



W.P.(MD).No.21261 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).No.21261 of 2021

and

W.M.P.(MD).Nos.17842 and 17843 of 2021

P.Anitha Rajabai

.. 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.655/Pu.Ma.Su/2014 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.655/G&M/2014 dated 13.05.2017.

For Petitioner : Mr.T.Dinesh
for Mr.S.Ramsundarvijayraj

For Respondents : Mr.A.Kannan
Additional Government Pleader



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ORDER

The Writ Petition is filed by one P.Anitha Rajabai to quash the impugned order of the first respondent in Na.Ka.No.655/Pu.Ma.Su/2014 dated 28.10.2021 and consequently, to direct the respondents to extend the non-operation period as per the quarrying lease issued by the first respondent in Rc.No.655/G&M/2014 dated 13.05.2017.

2. The petitioner is a quarry operator. She filed an application for carrying on quarrying operations in S.F.Nos.521/3A and 521/4B to an extent of 1.43.50 hectares of Kadamalaikuntu Village, Mekkamandapam Post, Kanniyakumari District. After going through the entire process of approval, quarrying lease was granted to the petitioner by the District Collector on 13.05.2017. The lease is valid till 2022.

3. While the petitioner was carrying out quarrying operations, a Writ Petition came to be filed before this Court in W.P.(MD).No.7067 of 2019. This Court granted an interim order restraining all quarrying operations from being carried out in the eco-sensitive zone in terms of Section 5 of the Environmental Protection Act of 1986. The Central Government subsequently amended its notification in S.O.3236(E) dated 22.09.2020. By this notification, eco-sensitive zone was defined as 3 Kms from a hill region. As the petitioner's quarrying operation in S.F.Nos.521/3A and 521/4B fell

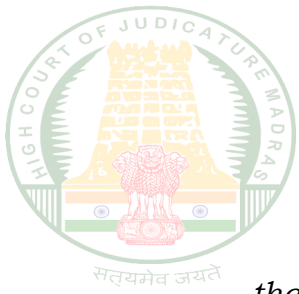


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beyond this distance of 3 Kms, the order suspending the quarrying operation was revoked on 23.10.2020. As the order was revoked, transport permits were issued by the District Collector thereafter.

4. Yet again, this Court was moved by way of a Writ Petition in W.P. (MD).No.17277 of 2020 challenging the notification issued by the Union of India fixing the eco-sensitive zone to 3 Kms from hill region. Consequent to this Writ Petition, yet again, the transport permit was suspended to the petitioner. This Court dismissed W.P.(MD).No.17277 of 2020 on 26.03.2021. Consequent to the dismissal, the transport permits for quarrying operations were issued from 09.04.2021.

5. As the petitioner was prevented from carrying on her quarrying operations pursuant to the orders of this Court in W.P.(MD).No.7067 of 2019 and W.P.(MD).No.17277 of 2020, she approached the respondents for extension of the lease period when the quarrying operation could not be carried on. This came to about 22 months and 20 days. The representation that was made by the petitioner on 19.04.2021 having not been considered, she filed W.P.(MD).No.8805 of 2021. By an order dated 30.04.2021, the Honourable Mrs.Justice J.Nisha Banu was pleased to allow the Writ Petition on the following terms:



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“7. After giving due consideration to the submissions made by the learned counsels appearing on either side, when the respondents have got power to grant permission to the petitioner to conduct stone quarrying operation over her land, for the non-operative period, on account of suspension of the mining lease granted in favour of the petitioner for no fault on her, rejecting the request made by the petitioner to conduct stone quarrying operation in her land for the non-operative period, is not justifiable and therefore, this Court is of the considered view that the respondents ought to have considered the reasonable request of the petitioner, permitting her to conduct stone quarrying operation, on account of suspension of the mining lease granted in favour of her.”

Pursuant to the directions of this Court, the first respondent passed an order on 07.06.2021, permitting the petitioner to continue the quarrying operations for the non-operative period of 22 months and 21 days beyond the lease period from 17.08.2022 or till the completion of the environmental clearance for the approved quantity, whichever is earlier.

