



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2021

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.14497 of 2021

and

W.M.P. (MD)No.11427 of 2021

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S.Senthil Kumar

...Petitioner

-Vs-

1.The District Collector,
Office of District Collectorate,
Karur District.

2.The Assistant Director,
Geology and Mining Department,
Karur.

3.The Tahsildar,
Pugalur, Karur District

4.Balachandran
Prorietor of Vel Blue Metals,
Kalipalayam, Pugalur Taluk,
Karur District.

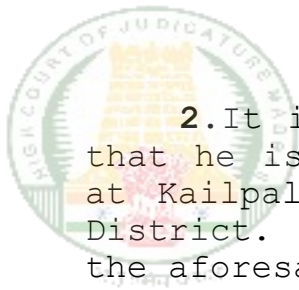
...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 to take necessary action against the fourth respondent's illegal quarry operation carrying out in SF No.484 and 485 situated at Kalipalayam, K.Paramathi Revenue Village, Pugalur Taluk, Karur District by considering the petitioner's representation dated 29.07.2021 within a time frame fixed by this Court.

For Petitioner : Mr.J.Senthil Kumaraiah
For Respondent : Mr.D.Ghandiraj
Government Advocate

ORDER

The prayer sought in this Writ Petition is for a Writ of Mandamus, directing the respondents 1 to 3 to take necessary action against the fourth respondent's illegal quarry operation carrying out in SF No.484 and 485 situated at Kalipalayam, K.Paramathi Revenue Village, Pugalur Taluk, Karur District by considering the petitioner's representation dated 29.07.2021 within a time frame fixed by this Court.



2.It is the case of the petitioner that the petitioner claimed that he is an agriculturist having agricultural land at S.No.171/3 at Kailpalayam, K.Paramathi Revenue Village, Pugalur Taluk, Karur District. He claims to have been cultivating drumstick farming in the aforesaid agricultural land for several years.

3.While so, the adjacent land owner, one Nallasamy, who is having land adjacent to the petitioner in S.No.485, seems to have obtained licence to operate for quarrying the small sized stone in his land for the period from 22.05.2000 to 21.05.2005. Thereafter, one Moon Blue Metals Company seems to have obtained licence to operate for quarrying the small sized stone in the aforesaid land for the period from 29.07.2005 to 28.07.2010. Thereafter, again, the said Nallasamy obtained license for the period from 29.11.2016 to 28.11.2021 in S.Nos.484 and 485. In the meanwhile, the fourth respondent purchased the said land in the year 2018. Thereafter, the licence granted in the name of Nallasamy seems to have been cancelled.

4.Thereafter, according to the petitioner, the fourth respondent has continued quarrying operation illegally without obtaining any valid permit or licence. According to the petitioner, the fourth respondent in fact submitted an application before the State Level Environmental Impact Assessment Committee (SEIAC) for seeking environmental clearance. According to him, no such clearance was given by SEIAC.

5.Despite this position, according to the petitioner, the fourth respondent continued to operate the quarry illegally, without any licence or permission. Therefore, in order to put a fullstop to the alleged illegal quarry on the part of the fourth respondent, to give a direction to the official respondents, that is the respondents 1 to 3 to stop the alleged illegal quarrying of the fourth respondent, it seems that the petitioner has given representation to the respondents on 29.07.2021 and the same since has not been considered by the official respondents, the petitioner has approached this Court by filing the present writ petition with aforesaid prayer.

6.When this matter came up for hearing on the earlier occasion, ie., on 13.08.2021, after hearing the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents, had passed the following order:

"It is the case of the petitioner that, he is having an agricultural land at S.No.171/3 at Kailpalayam, K.Paramathi Revenue Village, Pugalur Taluk, Karur District, where he claimed to have been doing agricultural activities.

