



WP (MD) Nos.10269 of 2019 &
4351 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON : 28.03.2024
PRONOUNCED ON: 12.08.2024**

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)Nos.10269 of 2019 and 4351 of 2022
and
WMP(MD)Nos.7915 of 2019 & 3062 and 3777 of 2024**

WP(MD)No.10269 of 2019

M.Ramesh Vargeesh

... Petitioner

Vs

The District Collector,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the respondent in Na.Ka.No.1107/PUMASU/2018, dated 01.02.2019 and quash the same and consequently directing the respondents confirm the licence granted to the petitioner under the lease to quarry rough stone over an extent of 0.60.0 hectare of patta land in S.F.No. 17 (Part), Kappiyarai “A” village, Kalkulam Taluk, Kanniyakumari District for period of five years vide District Collector's proceedings in RC.No.1107/G&M/2010, dated 18.01.2018.



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M.Ramesh Vargeesh

... Petitioner

Vs

- 1.The District Collector,
Kanniyakumari District.
- 2.The Assistant Director,
Geology and Mining,
Kanniyakumari District.
- 3.The Revenue Divisional Officer,
Kalkulam Taluk,
Padmanabhapuram,
Kanniyakumari District.
- 4.The Assistant Director,
Survey and Land Records,
Kanniyakumari District.
- 5.The Tahsildar,
Kalkulam, Kanniyakumari District.
- 6.The Village Administrative Officer,
Kappiyarai A Village,
Kanniyakumari District.
- 7.The Executive Officer,
Kappiyarai Panchayat,
Kanniyakumari District.
- 8.The State Environmental Impact
Assessment Authority,
represented by its Chairman,
3rd Floor, Panagal Maligai,
No.1, Jeenis Road, Saidapet,
Chennai – 600 015.



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9.The Chairman,
Tamil Nadu Pollution Control Board,
Chennai.

10.The Controller of Exploitation,
South Circle,
Chennai.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records relating to the impugned order of the 1st respondent in his proceedings in RC.No.1107/G&M/2018, dated 01.02.2019, quash the same as it is arbitrary and illegal consequently to direct the 1st respondent further to renew the petitioner quarry joint lease agreement for the period of three years.

For petitioner : Mr.Prabhu Selva Kumar
in both WPs

For Respondents : Mr.R.Baskaran,
Additional Advocate General,
assisted by Mr.G.V.Vairam Santhosh
Additional Government Pleader
for RR 1 to 7 in WP(MD)No.4351 of
2022 and for Respondent in
WP(MD)No.10269 of 2019
: Mrs.R.Vijayakumari Natarajan
for RR 9 & 10 in
WP(MD)No.4351 of 2022
: Mr.N.Dilip Kumar
for R8 in WP(MD)No.4351 of 2022



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COMMON ORDER

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The petitioner has filed these writ petitions challenging the order of the District Collector, Kanyakumari in and by which the quarry lease of the petitioner has been cancelled. He has also sought for renewal of the said quarry lease in the second writ petition. Since both writ petitions are connected, they are tagged and disposed of by this common order.

2.The petitioner has made an application for quarrying rough stone in S.F.No.17 (Part) at Kappiyarai 'A' Village, Kalkulam Taluk, Kanyakumari District for an extent of 1.24.5 hectares. Based on the application, the Tahsildar, Padmanabhapuram and the Revenue Divisional Officer, Padmanabapuram, conducted field inspection and recommended for granting lease. Mining Plan was approved by the Assistant Director of Geology and Mining, Kanyakumari. That apart clearance certificate has been obtained from the Pollution Control Board and the State Level Environment Impact Assessment Authority – Tamil Nadu. Finally Inspection was conducted by the Geology and Mining Department, Kanyakumari District @ Nagercoil and it was recommended for grant of lease for a period of five years over an extent of 0.60.0 hectares, since there are houses



