



W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2025

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

and

W.M.P.(MD).Nos.17838 and 17839 of 2021

W.P.(MD).No.20719 of 2022:

K.Rajeswaran

.. Petitioner

Vs.

1.The District Revenue Officer,
Office of the District Collector,
Kanniyakumari District

2.The Assistant Director,
Department of Geological and Mines,
Collectorate,
Kanniyakumari District.

3.The Sub Collector,
Office of the Collectorate,
Padmanathapuram,
Kanniyakumari District.

4.The Tahsildar,
Office of the Tahsildar,
Vilavankodu,
Kanniyakumari District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the first respondent in Rc No.181/G&M/2004 dated 16.06.2022 and quash the same and consequently directing the respondents



W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

to extend the non-operation period as per the quarrying lease issued by the first respondent in Rc No.181/G&M/2004 dated 18.11.2015 and to issue transport permit.

For Petitioner : Mr.M.Sricharan Rangarajan
Senior Counsel for Mr.S.Ramsundarvijayraj

For Respondents : Mr.A.Kannan
Additional Government Pleader

W.P.(MD).No.21256 of 2021:

K.Rajeswaran

.. Petitioner

Vs.

1.The District Collector,
Office of the District Collector,
Kanniyakumari District.

2.The Assistant Director,
Department of Geological and Mines,
Collectorate,
Kanniyakumari District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records pertaining the impugned order of the 1st respondent in Na.Ka.No.181/Pu.Ma.Su/2004 dated 28.10.2021 and quash the same and consequently directing the respondents to extend the non-operation period as per the quarrying lease issued by the 1st respondent in Rc.No.181/G&M/2004 dated 18.11.2015.

For Petitioner : Mr.M.Sricharan Rangarajan
Senior Counsel for Mr.S.Ramsundarvijayraj

For Respondents : Mr.A.Kannan
Additional Government Pleader



W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

COMMON ORDER

These two Writ Petitions are clubbed together as they present same issues. The prayers in the two Writ Petitions are as follows:

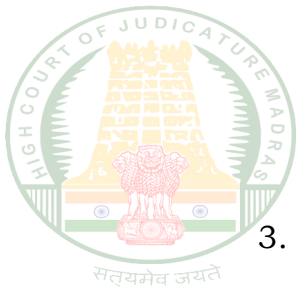
(i) W.P.(MD).No.20719 of 2022:

“To issue a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the first respondent in Rc No. 181/G&M/2004 dated 16.06.2022 and quash the same and consequently directing the respondents to extend the non-operation period as per the quarrying lease issued by the first respondent in Rc No.181/G&M/2004 dated 18.11.2015 and to issue transport permit.”

(ii) W.P.(MD).No.21256 of 2021:

“To issue a writ of Certiorarified Mandamus, calling for the records pertaining the impugned order of the 1st respondent in Na.Ka.No. 181/Pu.Ma.Su/2004 dated 28.10.2021 and quash the same and consequently directing the respondents to extend the non-operation period as per the quarrying lease issued by the 1st respondent in Rc.No. 181/G&M/2004 dated 18.11.2015.”

2. W.P.(MD).No.21256 of 2021 and 20719 of 2022 have been filed by the same person, by name, K.Rajeswaran.



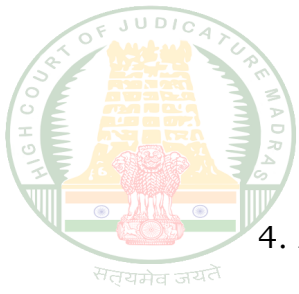
W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

3. Mr.Rajeswaran is a quarry operator in the property situated in S.F.No.486/5 to an extent of 1.22.0 hectares of Kaliyal Village, Vilavancode Taluk, Kanniyakumari District. He filed an application for grant of licence to quarry rough stones and jelly for the same. This application was made on 19.03.2004. As is required for an application for grant of quarry license, it was forwarded to the Chief Engineer, Agricultural Engineering Department at Chennai. He recommended the same by way of an order dated 10.06.2004. Thereafter, it went to the Principal Chief Conservator of Forest at Chennai, who also tendered “No Objection” for the said quarry. Thereafter, the Revenue Divisional Officer of the concerned area recommended the case of the petitioner. So did the Deputy Contractor of Town and Country Planning at Tirunelveli. It was then referred to the Assistant Director of Geology and Mining, Nagercoil for obtaining a technical report. He submitted a report to the following effect:

(i) The owner of the lands are Thiru.Joseph, Thiru.Suriyan, Thiru.Sebastian and Thiru.Thomas. They had entered into an agreement with Rajeswaran for quarrying and transportation of rough stone/jelly.

