



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **14.07.2021**

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.13627 of 2020

and

WMP (MD)No.11338 of 2020

WEB COPY

K.M.H.Mohamed Habeeb Najjar

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District.

2.The Revenue Divisional Officer,
Cheranmadevi
Tirunelveli District.

3.The Assistant Director
Mines,
Tirunelveli.

4.The Tahsildar,
Nanguneri Taluk,
Tirunelveli District.

5.Jonsy Mary

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the official respondents from granting quarrying license for the properties in survey numbers in 15/2D, 15/2F, 16/32, 6/4B, 6/5B and 6/1, Pappankulam Village, Nanguneri Taluk, based on the petitioner's representation, dated 31.08.2020.

For Petitioner

: Mr.T.A.Ebenezer

For Respondents

: Mr.P.Thilak Kumar

(R1 to R4)

Govt.Advocate

For Respondent-5

: Mr.Lajapathi Roy

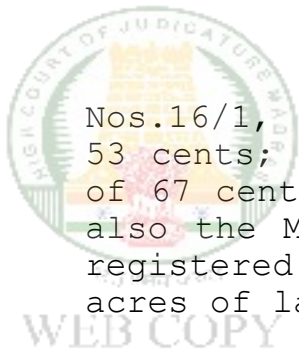
For Mr.V.Rajiv Rufus

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Mandamus, forbearing the respondents from granting quarrying license for the properties in survey numbers in 15/2D, 15/2F, 16/32, 6/4B, 6/5B and 6/1, Pappankulam Village, Nanguneri Taluk, based on the petitioner's representation, dated 31.08.2020.

2. The brief facts of the case are as follows:-

(i) The petitioner is the owner of properties in Survey



Nos.16/1, to the extent of 26 cents; 16/3 to the extent of 2 acres 53 cents; 15/2F to the extent of 5 acres 13 cents; 15/2D to extent of 67 cents in Pappankulam Village, Nanguneri Taluk. Petitioner is also the Managing Trustees of Habeeb Educational and Social Trust, registered in No.237/1992. The said Trust is having more than 113 acres of land in Pappankulam and its adjacent Ilankulam Villages.

(ii). One Vamadevan, the husband of 5th respondent, forged the signature of petitioner and fabricated power of attorney, as if the petitioner appointed him as power holder of 22 acres of land and sold the same to one Lawrence, in Documents No.9532/2008 and 9533/2008, registered in Nanguneri Sub Registrar. On the complaint of the petitioner, FIR in Crime No.45 of 2009 was registered on the file of the District Crime Branch, Tirunelveli, against the said accused persons including the Sub Registrar and said Vamadevan was arrested. After investigation, charge sheet was filed and the trial is pending against the accused in C.C.No.1411 of 2019, on the file of the learned Special Judicial Magistrate, ALGSC, Tirunelveli.

(iii). The said Lawrence filed a Suit in O.S.No.120 of 2009, on the file of the Additional District Munsif, Nanguneri, for permanent injunction. The said suit was misinterpreted by the said Lawrence, included his name in the revenue records and sold the property to one Premsingh Arputham Koildurai vide registered sale deed in Document No.643 of 2018, on the file of the Sub Registrar, Nanguneri. The petitioner preferred an appeal against the name change in patta before the 2nd respondent and the same is pending. In the meantime, he executed a settlement deed in Document No.1056 of 2018, in favour of his wife, the 5th respondent. Petitioner preferred a complaint against the revenue and registration officers, including the said Koildurai, for encumbering the property continuously by using the fabricated documents, which is pending enquiry before the District Registrar, Tirunelveli.

3. The learned counsel appearing for the petitioner would submit that the 5th respondent has applied for the Mines License in lands in survey numbers 6/1, 6/4B, 6/5B, 15/2F, 15/2D and 16/3. If said license is granted to 5th respondent, the petitioner's properties would be looted and he will be put to irreparable loss and hardship as the petitioner is residing in the constructed house, bearing Door No.273/1, Taxed 2141, which is situated within 50 meters from the expected quarry land in survey numbers 6/4B, 6/1 and 6/5B. Hence, petitioner made objection to the official respondents on 31.08.2020. Despite the same, the official respondents are processing 5th respondent's application still. The 4th respondent sent enquiry notice demanding the petitioner to appear on 25.09.2020. The Petitioner appeared in person and submitted his objection once again by writing. However, the official respondents are keen in granting license to the 5th respondent, since the petitioner complaints are pending against them regarding the



petitioner is before with court, restraining the official respondents from granting quarrying license to the 5th respondent for the properties in survey Nos.15/2D, 15/2F, 15/32, 16/32, 6/4B, 6/5B and 6/1, Pappankulam Village, Nanguneri Taluk.

