



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P (MD)No.22521 of 2019

and

WMP (MD)No.19307 of 2019

K.Sonai

... Petitioner

Vs.

1.The Principal Secretary,
Revenue Department,
St.George Fort, Chennai.

2.The District Collector,
Madurai District, Madurai.

3.The District Revenue Officer,
Madurai Collectorate,
Madurai.

4.The Additional Director,
Geology and Mining Department,
Madurai Collectorate, Madurai.

5.The Tahshildhar,
Vadipatty Taluk, Vadipatti,
Madurai.

6.P.Prabhu

... Respondents

[R-6 impleaded vide Court Order dated 06.02.2020 in WMP (MD)No.21699 of 2019 in WP(MD)No.22521 of 2019, dated 06.02.2020]

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus directing the second respondent to consider the representations of the petitioner dated 30.05.2019 and 14.09.2019 and subsequently, direct the respondents not to auction for quarrying the land in S.No.63, Koovan karadu, Kulasekarankottai Village, Vadipatty Taluk, Madurai District.

For Petitioner	: Mr.R.Ramasamy
For Respondents	: Mr.Veerakathiravan, Additional Advocate General, assist by Mr.P.Tilak kumar, G.P for R1 to R5. : Mr. B.Vijay karthikeyan, for R6.



ORDER

(Order of this Court was made by **K.MURALI SHANKAR, J.**)

The petitioner has filed the above Writ Petition as Public Interest Litigation, seeking writ of mandamus, directing the second respondent to consider the petitioner's representations dated 30.05.2019 and 14.09.2019 and direct the respondents not to auction for quarrying the land in S.No.63, Koovan Karadu, Kulasekarankottai Village, Vadipatty Taluk, Madurai District.

2.The petitioner has canvassed the following reasons/grounds for stopping the proposed auction for quarrying the land in S.No.63, Koovan Karadu, Kulasekarankottai Village, Vadipatty Taluk, in the affidavit filed in support of the writ petition ;

(i) Nearly 150 Acres of cultivatable lands situated nearby the quarries were affected and would continue to be affected;

(ii) The quarrying activities affected/affects the groundwater level;

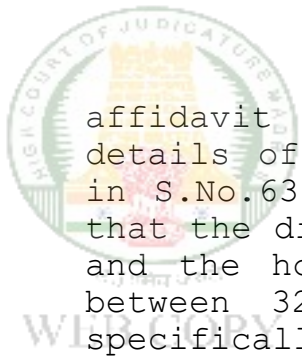
(iii) The Government formed SC/ST colony in S.No.51/1, 51/1A, 52/1B at Kulasekaran Kottai Village by granting patta to the people. Some of them constructed houses and some of them are planning to make constructions. Due to quarrying activities and the resultant stone throwing, affected the people living there and therefore, they were forced to vacate from that place. This caused the non-availability of labourers for the agricultural work.

(iv) Since the Koovankaradu quarry is situated less than a kilometer from the Sirumalai forest, the forest wealth and wild life will be affected.

3.It is pertinent to mention that the petitioner has taken a new ground/stand, which was not at all pleaded specifically in the affidavit filed in support of the writ petition, that the subject quarry is situated within the distance of 300 Meters from the houses at SC/ST colony, which is very much against the provision of Metalliferous Mines Regulation Act.

4.It is not in dispute that since auction notice has already been issued, this Court has permitted the respondents to proceed with the auction, but granted interim order that confirmation should not be done.

5.In view of the order passed by this Court dated 30.06.2021, the fifth respondent has measured the distance between the houses and the existing quarries in the patta as well the proamboke lands and submitted a report dated 06.07.2021 and on the basis of the said report, the second respondent has filed the additional counter

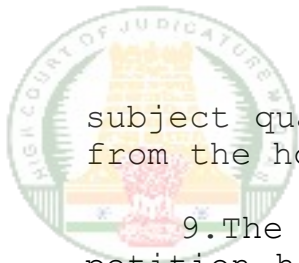


affidavit dated 15.07.2021, whereunder they have furnished the details of radial distance between the Government proamboke quarry in S.No.63 and the nearby houses in tabular format. It is evident that the distance between the Government proamboke quarry at S.No.63 and the houses situated in other survey numbers was shown to be between 320 meters and 400 meters. The second respondent has specifically stated in his additional affidavit that no habitations are situated within the radial distance of 300 meters from the proposed area brought out for tender cum auction in S.No.63 (Part -I) at Kulasekarankottai Village.

