
(1997) 03 MAD CK 0038
In the Madras High Court

K. Anbuthurai and Another

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 21-03-1997

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 4A

Citation : (1997) 2 MLJ 4

Hon'ble Judges : Sathasivam, J

Bench : Single Bench

Judgement

Sathasivam, J.—Aggrieved against granting permission to quarry sand in Nambi River as seen from the Tirunelveli Kattabomman District

Gazette Notification, dated 30.9.1995, the petitioner for the cause of public interest has filed the present writ petition in W.P. No. 16671 of 1995

for quashing the said Gazette Notification dated 30.9.1995. On 5.12.1995 this Court has entertained the writ petition and also granted interim

injunction in W.M.P. No. 26470 of 1995 and also issued a positive direction to the sixth respondent (P. Selvaraj - petitioner in W.P. No. 1008 of

1996) to forthwith stop quarrying operation. In view of the interim order by this Court as well as serious objections by the public, the District

Collector, Tirunelveli-Kattabomman District by the impugned order dated 7.12.1995, cancelled the lease granted in favour of the sixth respondent

in the said writ petition. The said order is being challenged in the later writ petition, namely, W.P. No. 1008 of 1996. Since both the writ petitions

are inter-connected, the same can be disposed of by a common order.

2. Inasmuch as in pursuance of the interim order of this Court dated 5.12.1995 and on the basis of the public objections, the lease granted in

favour of sixth respondent has been cancelled, no further adjudication is required in W.P. No. 16671 of 1995, consequently, the same is dismissed.

3. Now I shall deal with W.P. No. 1008 of 1996. The petitioner in this writ petition was a successful tenderer for Rs. 2,02,500 as lease amount In

respect of sand quarry in S.F. No. 245/3 situate in Thiruvambalapuram village, Radhapuram Taluk, for a period of 3 years from 1.11.1995 to

31.3.1998. According to the petitioner, he was allowed to quarry and he actually commenced the quarrying operation in the site from 16.11.1995

only. However, to his shock and surprise, he was serviced with an order dated 7.12.1995 by the first respondent purporting to cancel the lease

granted in his favour respecting the aforesaid sand quarry. The first respondent cancelled the lease on the alleged ground that further quarrying in

the area in question would be detrimental and prejudicial to the residents of the village and to the Muslim community because of its close proximity

to the Mosque. They have further entertained apprehension that the drinking water would be made unpotable and made unfit for any purpose in

due course. According to the petitioner, all the abovesaid causes or reasons are imaginary. It is also contended that behind the whole thing, there

were few political persons belonging to the party in power, whose aim was to make a monetary capital out of this scheme. In the affidavit the

petitioner has denied the existence of the Mosque within the prohibited area, nor the fear of a vocation of drinking water in the nearby locality, he

has also raised a contention that the Collector has no power to cancel the lease if it is objectionable on the ground that there is a Mosque by

monument near the quarry. The very same quarry was auctioned in the year 1990 also without any objection. With these averments, he prays for

quashing the order of the Collector dated 7.12.1995 and also seeks further direction to permit the petitioner to continue quarrying for a period of 3

years from 1.11.1995 to 31.3.1998.

4. On behalf of the respondents, the first respondent, namely, District Collector, Tirunelveli Kattabomman District filed a counter-affidavit wherein

he has admitted that the petitioner was a successful tenderer and he was allowed to quarry. It is also contended in the counter affidavit that the