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within 300 metres, as per Tamil Nadu Minor Mineral Concession Rules, 1959, with certain conditions. Accordingly a lease agreement was entered into between the petitioner and the District Collector on 18.01.2018. The lease period is from 23.01.2018 to 22.01.2023. The petitioner has been running the quarry. In the meanwhile, a batch of Public Interest Litigations were filed before this Court against certain quarries alleging violations of rules including the petitioner's quarry. Based on the directions of this Court a joint inspection was conducted by the officials and it was found that there are violations of prohibitory distance in respect of inhabited site in the petitioner's quarry. Subsequently the quarry lease and the lease agreement was cancelled by the District Collector vide the impugned order. Challenging the same these writ petitions are filed to quash the cancellation order and to renew the licence.

3.The learned Counsel for the petitioner submits that in the year 2010 the petitioner made an application seeking permission for conducting rough stone quarry to an extent of 1.24.00 hectare in S.F.No.17 (part) at Kappiyarai 'A' Village, Kalkulam Taluk, Kanyakumari District. On the directions of the District Collector, the 3rd respondent has conducted an inspection on the proposed quarry



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site and submitted his report on 17.01.2011 that there is no high tension electric line, water tank within 50 metre radius and there are 10 houses within a distance of 300 metres from the periphery of the quarry and therefore recommended for grant of quarry lease to an extent of 0.60.0 hectares. Thereafter the 2nd respondent has also conducted a joint inspection along with other officials on 21.03.2015 and submitted a report that except a few farm houses, no other valuable trees, high / low tension power lines, historical monuments, place of worship, water bodies, road are seen within the prescribed safety distance as mentioned in the Tamil Nadu Minor Mineral Concession Rules, 1959. Consequent to his report, the Mining Plan submitted by the petitioner was approved by the Assistant Director of Geology and Mining, Kanyakumari on 15.04.2015. The 8th respondent has issued environmental clearance on 05.06.2017 with certain conditions. The 9th respondent Pollution Control Board has given clearance certificate on 12.012.2017. Finally on 18.01.2018 lease was granted by the District Collector for a period of five years from 23.01.2018 to 22.01.2023 under Rule 19(1) and 22 of the Tamil Nadu Minor Mineral Concession Rules, 1959 with certain conditions and lease agreement was also entered into on 18.01.2018. While so, one Manothangaraj, a political leader filed writ petitions before this Court in WP(MD)Nos.4660 and 4661 of 20212 on



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10.10.2018, wherein this Court directed the officials to conduct an inspection in the quarry site and to find out any violation under Rule 36(1-A) of Tamil Nadu Minor Mineral Concession Rules, 1959. Based on the directions of this Court, a joint inspection was conducted by the officials on 16.11.2017 and it was observed that there were 11 houses of which 3 houses on the northwest direction and 8 houses on the southwest direction are situated within a distance of 300 metres from the periphery of the quarry boundary. Therefore, the quarry lease granted to the petitioner was cancelled that there are houses within a radius of 300 metres within the prohibitory distance as mentioned in Rule 36 of Tamil Nadu Minor Mineral Concession Rules.

4.The learned Counsel further submits that the quarry lease was granted to him only by following the due process of law, with necessary clearance and reports from the statutory authorities and there is no suppression of any material facts. The lease was granted for a period from 23.01.2018 to 22.01.2023, however, within one year, the quarry lease granted to him was cancelled without providing any opportunity to him. The 6th respondent has reported that out of 15 houses, referred as reason for cancellation only 2 houses were built with proper building



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plan approval and other houses are without any building plan approval. By referring to Rule 36(1-A)(c) of Tamil Nadu Minor Mineral Concession Rules, he submits that any new layout, building plan falling within 300 metre from any quarry site should be approved only after the concurrence of the Director of Geology and Mining Department. Therefore, even if there are houses, these houses are built without any building plan obtained from a competent authority and unlawfully. Therefore there is no impediment to permit the petitioner to run the quarry. He further submits that the petitioner has obtained loan from the bank and spent huge amount for purchasing machineries, accessories, etc., pursuant to the quarry lease granted by the District Collector. Since the quarry lease is now cancelled, the petitioner has suffered a complete loss.