6.When the matter was taken up for hearing on 26.08.2021 Mr.Veerakathiravan, learned Additional Advocate General appearing for the official respondents would submit that the distance between the quarry and the houses is more than 300 meters and there is absolutely no violation of the Rules. But on the other hand, Mr.R.Ramasamy, learned counsel appearing for the petitioner would submit that the distance between the quarry and the houses in SC/ST colony is less than 300 meters and that therefore, the distance should be measured to find out the truth. Since the learned counsel for the petitioner was vehemently reiterating his contention, the learned Additional Advocate General would submit that due to the interim order passed, the Government has already suffered huge loss and that the second respondent/District Collector himself has filed the counter affidavit narrating the measurements taken by the fifth respondent and the report given by him with respect to the distance between the subject quarry and the houses. Hence, this Court expressed that in the event of Tahsildar and the Surveyor measuring the distance between the quarry and the houses and finding the distance between the two, more than 300 meters, whether the petitioner is willing to pay the cost of Rs.10,00,000/- (Rupees Ten Lakhs Only). The learned counsel for the petitioner sought time till 31.08.2021 for getting instructions from the petitioner with regard to the same.

7.When the matter was taken up on 31.08.2021, the learned counsel for the petitioner would submit that the petitioner is not ready to pay the cost. On the other hand, he would submit that an Advocate Commissioner can be appointed to measure the distance and find out the truth.

8.As rightly contended by the learned Additional Advocate General, through the appointment of Advocate Commissioner, the petitioner is attempting to protract the matter and thereby getting the interim order extended. As already pointed out, the official respondents have specifically shown that no houses are situated within the radial distance of 300 meters from the subject quarry. But the petitioner has not produced any iota of evidence to show that the houses at SC/ST colony are situated within the distance of 300 meters from the subject quarry. The petitioner has neither



subject quarry is situated within the radial distance of 300 meters from the houses situated at SC/ST colony.

9.The petitioner in the affidavit filed in support of the writ petition has specifically stated in paragraph No.3 that the subject quarry license got expired in 2011, but the earlier auctioneer continued the quarry activities illegally and that therefore, one A.Kondavellai has filed the writ petition in WP.No.5549 of 2011 for stopping the illegal quarrying and the said petition was disposed of by this Court, directing the second respondent to consider the representation of the petitioner therein.

10.It is the specific contention of the second respondent that S.No.63 of Kulasekarankottai was previously leased out for rough stone quarrying, that S.No.63(Part-I) was given in lease to one Gurusamy for rough stone quarrying for the period between 01.03.2011 and 29.02.2016, that the land in S.No.63 (Part-II) was leased out as early as in the year 2004 to one Venkatraman, initially for five years from 16.09.2004 to 15.09.2009 and subsequently, for the period between 02.12.2009 and 01.12.2014.

11.Admittedly, the petitioner after giving two representations dated 30.05.2019 and 14.09.2019 has approached this Court only on 22.10.2019. As already pointed out, even according to the petitioner, the quarry license with respect to S.No.63 got expired in 2011 and thereby, he admitted that the quarry was in existence even before 2011.

12.It is settled law that a party invoking writ jurisdiction has to approach this Court without any delay. The Honourable Supreme Court in **Chairman/Managing Director, U.P Power Corporation Ltd. & others Vs. Ram Gopal [Civil Appeal No.852 of 2020]**, dated 30.01.2020, has observed that unexplained delays and inordinate laches would always be relevant in writ actions. The relevant paragraph is extracted hereunder :

"16.Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protest those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can



be enforced. In **SS Balu v. State of Kerala**, reported in (2009) 2 SCC 479, this Court observed thus :

"17.It is also well-settled principle of law that "delay defeats equity". ... It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment."

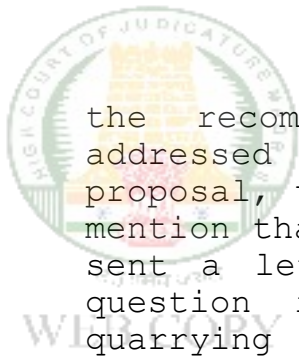
13.In the case on hand, as already pointed out, Survey No. 63 of Kulasekarankottai village was leased out for rough stone quarry from 2004 onwards. Considering the above, this Court has no hesitation to hold that the petition suffers from inordinate delay and as such the petition is hit by delay and latches.

