

**(2010) 04 MAD CK 0240**

**In the Madras High Court**

**Case No :** Writ Petition No's. 21006 and 26246 of 2009

A. Velusamy

APPELLANT

Vs

The District Collector and Others <BR>V. Pechimuthu  
Gounder Vs District Collector and Others

RESPONDENT

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**Date of Decision :** 06-04-2010

**Acts Referred:**

Tamil Nadu Forest Act, 1882 — Section 16, 26

Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 36(1), 36(1A)

**Citation :** (2010) 3 CTC 57 : (2010) 4 MLJ 273 : (2010) WritLR 497

**Hon'ble Judges :** P. Jyothimani, J

**Bench :** Single Bench

**Advocate :** V. Sanjeevi, in Wps. 21006 and 21007/09 and P. Valliappan, for S. Sithirai Anandam, in Wps. 26246 and 26247/09, for the Appellant; A. Edwin Prabhakar, Addl. Govt. Pleader and R. Ravichandran, for R.4 in Wps. 21006 and 21007/09, for the Respondent

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## **Judgement**

P. Jyothimani, J.—Writ Petition Nos. 21006 and 21007 of 2009 are filed by the respective petitioners, who are the husband and wife and they are the owners of S.F. Nos. 151/2A1, 151/2A2, 151/2A3(P) and 152/4D measuring 2.46.5 hectares and S.F. No. 150/1A4 measuring 1.23.0 hectares respectively in Bogampatti village, Palladam taluk, Coimbatore District.

2. They have filed the said writ petitions to forbear the respondents 1 to 4 from sanctioning any planning permission to construct building or approving the lay out within 300 mts. from the quarry site, comprised in the above said survey numbers. It is stated that the first respondent, District Collector granted quarrying lease to the petitioner in W.P. No. 21006 of 2009, for a period of five years in the proceedings dated 18.10.2002 and that was for quarrying rough stones in the said patta lands and the periods of the said leases in these writ petitions were between 25.10.2002 to 24.10.2007, 20.12.2002 to 19.12.2007, 12.02.2009 to 11.02.2014 and 12.02.2009 to 11.02.2014 respectively and the petitioners commenced the quarrying operations.

(a) According to the petitioners, there are no inhabited site, natham, residential houses or Government buildings within the radius of 500 mts. from the said quarry site. The petitioners made application to the first respondent District Collector on 20.12.2008 to quarry rough stones for a further period of five years in the said patta lands as per the Tamil Nadu Minor Mineral Concession Rules, 1959.

(b) It is stated that after necessary inspection effected by the Special Deputy Tahsildar (Mines), the District Collector in his proceedings dated 12.2.2009, granted the quarrying lease for a further period of five years. Thereafter, an agreement came to be executed on 12.2.2009 for the period from 12.2.2009 to 11.2.2014.

(c) It is the case of the petitioners that they are quarrying rough stones by paying the required seigniorage fees for the quantity removed from the leasehold area. It is stated that the adjoining land in S. No. 151/2A was also subject to quarry operation by one Nachimuthu S/o. Marappa Gounder. It is stated that there is no inhabited site or residential houses within a distance of 300 mts. from the quarry site as reflected in the order of the District Collector dated 12.2.2009 granting lease.

(d) As per Rules 36(1-A)(a) and 36(1-A)(c) of the Tamil Nadu Minor Mineral Concession Rules, 1959, no lease shall be granted within 300 mts. from any inhabited site and no lay out or building plan falling within 300 mts. from the quarry site shall be given approval by any agency unless prior clearance is obtained from the Director of Geology and Mining. The term 'inhabited site' is explained in Explanation No. III to Rule 36(1-A)(a), (b) and (c) of the Tamil Nadu Minor Mineral Concession Rules.

(e) It is stated that a nearby owner by name, Mr. Pechimuthu Gounder who has been subsequently impleaded as 5th respondent in these writ petitions by order of this Court dated 9.2.2010 intended to divide his lands into plots, which is situate adjacent to the petitioners' lands and sell the same to third parties as housing plots.

(f) It is the case of the petitioners that the said site which is within a radius of 300 mts. of the petitioners' lands, for which quarrying lease was granted by the first respondent District Collector is not either a residential area or inhabited site and as per the Rules, unless the Director of Geology and Mining gives prior clearance, no building plan, etc. can be approved by the respondent/authorities.