5.The learned Additional Advocate General by referring to the Counter affidavit of the District Collector, Kanyakumari submits that the petitioner was granted with quarry lease for quarrying rough stone over an extent of 0.06.0 hectare of patta land in S.F.No.17/1(P) of Kappiyarai 'A' village, Kalkulam Taluk, Kanyakumar District under Rule 19(1) of the Tamil Nadu Minor Mineral Concession Rules, 1959 on 18.01.2018 for a period of five years from 23.01.2018



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to 22.01.203 with certain conditions. As per the directions of the Division Bench of this Court in WP(MD)Nos.4660 to 4663 of 2017, dated 10.10.2018, the quarry site of the petitioner was inspected by the Assistant Director of Geology and Mining, Kanyakumari, the Assistant Director, Survey and Land Records, Kanyakumari and the Tahsildar, Kalkulam on 15.11.2018 and they have submitted a report that there are 11 houses within a distance of 300 metres from the boundaries of the area granted under quarry lease in S.F.No.17/1(P) Kappiyarai 'A' Village, Kalkulam Taluk, Kanyakumari District. Apart from that the Executive Officer, Kappiyarai vide his letter dated 07.12.2018 reported that all these 11 houses were approved prior to the grant of quarry lease in S.F.No.17 (P) Kappiyarai "A" Village, Kalkulam Taluk. Therefore necessary action was taken after issuing show cause notice to the petitioner the quarry operator. The petitioner was also provided with the reports based on which action taken and he was also provided opportunity to offer his explanation. After providing opportunity the lease granted to him was cancelled on the ground of violation of Rule 36(1A)(a) of the Tamil Nadu Minor Mineral Concession Rules, which prohibits grant of quarry lease for quarrying rough stone within 300 metres from any inhabited site. He further submits that as of now there are 19 dwelling



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houses, within 300 metres out of which, 11 houses were constructed with proper building plans. He further submits that the petitioner is having an appeal remedy under Rule 36-C (2) of the Tamil Nadu Minor Mineral Concession Rules, before the Director of Geology and Mining and without exhausting the appeal remedy the petitioner has approached this Court and therefore, on this ground also the writ petitions are liable to be dismissed.

6.The 9th respondent has filed a counter affidavit stating that the quarry site was inspected on 10.05.2022 by the AEE, Nagercoil and it was found that 12 houses were there within a radius of 300 metres and there was no high tension electric line passing through the quarry site.

7.This Court has considered the rival submissions and perused the materials placed on record.

8.The petitioner was granted with a quarry lease for quarrying rough stone over an extent of 0.60.0 hectare of patta land in S.F.No.17/1(P) of Kappiyarai 'A' village, Kalkulam Taluk, Kanyakumari District under Rule 19(1) of Tamil Nadu



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Minor Mineral Concession Rules, 1959 vide proceedings of the respondent in RC.No.1107/G&M/2010 dated 18.01.2018 for a period of 5 years. The same was cancelled by the respondent vide proceedings RC.No.1107/G&M/2010 dated 01.02.2019 under Rule 36(5) (h) of Tamil Nadu Minor Mineral Concession Rules, 1959 for the violation of Rule 36(1A) (a) of the said Rules, as the Rule 36(1A) prohibits grant of quarry lease for quarrying rough stone within 300 metres from any inhabited site. Aggrieved by that orders cancelling the quarry lease, the petitioner has filed WP(MD)No.10269 of 2019 for a direction to the respondent to confirm the lease granted to the petitioner for quarrying rough stone in this patta land in SF.No.17(P) Kappiyarai A Village, Kalkulam Taluk, Kanniyakumari District for the entire period of five years as granted in RC.No.1107/G & M/2010 dated 18.01.2018. Pending this petition, he has filed another writ petition in WP(MD)No.4351 of 2022 as against the same impugned order that it is arbitrary and illegal with a consequential relief to direct the respondent to renew his quarry lease agreement for three more years.

