended to notify the lands in Survey No.302/2 for tender. The above factors give an impression that there is no truth in the submission of the 4th respondent and Rule 36 of the Tamil Nadu Minor Mineral Concession Rules is properly followed.

16. In this case, it is seen that though several notices were sent to the petitioner before and after filing of this writ petition for personal hearing by the first respondent, as directed by this Court in the order dated 14.09.2020 in W.P.(MD).No.11527 of 2020, she did not appear before the first respondent and ultimately, the District Collector, by his proceedings dated 24.05.2021, rejected the request of the petitioner to stop the quarry lease in respect of Survey No.302/2. The first respondent cannot be directed to be waited till the response of the petitioner. It appears, the intention of the petitioner is only to drag on the process of auctioning. The official respondents also did not issue the order of lease, as per the interim order of this Court dated 11.02.2021. This Court does not find any violation of the order dated 14.09.2020 in W.P.(MD).No.11527 of 2020.

17. It is needless to say that river sand was the main raw material of the construction industry. Now, quarrying of river sand is banned. The alternative source available to the construction industry is the crusher of stone. It is stated that the rough stone quarry site in S.F.No.302/2 has been in operation for about 40 years and it was the main source for construction industry in Nilakottai Taluk. Therefore, the public interest at large must be taken into account. At the same time, if any resolution passed by the Panchayat in respect of quarrying of the land within their panchayat and produced, it must be considered by the official respondents and their grievances must be redressed possibly. In this case, it is



to quarry site in respect of the land in Survey No.302/2, Mallanampatti Village. Further, according to the report of the Block Development Officer, the villagers have been fighting to stop the above said quarry site for the past 20 years, but the quarry site stated to be in operation for the past 40 years. In view of the above, this Court is not in a position to specifically direct the respondents to consider the resolution of the Panchayat, before taking any decision for leasing out quarry site in Survey No.302/2.

18. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions in W.M.P.(MD).Nos. 2072 and 2073 are dismissed and W.M.P.(MD).No.6623 of 2021 is closed.

Sd/-

Assistant Registrar (CRL)

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Sub Assistant Registrar(CS)

bala

To

1.The District Collector,
Dindigul District,
Dindigul.

2.The Deputy Director of Geology & Mining,
O/o.Deputy Director of Geology & Mining,
District Collectorate,
Dindigul.

3.The Tahsildar,
Nilakottai Taluk,
Dindigul District.

+1 CC to M/s.T.CIBI CHAKRABORTHY, Advocate (SR-31884[F] dated 11/10/2021)

W.P (MD) No.2495 of 2021
08.10.2021

MGJ(27.10.2021) 8P 5C