6. Thereafter, on 28.10.2021, the first respondent issued the impugned show cause notice. In the said notice, he directed the petitioner to get clearance from the District Forest Committee as the quarry of the petitioner attracts Section 4 of the Tamil Nadu Preservation of Private Forests Act of 1949. He stated in case, a reply is not given, he will invoke the provisions of Section 4-A(2) of Mines and Minerals (Development and Regulation) Act of 1957. The petitioner, after giving a reply to the same on



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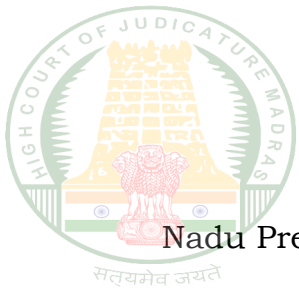
16.11.2021, has come forward with the present Writ Petition.

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7. I heard Mr.T.Dinesh representing Mr.S.Ramsundarvijayraj for the petitioner and Mr.A.Kannan, learned Additional Government Pleader for the respondents.

8. Mr.T.Dinesh pleads that Section 4-A of the Tamil Nadu Preservation of Private Forests Act of 1949 does not arise as there is no case of a sale or a purchase by the petitioner of the lands covered by the quarry. He further urges that the petitioner had already secured clearance from the Hill Area Conservation Authority under the Town and Country Planning Act, the Pollution Control Board and additional clearance required from the District Level Environment Impact Assessment Authority prior to the grant of lease. He states that as the show cause notice has been issued invoking a wrong provision of law, it has to be interfered with.

9. Per contra, Mr.A.Kannan, learned Additional Government Pleader for the respondents, referring to the counter affidavit filed by the first respondent, pleads that it is only a show cause notice and in case, the explanation is found satisfactory, the proceedings will be closed. Challenging the same by way of a Writ Petition is premature. He points out that as the quarrying operations of the petitioner fall within the purview of the Tamil



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Nadu Preservation of Private Forests Act of 1949, she ought to have obtained prior approval from the District Forest Committee in terms of Section 4-A and as she failed to get prior sanction, temporary suspension order was issued.

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

11. 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, Padmanabhapuram;
- (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).

12. It is conceded from paragraph 5 of the counter affidavit that it is



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only after having been convinced that the entire process of approvals have been obtained from 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.

13. The show cause notice was issued on the ground that the quarry was in violation of Section 4-A of the Tamil Nadu Preservation of Private Forests Act of 1949. Section 4-A(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.”

14. 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.Nos.521/3A and 521/4B of Ponmanai Village, Kalkulam Taluk, Kanniyakumari District. When the Section applies only for a sale or a



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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.

15. 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 50 of the typed set of papers. In that Writ Petition, an application was filed for issuance of 'No Objection Certificate' for rough stone quarrying operations in 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.

16. 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



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

17. 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.

18. A reading of the statute shows that Section 4-A(2) of the Mines and

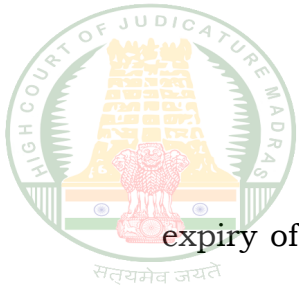


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Minerals (Development and Regulation) Act of 1957 is exercisable by the State Government and not by the District Collector. May be the District Collector thinks he is the State Government, but unfortunately, law makes a drastic difference between a 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.

19. As Section 4A of the Tamil Nadu Preservation of Private Forests Act does not apply to the facts of the present case, the show cause notice is an attempt to get around an order passed by this Court in W.P.(MD).No.8805 of 2021 dated 30.04.2021. Hence, as the show cause notice reeks of patent non-application of mind and an attempt to override the order of this Court, it requires to be interfered with.

20. Accordingly, the impugned order is quashed. The Writ Petition stands allowed. There shall be a Mandamus to the respondents to issue transport permits to the petitioner for the remaining period or until the



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expiry of the environmental clearance certificate. 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

- 1.The District Collector,
Office of the District Collector,
Kanniyakumari District.
- 2.The Assistant Director,
Department of Geological and Mines,
Collectorate,
Kanniyakumari District.



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V.LAKSHMINARAYANAN,J.

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