(ii) The area has meager soil thickness and is a virgin land devoid of thick vegetation and covered with exposures of charnockite.

(iii) The mineral available over the land is suitable for rough stone jelly and finally, the requirements of Section 36(1) of the Tamil Nadu Minor Mineral Concession Rules of 1959 stand satisfied.

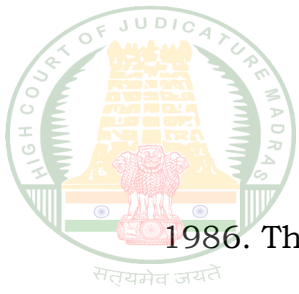


W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

4. After these approvals, no objections and technical report, the matter was placed before the Hill Area Conservation Committee – HACA Committee. The said Committee also recommended the grant of quarry lease to the writ petitioner. Thereafter, the matter was sent for environmental clearance and that too was obtained on 06.11.2015. Wide publication was given in a newspaper recording the environmental clearance. This was made on 13.11.2015 and 14.11.2015. After perusal of all these records, on 18.11.2015, the District Collector, Kanniyakumari District granted a lease to the petitioner to quarry rough stone/jelly over the said property for a period of five years.

5. Due to the intervention of a judgment of the Supreme Court, environmental clearance had to be obtained from the District Level Environment Impact Assessment Authority (DEIAA). The District Level Environment Impact Assessment Authority also granted the modified environment clearance on 09.12.2017. The petitioner was exploiting the permit granted peacefully till 05.04.2019.

6. A Writ Petition came to be filed before this Court in W.P.(MD).No. 7607 of 2019. The prayer in the Writ Petition was to prevent quarry operations in eco-sensitive zone and eco sensitive areas, as declared by the Central Government, under Section 5 of the Environmental Protection Act of

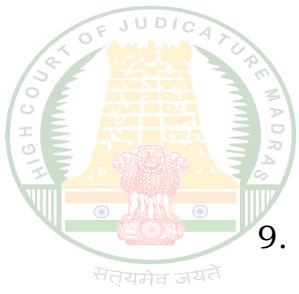


W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

1986. This Court entertained the Writ Petition on 01.04.2019 and granted an interim order. Subsequently, inspection took place for all quarries including that of the petitioner's quarry. Subsequently, the District Collector, by order dated 05.04.2019, suspended the quarry operations of the petitioner as the quarry is situated within 10 Kms from the Kanniyakumari Wild Life Sanctuary.

7. Thereafter, the District Collector, Kanniyakumari District passed an order on 23.10.2020, taking note of the notification issued by the Government of India, Ministry of Environment, Forest and Climate Change in S.O.3236(E) dated 22.09.2020, whereunder, the stipulated eco sensitive area had been revised from 0-3 Kms and consequently, permitted the petitioner to resume quarrying operations. The order of temporary suspension issued on 05.04.2019 pursuant to an order of this Court, was revoked.

8. On 31.10.2020, the petitioner sent a representation to the District Collector pointing out that on account of the order of suspension dated 05.04.2019, the petitioner was not in a position to extract rough stones/jelly during this period. As the quarrying licence had expired on 17.11.2020, he sought for extension of lease period by 18 months and 17 days, being the non-operational period during the subsistence of the lease.



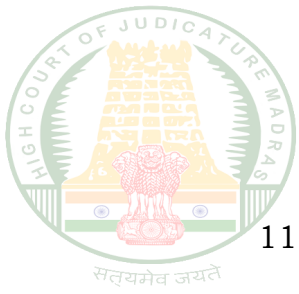
W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

9. As no orders were passed by the District Collector on the representation dated 31.10.2020, the writ petitioner approached this Court by way of a Writ Petition in W.P.(MD).No.7941/2021. By an order dated 21.04.2021, this Court directed the District Collector to permit the petitioner to conduct stone quarrying operations for the non-operative period. The District Collector caused verification of the period of lease as against the time when the transport permits were stopped and came to the conclusion that the transport permits were stopped for a period of 18 months and 17 days, as stated by the writ petitioner. Consequently, he passed an order on 02.06.2021, permitting quarrying operations for the non-operative period of 18 months and 17 days from the date of the order or till the completion of the environmental clearance for the approved quantity, whichever is earlier.

