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W.P.Nos.17905 & 17906 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.02.2024

Pronounced on : 22.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.Nos.17905 & 17906 of 2023

and

W.M.P.Nos.17031, 17032, 17472 & 19540 of 2023

W.P.No.17905 of 2023 :

S.Baghya Lakshmi

... Petitioner

Vs.

1.The National Green Tribunal,
Southern Zone,
Represented by its Registrar,
Kalas Mahal, Kamarajar Salai, PWD Estate,
Chepauk, Triplicane,
Chennai – 600 005.

2.The Director,
Department of Environment,
State of Tamil Nadu,
No.1, Jeenis Road, Panagal Building,
Ground Floor, Saidapet, Chennai – 600 015.

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3. The District Collector,

Coimbatore,

Collectorate Building, Coimbatore – 641 018.

4. State Environment Impact Assessment Authority (SEIAA)

Tamil Nadu,

3rd Floor, Panagal Maaligai,

No.1, Jeenis Road, Saidapet,

Chennai – 600 015.

5. The Chairman,

Tamil Nadu Pollution Control Board,

76, Mount Salai,

Guindy, Chennai – 600 032.

6. The District Environmental Engineer,

Tamil Nadu Pollution Control Board,

Coimbatore South, Plot No.E-55A,

SIDCO Industrial Estate, Pollachi Main Road,

Kurchi, Coimbatore – 641 021.

7. The Assistant Director,

Department of Mines and Geology, Tamil Nadu,

Alandur Road, Guindy Industrial Estate,

Guindy, Chennai – 600 032.

8. The Joint Director,

Department of Agriculture, Tamil Nadu,

Chepauk, Chennai – 600 005.

9. The Tahsildar,

Kinathukadavu Taluk, Coimbatore.



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10.Pollachi Granites,
Represented by its Partner,
Sokkanur, Kinathukadavu Taluk,
Coimbatore – 642 109.

11.A.Kalimuthu Rajan

12.The Director,
Directorate of Town and Country Planning,
E and C Market Road, Koyambedu,
Chennai.

... Respondents

*[R12 suo motu impleaded vide order dated
25.07.2023 made in W.P.No.17905 of 2023]*

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to quash the order of the 1st respondent Tribunal dated 25.05.2023 in O.A.No.138 of 2022 (SZ) and consequently direct the respondent Authorities 2 to 9 to immediately restrain the respondents 10 and 11 from carrying on any quarrying activity in the mid of the agricultural lands at S.F.No.444/1 (P) of Sokkanur Village, Kinathukadavu Taluk, Coimbatore District, of an extent of 2.42 Ha.

For Petitioner	:	Mr.S.Kamalesh Kannan
R1	:	Tribunal
For R2, R3, R7 to R9	:	Mr.S.Silambanan Additional Advocate General-II assisted by Mrs.S.Anitha Special Government Pleader



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For R5 and R6 : Mr.R.Shunmugasundaram
Advocate General
assisted by Mr.V.Gunasekar
Standing Counsel

For R4 : Mr.Venkataswamy Babu
Senior Panel Counsel

For R10 and R11 : M/s.R.T.Shyamala
for Mr.M.Velmurugan

W.P.No.17906 of 2023 :

S.Baghya Lakshmi

... Petitioner

Vs.

- 1.The Director,
Department of Environment,
State of Tamil Nadu,
No.1, Jeenis Road, Panagal Building,
Ground Floor, Saidapet, Chennai – 600 015.
- 2.The District Collector,
Coimbatore,
Collectorate Building, Coimbatore – 641 018.
- 3.State Environment Impact Assessment Authority (SEIAA)
Tamil Nadu,
3rd Floor, Panagal Maaligai,
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Chennai – 600 015.



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4.The Chairman,

Tamil Nadu Pollution Control Board,
76, Mount Salai,
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5.The District Environmental Engineer,

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Coimbatore South, Plot No.E-55A,
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Chepauk, Chennai – 600 005.

8.The Tahsildar,

Kinathukadavu Taluk, Coimbatore.

