



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.08.2021**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.20034 of 2020

and

W.M.P. (MD)Nos.16680 of 2020 and 5167 of 2021

WEB COPY

S.A.Murali

...Petitioner

-Vs-

- 1.The Principal Secretary to Government,
Industries Department, cum
The Chairman of Tamil Nadu Cements
Corporation Limited,
Secretariat, Chennai-9.
- 2.The District Collector,
Tenkasi, Tenkasi District.
- 3.The Assistant Director of
Geology and Mining,
Tenkasi District at Tirunelveli.
- 4.The Revenue Divisional Officer,
Sankarankovil, Tenkasi District.
- 5.The Revenue Divisional Officer,
Tenkasi, Tenkasi District.
- 6.The Block Development Officer,
(Village Panchayat)
Vasudevanallur Panchayat Union,
Vasudevanallur, Tenkasi District.
- 7.The Deputy Director of Town and Country Planning,
Tirunelveli Region, Xavier Colony,
South Bye-pass Road,
Tirunelveli-627 005.
- 8.The Assistant Engineer,
(Distribution),
Tamil Nadu Generation and Distribution Corporation
Limited, Perumalpatti,
Sankarankovil, Tenkasi District.

9.F.Louis Francis

...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to

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8 to take action to restrain the 9th respondent or any other men claiming title to the land in S.No.1157/1, Thenmalai Part 1 Village, Sivagiri Taluk, Tenkasi District from constructing any super structure without obtaining building plan approval.

For Petitioner : Mr.R.J.Karthick
For Respondents : Mr.D.Gandhiraj
Government Advocate
(for R1 to R5, R7 & R8)
Mr.P.Thilakkumar
Government Advocate (for R6)
Mr.F.X.Eugene (for R9)

ORDER

The prayer sought for in this writ petition is for a Writ of Mandamus, directing the respondents 1 to 8 to take action to restrain the 9th respondent or any other men claiming title to the land in S.No.1157/1, Thenmalai Part 1 Village, Sivagiri Taluk, Tenkasi District from constructing any super structure without obtaining building plan approval.

2.It is the case of the petitioner that the petitioner is doing limestone mining operation in S.F.No.24/1F. 29/2B, 29/2F, 34/1 to 13 measuring 4.09.5 hectares in Pandhapuli Village, Sankarankovil Taluk, Tenkasi District and the Government, by G.O.(3D)No.131, Industries (MMD.2) Department, dated 26.12.2005, executed a lease deed on 27.02.2006 in favour of the petitioner for twenty (20) years. Therefore, according to the petitioner, based on the lease, which is still in force, he is doing mining activities.

3.In this context, it is the grievance of the petitioner that, the ninth respondent is having land adjacent to the quarry site at S.No.1157/1, Thenmalai Part 1 Village, Sivagiri Taluk, Tenkasi District, where he seems to have approached the sixth respondent for getting permission to construct a building and if any such permission is granted by the sixth respondent, the planning authority, for construction of the building to the ninth respondent, that will have an impact on the mining operation, which is going on. Therefore, in order to stall the planning authority, from granting planning permission sought for by the ninth respondent, the present writ petition has been filed with the aforesaid prayer.

4.Heard the learned counsel appearing for the petitioner, who would submit that, since the mining operation is going on in the land, adjacent to which the ninth respondent sought for permission to construct building, if any such permission is granted, that would run contra to the relevant provisions of the mining Act and the rules made thereunder, as within the radius, no such activity is being permitted, where the mining operation has already commenced.



Therefore, on that ground, though objection was raised by the petitioner since it has not been considered, the petitioner was triggered to file the present writ petition with the aforesaid prayer. Hence, he seeks indulgence of this Court.

5. Mr. D. Gandhiraj, learned Government Advocate appearing for the official respondents has submitted that, among all the official respondents, only the sixth respondent, Block Development Officer is the concerned authority for considering the request if any to be made by the ninth respondent for getting planning permission to construct a building in the land belongs to the ninth respondent.

6. In this context, the sixth respondent has filed counter affidavit, where the learned Government Advocate relied upon the following:

"4. I humbly submit that adjacent to the mining quarry the Tamil Nadu Cement Corporation Limited is functioning. As such some other quarries functioning in that locality. While this being so, the 9th respondent made application on 18.09.2020 seeking for to grant plan approval for constructing a building with iron roof in the land comprised in Sur. No. 1156/4B & 1157/1 situated at Thenmalai Part-I, Vasudevanallur Panchayat, Tenkasi District. After the receipt of the application, 6th Respondent has raised certain queries vide communication dated 21.09.2020. The following are the queries raised 1. Encumbrance Certificate, 2. FMB Sketch, 3. Approval from Urban planning Department, 4. No objection Certificate from Forest Department and 5. No objection certificate from Geology and Mining Department Whereas the 9th respondent has not submitted the required documents and hence his application is pending consideration.