10. Thereafter, on 19.08.2021, the District Collector formed a Committee under the Hill Area Conservation Authority. It consisted of,

- (i) the Sub Collector, Padmanabhapuram,
- (ii) the District Forest Officer and
- (iii) the Assistant Director, Geology and Mining, Kanniyakumari.

This Committee was called upon to examine all the quarries located in the Villages covered under the HACA Committee and also to review and verify whether such quarries have complied with the “No Objection Certificate” given by the District Forest Officer.



W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

11. Subsequently, the petitioner was issued with a show cause notice on 28.10.2021, on the following grounds:

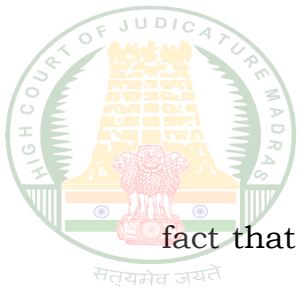
(i) the quarry is covered by HACA and the Tamil Nadu Preservation of Private Forests Act, but outside the eco sensitive zone;

(ii) The report of the Village Administrative Officer states that the lease area is covered by the Private Forests Act;

(iii) Quarrying operations being a non-forest activity, the permission of the District Forest Committee is necessary under Section 4 of the Tamil Nadu Preservation of Private Forests Act; and

(iv) Finally, relying upon the order passed by this Court in W.P.No.9264 of 2009 dated 04.09.2019, as permission had not been obtained from the District Forest Committee in terms of Section 4-A of the Tamil Nadu Preservation of Private Forests Act, the petitioner was called upon to show cause as to why the suspension of the quarry lease should not be continued.

12. The petitioner responded to this show cause notice by his reply on 15.11.2021. He stated that prior to the grant of the quarry lease, all the requisite permissions have been obtained. He pointed out that as the HACA Committee had already granted clearance, there is no necessity to obtain a separate clearance from the District Forest Committee under the Tamil Nadu Preservation of Private Forests Act. This reply was given on account of the



W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

fact that the members of the HACA Committee as well as the District Forest Committee are one and the same and they are drawn from the same Department, namely, the Revenue Department, Agricultural Department and the Forest Department. He relied upon the order passed by this Court in W.P.(MD).No.7941 of 2021 to point out that the revocation order itself was passed pursuant to the order passed by this Court on 21.04.2021 and therefore, he requested the proceedings be dropped.

13. After having received the reply and after the expiry of 6 months, the District Collector passed the impugned order on 16.06.2022, stating that the extension of lease granted stands cancelled as the same is in violation of Section 2 of the Forest (Conservation) Act, 1980, Section 3(2) of the Tamil Nadu Preservation of Private Forests Act and Section 4A(2) of the Mines and Minerals (Development and Regulation) Act, 1957.

14. The show cause notice has been challenged in W.P.(MD).No.21256 of 2021 and the final order has been challenged in W.P.(MD).No.20719 of 2022.

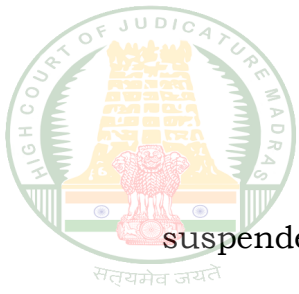
15. The District Collector has gone on record, by way of a counter affidavit, to the averments made in the affidavit. According to him, W.P. (MD).No.21256 of 2021 is a premature Writ Petition, as it is only a show



W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

cause notice. He points out, all that he required the petitioner was to state as to why the order granting extension should not be cancelled, since it does not comply with Section 4-A of the Tamil Nadu Preservation of Private Forests Act of 1949. The counter affidavit concedes that the application made for grant of quarry license was duly processed, after availing all the necessary requirements, in accordance with the prevailing rules and law. The District Collector states, it is only after satisfying himself on all these aspects, permission was granted to the petitioner on 18.11.2015. He agrees with the writ petitioner that quarrying operations were stopped pursuant to an order passed by this Court in W.P.(MD).No.7067 of 2019 on 05.04.2019.