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Represented by its Partner,
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Chennai.

... Respondents



W.P.Nos.17905 & 17906 of 2023

*[R11 suo motu impleaded vide order dated
25.07.2023 made in W.P.No.17906 of 2023]*

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the 3rd respondent to cancel the environmental clearance dated 28.03.2022 for deliberate concealment of data in the application made for obtaining it, based on the representation dated 02.05.2023, and direct the respondents 4 to 6 for recovering damages from the respondents 9 and 10 who had caused damage to the environment by quarrying on an ecologically rich site at S.F.No.444/1 (P) of Sokkanur Village, Kinathukadavu Taluk, Coimbatore District, of an extent of 2.42 Ha.

For Petitioner	:	Mr.S.Kamalesh Kannan
For R1, R2, R6 to R8	:	Mr.S.Silambanan Additional Advocate General-II assisted by Mrs.S.Anitha Special Government Pleader
For R4 and R5	:	Mr.R.Shunmugasundaram Advocate General assisted by Mr.V.Gunasekar Standing Counsel
For R3	:	Mr.Venkataswamy Babu Senior Panel Counsel
For R9 and R10	:	M/s.R.T.Shyamala for Mr.M.Velmurugan



W.P.Nos.17905 & 17906 of 2023

COMMON ORDER

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S.S. SUNDAR, J.

W.P.No.17905 of 2023 is filed for issuance of a Writ of Certiorarified Mandamus to quash the order of the 1st respondent/National Green Tribunal dated 25.05.2023 in O.A.No.138 of 2022 (SZ) and for issuing further direction to the official respondents 2 to 9 to take action against the respondents 10 and 11 and to restrain the respondents 10 and 11 from carrying on any quarrying activity in the agricultural lands in S.No.444/1, Sokkanur Village, Kinathukadavu Taluk, Coimbatore District.

2.W.P.No.17906 of 2023 is also filed by the same petitioner for issuance of a Writ of Mandamus to direct the 3rd respondent to cancel the environmental clearance dated 28.03.2022 granted to the respondents 9 and 10 for the deliberate concealment of particulars in the application for getting environmental clearance and for other consequential reliefs.



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WEB COPY 3.The parties are referred to as per their litigating status in W.P.No.17905 of 2023.

4.Brief facts that are set out in the affidavit filed in support of both the writ petitions are as follows :

4.1.The 11th respondent in W.P.No.17905 of 2023 owns a vast extent of land of about 35 Acres in Sokkanur Village, Kinathukadavu Taluk, Coimbatore District. Out of the lands owned by the 11th respondent, he has entered into an agreement with the 10th respondent, the Project Proponent, in respect of 2.42 Hectares in S.No.444/1 in Sokkanur Village for extraction of rough stone and gravel.

4.2.The petitioner, being the owner of lands in the same area, has made several representations objecting to the intended conversion of the agricultural land for non-agricultural purposes. The petitioner has raised the following objections :

(a) The respondents have proposed to use the agricultural lands for non-



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agricultural purposes without necessary conversion certificate from the 7th respondent and permission from other Statutory authorities.

- (b) The respondents 10 and 11 have applied for licence by showing the land as barren, suppressing the fact that the land in which the quarrying operation was proposed, is a fertile agricultural land with coconut trees. If the licence is granted to the 10th respondent for quarrying, the surrounding agricultural lands would lose the nature and become unfit for agriculture.
- (c) The respondents 10 and 11 have given false information about water table. Even though water table is within 7.3 m, the respondents 10 and 11 have given false information to the 3rd respondent as if the water table has gone beyond 200 feet and obtained permission from the 3rd respondent illegally.
- (d) The existence of temples and buildings within prohibited distance from the proposed quarrying site was not disclosed and other Statutory pre-requisites for conversion of land use from agricultural to non-agricultural purposes is not obtained from the 8th respondent, which is mandatory as per G.O.Ms.No.79, Housing and Urban



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Development [UD4(3)] Department, dated 04.05.2017.

