



WP(MD)No.21888 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.11.2023**

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THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

W.P.(MD)No.21888 of 2021

and

W.M.P.(MD)Nos.18484 of 2021 & 527 of 2022

Murugesan

...Petitioner

/Vs./

1.The District Collector,
Kanyakumari District,
At Nagercoil.

2.The Revenue Divisional Officer,
Padmanabhapuram Sub-Division,
Thuckalay Post, Kanyakumari District.

3.The Tahsildar,
Kalkulam Taluk,
Thukalay Post,
Kanyakumari District.

4.The Assistant Director of Geology and Mining,
Kanyakumari District,
At Nagercoil.

5.Abraham

6.Jayamathi

...Respondents



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PRAYER:- Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 4 herein to initiate appropriate legal action against the 5th respondent stone quarry and crusher industry running in resurvey No.397/1A1C, Villukuri-B Village, Kalkulam Taluk and restore the Chenthankulam tank's bund as well as outlet waterway (Nilaviyal Neer Valithadam) running through the resurvey No.377/3 Villukuri-B Village, kalkulam Taluk and consequently direct the respondents 1 to 4 herein to ensure the petitioner's safety as well as the agricultural field in resurvey numbers 376/5C, 376/9A, 376/5B, and 376/9B2 in Villukuri-B Village, Kalkulam Taluk, based on the petitioner's representation dated 29-06-2021 and 11-10-2021.

For Petitioner : Mr.K.Vamanan

For Respondents : Ms.D.Farjana Ghoushia (R1 to R4)

Special Government Pleader

Mr.K.Samidurai (R5 & R6)

ORDER

This writ petition has been filed for issuance of writ of mandamus directing the respondents 1 to 4 to initiate legal action against the 5th respondent on the ground that the 5th respondent is running an illegal stone quarry and crusher unit in the subject property in Resurvey No.397/1A1C and for a further direction to restore the Chenthankulam tank bund as well as waterway (நிலவியல்



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நீர்வாழ்த்தடம்) in Resurvey No.377/3 in order to protect the agricultural land belonging to the petitioner situated in Resurvey numbers 376/5C, 376/9A, 376/5B, and 376/9B2 in Villukuri-B Village, Kalkulam Taluk.

2. The specific case of the petitioner is that he is an agriculturalist and he is cultivating paddy, banana and coconut in the subject properties. On the eastern side of the property, the respondents 5 and 6 are owning lands and the 5th respondent is running a stone quarry and crusher unit.

3. The further case of the petitioner is that the 5th respondent is running the unit illegally and he has dumped the quarry waste and thereby has obliterated the tank bund and blocked the water channel and as a result, there is water log which has resulted in huge damage to the petitioner in carrying on with the agricultural activities. The representations made by the petitioner in this regard to the official respondents also did not yield any result. It is under these circumstances, the present writ petition was filed before this Court.

4. The respondents 5 and 6 have filed an affidavit before this Court. The relevant portions in the affidavit are extracted hereunder:-

3. I respectfully submit that the 6th respondent is my wife.

The 6th respondent and myself had been running crusher unit in



the name and style of M/s Wise Blue Metals from the year 2001 and Certificate of Registration was issued to us on 22.02.2001. The 1st respondent had granted permission and certificate for transportation and storage of minerals under rule 4(1) of Tamil Nadu Prevention of Illegal Mining, Transportation and Storage of Minerals and Mineral Dealers Rules 2011 by proceedings bearing Rc.No. 13/G&M/2017 dated 07.05.2017. The Tamil Nadu Pollution Control Board also granted consent for running the said crusher Unit and latest renewal is 09.05.2019 and which is valid till 31.03.2023.

4. I respectfully submit that I am having patta land in Survey No.397/1A2 measuring an extent 2.00.0 hectare in Villukuri village and Kalkulam taluk. The 1st respondent by proceedings dated 10.01.2016 bearing R.C.No. 395/G&M/2009 had granted permission to conduct rough stone quarry in the said land for a period of 5 years from 10.01.2016 to 09.01.2021. There after the 1st respondent had given permission for a period of 36 months and 18 days from 02.06.2021 (Non operative period).

5. I respectfully submit that hence it is not illegal quarry and crusher unit is also not illegal one. But the petitioner had filed affidavit that we are running crusher unit illegally which is bald allegation and against the real facts. Infact the petitioner also had the knowledge of the same but he had approached this Honorable court without clean hand by suppression real facts and got the interim order.

6. I respectfully submit that we are not quarrying violating the conditions stipulated in the lease deed as well as the lease proceedings. As per the mining plan alone I had



conducted the quarry. The authorities also periodically had conducted inspections in the quarry site. It is pertinent to mention here that the quarry wastes are dumped only in my patta land and not obstructing the irrigation channel. The petitioner can not say that I am running unlawful business without any proof and on bald allegation.

7. I respectfully submit that we are running a small brick manufacturing Unit and it is not an industry and we have not damaged the bund of Chenthankulam Tank by taking mud. It is pertinent to mention here that it is a false statement. Further the "Nilaviyal Neer Vali Pathai" also not at all damaged by us. All the above allegations are false and in order wreck vengeance against us, the petitioner had filed above writ petition.