16. Yet again, he states that permission was granted for the non-operative period of 18 months and 17 days pursuant to the order dated 21.04.2021 in W.P.(MD).No.7941 of 2021. He pleads that he received a lot of complaints and on account of repeated litigations preferred by persons, claiming to be concerned about environment and in order to protect the flora and fauna in the HACA Villages, he had taken steps to stabilise the sensitive ecology in the District. In pursuance of this intimation, he received a report from the District Forest Officer, Kanniyakumari and found that out of the 15 quarries permitted in that District, 12 quarries come within the HACA area and 3 quarries come within the areas covered under the Tamil Nadu Preservation of Private Forests Act of 1949. Therefore, he had unilaterally



W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

suspended the licence given to all quarries by his proceedings dated 19.08.2021 and appointed the Committee set forth above. He states the Committee did a complete re-examination of all the quarrying operations and found that out of the 15 operating quarries, 3 including that of the writ petitioner fell within the purview of the Tamil Nadu Preservation of Private Forests Act of 1949. On the basis of this report, he submits that as Section 4-A of the aforesaid Act had been violated, he had decided to suspend the quarry operation.

17. I heard Mr.M.Sricharan Rangarajan, learned Senior Counsel for Mr.S.Ramsundarvijayraj for the petitioner and Mr.A.Kannan, learned Additional Government Pleader for the respondents.

18. I have carefully considered the submission of both sides. I have gone through the records.

19. At the outset, I should point out as the show cause notice has concluded in a final order dated 16.06.2022, the challenge to the show cause notice in W.P.(MD).No.21256 of 2021 need not be gone into. Hence, I am dealing only with W.P.(MD).No.20719 of 2022.

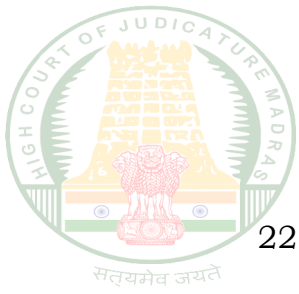


W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

20. A perusal of the typed set of papers filed in support of the Writ Petitions reveals that the petitioner has secured permission from the following authorities:

- (i) The Chief Engineer, Agricultural Engineering, Chennai;
- (ii) **The Principal Chief Conservator of Forest, Chennai;**
- (iii) The Revenue Divisional Officer, Kanniyakumari District;
- (iv) The Deputy Director, Town and Country Planning, Tirunelveli;
- (v) The Assistant Director of Geology and Mining, Nagercoil;
- (vi) Hill Area Conservation Authority – HACA;
- (vii) Environmental Clearance by the District Level Environment Impact Assessment Authority (DEIAA).

21. It is conceded from paragraph 5 of the counter affidavit filed in W.P.(MD).No.21256 of 2021 that it is only after having been convinced that the entire process of approvals have been obtained from by all the aforesaid authorities, quarrying licence had been given to the writ petitioner. The counter affidavit does not reveal that the writ petitioner had come under adverse notice of either illegal mining or excessive mining, (which is also covered by illegal mining) during the course of exploitation of the quarrying lease.



W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

22. The show cause notice was issued on the ground that the quarry was in violation of Section 4A of the Tamil Nadu Preservation of Private Forests Act of 1949. Section 4A(1) reads as follows:

“4-A. (1) Notwithstanding anything contained in sub-section (1) of section 3, the purchaser of the whole or any portion of the forest, which has been sold by the owner of such forest without the previous sanction of the committee under clause (a) of sub-section (1) of section 3, may, apply to the committee for sanction to retain the whole or any portion of the forest, within such time as may be prescribed.”

23. Section 4A(1) operates when a person purchases an area covered by the Tamil Nadu Preservation of Private Forests Act, without the previous sanction, of the Committee under Section 3(1)(a) of the said Act. It is not anybody's case that the writ petitioner had purchased the property situated in S.F.No.486/5 of Kaliyal Village, Vilavancodu Taluk, Kanniyakumari District. When the Section applies only for a sale or a purchase, to apply it for cases of lease, shows that the District Collector had applied a wrong provision of law to the facts presented before him. This is the first instance of non-application of mind by the District Collector.

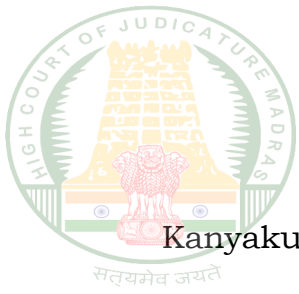
24. Secondly, the District Collector has referred to an order passed by this Court in W.P.No.9264 of 2009 dated 04.09.2019. The said order has been placed for perusal by this Court in page 20 of the typed set of papers.