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4.3.Reiterating the same objections, the petitioner approached the Hon'ble National Green Tribunal by filing an Original Application in O.A.No.138 of 2022 under Section 14 of the National Green Tribunal Act, 2010, with a prayer to direct the official respondents to take necessary action to restrain respondents 10 and 11 from quarrying the site for which approval is obtained by the 10th respondent. Though the Hon'ble National Green Tribunal originally granted an order of status *quo* on 13.12.2022, after notice to the official respondents, dismissed the Original Application by holding that none of the objections raised by the petitioner can be sustained. The Tribunal also observed that the application itself was motivated due to personal enmity.

4.4.It is pertinent to mention that the Tribunal has considered almost all the documents and materials and found that the 10th respondent has obtained quarry licence after submitting the mining plan and other documents which are required to satisfy the mandatory requirements of the



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Statutes. Referring to the stand taken by the official respondents, the National Green Tribunal found that no trade effluent is generated from the manufacturing process by the 10th respondent and that the environmental clearance obtained from the 8th respondent is valid for 3 years. Considering the documents filed before the Tribunal and the statement of facts as seen from the counter of official respondents, the Tribunal found that the 10th respondent has obtained consent to operate which is valid upto 17.03.2027 and the 10th respondent was unable to commence the mining operation in view of the pendency of the proceedings before the Tribunal. The Tribunal observed that the petitioner has left sufficient space from water channels to ensure free flow of water from the mamool channels. Relying upon the report and counter affidavit of the official respondents, including the State Environment Impact Assessment Authority, the Tribunal justified the stand of Statutory authorities who have permitted the 10th respondent to commence quarry operations subject to making compensatory plantation of 500 number of trees and to follow the norms. After holding that the 10th respondent has complied with all the conditions for getting environmental clearance and other approvals from the Statutory authorities, the Tribunal



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held that there is no merit in the application and that the Original

Application is motivated due to personal reasons without any *bona fides*.

4.5.Challenging the order of the Tribunal, the petitioner has filed W.P.No.17905 of 2023 raising several grounds. W.P.No.17906 of 2023 is filed for issuing a direction to cancel the environmental clearance obtained by the 10th respondent on 28.03.2022 and for recovery of damages from the respondents 10 and 11 for causing damage to the environment by quarrying. Common grounds are raised in both writ petitions.

5.Learned counsel for the petitioner, though made several submissions reiterating the objections raised by the petitioner before the official respondents as well the National Green Tribunal in the Original Application, during arguments, focussed on a new point contending that the 10th respondent, the Project Proponent, has suppressed the existence of a 'vari' which runs intercepting the quarry site. It is to be noted that the petitioner has not raised this issue before the Tribunal. His prime contention before the Tribunal and before the appellate authority was that



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on the either side of the proposed site, there are water channels ('vari') and the permission to operate quarrying rough stone would lead to obliteration of the water channels. The learned counsel also submitted that the respondents 10 and 11 have not obtained permission for converting the agricultural lands for non-agricultural purposes as per G.O.Ms.No.79, Housing and Urban Development [UD4(3)] Department, dated 04.05.2017. The learned counsel then submitted that the Project Proponent, namely the 10th respondent, had misrepresented before the authorities as if the ground water level is beyond 200 feet for getting permission, suppressing the fact that the ground water level as per the data available with the petitioner is just 7.3 m. The existence of temple and other buildings within the prohibited distance of 300 m was also projected by the petitioner. However, no document is filed to substantiate his contention that there are several buildings and temple which are located within the prohibited distance.

6.All the official respondents who have also contested the Original Application before the National Green Tribunal have reiterated their contentions by filing independent counter affidavits in both the writ



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petitions. All the official respondents have acknowledged the permission, approval, clearance and No Objection Certificate obtained by the respondents 10 and 11 from various Statutory authorities and also the satisfactory compliance of other Statutory requirements.