(g) If such permission for building plan is granted within 300 mts. to the quarry site making the area as inhabited site, the occupant would object to the continuance of quarrying operation and putting up any building within 300 mts. from the quarry site is not suitable and therefore, the petitioners sent a detailed representation to the respondents on 24.9.2009, not to grant any approval of lay out of site plan to any one within a radius of 300 mts. from the lands of the petitioners, for which the quarrying operation is granted. In these circumstances,

the present writ petitions have been filed for a direction against the respondents 1 to 4 as stated above.

3. The said V. Pechimuthu Gounder who was impleaded as 5th respondent in the above said writ petitions has filed W.P. Nos. 26246 and 26247 of 2009, challenging the orders of the first respondent District Collector dated 12.2.2009 granting lease to the writ petitioners in W.P. Nos. 21006 and 21007 of 2009 in respect of the lands stated above for quarrying operation for the period from 12.2.2009 to 11.2.2014 on the ground that the quarrying lease granted by the first respondent is illegal since it is situated within the inhabited site, that the lease has been granted within 300 mts. from the residential area and that the petitioner Pechimuthu's house site is situate within the prohibited distance of 300 mts. By relying upon the revenue records stating that as per the records it is treated as house from 1975 onwards, it is stated by the petitioner Pechimuthu that the subsequent grant of lease for the period between 2002 and 2009 and the extension from 2009 to 2014 is clearly prohibited as per the Tamil Nadu Minor Mineral Concession Rules.

4. It is the contention of the learned Counsel appearing for the petitioners Mr. Sanjeevi that the quarrying lease has been granted in favour of the petitioners in W.P. Nos. 21006 and 21007 of 2009 from the year 2002, on the basis of which there have been the quarrying operations but the petitioner Pechimuthu has not raised any objection. Mr. Sanjeevi would submit that while the occupation of the petitioner Pechimuthu from the year 1975 is not disputed, though the quarrying operation has been done by the petitioners in W.P. Nos. 21006 and 21007 of 2009 from 1991 onwards, the same has never been objected to by the petitioner Pechimuthu and as per the revenue records, the lands are classified as punja lands, not taxed for any housing purposes and therefore, according to the learned Counsel for the petitioners, it cannot be treated as an inhabited site. It is his contention that the occupation of a portion of land is different from the one used as inhabited site.

5. It is specifically stated by the writ petitioners in W.P. Nos. 21006 and 21007 of 2009, who were granted quarrying lease by the District Collector and who are the respective 4th respondents in the writ petitions filed by Pechimuthu Gounder in W.P. Nos. 26246 and 26247 of 2009, as it is seen in the counter affidavit that the land of the said Pechimuthu Gounder is a punja land and not a village site, town site or house site as per the revenue records or lay out approved by a local body or Town and Country or Metropolitan Planning Authority and therefore, the land does not come within the ambit of inhabited site and the grant of lease in favour of the petitioners in W.P. Nos. 21006 and 21007 of 2009 cannot be objected to by the said petitioner Pechimuthu Gounder, especially when his land is not a natham or approved lay out land.

6. On a reference to the records, it is seen that the lands in survey No. 148, Bogampatti village to an extent of 14.86 acres belonging to the writ petitioner in W.P. Nos. 26246 and 26247 of 2009 V. Pechimuthu Gounder who has challenged

the lease granted in favour of the writ petitioners in W.P. Nos. 21006 and 21007 of 2009 in respect of S.F. Nos. 151/2A1, 151/2A2, 151/2A3(P), 152/4D and S.F. No. 150/1A4, are adjacent lands and he sold 10 acres of his lands to the third parties. It is his case that he is having his house and he is residing there for more than 40 years and he intended to divide the remaining extent of 4.86 acres for developing housing plots.

7. A reference to the impugned order passed by the District Collector in granting stone quarrying lease for a period of five years up to 2014 shows that the Village Administrative Officer as per the village accounts, has reported that within 300 mts. distance there are no natham house sites or natham vacant sites or approved housing sites. It was based on that report, the lease has been granted in favour of the petitioners in W.P. Nos. 21006 and 21007 of 2009.

