



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 30.08.2022

Pronounced on : 13.06.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.13822, 13823 & 13824 of 2022

V.Nagendran	... Petitioner in WP(MD)No.13822 of 2022
M.Baskaran	... Petitioner in WP(MD)No.13823 of 2022
K.Sivan	... Petitioner in WP(MD)No.13824 of 2022

v.

- 1.The District Collector, Dindigul District.
- 2.The Assistant Director (Geology & Mining),
Dindigul, Dindigul District.
- 3.The Revenue Divisional Officer, Dindigul.
- 4.The Tahsildar, Nilakottai, Dindigul District.
- 5.The Block Development Officer,
Batlagundu, Dindigul District.
- 6.The President,
Mallanampatti Village Panchayat,
Nilakottai Taluk, Dindigul District.
- 7.The Chairman cum Managing Director,
TANGEDCO, 6th Floor,
TANTRANSCO Building,
No.144, Annasalai, Chennai – 600 002.



8. The Chief Electrical Inspector,
Electrical Licensing Board,
Thiru. Vi. Ka. Industrial Estate,
Guindy, Chennai – 600 032.

9. The Superintending Engineer,
Non Conventional Energy Sources (NCES),
TANGEDCO, No.102, Dhali Road,
Udumalpet – 642 126.

10. The General Manager,
M/s.F.Robin Power Solutions Private Limited,
Chinnupatti Main Road, Reddiapatti Post,
Nilakkottai Taluk, Dindigul District.

11. The Managing Director,
Palani Vijay Cottspin Private Limited,
203, Lakshmipuram, Palani Town,
Dindigul District – 624 601.

12. The Director,
Divyalakshmi Textiles Private Limited,
Kulasekaranallur Village,
Tiruchulli Road, Aruppukottai,
Virudhunagar District – 626 105.

13. The Managing Director,
Sri Jayajothi and Company Private Limited
70, Alagai Nagar, Rajapalayam Town,
Virudhunagar District - 626 117.

14. The Managing Director,
L.S Mills Limited, 351, Madurai Road,
Allinagaram, Theni Town, Theni District – 625 531.

15. The Director,
The Softex Processing Mills, 135A and R21,
SIPCOT Industrial, Growth Centre,
P.V.Palayam, Perundurai, Erode District – 638 052.



16. The Managing Director,
Akshara Spinning Mills Private Limited,
No.883/1, 2 Pollachi Road, Chinnaputhur Village,
Dharapuram, Tiruppur District.

17. The Managing Director,
R.Robin Polymers Private Limited
No.6/600, Chinnupatti,
Reddiyapatti Post, Batlagundu,
Dindigul District – 624 202.

... Respondents in all cases

(R11 to R17 were impleaded vide court
order dated 14.07.2022)

Prayer in WP(MD)No.13822 of 2022 : 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 9 herein to forthwith remove the Solar Power Plant installed by the respondents Nos.10 to 17 and other unauthorised constructions established by the respondents 10 to 17 which is situated within 500 meters from the government poramboke quarry survey fields in S No.318/2 situated at Mallanampatti Village, Nilakottai Taluk, Dindigul District by complying with the proceedings issued by the second respondent in Na.Ka.No.44/2022 (Mines) dated 31.01.2022 and consequently forbearing the respondents 1 to 9 from permitting any unauthorised constructions whatsoever within the 500 meters from the quarry operation areas.

Prayer in WP(MD)No.13823 of 2022 : 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 9 herein to forthwith remove the Solar Power Plant installed by the respondents Nos.10 to 17 and other unauthorised constructions established by the respondents 10 to 17 which is situated within 500 meters



from the government patta quarry survey fields in S Nos.304/3, 304/4, 304/5, 317/2B, 317/2C1, 317/2C2, 317/2C3, 318/1B2, 318/1C1 and 318/1C2 situated at Mallanampatti Village, Nilakottai Taluk, Dindigul District and consequently forbearing the respondents 1 to 9 from permitting any unauthorised constructions whatsoever within the 500 meters from the quarry operation areas.

Prayer in WP(MD)No.13824 of 2022 : 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 9 herein to forthwith remove the Solar Power Plant installed by the respondents Nos.10 to 17 and other unauthorised constructions established by the respondents 10 to 17 which is situated within 500 meters from the government patta quarry survey fields in S No.302/2(Part) situated at Mallanampatti Village, Nilakottai Taluk, Dindigul District and consequently forbearing the respondents 1 to 9 from permitting any unauthorised constructions whatsoever within the 500 meters from the quarry operation areas.