4. The 5th respondent filed a counter contending inter alia that the Petitioner is not owner of the property, which lies in S. No.16/1, 16/3, 15/2F and 15/2D, as the same was already sold to other parties. The Petitioner claims that his signature has been forged and fabricated to create a Power of Attorney, further 22 acres of land was sold to one Mr. Lawrence vide documents registered as 9532/2208 9533/2208 and before the Nanguneri Sub Registrar. A complaint was made by the Petitioner and an FIR was registered to that effect in Crime No.45 of 2009, before District Crime Branch, Tirunelveli. Further the Charge Sheet was filed in the above mentioned Complaint in C.C. No.1411/2019, on the file of the Learned Judicial Magistrate, ALGSC, Tirunelveli. The Petitioner has cunningly and conveniently suppressed before this Court that the said C.C. No.1411/2019 has been challenged before this Court in CrI.O.P.(MD)No.1557 of 2020 and that this Court granted an order of interim stay. And the case is still pending.

5. The learned counsel appearing for the 5th Respondent would submit that is that the Petitioner has not approached this Court with clean hands. The Petitioner has filed the present Petition with malicious intention of achieving his goals through crooked method. The Petitioner has clearly stated in his Complaint in C.C. No.1411/2019 before the Police authority that he has signed the Power of Attorney and the Power of Attorney was taken by the Power holder and the Sale Deed was executed and this Petitioner's grievance in the said complaint is that the Sale consideration was not given to him by the Power holder. This was the statement of the Petitioner herein made before the Police authority and Charge Sheet was filed, but the Petitioner approached this Court, claiming that his signature was forged and documents were fabricated and the present Petition is filed. From the self contra statement of the petitioner it is clear that the Petitioner is knocking the doors of this Court through the present petition with ulterior motive of achieving his illegal benefits.

6. The learned counsel for the 5th respondent would further submit that the property, which belongs to the Petitioner was transferred in the name of one Lawrence in 2009 itself. Further the Revenue records including the patta of the said property was transferred in favour of the said Lawrence. After enjoying the said property for around 10 years, the said Lawrence sold the said property to one Mr. Premsingh Arputham Koildurai, vide sale deed No.643/2018, on the file of Sub Registrar,



Nanguneri. Further the said property was transferred in favour of the 5th respondent through registered Document No.1056/2018. In the continuance of the same, Revenue records were transferred in the name of one Koildurai and subsequently, in favour of the petitioner. The Petitioner is creating all kind of hindrances to the 5th respondent from enjoying the properties. The Petitioner had approached the District Registrar, Tirunelveli and pleaded to nullify the Sale Deed made by the said Lawrence to the husband of the 5th Respondent, which was rejected vide order dated 24.10.2019.

7. It is his further contention that the distance between the place between the quarry and the partly constructed room would be around 150 metres. The Petitioner herein making a false allegation to mislead this Court. Since the reports of the Revenue Officials and District administration based on due enquiry and spot visit, the attempt made by the Petitioner in the present Petition is completely frivolous and misleading. The same would not be sustained in the eye of law and fact and restraining order sought by the Petitioner is not allowable as the Petitioner is not even clear about the survey numbers of the property. In view of the forgoing reasons, the petitioner has not made out any prima facie case for the relief. Therefore, the learned counsel for the 5th respondent prays for dismissal of the Writ Petition.

8. The learned Government Advocate appearing for the official respondent would submit that the subject matter is pending before the District Collector and the District Collector has to take a final call in the present issue and therefore, the District Collector may be directed to pass final orders.

9. Considering the facts and circumstances of the case, the District Collector, Tirunelveli District, is directed to take a final call in the subject matter in issue with regard to the grant of quarrying license for the properties in survey numbers in 15/2D, 15/2F, 16/32, 6/4B, 6/5B and 6/1, Pappankulam Village, Nanguneri Taluk, after hearing the petitioner, the 5th respondent and all other aggrieved parties, if any, within a 12 weeks from the date of receipt of a copy of this order. With the above directions, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

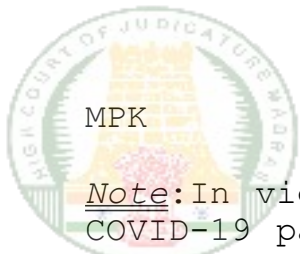
Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



MPK

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The District Collector,
Tirunelveli District.
- 2.The Revenue Divisional Officer,
Cheranmadevi
Tirunelveli District.
- 3.The Assistant Director
Mines,
Tirunelveli.
- 4.The Tahsildar,
Nanguneri Taluk,
Tirunelveli District.

+1 CC to M/s.SPL GP (SR-22690[F] dated 15/07/2021)

W.P (MD) No.13627 of 2020
14.07.2021

CM(CO)
KB(30.07.2021) 5P 6C