8. It is seen that the third respondent, the Commissioner of Sultanpet Panchayat Union in his letter dated 27.11.2009 addressed to the 4th respondent, the President of Bogampatti Village Panchayat has stated that in Survey No. 150/1A4 to an extent of 1.23.0 hectares and in Survey Nos. 151/2A1, 151/2A2, 151/2A3 and 152/4D to an extent of 2.46.5 hectares licence has been granted for quarrying stones from 12.2.2009 to 11.2.2014 to M/s. V. Rukmamni and A. Velusamy who are the petitioners in W.P. Nos. 21006 and 21007 of 2009 respectively. In that letter, it is directed that no building permit shall be granted to put up any construction within 300 mts. distance.

9. The 4th respondent, the President of Bogampatti Village Panchayat in his certificate dated 21.1.2010 has stated that in respect of S.F. Nos. 136 and 148 which are stated to belong to Mr. Pechimuthu, the writ petitioner in W.P. Nos. 26246 and 26247 of 2009, no approval has been granted for his house and the house has not been allotted any door number and it has not been assessed to tax.

10. The various documents which are relied upon by the learned Counsel for the petitioner in W.P. Nos. 26246 and 26247 of 2009 as filed in the typed set of papers even though show that there are certain electricity receipts issued in respect of S.F. No. 136 of Bogampatti village, there is nothing to show the existence of any house or any property tax receipt or any approved lay out. Therefore, even assuming that the petitioner Pechimuthu is living in Survey No. 136 keeping it as his godown, it is clear that such place has not been approved as a residential area or plot by any authority competent to grant such approval like, Planning Authority or President of Panchayat and the mere production of the certificate of the President of Panchayat or the Village Administrative Officer to show that he has been living in that particular place viz., in survey No. 136 would not be sufficient to show that the petitioner Pechimuthu is occupying the approved residential plot as approved by the competent authority.

11. Though it is made clear and it is also admitted by the learned Counsel for the petitioners in W.P. Nos. 21006 and 21007 of 2009 that the said petitioner V.

Pechimuthu Gounder is occupying the land adjacent to the place for which the quarrying operations are permitted, yet it is not the case of the petitioner Pechimuthu that the said land is an inhabited site within the meaning as defined in the Tamil Nadu Minor Mineral Concession Rules, 1959. On the face of it, there is no approval by the competent authority in respect of the land of the petitioner in W.P. Nos. 26246 and 26247 of 2009, classifying it as housing site or as natham or vacant site or building.

12. On the other hand, as per the communications of the respondents 3 and 4 in W.P. Nos. 21006 and 21007 of 2009, it is clear that no lay out or house site within 300 mts. distance from S.F. Nos. 151/2A1, 151/2A2, 151/2A3 part and 152/4D has been granted to anyone.

13. In the above said background we have to construe the relevant provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959. Rule 36(1-A) of the said Rules dealing with the general restrictions in respect of quarrying operations which is as follows:

36. General restrictions in respect of quarrying operations.-

(1-A)(a). No lease shall be granted for quarrying stone within 300 metres (three hundred metres) from any inhabited site:

Provided that the existing 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, Corgaum:

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.

(b) The methodology specified in column (2) of the Table shall be adopted in respect of the operational sources specified in column (1) thereof for rock quarrying operations.

TABLE Sl. Operational Methodology to be adopted No. sources for controlling the dust (1) (2) (3) 1 Drilling Liquid injection (water with a wetting agent) of capturing and venting emissions to a control device. 2 Blasting Adoption of good blasting practices. 3 Loading Water wetting. (at mines) 4 Transport Watering treatment with surface agents, soil stabilisation on paving. (c) No new layout, building plans falling within 300 metres from any quarry should be given approval by any agency unless prior clearance of the Director of Geology and Mining is obtained. On receipt of proposals for according clearance, the Director of Geology and Mining shall decide upon the continuance or closure, as the case may be, of any quarry which is situated within 300 metres from the new layout, buildings sought for such clearance.]