(Prayers were amended vide court order dated 14.07.2022)

in all cases : -

For Petitioners : Mr.M.Ravi

For Respondents : Mr.P.Thilakkumar, Government Pleader
for R1 to R4

Mr.V.Om Prakash, Government Advocate
for R5

Mr.S.Deenadhayalan, standing counsel
for R7 to R9

Mr.Ajmal Khan, Senior counsel
for M/s.Ajmal Associates for R10

No appearance for R6, R8, R11, R12,
R13, R14, R15, R16 & R17



COMMON ORDER

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The relief sought for by the petitioners, namely, Thiru.N.Nagendran, M.Baskran and Mr.K.Sivan is one and the same. They want this Court to direct the official respondents to remove the Solar Power plant and other constructions put up by the tenth respondent within 500 meters of the petition mentioned quarry sites. The sites mentioned in WP(MD)Nos.13822 of 2022 and WP(MD)No.13824 of 2022 are comprised in government poramboke lands whereas the quarry sites mentioned in WP(MD)No.13823 (M.Baskaran) are comprised in Patta lands. While quarry license of Nagendran, petitioner in WP(MD)No.13822 of 2022 has expired on 01.09.2022, the other applicants have applied for license and they are at the various stages of considerations. The apprehension of the petitioners is that since the tenth respondent had established the solar power plant and the same is located within five hundred meters of the quarry sites, their applications for grant/renewal would not be considered. That led to the filing of these writ petitions.

2.The learned counsel for the petitioners reiterated all the contentions set out in the affidavits filed in support of the writ petitions and called upon this Court to grant relief as prayed for.



3. The prime contestant is the tenth respondent. The tenth respondent had put up the solar power plant and other constructions. The learned Senior Counsel took me through the stand taken in their counter affidavit. His contention is that the solar power plant was commissioned as early as on 24.03.2020. It is generating 70 MW of electricity and supplying to TANGEDCO. According to him, while the quarries were in operation in some of the survey numbers mentioned by the petitioners, they had been abandoned quite some time back and there was no impediment for the tenth respondent to establish the power plant in the year 2020. Thus, as on date, in view of the installations made by the tenth respondent, if any application for quarry license is to be considered, it would have to take into account the existence of the solar power plant. His further contention is that even if there is conflict between the fundamental rights of the petitioners to conduct business and that of the tenth respondent, this Court should uphold that right which advances public good and subserves larger public interest. Since the activities of the tenth respondent generate green energy whereas the petitioners are engaged in polluting activities, this Court ought to lean in favour of the tenth respondent. He relied on the decisions of the Hon'ble Supreme Court reported in (2017) 4 SCC 397 (Asha Ranjan v. State of Bihar) and (1998) 8 SCC 296 (Mr.X vs. Hospital 'Z'). He would also point out that a sum of Rs.400 crores had already



been invested in the project and an order for removal of the power plant would not be in public interest. He pressed for dismissal of these writ petitions. The stand taken by the official respondents is also in favour of the tenth respondent.

4.I carefully considered the rival contentions and went through the materials on record. The survey numbers mentioned in WP(MD)No.13823 of 2022 were the subject matter of WP(MD)No.558 of 2015. The following prayer was sought in the said writ petition :

“This writ petition has been filed by M.Subramanian seeking Writ of Mandamus forbearing the respondents no.1, 3 and 7 from granting any planning approval of building permission for any construction / development of any building structure or hut within 300 meters from the quarrying site of the petitioner in Survey Nos.304/5, 305/1C, 317/2C3, 318/1C2, 319/2B, 318/2, 319/3, 302/2 and 320/1 of Mallanampatti Village, Nilakottai Taluk and consequently direct the respondents to prevent any illegal construction being made within the said safety distant in light of Rule 36(1-A) of the Tamil Nadu Minor Mineral Concession Rules, 1959 and the proceedings of the second respondent in Na.Ka.No.185/2013 (Kanimam) dated 25.04.2013.”

The writ petition was allowed in the following terms :

“5.The 2nd respondent/District Collector, Dindigul District, also on receipt of the objection from the petitioner issued a direction to the planning authorities in his proceedings dated 25.04.2013 not



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to accord any direction or approval for any such layout or construction within 300 meters of quarrying site as mandated under Rule 36(1-A) (c) of the Tamil Nadu Minor Mineral Concession Rules, 1959 for the reason that the petitioner has been quarrying in the aforementioned survey lands. Similarly, the Block Development Officer, Batlagundu, by his proceedings dated 09.05.2014 directed the President of Malanampatti Village, 7th respondent herein to issue a notification to the public that the lands within 300 mts from the quarrying site ought not to be plotted out and no construction can be carried out. Besides, the Tahsildar of Nilakottai Taluk, 6th respondent herein in his proceedings dated 22.05.2014 taking note of the fact that few real estate business persons are attempting to sell the land within 300 mts from the quarrying site contrary to the rules has intimated the Sub Registrar, Nilakottai, in his proceedings dated 22.05.2014 that no property can be conveyed in respect of the lands in question without prior permission from the Town and Country Planning. In view of the aforementioned proceedings issued by the District Collector, Block Development Officer, Batlagundu, Tahsildar, Nilakottai Taluk, this Court has no hesitation to forbear the respondent 1, 3 and 7 from granting planning approval or building permission for any construction or development of any building structure or hut within 300 meters from the quarrying site of the petitioner's land in Survey Nos.304/5, 305/1C, 317/2C3, 318/1C2, 319/2B, 318/2, 319/3, 302/2 and 320/1 situated at Mallanampatti Village, Nilakottai Taluk.”