7.The 3rd respondent/District Collector has filed a common counter affidavit in both the writ petitions justifying the rejection of petitioner's objections objecting to the grant of lease in favour of the 10th respondent by the Revenue officials and the recommendation for grant of quarry lease in favour of the 10th respondent in respect of the site in S.F.No.444/1 (2.42.0 Hectares as per the mining plan) and for setting up a Stone Crusher Unit in an extent of 3 Acres. In the counter affidavit, it is also pointed out that the 10th respondent had applied for quarry lease after leaving proper safety distance from the residential area as well as the existing coconut farms. The District Collector also confirmed that the Crusher Unit is located at a distance of more than 500 m from the residential area and coconut farms. The District Collector, representing the Revenue, has specifically stated in his counter affidavit that the water channel ('vari') is not running across the



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quarry site, but it is located adjacent to the area in respect of which permission was sought for to quarry rough stone and to operate Crushing Unit. The District Collector indicated the environmental clearance from the State Environment Impact Assessment Authority dated 18.03.2022 for carrying out quarrying of rough stone and gravel as per the licence granted in favour of the 10th respondent. The approval granted to the mining plan also was referred to in the counter affidavit. It is stated that the environmental clearance obtained by the petitioner was subject to condition by which the Project Proponent, namely the 10th respondent, was asked to make compensatory plantation of 500 number of trees in view of the removal of 42 number of trees before commencing quarry operation. The 3rd respondent has denied every allegation made against the official respondents as well the 10th respondent regarding irregularities while granting quarry licence in favour of the 10th respondent. The District Collector has also indicated the permission granted to the 10th respondent for transporting gravel and rough stone from the quarry site. Referring to the No Objection Certificate issued by one Muthumala Narpani Trust, the 3rd respondent specifically stated the public of Sokkanur Village had no



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objection for grant of permission for quarrying rough stone or gravel in the patta land in S.F.No.444/1.

8.The 4th respondent, namely the State Environment Impact Assessment Authority, filed a common counter affidavit in both the writ petitions, as regards the application filed by the 10th respondent for getting environmental clearance for the proposed quarrying of rough stone and gravel from the leasehold land and about the fair manner in which the environmental clearance was granted in favour of the 10th respondent. Referring to the fact that the entire Survey Number in S.No.444/1 is registered as patta land (Punja land), the 4th respondent also confirmed that they verified as to the non-existence of any houses, temple or structure within the prohibited distance.

9.A common counter affidavit is also filed by respondents 5 and 6 on behalf of Pollution Control Board about the clearance obtained from the 5th respondent which is valid for five years from 18.03.2022. Further, the respondents 5 and 6 have confirmed the position that the 10th respondent



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Unit had provided Air Pollution Control Measures such as Water Sprinkler Arrangement, so as to control the dust emission generated from mining and vehicle movement. They certified that no trade effluent is generated from the process. After referring to the fact that the 10th respondent has complied with all the terms and conditions for which the approval was granted to the 10th respondent, the respondents 5 and 6 also prayed for dismissal of these writ petitions as devoid of merits.

10.The 7th respondent, the Joint Director of Agriculture, has also filed independent counter affidavits in both the writ petitions, indicating that the petitioner, without a representation being made to the 7th respondent, cannot maintain a writ petition by simply impleading them as a party. In other words, a writ petition without a formal prior request to them to perform any public duty prescribed under any Statute. The 7th respondent pointed out that the application submitted by the 10th respondent for conversion of land use from agricultural to non-agricultural purposes was returned by the 7th respondent only due to the pendency of the Original Application before the Tribunal. However, the 12th respondent/Director of Town and Country



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Planning has filed a counter affidavit, wherein, it is indicated that the village falls under the non-planning area and hence, the requirement as per G.O.Ms.No.79, Housing and Urban Development [UD4(3)] Department, dated 04.05.2017, cannot be insisted, as conversion of land use is not mandatory for issuance of a quarry licence.