Explanation.- [for the purpose of Sub-rules (1) and (1-A)]-

(i) "public road" shall mean a road which has been constructed by artificially surfaced as distinct from a track resulting from repeated use;

(ii) "village road" shall mean and include any track shown in the revenue record as village road;

[(ii-a) "stone" shall mean rough stones including khandas, boulders, size-reduced (broken or crushed) materials including metal jelly, ballasts, mill stones, hand chakais and building and road construction stones other than black, red, pink, grey, green, white or other coloured or multi coloured granites or any other rocks suitable for use as ornamental and decorative stones];

[(iii) "inhabited site" shall mean a village site or town site or a house site as referred to in the revenue records or a house site or layout approved by a Local Body or Town or Country or Metropolitan Planning Authority, where the said Body or Authority is created under a statute and empowered to approve such an area as a house site or lay-out area.

(2) The quarrying permit holder or the lessee shall strengthen and support to the satisfaction of the Railway Administration concerned or the State Government, as the case may be, any part of the quarry which in the opinion of the Railway Administration or, as the case may be, the State Government requires such strengthening or support for the safety of any railway, reservoir, canal, road or any other public works or structures.

(3) If any mineral not specified in the lease deed or agreement is discovered, the quarrying permit holder or the lessee shall not mine or dispose of such mineral without obtaining the permission of the authority empowered to grant permit or lease for quarrying of the discovered mineral and without payment of the seigniorage fee. If the quarrying permit holder or the lessee fails to intimate to the State Government or the District Collector or the District Forest Officer, as the case may be, of the discovery of such new minerals within a period of thirty days from the date of the discovery of the mineral, the State Government or the District Collector or the District Forest Officer, as the case may be, may levy enhanced seigniorage fee upto fifteen times of ordinary seigniorage.

(4) The lessee shall, at his own expense, erect boundary marks round the area shown in the plan annexed to the lease or agreement and in which he works minerals and, at all times, maintain and keep such boundary marks in good repair.

(5)(a) The quarrying permit holder or the lessee or his tenant or lessee, etc, shall keep correct accounts showing the quantity and other particulars of all minerals obtained and despatched from the quarry. He shall also allow any officer authorised by the [State Government], director of Geology and Mining, Chief Conservator of Forests, the Collector or the District Forest Officer, as the case may be, to examine such accounts and furnish him with such informations and

returns as may be specified by them.

[(aa) Joint Director (Geology and Mining), Deputy Director (Geology and Mining), Assistant Director (Geology and Mining), Assistant Geologist, Special Tahsildar (Mines), Special Deputy Tahsildar (Mines) and Special Revenue Inspector (Mines) in the district offices of the Department of Geology and Mining and Presidents of Village Panchats, Executive Officers of Town Panchayats or Townships and the Commissioners of Municipalities or Corporation shall exercise the powers and discharge the duties as may be required and as the circumstances of the cases warrant in respect of the provisions of clause (a) and within their respective jurisdiction:

Provided that the said powers and duties exercisable and dischargeable by the local body authorities specified above shall be exercisable and dischargeable only in respect of minor minerals, namely, building and road construction stones including gravel, ordinary sand, earth and turf and ordinary clay including silt, brick and tile clay and within their jurisdiction relating to all lands excepting the reserved forest lands and lands reserved under the Tamil Nadu Forest Act, 1882 (Tamil Nadu Act V of 1882).

(b) the quarrying permit-holder or the lessee shall remove, or allow removal and transportation of any mineral from the area where quarrying is permitted only after obtaining bulk transport permit and facsimiled despatch slips in the Forms prescribed [in Appendices XII, XII-A and XIII, XIII A to these rules from the officer authorised in this behalf by the State Government, District Collector] or the District Forest Officer, as the case may be. The person who has been permitted to quarry in any area or his men, in turn, shall issue the facsimiled despatch slips to the vehicles used for removal or transportation of the mineral furnishing the particulars in the despatch slips specifically indicating the vehicle number, the quantity of the mineral allowed to be transported by the vehicle by using that despatch slip and the time of issue of the despatch slip to the vehicle. All the vehicles used for transporting any mineral from any area shall be in possession of the individual despatch slips for the quantity of the minerals available in the vehicle at all the times of transportation of the mineral by the vehicles:

Provided that the vehicles used for transporting any mineral free of charge for bonafide domestic or agricultural purpose shall have a letter of authorisation from the person for whose use the mineral is intended and the vehicle driver or owner shall be responsible for establishing the bonafide transport of the mineral for such purpose when called upon to do so.