2.It is the further case of the petitioner that, in the adjacent land at S.No.484 & 485,



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Kailpalayam, K.Paramathi Revenue Village, Pugalur Taluk, Karur District, the fourth respondent was initially doing crusher activities and subsequently, he started mining activities by extracting minerals from the land. When this was enquired, it is the case of the petitioner that, it came to light that the fourth respondent, without having any mining licence or lease, is illegally doing mining activities and also, there is no SEIA certificate issued by the State Environmental Authority for running a crusher unit and other allied units of the fourth respondent. Therefore, the activity being taken by the fourth respondent is illegal, according to the learned counsel for the petitioner. Hence, he had given a representation/complaint on 29.07.2021, to the second and third respondents, to take action against the fourth respondent to ensure that no unlawful quarrying or crusher activities shall be taken place at the premises mentioned therein at the behest of the fourth respondent.

3.It is the further case of the petitioner that in response to said complaint given by the petitioner, dated 29.07.2021, the office of the second respondent has issued a proceedings through letter dated 06.08.2021 and a copy of which addressed to the petitioner stating that, the spot in question had been inspected on 06.08.2021 and it was found no such illegal quarrying activity was taken place at that time. However, insofar as the blue metal crusher unit run by the fourth respondent is concerned, whether the TamilNadu Pollution Control Board consent was obtained or not has to be verified. Without it's consent and unless any licence or lease is given for the fourth respondent, he shall not indulge any quarrying or crusher activities. Therefore, in order to ensure the same, the officer concerned in the local area shall have a vigil over the fourth respondent's activities and intimate the same to the second respondent.

4.Though such a stand has been taken by the second respondent in the communication dated 06.08.2021, issued, the ground reality, according to the petitioner, is entirely different, where, the fourth respondent is continuously doing those illegal activities unabatedly and unmindful of



the complaint given by the petitioner as well as the vigil order issued by the second respondent dated 06.08.2021.

5.However, the learned Government Advocate appearing for the official respondents, on instructions would submit that, on 06.08.2021, an inspection has been conducted, pursuant to which only, the said order has been passed by the second respondent. Therefore, there is no illegal mining activity is taken place. Insofar as the blue metal crusher unit run by the fourth respondent is concerned whether consent has been obtained by him or not to be verified. Unless and until he gets consent and lease or licence for doing mining activity, the fourth respondent shall not be permitted to do the mining activities, if any, vigil shall be maintained by 24*7 by the officer concerned. According to the learned Government Advocate, the fourth respondent is not doing any illegal mining activities.

6.Such stand taken by the respondents since has been stoutly denied by the repudiation of the learned counsel appearing for the petitioner, this Court feels that since both the learned counsel made the submission on the instructions given by the respective clients, in order to ascertain the fact which is prevailed as on date in the concerned quarry site or the concerned place, where the alleged illegal quarrying is taken place according to the petitioner, an Advocate Commissioner is to be appointed as an Officer of this Court, who can go to the spot concerned and verify by conducting an inspection in the presence of the second, third and fourth respondents as well as the petitioner and can file a report before this Court.

7.For the aforesaid purpose, this Court appoints Mr.J.Shenbagalingam, Advocate at 54, Law Chamber, High Court Campus, Madurai Bench of Madras High Court, Madurai, Contact No:72999 66006, as an Advocate Commissioner, who shall visit the property in question that is, S.No.484 & 485, Kalipalayam, K.Paramathi Revenue Village, Pugalur Taluk, Karur District and note down the physical feature of the spot concerned including the alleged crusher unit of the fourth respondent and also, after conducting a limited enquiry, whether any illegal mining activity or quarrying



activity had been taken place at the behest of the fourth respondent in the spot concerned, can also be ascertained by the Advocate Commissioner. Before visiting the property concerned, the Advocate Commissioner shall issue notice to the second, third and fourth respondents as well as the petitioner and in the presence of them or their representatives, inspection can be conducted. Accordingly, a report shall be filed with field map or rough sketch before this Court, within a period of two weeks from the date of receipt of the warrant from this Court in this regard.

8.The initial remuneration of the Advocate Commissioner shall be fixed at Rs.50,000/- [Rupees Fifty Thousand only], which shall be paid by the petitioner immediately on receipt of the warrant, and on such payment, the Advocate Commissioner shall proceed to conduct an inspection and file a report as indicated above, within the timeframe.