11.The 10th respondent has filed a detailed common counter affidavit in both the writ petitions indicating the ordeal undergone by the 10th respondent while getting clearance from the State Environmental authorities and the Revenue officials. Since clearance was granted in favour of the 10th respondent after assessing the impacts associated with quarrying of rough stone and gravel, it is contended by the 10th respondent that these writ petitions are only to wreck vengeance due to previous enmity and prayed for dismissal of the writ petitions for want of *bona fides* and merits.

12.Learned counsel appearing for the respondents 10 and 11 submitted that the writ petitions are not maintainable in view of the alternative remedy available to the writ petitioner before the Hon'ble



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Supreme Court. However, the learned counsel for the petitioner relied upon a judgment of a Division Bench of this Court in the case of K.Saravanan v. National Green Tribunal, Southern Zone, Chennai and another in an unnumbered Writ Petition in W.P.SR.No.50788 of 2021, dated 21.06.2021 holding that the writ petition is maintainable by referring to the judgment of the Hon'ble Supreme Court and this Court. This Court is convinced that the writ petition is maintainable and hence, the preliminary objection raised by the learned counsel for the respondents 10 and 11 is answered in favour of the petitioner.

13.Learned counsel appearing for the petitioner, in view of the specific stand taken by the official respondents in their counter affidavits, has focussed his arguments only on the following grounds :

- (a) A water channel is in existence in the same Survey Field and it runs across the quarry site. The permission, if granted for quarrying and operating Crushing Unit, will lead to obliteration of water channel which cannot be permitted and it is the duty of the State instrumentalities to preserve the water bodies.



(b) The 10th respondent has not obtained any Certificate or permission for conversion of land use from agricultural to non-agricultural purposes.

Hence, the 10th respondent cannot be permitted to carry out quarry operation or operate Crushing Unit.

14. Though the learned counsel for the petitioner relied upon a few judgments to sustain his argument that the environmental clearance obtained by the 10th respondent is by suppressing facts and data and that therefore, clearance should be cancelled, as fraud vitiates every solemn transaction, the learned counsel for the petitioner is unable to demonstrate on what basis the submission is made before this Court that environmental clearance dated 28.03.2022 from the 4th respondent is obtained by suppression or by fraudulent means. In the absence of any material to show that the particulars/documents submitted by the 10th respondent for getting environmental clearance are forged or necessary documents for granting environmental clearance were not furnished by the 10th respondent, this Court is unable to entertain such vague objections of the learned counsel for the petitioner.



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15.As regards conversion, a specific stand is taken by the 12th respondent/Director of Town and Country Planning that it is not mandatory to get a Certificate or permission for conversion of land use from agricultural to non-agricultural purposes, for the reason that the site is located in a non-planning area. We cannot ignore the specific stand taken by the 12th respondent that conversion of land is not mandatory for issuance of quarry licence in this case. Assuming that permission is required for conversion, this Court has also recorded the statement in the counter affidavit filed by the 7th respondent that the application submitted by the 10th respondent before the 7th respondent was only returned by citing the pendency of the Original Application before the Tribunal. However, that does not vitiate the environmental clearance obtained by the 10th respondent earlier from the 4th respondent. It is pertinent to mention that no reason is stated by the petitioner or 7th respondent to reject the application for conversion. In such circumstances, this Court is unable to appreciate the arguments of learned counsel appearing for the petitioner that the Tribunal ought to have allowed the Original Application.



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16.Learned counsel appearing for the petitioner produced before this Court the photocopy of the Village Map duly certified as saleable copy by the office of the Zonal Deputy Director of Survey. From the official document, this Court is unable to accept the argument of the learned counsel for the petitioner that there is a 'vari' or channel that runs across the quarry site. It is to be noted that, as per the Survey Manual, a 'vari' or channel is not detailed in the Village Map. From the reference sheet, though several signs are found, this Court is unable to find a reference to 'vari' and corresponding sign in the map required to be marked/drawn to show the existence of a channel or 'vari' in the map. Very strangely, the learned counsel appearing for the petitioner also produced before this Court a topographical sketch showing the details of S.F.No.444/1 at Sokkanur Village. Though the petitioner shows the existence of a channel by a small line crossing S.No.444/1, this Court is unable to sustain the argument of learned counsel for the petitioner based on the topographical sketch which is not supported by any Revenue Plan or FMB or any Revenue document. The learned counsel appearing for the 11th respondent has produced before