9.The petitioner's lease was cancelled for the violation under Rule 36(1A)(a) of the Tamil Nadu Minor Mineral Rules, 1959 and the same is extracted as under:



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“36(1-A)(a). No lease shall be granted for quarrying stone within 300 metres (three hundred metres) from any inhabited site: Provided that the exiting quarries which are subsisting under current leases shall be entitled for continuance till the expiry of the lease period. The lessees whose quarries lie within a radius of 300 metres from the inhabited site shall undertake blasting operations only after getting permission of the Director of Mines Safety, Gorgaum ; Provided further that the new and existing units of quarries shall also be required to comply with the Pollution Control Measures (i.e., dust control measures) besides complying with the other conditions in regard to Pollution Control Measures.”

10.The petitioner has made his application for conducting rough stone quarry in his patta land on 23.12.2010. Based on his application, the District Collector called for a report from the Revenue Divisional Officer, Padmanabapuram. Accordingly, the RDO along with the Tahsildar, Padmanabapuram, and the other officials of Revenue Department conducted a field inspection in the petitioner's patta land in S.F.No.17/1 P of Kappiyarai Village on 10.01.2011 and submitted a report. The officials of the Geology and Mining have also inspected and recommended for quarry. The Pollution Board and



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the State Environmental Impact Assessing Authority have also cleared the project, only thereafter the lease was granted to the petitioner on 18.01.2018 for a period of five years., ie., from 23.01.2018 to 22.01.2023. The initial report of the RDO itself disclose the availability of houses within the radius 300 metres. Further RDO has recommended for grant of lease only to an extent 0.60.0 hectares, instead of 1.24.5 hectares as requested by the petitioner. This report was filed on 16.01.2011 and thereafter there was no progress On the reminders by the petitioner the District Collector directed the Assistant Director (Mines and Geology) to submit his inspection report. The Assistant Director (Mines and Geology) has submitted his inspection report on 21.03.2015 and recommended for grant of quarry lease that the houses which are available are only farm houses and except few houses there is no other residential house. Only based on these the reports the District Collector suggested the petitioner to submit his mining plan and the mining plan was approved in a hurried manner within 9 days. The petitioner was also directed to obtain the environmental clearance as required. The petitioner has applied for the same before the State Environmental Impact Assessing Authority and obtained the environmental clearance on 05.06.2017. An amendment was suggested and the amended environmental clearance was also issued on 30.11.2017. The pollution



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control board issued their clearance on 12.12.2017 and the lease was granted on 18.01.2018.

11.While so based on the directions of a Division Bench of this Court in a batch of Public Interest Litigations, a joint inspection was conducted by the officials and it was found that there are violations of Rule 36(1A) of the Minor Mineral Concession Rules that there are houses within the radius of 300 metres and therefore, the quarry lease granted to the petitioner in the year 2018 was cancelled by the District Collector vide the impugned order dated 01.12.2019.

12.The main contention of the petitioner is that he has not suppressed anything and he has furnished all the necessary documents and obtained necessary permission and clearance from State Environmental Impact Assessing Authority and the Pollution Control Board and the quarry lease was granted only after a field inspections by the Tahsildar, Revenue Divisional Officer, Pollution Control Board and the other officials and based on their reports The petitioner has also taken a stand that there is no house within the radius of 300 metres from his quarry site and therefore, this Court by its earlier by order dated 01.02.2024 has appointed



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Advocate Commissioners to ascertain the ground reality from his quarry site. The learned Advocate Commissioners have also inspected the quarry site filed their report dated 19.03.2024, as under:

“Conclusion:

It could be categorically found that there are 37 number of houses within 300 metres of sphere from quarrying operation by which question of permissibility to run the quarrying operation is prohibited as per Rules 36 (1-A) of the Minor Mineral Concession Rules, 1959.

The list of those 37 houses with its details are also furnished along with the report.”

