



WEB COPY

W.P.(MD).No.20421 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2021

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) .No.20421 of 2021

Vincy

... Petitioner

Vs.

1. The District Collector,
Kanyakumari District,
Nagercoil.
2. The Sub Collector,
Padmanabhapuram,
Kanyakumari District.
3. The Assistant Director,
Geology and Mines Department,
Nagercoil,
Kanyakumari District.
4. The Tahsildar,
Taluk Office,
Vilavancode,
Kanyakumari District.

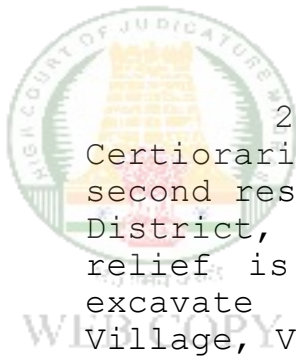
... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining the impugned order in Moo.Mu.A1/3300/2021 dated 04.10.2021 passed by the second respondent and quash the same consequently direct the respondents to grant permission to the petitioner to excavate the sand and rock at Survey No.338/7A situated at Viladurai Village, Vilavancode Taluk, Kanyakumari District.

For Petitioner : Mr.S.Muniyandi
For Respondents : Mr.J.John Rajadurai
Government Advocate

ORDER

Heard Mr.S.Muniyandi, learned counsel for the petitioner and Mr.J.John Rajadurai, learned Government Advocate who appears on behalf of the respondents.



2.This Writ Petition has been filed in the nature of Certiorari Mandamus calling into question the order of the second respondent/the Sub Collector, Padmanabhapuram in Kanyakumari District, dated 04.10.2021 and to quash the same. Consequential relief is also sought seeking permission to the petitioner to excavate the sand and rock at Survey No.338/7A at Viladurai Village, Vilavancode Taluk, Kanyakumari District.

3.In the affidavit filed in support of the Writ Petition, it had been stated that the land in Survey No.338/7A measuring 0.31.50 hectares originally belonged to one Sukumaran. However, he is not in possession. There is a big rock and sand available in the said land. The house of the petitioner is adjacent to the said land. The petitioner apprehends that during the rainy season, the said rock would be a source of danger to her house, since her house is adjacent.

4.Naturally, the rock will have to be removed. It can be removed only when it is broken into smaller pieces. In this connection, the petitioner had given a representation to the first respondent/the District Collector to remove the rock as well as the sand by herself. This representation was forwarded by the first respondent/the District Collector to the second respondent/the Sub Collector. The Sub Collector enquired into the matter and passed the impugned order stating that he has no authority to direct the removal of the rock or the sand.

5.A Status Report had been filed by the second respondent/the Sub Collector, Padmanabhapuram, Kanyakumari District, wherein, he had stated that he had inspected the property in R.S. No.338/4B and 338/7A at Viladurai Village on 02.12.2021 and had made an assessment with respect to excavation of sand and removal of rock at Survey No.338/7A. He also conducted enquiry with the writ petitioner and the fourth respondent/the Tahsildar, Vilavancode, Kanyakumari District, on 06.12.2021. He claimed that he perused the relevant records.

6.As a fact, he stated that the aforementioned rock is situated about 16 metres away in R.S.No.338/7A. The rock is 7 metres in height and it is about 6 metres above the ground level. If he claims that the rock is stable and does not impose any immediate danger, I could very well call upon a further affidavit from the second respondent/the Sub Collector to undertake to compensate anybody who suffers loss either for property or person, if the rock was actually to fall on their head or on their houses.

7.The second respondent/the Sub Collector may not be competent to give any opinion whether the rock is stable and whether it poses danger or does not poses danger. It is the interest of the general public that if the rock is to be removed, the authorities should take necessary steps to remove the rock or



they can permit the petitioner to remove. She has come forward to remove the same. Not passing any order or not taking any decision in this regard would only cause a continuous danger to residents like the petitioner herein. He had finally stated that after the inspection, he had sent a detailed report to the District Collector and the District Collector alone is the competent authority to decide on this aspect.

8.I must express the concern of the Court at the callousness of the both first and second respondents. Either one of them should take up the responsibility of removing the rock if it is to be a danger to the neighbouring house and to the residents of the neighbourhood. Shifting the onus from the office of the District Collector to the Office of the Sub Collector and making a field visit by the second respondent would not be of any help to the writ petitioner. The Court expects that an order to be passed either coming forward to remove the rock or permitting the petitioner or any other individual to remove the rock. The Status Report of the second respondent is rejected as being totally unhelpful.

9.A direction is given to the first respondent/the District Collector to take immediate steps either with his officials or permit the petitioner to remove the rock. If the District Collector takes a decision to remove the rock following proper procedure, it must be done so within a period of twelve (12) weeks from the date of receipt of a copy of this order. If the District Collector were to give necessary permission to the petitioner to remove the rock, again such permission is to be granted within a period of 12 weeks from the date of receipt of a copy of this order. Either way, an order has to be passed by the District Collector. A Mandamus issued in the aforesaid terms.

10.With the above observations, this Writ Petition is allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

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 services centre/lin/its services

<https://hcservicescentre.gov.in/hcservices/>



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