

(2012) 06 MAD CK 0089

In the Madras High Court

Case No : Writ Petition (MD) No. 6912 of 2012 and M.P. (MD) No"s. 1 and 2 of 2012

Bharthiya Kisan Sangam

APPELLANT

Vs

The District Collector, Madurai District, Madurai and Others

RESPONDENT

Date of Decision : 07-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 06 MAD CK 0089

Hon'ble Judges : S. Vimala, J;P. Jyothimani, J

Bench : Division Bench

Advocate : Veera Kathiravan, for the Appellant; K. Mahendran, Spl. Govt. Pleader for Respondent 1 to 4 and Mr. G. Chandrasekar for Respondent-5, for the Respondent

Judgement

P. Jyothimani, J.—The present writ petition is filed as a public interest litigation by Bharathiya Kisan Sangam, Keelamathur Branch, Madurai

District, challenging the lease granted to the 5th respondent by the 1st respondent, the District Collector, Madurai District, dated 20.03.2012,

granting permission to quarry gravel in Survey No. 20/2 at Keelamathur Village, Madurai South Taluk, in an extent of 0.54.0 Hectares, in

accordance with the Tamil Nadu Minor Minerals Concession Rules, 1959, for a period upto 19.06.2012. The main ground on which the writ

petition has been laid is that the 5th respondent, who has been granted quarrying lease, has been indiscriminately quarrying gravel in violation of the

conditions. The conditions stipulate that quarrying shall not be beyond 1 (one) metre depth, apart from other conditions stipulated in the impugned

order.

2. This Court appointed Messrs. T.S.R. Venkataramana and I. Pinaygash as Advocate Commissioners to visit the quarrying site and find out as to whether the 5th respondent has committed breach of conditions imposed while quarrying gravel. In the Report of the Advocate Commissioners, it is clearly stated that the 5th respondent has quarried to the depth exceeding 1 (one) metre and in fact he has quarried upto 4 to 7 metres and that has also been substantiated with various photographs taken by the learned Advocate Commissioners. Learned Advocate Commissioners have also stated that when the statutory authorities, who were present at the time of inspection, were requested to identify the place in respect of which lease was granted to the 5th respondent, the authorities were unable to identify or earmark the portions. The learned Advocate Commissioners have in fact given some suggestions, especially in respect of the impugned order itself wherein the 1st Respondent has not even chosen to identify or specify the place in respect of which lease was granted.

3. After the Report was filed by the learned Advocate Commissioners, this Court directed the Revenue Divisional Officer, Madurai, the 2nd respondent herein, to find out the actual position as to whether the 5th respondent has committed any breach of conditions imposed while quarrying. The Revenue Divisional Officer, Madurai, has filed an affidavit, dated 07.06.2012, in which he has made it in clear terms that the 5th respondent has violated lease conditions. In fact, the affidavit states three violations stated to have been made by the 5th Respondent and they read as follows:

1. The lessee has granted permission for quarrying gravel for a depth of 1.00 metre only. Whereas he has quarried over and above the permitted depth i.e. 2.00 to 4.00 metres depth.
2. The lessee has granted permission over an extent of 1.00.0 hectare. But he has carried out the quarrying operation in 1.43.5 hecets. more than the permitted extent.
3. The Lessee Thiru Ajmeer has quarried and transported 38345 CBM gravel without obtaining transport permit.
4. In respect of the second violation, the Revenue Divisional Officer has stated that though lease was granted to an extent of 1.00.0 hectare, the 5th Respondent has quarried to an extent of 1.43.5 hectares, which is more the

permitted extent. But, a reference to the impugned lease filed by the petitioner shows that the extent for which lease granted to the 5th respondent is relating to only 0.54.0 hectares, even though in the impugned order it is stated that there is recommendation by the Public Works Department that the 5th respondent can be granted quarrying lease to an extent of 1.00.0 hectare. A further reference to the impugned lease shows that the Executive Engineer, Public Works Department, has identified 90 mtrs. x 60 mtrs., in an extent of 0.54.0 hectares, for the purpose of granting licence for quarrying gravel, as per Rule 12(2) of the Tamil Nadu Minor Mineral Concession Rules.

5. Since it is vehemently disputed about the extent, the learned Special Government has produced a copy of the impugned lease, dated 20.03.2012, passed by the 1st Respondent, the District Collector, which is similar to the impugned order filed by the petitioner, in which in the operative portion instead of 0.54.0 hectares, the same has been corrected as 1.00.0 hectares. Therefore, the petitioner has raised objections that there has been some illegal corrections made.

6. Be that as it may, as stated in the Revenue Divisional Officer's Report, even it is taken that the 5th respondent has been given lease to an extent of 1.00.0 hectare, there has been clear violation as to the extent in which the 5th Respondent has quarried gravel. Therefore, it is incumbent on the part of the District Collector to take immediate action for the purpose of cancellation of lease granted to the 5th respondent, in accordance with Rule 36(5)(h) of the Tamil Nadu Minor Minerals Concession Rules, 1959. Rule 36(5)(h), which reads as follows,

In case of breach by the quarrying permit-holder or quarrying lease holder or his transferee or assignee of any of these rules or of the conditions of the lease, the Director of Geology and Mining or the Chief Conservator of Forests, as the case may be, or the District Collector or the District Forest Officer, as the case may be, without prejudice to any other penalty which may be imposed in respect of such breach, may cancel the lease after granting an opportunity of hearing to the said person.

As per this rule, before cancelling lease, the District Collector has to give notice to the lessee and an opportunity must be given.

7. The learned counsel for the 5th respondent would submit that without giving

notice, his right of operating lease cannot be stopped, since he has got right to quarry till 19.06.2012. Mere absence of any power under Rule 36 of the Tamil Nadu Minor Minerals Concession Rules, 1959 on the part of the District Collector or any other authority for passing interim order of stopping further quarrying pending passing final order regarding cancellation of lease, the same cannot be an impediment for this Court, while exercising its power under Article 226 of the Constitution of India, in passing appropriate interim orders till the District Collector passes final order, in accordance with the above Rules. In any event, in the report filed by the 2nd respondent, the Revenue Divisional Officer, it is clearly stated in paragraph 7 that at the time of inspection on 12.04.2012, the 5th respondent was not carrying on any quarrying activities. Mr. K. Mahendran, learned Special Government Pleader appearing for respondents 1 to 4, would submit that even as on today, there is no quarrying operation carried on by the 5th respondent. The said statement is recorded. As per the statement of the Revenue Divisional Officer made in his report, dated 07.06.2012, the 5th respondent shall continue to remain not quarrying till final orders are passed. Mr. K. Mahendran, the learned Special Government Pleader, would also submit that the authorities will pass specific orders against the 5th respondent directing him to stop quarrying operations. In view of the same, the writ petition stands disposed of, directing the 1st respondent, the District Collector, Madurai District, to initiate action against the 5th respondent, in accordance with Rule 36(5)(h) of the Tamil Nadu Minor Mineral Concession Rules, 1959 and pass appropriate orders and such orders shall be passed within a period of one week from the date of receipt of a copy of this order. No order as to costs. Connected M.P. (MD) Nos. 1 and 2 of 2012 are closed.