9.Post this matter for filing Advocate Commissioner's report on 02.09.2021."

7.Accordingly, one Mr.J.Shenbagalingam was appointed as Advocate Commissioner to verify the facts and to file a report with sketch. Thereafter, the matter is today coming up for further hearing. However, Mr.J.Shenbagalingam, Advocate Commissioner has submitted that, though notice had been given to the learned counsel for the petitioner as well as other side to have an inspection on the last Saturday, ie., on 31.08.2021, the learned counsel for the petitioner contacted him and stated that the petitioner being an agriculturist is not able to mobilise the Advocate's initial remuneration fixed by this Court and therefore he is not in fact in a position to pay the remuneration and therefore, the Advocate Commissioner could not execute his warrant issued by this Court.

8.In response to the same, the learned counsel for the petitioner having endorsed the said statement of the Advocate Commissioner would further add that, in view of the financial position, the petitioner is not able to mobilise even the Advocate Commissioner's fee. Therefore, the learned counsel for the petitioner would submit that if at all this Court is satisfied on the basis of the report or instructions received by the learned Government Advocate from the official respondent on 06.08.2021, recording the same, this writ petition can be disposed, he contended.



9.I have considered the said submission made by the learned counsel for the petitioner as well the Advocate Commissioner.

10.In this context, the learned Government Advocate also has submitted that on 06.08.2021 itself, instructions were received from the official respondents, according to which, an inspection had been conducted, pursuant to which only, the said order had been passed by the second respondent. Therefore, no illegal mining activity is taken place. He has also submitted that insofar as the Moon Blue Metals Company run by the fourth respondent is concerned, whether consent has been obtained by him or not has to be verified. Unless and until he gets consent for doing mining activity, the fourth respondent shall not be permitted to do the mining activities, if any, vigil shall be maintained by 24x7 by the officer concerned, he contended. In fact, the very same information has been recorded by this Court in para 5 of the earlier order dated 13.08.2021 and therefore, the same stand is now being reiterated by the learned Government Advocate.

11.In view of the said stand taken by the learned Government Advocate on behalf of the official respondents, where if at all the fourth respondent had not obtained any licence for continuing any mining or running the crusher unit with necessary permission from the SEIAA officer concerned and other authorities, that would be verified in this regard and strict vigil would be maintained by the respondents to ensure that no illegal mining activity or crusher activity would be taken place in the spot concerned.

12.When that being the position, this Court feels that no further orders at this juncture can be made giving any further direction to the officials to stop the illegal mining activity or crusher activity allegedly undertaken by the fourth respondent and moreover in order to ascertain whether any illegal activity as alleged by the petitioner on the part of the fourth respondent is being undertaken or not it cannot be ascertained, in view of the failure in sending the Advocate Commissioner to have an inspection and to file a report and therefore, this Court, by having taken into account the stand taken by the official respondents as projected by the learned Government Advocate, is inclined to dispose of the writ petition with the observation that if any illegal mining activity or crushing activity is being taken place in the spot concerned either by the fourth respondent or any other party, the same can be monitored and vigil shall be maintained by the official respondents and the necessary remedial action under law can be taken.

13.It is to be mentioned that though learned Advocate Commissioner was not given any initial remuneration, he has made sincere efforts to execute the warrant. Therefore, his sincerity is taken on record.



14.With these observations, this Writ Petition is disposed of.
No costs. Consequently, the connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (AD-I)

/ /2021

Sub Assistant Registrar(CS)

pnm/sm

To

1.The District Collector,
Office of District Collectorate,
Karur District.

2.The Assistant Director,
Geology and Mining Department,
Karur.

3.The Tahsildar,
Pugalur, Karur District.

+1 CC to M/s.GP (SR-28071[F] dated 03/09/2021)

Order made in

W.P. (MD)No.14497 of 2021

Dated:

02.09.2021

TP (CO)

GC/JGB(16.11.2021) 7P 5C