



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.2195 of 2022

and

W.M.P. (MD) No.1913 of 2022

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Centre for the Educare and Research Charitable Trust,
Rep. by its Managing Trustee,
C.Sree Kumar.

... Petitioner

Vs.

1.The Principal Secretary to Government of Tamil Nadu,
Geology and Mining Department,
Fort St.George,
Chennai - 600 009.

2.The Director of Geology and Mining,
Industrial Estate,
Guindy, Chennai.

3.The District Collector,
Kanyakumari District,
Nagercoil.

4.The District Revenue Officer,
Kanyakumari District,
Nagercoil.

5.The Tahsildhar,
Thiruvattar Taluk,
Thiruvattar,
Kanyakumari District.

6.Jeyakumar

7.Rajakumari

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents 1 to 5 to take appropriate action against the illegal mining and unauthorized functioning of the brick kiln run by the 6th and 7th respondents in Survey No.881/3, 7, 9A, 10 in Thiruvattar Village, Kanyakumari District and thereby prevent the land sliding and soil erosion in the locality by considering the petitioner's representation dated 25.10.2021.



For Petitioner : Mr.N.Mohideen Basha
For Respondents : Mr.P.Thilak Kumar,
Government Pleader for R1 to R5.
Mr.M.Ajmal Khan, Senior Counsel,
For Ajmal Associates for R6 & R7.

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ORDER

Heard the learned counsel for the writ petitioner, the learned Government Pleader for the respondents 1 to 5 and the learned senior counsel for the respondents 6 and 7.

2.The writ petitioner/C.Sree Kumar and the sixth respondent/C.Jeyakumar are brothers. While the writ petitioner is running an educational institution, the sixth respondent is running a brick kiln unit. The allegation of the petitioner is that the activities of the sixth respondent are posing a serious danger to the structural stability of the petitioner's school. Therefore, he has given complaint before the authorities and since the authorities have not taken action, the present writ petition came to be filed.

3.When the matter was taken up for admission on 03.02.2022, the following direction was passed:-

"Mr.N.Satheesh Kumar, learned Additional Government Pleader takes notice of the respondents 1 to 5.

Issue notice to the sixth and seventh respondents through Court and also privately returnable by 04.03.2022.

The fifth respondent/the Tahsildar, may make a field visit, after issuing notice to the petitioner and also to the sixth and seventh respondents, to examine the location where the mining is being conducted and file a report before this Court.

Call the matter again on 04.03.2022."

4.Pursuant to the said direction, the Tahsildhar conducted a field visit and later issued enquiry notice to the sixth respondent. The said enquiry notice was put to challenge by the sixth respondent in W.P.(MD)No.5250 of 2022 and an interim order was also granted. The said writ petition was dismissed by me as not maintainable today ie., 09.06.2022.

5.The learned Senior Counsel for the respondents 6 and 7 questioned the maintainability of this writ petition. According to him, if the petitioner is having a grievance, he has to necessarily move the National Green Tribunal. He also would state that the petitioner had already filed O.S.No.89 of 2021 on the file of the Sub Court, Padmanabhapuram. According to the learned Senior Counsel, the petitioner has to necessarily pursue his remedy in the civil suit and he cannot maintain a parallel writ petition on the same caution of action. He also stated that the very filing of the



writ petition is vitiated by malice.

6.The learned Government Pleader produced before me a copy of the report preferred by the Tahsildhar. I went through the contents of the report and also the materials enclosed in the typed sent of papers. It is seen that deep pits have been dug for mining activities. It is also seen that the license granted to the sixth respondent expired in the year 2010 itself. The learned Senior Counsel would of course state that an application for renewal has been submitted and orders are to be passed thereon.

7.The petitioner had placed *prima facie* materials that obviously require action to be taken by the concerned authorities. The report of the Tahsildhar also contains the some adverse finding against the sixth respondent. If any further observation is made in the writ petition, it may definitely prejudice the sixth respondent. In matters concerning environment, this Court should be guided by larger considerations and not by technical considerations. The objection raised by the learned Senior Counsel for the sixth and seventh respondents are purely technical in nature. The third respondent will look into the complaint of the petitioner and take appropriate action in accordance with law. The third respondent is obviously obliged put the sixth respondent on notice and adhere to the principles of natural justice.

8.At this stage, the learned Senior Counsel drew my attention to the order dated 20.05.2022 made in W.P.(MD)No.10002 of 2022, a learned Judge of this Court had passed the following order in the said writ petition:-

"6.For the foregoing reasons, this Court directs the first respondent to pass final orders on the petitioner's application, dated 08.03.2021, followed by his representation, dated 08.05.2022, seeking for renewal of his mining permission/licence in respect of the petitioner's patta land in R.S.No.881/3, Thiruvattar Village, Thiruvattar Taluk, Kanniyakumari District, within a period of twelve weeks from the date of receipt of a copy of this order, after affording a fair hearing to the petitioner and the Centre for Educare and Research Charitable Trust representing by its Managing Trustee Mr.Sreekumar and any other necessary party, whom the first respondent deems fit to enquire."

9.It is needless to say that since the said order dated 20.05.2022 was passed after hearing the learned counsel for the writ petitioner herein, the said order has to be necessarily complied with and the outcome of this writ petition will not have a bearing thereon.



10.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-I)

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/ /2022

Sub Assistant Registrar(CS)

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To:

1.The Principal Secretary to Government of Tamil Nadu,
Geology and Mining Department,
Fort St.George,
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2.The Director of Geology and Mining,
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Guindy, Chennai.

3.The District Collector,
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4.The District Revenue Officer,
Kanyakumari District,
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5.The Tahsildhar,
Thiruvattar Taluk,
Thiruvattar,
Kanyakumari District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-25014[F] dated
10/06/2022)

+1 CC to M/s.SPL.GP (SR-25158[F] dated 10/06/2022)

W.P (MD)No.2195 of 2022
09.06.2022

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