[(bb) In respect of minor minerals namely, building and road construction stones including gravel, ordinary sand, earth and turf and ordinary clay including silt, brick and tile clay occurring in any land except those lands constituted as reserved forests u/s 16 of the Tamil Nadu Forests Act, 1882 (Tamil Nadu Act V of 1882) and reserved lands notified u/s 26 of the said Act V of 1882, the

Presidents of Village Panchayats, Executive Officers of Town Panchayats and Townships and Commissioners of Municipalities and Corporations shall collect lease amount, seigniorage fee or dead rent or area assessment or any other payment, as the case may be, in relation to the lessees or permit holders, sign and issue transport permits and dispatch slips to the quarrying permit holders and lessees and collect penalty amount and compounding fee from the persons liable to pay the penalty or compounding fee, as the case may be:

Provided that in the case of Village Panchayats, the transport permit and despatch slips shall be jointly signed by the Village Panchayat President and Vice-President. In the absence of Vice-President, any member authorised by the Panchayat for this purpose shall jointly sign the transport permits and despatch slips in the place of Vice-President:

Provided further that the issue and use of transport permits and despatch slips for transportation of any minor mineral shall be subject to the conditions stipulated in these rules and instructions of the State Government, Director of Geology and Mining and or the District Collector or the District Forest Officer issued, from time to time].

(c) The quarrying permit holder or the lessee shall carryout quarrying operations in a skillful, scientific and systematic manner keeping in view proper safety of the labourers, structure and the public and public works located in that vicinity of the quarrying area and in a manner to preserve the environment and ecology of the area.

makes it clear that the grant of quarrying lease within 300 mts. of inhabited site is prohibited and no new lay out or building plan falling within 300 mts. from quarry site should be approved without prior clearance of the Director of Geology and Mining.

14. On the facts of the present case which I have elicited above, there is no difficulty to conclude that there is no building plan or lay out granted within 300 mts. radius from the place where the stone quarrying permit has been granted to the petitioners in W.P. Nos. 21006 and 21007 of 2009. Now, the term 'inhabited site' in Explanation III to Rule 36(1-A)(a), (b) and (c) of the Tamil Nadu Minor Mineral Concession Rules, 1959 shows that it must be a village site, town site or house site as per the revenue records or house site or lay out as approved by the Town and Country Planning or Metropolitan authority which authority is empowered to approve it as a house site or lay out area. There is absolutely nothing on record to show that survey No. 148, as claimed by the petitioner in W.P. Nos. 26246 and 26247 of 2009, is either a village site or town site or house site.

15. On the other hand, it is stated to be a punja land by the petitioners in W.P. Nos. 21006 and 21007 of 2009 and it is not a natham land or house site. The field map relied upon by the petitioner in W.P. Nos. 26246 and 26247 of 2009 in respect of survey Nos. 136 and 148, as it is seen in page 51 of the typed set of

papers filed, even though refers to a small portion as a house and another portion as a well, there is no other revenue records or document issued by the competent authority showing that the said land is a house site or lay out area and therefore, the field map is not sufficient to hold that it is an approved house site or village site or town site as per the term 'inhabited site' found in the said Rules. Inasmuch as the area stated by the petitioner in W.P. Nos. 26246 and 26247 of 2009 is neither a residential house approved by the authorities competent under the statute, nor approved by the revenue authorities in the revenue records, even if it is taken that there is electricity connection in the hut or in the area in question, that is not sufficient, in my considered view, to come to the conclusion that the said area can be safely declared as 'inhabited site' within the meaning of the said Rules.

16. In such view of the matter, there is absolutely nothing to interfere with the order of the District Collector in granting stone quarrying lease in favour of the petitioners in W.P. Nos. 21006 and 21007 of 2009 and therefore, the writ petitions in W.P. Nos. 26246 and 26247 of 2009 stand dismissed and W.P. Nos. 21006 and 21007 of 2009 stand allowed forbearing the respondents therein from sanctioning any planning permission within 300 mts. from the quarry site in question except by following the provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959. No costs. Connected miscellaneous petitions are closed.