8. I respectfully submit that my son had purchased a property in the year 2007 from one Sugadevan in S.No. 376/5D and 376/5A totally measuring an extent of 1 acre 9 cents and 750 square links and subsequently amendment deed was filed by amending S. Nos as 376/5D and 376/9B in the year 2017. The writ petitioner's brother Suresh also had purchased from the very same Sugadevan in the said S.No. 376/9B and had encroached my land in S.No. 376/9B. Hence from the year 2017 onwards there is a dispute with regard to the above said property between us. The writ petitioner and his brother had openly vowed us that they will not allow us to run our crusher unit and quarry.

9. I respectfully submit that it is pertinent to mention here that the writ petitioner had run Brick Manufacturing Unit till 2018 in his land. Thereafter, after the outbreak of dispute between us, he had shifted his brick manufacturing industry to



the near by land and converted this land as agricultural land and he has been doing agriculture only for the past 2 years. The only intention of the petitioner is that he wants to settle his score with us. It is pertinent to mention here that there are 4 crushing Units and out of which one is not running and other 3 are very close to the petitioner's land when such is the case filing writ petition only against us proves that in order to settle his score he had filed the said writ petition with false and frivolous statements.”

5. Heard Mr.K.Vamanan, learned counsel appearing for the petitioner, Ms.D.Farjana Ghoushia, learned Special Government Pleader for the official respondents and Mr.K.Samidurai, learned counsel for the respondents 5 and 6.

6. The learned Special Government Pleader appearing on behalf of the official respondents submitted that the 5th respondent was granted permission to run the stone quarry and crusher unit for the period from 10.01.2016 to 09.01.2021. Thereafter, there was non-operative period and to compensate the same, the period has been extended and it comes to an end on 24.06.2024.

7. The learned Special Government Pleader further submitted that the respondents 5 and 6 are carrying on with the quarry operation after getting a valid permission and after a lease agreement was entered into with the first respondent and there is also an Environmental Clearance granted by the



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concerned authority. Hence, it was contended that the quarry operation is done in compliance with all the statutory requirements. The learned Special Government Pleader submitted that an inspection was conducted and it was found that the respondents 5 and 6 are carrying with the quarry operation in line with the permission given to them.

8. The learned counsel appearing on behalf of the respondents 5 and 6 submitted that the present writ petition is actuated with malafides. The petitioner was running a brick manufacturing unit till 2018 in his land and thereafter, there was some misunderstanding between the petitioner and the 5th respondent. The petitioner thereafter converted the land as an agricultural land and is doing agricultural activities for the last two years.

9. It was further contended by the learned counsel appearing on behalf of the respondents 5 and 6 that the petitioner wanted to settle scores and as a result, the present writ petition has been filed before this Court. The learned counsel submitted that the respondents 5 and 6 complied with all the statutory requirements for the operation of the quarry and there is no ground to grant the relief as sought for by the petitioner.



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10. The learned counsel appearing for the petitioner submitted that the respondents 5 and 6 have caused large scale obstruction to the nearby water body and as a result, the tank bund has been destroyed and the water body has been blocked. The learned counsel submitted that the authorities must take action against the respondents 5 and 6 and must restore the tank bund and also remove the block caused to the water way by the respondents 5 and 6.

11. In the considered view of this Court, the quarry unit and the crusher unit run by the respondents 5 and 6 cannot be termed as illegal, since these units are being run after getting proper permission from the competent authority. The period is also coming to an end in June, 2024.

12. The learned Special Government Pleader, on specific instructions, submitted that the respondents 5 and 6 are running quarry operation in accordance with all the statutory requirements.

13. The petitioner has projected the case as if the lands belonging to him and his brother were always used for agricultural activities. Unfortunately, the petitioner had concealed the fact that the brick manufacturing unit was run till the year 2018 and now this has come to light by virtue of the affidavit filed by



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the respondents 5 and 6. In view of the same, the ground raised by the respondents 5 and 6 to the effect that the writ petition is actuated by malafides stands probalised.

14. When a writ petition is filed before the Court, the Court entirely goes by the averments made in the affidavit and it is taken to be an evidence. While filing such an affidavit, the petitioner has to put forth all the material facts without concealing any fact. If at a later point of time the Court finds that material facts have been concealed, that by itself becomes a ground for the Court to deny the relief sought for and to dismiss the writ petition. The Hon'ble Apex Court has repeatedly held that a person invoking writ jurisdiction must always approach the Court with clean hands by revealing all the material facts.

15. In the instant case, the petitioner has conveniently concealed the fact that there was a brick manufacturing unit, which was run till 2018. There was some misunderstanding and as a result, the petitioner seems to have started doing agricultural activities in the land. In view of the same, the petitioner has now come up with a case as if the respondents 5 and 6 are illegally quarrying in the property and are causing damage to the water body.



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16. Quarrying operations are going on from the year 2016 and the complaint against the respondents 5 and 6 had started only from the year 2021, when representations were made to the respondents. This is clearly pursuant to some misunderstanding between the petitioner and the respondents 5 and 6. Once this fact comes to light, this Court has to deal with the case projected by the petitioner with a pinch of salt. Unless and otherwise all the material facts are pleaded in an affidavit, it is not desirable for a Court to go into the dispute, since there are facts more than what meets the eye.

17. In view of the above, this Court is not inclined to exercise its writ jurisdiction in the instant case and the relief sought for by the petitioner cannot be granted by this Court. This writ petition accordingly stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

21.11.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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N.ANAND VENKATESH, J.

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