14.The sixth respondent, who was subsequently impleaded after he became successful bidder in the auction conducted in pursuance of District Gazette (Extra-ordinary) Notification No.14, dated 21.10.2019, has filed the counter affidavit stating that a patta stone quarry is situated in S.No.64/1B, 64/3B, 64/4A, 4B, 4C, 4D and 64/5A, that stone quarry is nearer to the habitation place and that the petitioner has not stated anything about the patta quarry, for the reasons best known to him.

15.The second respondent in his additional counter affidavit has also stated that two rough stone quarry leases are in existence in patta lands, one in S.No.64/1A and 65/6 and the other in S.No.64/1B, 64/3B, 64/4A, 64/4B, 64/4C, 64/4D and 64/5A. As rightly contended by the respondents, the petitioner has nowhere whispered anything about the stone quarries in patta lands nearby to the subject quarry.

16.It is not the case of the petitioner that he had made complaints with regard to the patta stone quarries also. As rightly contended by the respondents, the petitioner has not offered any reason or explanation to single out the subject quarry.

17.It is the further case of the petitioner that the subject quarry is situated within a distance of less than a Kilometer from Sirumalai forest and that therefore, the forest wealth and wildlife will get affected. He would further submit that when the notification of District Collector inviting applications for grant of quarry lease in SF.No.1/1 (Part-I) Paliyankaradu, Ramagoudanpatti Village, Vadipatti Taluk, situated nearby the Kulasekarankottai Village, was challenged before this Court in WP(MD)No.12697 of 2010 and that this Court has passed an order on 29.10.2020 quashing the impugned notification and directed the District Collector to forward



the recommendation of the District Forest Officer, Madurai, addressed to the District Revenue Officer and on receipt of such proposal, the Government shall consider the same. It is pertinent to mention that in the above said case, the District Forest Officer has sent a letter to the District Revenue Officer that the land in question is in continuation of Sirumalai hills and that any quarrying operation would adversely affect ecology and would be hindrance to the wild animals. Admittedly, in the case on hand, Koovankaradu, Kulasekarankottai Village is not shown to be a part or continuation of Sirumalai hills. More over, it is not the case of the petitioner that the Forest Department has raised any objections for leasing out the Koovankaradu for stone quarry. Hence, the above said decision, cannot be applied to the case on hand.

18.The sixth respondent in his counter affidavit has attributed motive for the petitioner to file the above writ petition and according to him, the petitioner has filed the present writ petition in collusion with the stone quarry operator situated in patta land of S.No.64 and that there existed political enmity as the petitioner's wife contested Town Panchayat Chairman Election against the mother of the sixth respondent in the year 2011. The second respondent has also stated that the petitioner with *male fide* and vested intention, has filed the above petition.

19.The learned Additional Advocate General would submit that in the public auction conducted on 06.11.2019, the sixth respondent became the successful bidder for Rs.75,10,000/- as one time lease amount for a period of five years and by filing the above petition in 2019, the petitioner has caused severe loss to the Government Ex-checker and that therefore, heavy costs may be imposed on the petitioner.

20.Whatever it is, the fact remains that the petitioner has suppressed the material facts and approached this Court with unclean hands. Viewing from any angle, the Writ Petition is absolutely devoid of merits and the same is liable to be dismissed.

21.In the result, the Writ Petition is dismissed. No costs.

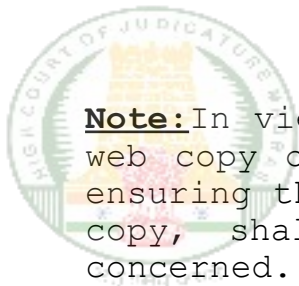
Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)



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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5.The Tahshildhar,
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+1 CC to M/s.S.SANKAR, Advocate (SR-27933[F] dated 02/09/2021)

+1 CC to M/s.GP (SR-27946[F] dated 02/09/2021)

W.P (MD) No.22521 of 2019
31.08.2021

RS (15.09.2021) 7P 8C