5. I humbly submit that 6th respondent has not granted any plan approval for construction of a building with iron roof in sur. No. 1156/4B & 1157/1 situated at Thenmalai Part I, Vasudevanallur Panchayat Union, Tenkasi District. If the 9th respondent indulged in any construction without obtaining proper plan approval then it would be distinguished as illegal construction and appropriate action would be taken in accordance with law.

6. I humbly submit that our office hereby reiterate that the 9th respondent was not granted with any plan approval for putting up a construction in the land comprised in



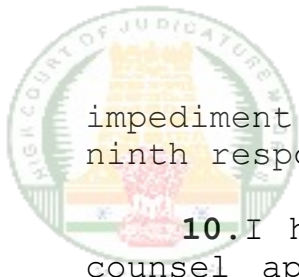
Sur.No.1156/4B & 1157/1 situated at Thenmalai Part I, Vasudevanallur Panchayat Union, Tenkasi District.

7. I humbly submit that to my shock and surprise the Secretary of Thenmalai Village Panchayat one S.Muniasamy has forged my signature and issued plan approval in favour of the 9th respondent on 29.10.2020 vide A.No.10/2020-2021. After knowing the same detailed enquiry has been conducted where the Secretary has admitted his guilt and hence he was suspended from the service and vide proceeding Na.ka.No.B6/66/2021 dated 05.08.2021 notice was issued to the 9th respondent to demolish the illegal construction made in sur.No.1156/4B & 1157/1 within a period of 30 days failing which appropriate action would be taken."

7.By relying upon these averments made by the sixth respondent, the learned Government Advocate would submit that, the sixth respondent has not granted any such permission to the ninth respondent and in this context, it is alleged in the counter affidavit that, the ninth respondent has managed to get a bogus permission from the Secretary of the Thenmalai Village Panchayat and in this regard, an enquiry has been contemplated. Therefore, no such permission sofar has been granted. That is the stand of the sixth respondent, he contended. Therefore, the learned Government Advocate would further submit that, by recording the aforesaid development, this writ petition can be given quietus.

8.Per contra, the learned counsel appearing for the ninth respondent would submit that, the petitioner is not at all doing mining operation. Therefore, in the guise of doing mining operation, he is stalling the lawful attempt of the respondents to get planning permission for construction of a building in the land of the ninth respondent, for which he is entitled to. In this context, the sixth respondent, in his counter, especially in Paragraph No.7 has projected as if the ninth respondent has obtained a fraudulent permission from the concerned authority by forging the signature of the sixth respondent, with the help of the Secretary to the said Panchayat. In this regard, a notice had also been sent recently by the sixth respondent to the ninth respondent. However, the said proceedings initiated by the sixth respondent against the ninth respondent would be suitably met by ninth respondent.

9.In this context, the learned counsel for the ninth respondent would further submit that, since the ninth respondent is entitled to get planning permission and the same cannot be prevented or thwarted by any such move, as now has been made by the petitioner in the case as if that he is doing mining activities, may not be justifiable. Because, he is not doing any mining activity, there can be no



impediment for the sixth respondent to consider the plea of the ninth respondent to grant such permission, he contended.

10. I have considered all these submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. In this Writ Petition, the simple prayer sought for by the petitioner is only to prevent the concerned authority, that is the sixth respondent from giving planning permission to make construction by the ninth respondent on his land mentioned in the prayer. In this context, a number of official respondents have been arrayed as party respondents. Only the sixth respondent is the proper authority and he has filed counter affidavit, which has been quoted hereinabove, wherein he has taken a clear stand that, no such permission has been given. While that being so, the prayer as sought for by the petitioner has been met already and therefore, this Court feels that this Writ Petition need not be persuaded further and can be disposed of by recording the aforesaid stand taken by the sixth respondent.

12. Insofar as the claim of the ninth respondent that the petitioner's alleged mining activities cannot stand in the way, for his lawful claim for getting planning permission, is concerned, it is open to the ninth respondent to adjudicate the issue in the manner known to law before the sixth respondent or any other planning authority for getting permission to construct the building and in this regard, if any such move is made by the ninth respondent, it can be decided by the concerned authority as per the relevant provisions of the planning law, which covers the area, where the land of the ninth respondent locates.

13. In view of the aforesaid, this Court feels that this Writ Petition can be disposed of by recording the aforesaid developments. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Sm: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.

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+1 CC to M/s.F.X.EUGENE, Advocate (SR-25925[F] dated 11/08/2021)

+1 CC to M/s.SPL GP (SR-26069[F] dated 12/08/2021)

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