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this Court the Extract of A-Register prepared during UDR. In respect of the entire survey number in S.No.444/1, there is no indication about the existence of any 'vari' or channel. It is also to be noted that the property in S.No.444/1 is classified as "Ryotwari Punja" in the name of an individual to show that it is a patta property. Therefore, this Court cannot accept the case of the petitioner that a 'vari' or water channel runs across the quarry site. It is also to be noted that the petitioner has raised this for the first time in the grounds before this Court. However, the consistent stand taken by the petitioner himself before the Tribunal is that two different 'vari' or channel are passing on the southern and western side of the quarry site. The contention of the 11th respondent as regards the existence of 'vari' passing through the adjacent land and that atleast a distance of 10 m is left as a protective measure for the free flow of water through the 'vari' is accepted.

17.A Division Bench of this Court, in which one of us was a party, in the case of ***R.Chandra Sekaran v. District Collector and others*** reported in ***(2023) SCC Online Mad 5627***, has held as follows :

“15.In this State, after the commencement of Tamil



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Nadu Survey and Boundaries Act, 1897, which was repealed under Tamil Nadu Survey and Boundaries Act, 1923, field survey was conducted. As per the survey manual, the Survey Officer while carrying out the survey used to denote survey marks and prepare topographical details by marking pictures in the village map about the existence of a house, temple, mosque, lamp, telephone line, railway line, cart track, foot path, river, street, culvert or bridge, tanks etc. Marking the symbols may indicate a temporary or permanent feature. Some times the existence of any such thing as detailed in village map may not be even seen due to change or development over a period of time. While the village boundary, existence of tank and permanent structure which are detailed in FMB surveys can always be identified on ground with reference to particular classification of land, existence of foot path by dotted lines or similar features like channel cannot be interpreted that it always exists for all the time to come. In other words, unless the specific area is sub divided to indicate the existence of a tank or road and marking of rivers or pictures in revenue map can only be taken as existence of such features at the time of survey. In the absence of any other record or evidence of foot path or cart track in FMB, it is a weak evidence to deprive the proprietary right of pattadars/owners.



16. In the present case, the revenue map alone is relied upon by the fourth respondent in order to indicate that a line is drawn through Survey Nos.371/7, 371/8, 371/9 and 371/10. On field inspection, the Tahsildar himself has recorded that no Odai is in existence. Unless the water channel has its beginning and the end to connect the channel to a tank or some waterbody, the Court cannot presume, without further evidence, the existence of a permanent water body which vests with the Government.”

18. The learned counsel appearing for the petitioner has not produced any record to show that a 'channel' or 'vari' is in existence to connect a source and end. Based on mere statement, this Court cannot presume existence of any channel or 'vari' running through the quarry site for which the 10th respondent has obtained permission for quarrying and to operate the Stone Crushing Unit.

19. From the counter affidavits filed by all the respondents, this Court is unable to find any admission by any of the official respondents regarding statutory violations by the respondents 10 and 11 in obtaining the quarry



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licence or to commence the Stone Crushing Unit. The 10th respondent has applied for environmental clearance from the 4th respondent and obtained clearance subject to few conditions. The 10th respondent has also taken care to apply before the Statutory authorities and had obtained all the approvals and consent necessary to operate the stone quarry as well as the Crusher Unit. As pointed out by the learned counsel for the respondents 10 and 11, these writ petitions appear to be motivated due to personal enmity. Since this Court is unable to find any legal injury or any damage that is likely to be caused to the petitioner by permitting the Crusher or quarrying operations on a patta land belongs to the 11th respondent, this Court finds some force in the contentions of the private respondents that the writ petitions are with an ulterior motive and not for any *bona fide* cause.

20.Hence, both the writ petitions are dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (N.S., J.)
22.03.2024

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