It is relevant to note here that relief was sought in respect of patta lands. As regards the conducting of rough stone quarry in S.No.302/2, Mallanampatti Village, one Mary had raised objections. She filed WP(MD)No.11527 of 2020. Vide order dated 14.09.2020, I had directed the District Collector, Dindigul to hear her before granting license. However, her objections were overruled vide proceedings dated 24.05.2021. Subsequently, proceedings were issued in favour of Thiru.K.Sivan, petitioner in WP(MD)No.13824 of 2022. He was declared as the successful tenderer in the tender-cum-auction proceedings. It was put to challenge in WP(MD)No.2495 of 2021. The said writ petition was dismissed by a learned Judge of this Court in the following terms :

“13.As per Rule 36(1-A) of the Tamil Nadu Minor Mineral Concession Rules, 1959, no stone quarrying lease can be granted within 300 metres from any inhabited sites. According to the official respondents, the stone quarrying operation in S.F.No.302/2 of Mallanampatti Village had been carrying on for the past 40 years. It is seen that since some of the owners of the lands situated within 300 metre radius of quarry sites in SF.Nos.304/5, 305/1C, 317/2C3, 318/1C2, 319/2B, 318/2, 319/3, 302/2 and 320/1, at Mallanampatti Village, Nilakottai Taluk, attempted to plot out their lands and to create residential ares in violation of Rule 36 of the above Rules, a quarry lease holder had filed a writ petition before this Court in W.P. (MD).No.558 of 2015 for a direction not to permit any construction within 300 metres radius of the said quarry sites and this Court, by order dated 28.09.2015, has specifically directed the Director of



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Town and Country Planning, Chennai; the Member Secretary, Dindigul Local Planning Authority, Dindigul District and the President of Mallampatti Village, Nilakottai Taluk, not to grant any permission for construction of building or hut within 300 metres of the abovesaid quarry sites.

17.It is needless to say that river sand was the main raw material of the construction industry. Now, quarrying of river sand is banned. The alternative source available to the construction industry is the crusher of stone. It is stated that the rough stone quarry site in S.F.No. 302/2 has been in operation for about 40 years and it was the main source for construction industry in Nilakottai Taluk. Therefore, the public interest at large must be taken into account. At the same time, if any resolution passed by the Panchayat in respect of quarrying of the land within their panchayat and produced, it must be considered by the official respondents and their grievances must be redressed possibly. In this case, it is seen that the resolution of Mallanampatti Panchayat does not relates to quarry site in respect of the land in Survey No.302/2, Mallanampatti Village. Further, according to the report of the Block Development Officer, the villagers have been fighting to stop the above said quarry site for the past 20 years, but the quarry site stated to be in operation for the past 40 years. In view of the above, this Court is not in a position to specifically direct the respondents to consider the resolution of the Panchayat, before taking any decision for leasing out quarry site in Survey No.302/2.”



5. Even a mere look at the materials placed by the petitioners would show that the petition mentioned survey numbers were quarry sites for a very long period. It is the tenth respondent who has chosen to install the solar power plant near them. As already noticed, while one of the petitioners is an existing license holder, the applications submitted by others are pending consideration at various stages. Whether to grant license to the petitioners to conduct quarry in a patta land/poramboke land is a matter that is left to the discretion of the authorities. It is made clear that their applications will not be rejected by citing the installation of the solar power plant put up by the tenth respondent. The tenth respondent having voluntarily established the plant near a known quarry region, cannot now insist that license for conducting quarry operations should not be issued. The distance Rule set out in the statutory rules cannot be applied because the direction given by this Court in WP(MD)No.558 of 2015 is holding the field. A learned Judge of this Court had issued such a direction only for the reason that the quarry operations should not be hampered or prevented in future by citing the fact that residential constructions have come up within the prohibited distance. The solar power plant can be put up in any place. There is no dearth of such places in India. The tenth respondent having voluntarily chosen a site near an existing quarry site cannot now be heard to invoke the distance rule. The petitioners would allege that the solar power plant has been



put up without getting proper permission. If that be so, it is for the authorities to take action. I decline to direct removal of the solar power plant put up by the tenth respondent because the petitioners have no legal right to seek such relief.

6. With this clarification in favour of the petitioners, the writ petitions are disposed of. No costs.

13.06.2023

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To

1. The District Collector, Dindigul District.
2. The Assistant Director (Geology & Mining), Dindigul, Dindigul District.
3. The Revenue Divisional Officer, Dindigul.
4. The Tahsildar, Nilakottai, Dindigul District.
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7. The Chairman cum Managing Director, TANGEDCO, 6th Floor, TANTRANSCO Building, No.144, Annasalai, Chennai – 600 002.
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9. The Superintending Engineer, Non Conventional Energy Sources (NCES), TANGEDCO, No.102, Dhali Road, Udumalpet – 642 126.



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G.R.SWAMINATHAN, J.

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WP(MD)Nos.13822, 13823 & 13824 of 2022

13.06.2023