



W.P. No.10360 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 14.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

W.P. No.10360 of 2017

1.K.Rajamanickam

2.K.Sasikumar

3.K.Raja

. . . Petitioners

Vs

1.The District Collector
Thiruvannamalai District
Thiruvannamalai

2.The Tahsildhar
Thandarampet Taluk

3.The Village Administrative Officer
Veeranam Village, Thandarampet Taluk
Tiruvannamalai District

4.The General Manager
Tamil Nadu Minerals Limited
TWAD House, No.31, Kamaraj Salai
Chepauk,
Chennai - 600 005

5.The Managing Director
Tamil Nadu Minerals Limited
TWAD House, No.31, Kamaraj Salai
Chepauk,
Chennai - 600 005

. . . Respondents



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PRAYER : Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus, directing the respondents, particularly the respondents 4 and 5 to compensate to the tune of Rs.20,00,000/- towards compensation for illegal excavation of granite stones to an extent of 0.20 cents and also using petitioners' land as a pathway illegally to the extent of 0.10 cents in the land i.e. a portion of property, comprised in Survey No.126/2, situated at Veeranam Village, Thandarampet Taluk, Tiruvannamalai District on the basis of 1st petitioner's representation dated 28.02.2017.

For Petitioners : Mr.R.Thanjan

For Respondents : Mr.B.Vijay, Addl. Govt. Pleader
for R1 to R3
Mrs.A.Srijayanthi for R4 & R5

ORDER

Though the writ petition has been camouflaged in the name of writ of mandamus, the relief itself is for claiming a compensation of Rs.20,00,000/- from the respondents 4 and 5.

2. The case of the petitioners is that they own land to an extent of 3.72 Acres in S. No.126/2 in Veeranama Village, Thandarampet Taluk, whereas, the 5th respondent, who was given a licence for quarrying in adjacent lands, while quarrying in the adjacent lands, the fifth respondent has also quarried in the petitioners' land in an extent of 20 cents, which caused them a loss, to the tune of Rs.20,00,000/-. Therefore, the writ petition has been filed.



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3. Though several vague allegations have been made in the affidavit filed in support of the writ petition, the crux of the writ petition is for the above relief.

4. The first respondent/District Collector has filed a counter affidavit to the effect that the representation of the petitioners was considered and the property has been inspected with the independent body from the Mining Department and found that there was no quarrying done in the petitioners' property. According to the stand of the Collector/first respondent, petitioners' property is a virgin property and no quarrying was done.

5. The fifth respondent has also refuted the contention of the writ petitioners and taken a stand that no quarrying was done in petitioners' property.

6. Learned counsel appearing for the petitioners would submit that this court has earlier appointed an Advocate-Commissioner to inspect the property and the Commissioner has also filed a report. The report indicates that the petitioners' property was quarried and it is according to him, the Commissioner's Report would show that the earth



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mover was used to dig the land and the Commissioner had found broken stones in the property. Therefore, it is clear that quarrying operation was also done in petitioners property by the fifth respondent. It is his submission that the photographs filed in the writ petition shows that there were quarrying operation in the petitioners' property.

7. Mr.B.Vijay, learned Additional Government Pleader appearing for the respondents 1 to 3 would vehemently contend that there are disputed facts and that the fifth respondent has taken a specific stand that there are no quarrying operation done in petitioners' property and that the writ petition itself is in the nature of mandamus claiming a compensation of Rs.20,00,000/-, all the pleadings have to be proved before the concerned civil court and the writ court cannot go into the disputed facts.

8. It is his further contention that the very counter of the first respondent itself clearly indicates that experts from the Mining Department have inspected the property and found that there are no quarrying activities done in the petitioners property and hence his contention is that the writ petition is not maintainable. In support of his submission, he has relied upon a judgment of the Hon'ble Apex Court in ***Roshina T. vs. Abdul Azeez K.T. and others*** reported in **(2019) 2**



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9. I have heard the learned counsel and perused the materials available on record.

10. As rightly pointed out by the learned Additional Government Pleader appearing for respondents 1 to 3 that the writ petition has been filed as a civil suit for claiming compensation. The respondents have disputed the allegation of the petitioners that their lands also quarried by the 5th respondent. It is admitted fact that the 5th respondent was given a quarry permit in Survey Nos.74 (part), 126/1A, 127, 132 (part), 144/1,2, 145/2 of Veeranam Village and whereas the petitioners land is in different survey, namely S. No.126/2. When the petitioners allegations are seriously disputed, this court is of the view that merely on the basis of the report of the Commissioner it cannot arrive at a compensation. Since the Commissioner's report is always subject to proof and also can be can be challenged by either of the parties, when objections and challenges are made to the Commissioner's Report, the Report has to be tested and evidence has to be let in by the Commissioner. Therefore, merely on the basis of the report, writ court cannot arrive at a definite conclusion that there was quarrying activity took place in petitioners' land and what was the nature of the area, how much stones were broken, or whether minerals have been



removed, are all matter of evidence, it has to be pleaded and proved before the civil court and not before the writ court by just filing an affidavit to claim such a huge compensation.

11. The Hon'ble Apex Court in the case of **Roshina T. vs. Abdul Azeez K.T. and others** reported in **(2019) 2 SCC 329**, in paragraph Nos.13 and 14 has held as follows:

"13. These questions, in our view, were pure questions of fact and could be answered one way or the other only by the civil court in a properly constituted civil suit and on the basis of the evidence adduced by the parties but not in a writ petition filed under Article 226 of the Constitution by the High Court.

14. It has been consistently held by this Court that a regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons. The remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant."

12. Considering the above judgment and the issue involved in the writ petition is purely a disputed question of fact, the same has to be agitated only before the competent civil court and even in the event of



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claiming damages, the burden lies on the petitioners to establish it.

Normally, if a party claims damages, the onus is heavily on the party seeking damages and it requires proper pleadings and proof. In such view of the matter, this court is of the view that the writ petition is certainly not maintainable. **In such view of the matter, the writ petition is dismissed. However, there is no order as to costs.**

13. At this stage, the learned counsel appearing for the petitioners would submit that the writ petition was filed in the year 2017 and the petitioners are poor from the rural background, therefore, the periods spent in the writ petition may be excluded for working out their remedy before the appropriate civil court. Considering the nature of the relief sought by the petitioners and also they are from the rural background, the periods spent in this writ petition, may be excluded as per Section 14 of the Limitation Act, while filing a suit, as the petitioners were pursuing their remedy bonafidely before this court. If advised, the writ petitioners may file a suit within a period of four months from today, before the concerned civil court.

14.10.2022

Index : Yes / No
Speaking/non speaking order
Asr



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High Court, Madras



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N. SATHISH KUMAR, J.

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