W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

In that Writ Petition, an application was filed for issuance of 'No Objection Certificate' for rough stone quarrying operations in the very same Kaliyal Village, Vilavancodu Taluk, Kanniyakumari District in SF.Nos.471/2 and 473. In a stark distinction to the facts of the present case; in that case, the Principal Chief Conservator of Forests had rejected permission by an order dated 03.04.2009. That order was challenged before the High Court. It was a case of alienation of property in favour of the writ petitioner therein. Since an alienation comes within the scope of Section 4-A, this Court held that the petitioner would have to get permission from the Committee constituted under Section 4-A of 1949 Act and thereafter, proceed in accordance with law.

25. The very facts involved in W.P.No.9264 of 2009 shows that the petitioner therein had not secured permission from the Committee prior to the **purchase** made by him. In the present case, as already pointed out, it is not a case of purchase, but it is a case of lease. In addition, the Principal Chief Conservator of Forests had rejected permission to the petitioner in W.P.No.9264 of 2009. In this case, the very same authority had granted 'No Objection' for grant of quarry licence to the writ petitioner. Not only the facts fundamentally vary, but the law applicable also are distinctly different. Hence, both Section 4-A of the Tamil Nadu Preservation of Private Forests Act of 1949 as well as the judgment in Joseph Jacob Vs. District Collector,



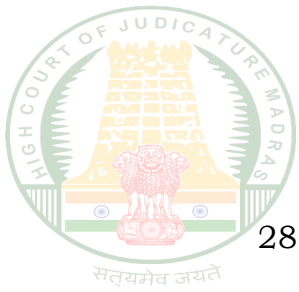
W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

Kanyakumari District and others, W.P.No.9264 of 2009 dated 04.09.2019,
are inapplicable to the present case.

26. In addition, I should point out that the show cause notice related only to Section 4-A of the Tamil Nadu Preservation of Private Forests Act. However, in the impugned order, which was passed pursuant to the show cause notice, the District Collector had taken into consideration another legislations, which was not even referred to in the show cause notice, namely, Section 2 of the Forest (Conservation) Act of 1980.

27. Insofar as Section 4-A(2) of the Mines and Minerals (Development and Regulation) Act of 1957 is concerned, it enables the State Government to terminate a prospecting licence or a mining lease granted for any area, if it is found that the following are being violated:

- (i) preservation of natural environment;
- (ii) control of floods;
- (iii) prevention of pollution;
- (iv) danger to public health or communications;
- (v) to ensure safety of buildings, monuments or other structures;
- (vi) for any other purposes, as the State Government may deem fit.

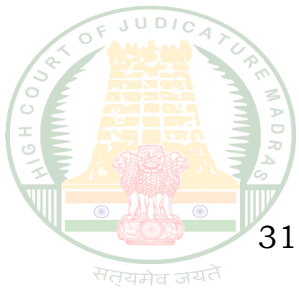


W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

28. A reading of the statute shows that Section 4-A(2) of the Mines and Minerals (Development and Regulation) Act of 1957 is exercisable by the State Government and not by the District Collector. May be the District Collector thinks he is the State Government, but unfortunately, law makes a drastic difference between a servant of the State Government, namely, the District Collector and the State Government itself. When the power is exercisable only by the State Government, the claim of the District Collector, that he is exercising that power, is beyond one's comprehension. Even if I were to assume the State Government and the District Collector are one and the same, (which I am not), the power under Section 4A(2) can be exercised only on the grounds set forth above. None of those grounds exist in the present case.

29. Apart from extracting the provision, the District Collector in the impugned order has not explained as to how the extension granted to the writ petitioner by his order dated 02.06.2021, pursuant to the order of this Court dated 21.04.2021, attracts any of the aforesaid clauses.

30. Apart from being hit by the principle of ultra vires, the impugned order has to go for it is unreasoned. There are absolutely no reasons as to how Section 4-A(2) applies to the facts of the case or as to how Section 2 of the Forest (Conservation) Act of 1980 applies.



W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

31. In the light of the above discussion, the impugned order dated 16.06.2022 is quashed. The Writ Petition in W.P.(MD).No.20719 of 2022 stands allowed. There shall be a Mandamus to the respondents to issue transport permits to the petitioner for the remaining period or until the expiry of the environmental clearance certificate. Since the show cause notice dated 28.10.2021 has merged with the final order dated 16.06.2022, no orders are necessary in W.P.(MD).No.21256 of 2021. The same stands closed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

13.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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Office of the District Collector,
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- 2.The Assistant Director,
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Collectorate,
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W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

4. The Tahsildar,
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W.P.(MD).Nos.20719 of 2022 and 21256 of 2021

V.LAKSHMINARAYANAN,J.

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W.P.(MD).Nos.20719 of 2022
and 21256 of 2021

13.03.2025