13.The District Collector, Kanyakumari in his counter affidavit has stated that as per the joint inspection report of the Assistant Director of Geology and Mining, Kanyakumari , the Assistant Director (i/c), Survey and Land Records, Kanyakumari and the Tahsildar, Kalkulam dated 15.11.2018 they have reported that there are 11 houses within the radius of 300 metres from the boundary of the quarry site. As per the letter dated 07.12.2018 of the Executive Officer, Kappiyarai all these 11 houses were approved prior to the grant of quarry lease in S.F.No. 17(P), Kappiyarai Village, Kalkulam Taluk. Therefore, there cannot be any grant



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of quarry lease as per Rule 36(1A)(a) of the Tamil Nadu Minor Mineral Rules.

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However the quarry lease was granted violating Rule 36(1A) (a) of the Rules.

The District Collector is now got trapped pursuant to the orders of this Court in the Public Interest Litigation. In the inspection conducted by the very same authorities in the year 2019 found houses and consequently cancelled the lease granted to the petitioner by the order impugned within a year. Admittedly there are houses within the radius of 300 metres from the petitioner's quarry site and these houses were in existence even before the lease, constructed with building plan and therefore, as per the above rule, the petitioner's quarry cannot be allowed to continue. The impugned order was passed after providing opportunity to the petitioner and as per Rules and therefore this Court does not find any reason to interfere with the impugned order and accordingly, these writ petitions are dismissed. At the same time the ground raised by the petitioner that it is no his fault and he has not suppressed anything before the authorities for obtaining the lease and suffered a huge loss for no fault of him, has to be considered.

14. The lease was granted for a period of five years, but it was cancelled in one year. The petitioner claims that he has made huge investment based on the



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lease granted and has suffered a total loss. He is having a legitimate expectation based on the lease granted, made huge investments for machineries and other infrastructure and suffered a loss due to the cancellation of lease. He has not made any false claim and it is purely the mistake of the officials. The officials who conducted inspection were aware of the presence of the houses within the prohibitory distance. The purpose of the inspection itself is to ascertain there is anything in violation of this Rule 36(1A). Lease was granted violating the rules and the same is now cancelled on the intervention of the Court.

15.The quarry lease was granted only after inspection of the RDO, the Assistant Director of Mines and other officials. The RDO in his report has pointed out there are 10 houses within the radius of 300 metres in the year 2011 itself and therefore the officials have not proceeded within the file for nearly five years. In the year 2015 the file got momentum and a report was called for from the Assistant Director of Geology and Mining and he justified the houses as it is only farm houses. Mining plan and environmental clearance were granted in a mechanical manner and finally the lease was granted. The lease was granted deliberately violating the Rule 36(1A), knowing well that there are houses within the prohibitory distance. Since there is a deliberate mistake on the part of the officials



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in granting the lease, the petitioner needs to be compensated. Therefore, these writ petitions are partly allowed with a cost of Rs.10 lakh [Rupees Ten lakh] which is liable to be paid by the District Administration to the petitioner and it shall be recovered from the concerned officials, who are responsible for grant of lease in violation of Rule 36(1A) of the Tamil Nadu Minor Mineral Concession Rules.

16.The government shall also initiate necessary departmental proceedings as against the erring officials including the District Collector and shall ensure such violations are not occurring in future. The compensation shall be provided within a period of four weeks from the date of receipt of a copy of this order.

17.On behalf of the village two impleading petitions were filed in WMP(MD)Nos.3062 and 3777 of 2024 are filed. In view of the orders passed in the main writ petitions, this Court is not passing any orders in the impleading petitions. However the impleading petitioners shall pay a sum Rs.10,000/- each, to the Advocate Commissioners in this case. Consequently connected miscellaneous petitions are closed.

12.08.2024



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To

- 1.The District Collector,
Kanniyakumari District.
- 2.The Assistant Director, Geology and Mining,
Kanniyakumari District.
- 3.The Revenue Divisional Officer,
Kalkulam Taluk, Padmanabhapuram,
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