general public in and around Thiruvambalapuram village raised objections and

represented to the Collector to stop the sand quarry on the plea that they may be deprived of drinking water and water for agricultural operations. The District Collector, Tirunelveli, has directed the Sub-Collector, Cheranmahadevi and the Assistant Director of Geology and Mining, Tirunelveli to inspect the lease granted area. The Sub Collector, Cheranmahadevi, after inspection, reported that the Holy mosque of Athankaraipallivasal is very near to the lease area and that if sand is quarried, the water in the drinking water well may turn saline. The Sub Collector has recommended to cancel the lease. The lease was cancelled by the impugned order. One K. Anbuthurai has also filed a writ petition in W.P. No. 16671 of 1995 before this Court to stop the above said sand quarry and this Court also granted injunction until further orders. Even before the receipt of the injunction order, the quarry operation relating to the petitioner was stopped on 23.11.1995. It is also contended in the counter affidavit that in view of the public objection, existence of Holy mosque very near to the quarry and of the fact that there is likelihood of drinking water becoming saline, the Collector has cancelled the lease and directed the petitioner to get refund of Rs. 1,24,875 out of the total lease amount of Rs. 2,02,500 remitted by him. It is also contended that against the order of District Collector the petitioner has not preferred appeal before the Commissioner of Geology and Mining, Madras and that the petitioner has not exhausted the appeal provisions as per Rule 36(C)(2) of Tamil Nadu Minor Mineral Concession Rules, 1959.

5. In the light of the above pleadings, I have heard the arguments of Mr. M.M. Sundaresh, learned Counsel for the petitioner and Mr. K.

Balasubramanian, learned Additional Government Pleader.

6. There is no dispute that the petitioner was a successful tenderer and on fulfilling the tender conditions and after deposit of the required amount, lease was granted in favour of the petitioner for a period of 3 years from 1.11.1995 to 31.3.1996. There is also no dispute that the petitioner has deposited a sum of Rs. 2,02,500 being the first year of lease. In the impugned order dated 7.12.1995, the District Collector has assigned the following reasons for cancellation of the lease and the same is extracted hereunder:

A reading of the above paragraph shows above that on inspection, the Sub

Collector ascertained that a mosque is very near to the quarry, and that if the petitioner is allowed to continue the quarry operations, the ground water is likely to become saline.

7. With reference to the first objection viz., existence of mosque, Mr. M.M. Sundaresh, learned Counsel for the petitioner submitted that as per

Section 4-A of the Mines and Minerals Regulation and Development Act, 1957 the State Government alone is competent to take action and

terminate the lease even before the expiry of the lease. He elaborated that in view of the conclusion that there is a monument near the quarry as

seen from the Sub-Collector's report, the termination can be only by the State Government and not by the District Collector. It is true that if there

is monument near the quarry site, in view of Section 4-A of said Act, the State Government is competent to cancel the the lease even before the

expiry of the period. However, in our case in the report of the Sub-Collector there is only a mosque near the quarry site and not monument as

contended by the learned Counsel for the petitioner. In the absence of any report with regard to existence of any monument as per the conditions

of leases seen from the notification, the Collector is competent to cancel the lease. Hence, the first objection namely the Collector has no

jurisdiction to pass the impugned order cannot be accepted. Likewise, the Sub Collector has also informed on inspection that if the petitioner is

allowed to quarry sand in the existing place, there is likelihood of the drinking water becoming saline. Since the general public have raised

objections, the District Collector has directed the Sub-Collector of Seranmahadevi to go and inspect the quarry place. The Sub-Collector

inspected the quarry site in person and enquired the general public. On the basis of the report holding that the water in the nearby area is likely to

become saline, the Collector while accepting the report of the Sub Collector, has cancelled the lease obtained by the petitioner. In the auction

notification, there is a specific clause that if there is any objection from the general public or there is likelihood of damage to public property or

injury to any one, it is open to the District Collector to cancel the-lease without giving notice. In these circumstance, in the light of the various

conditions in the notification published prior to the grant of lease in favour of the petitioner, I do not find any merit in the second objection of the

learned Counsel for the petitioner.

8. Under these circumstances, I am unable to accept any one of the contentions raised by the learned Counsel for the petitioner. Consequently, the

writ petition fails and the same is dismissed. No costs.

9. Before parting with this case, I want to make the following observations:

The District Collector is competent to grant lease to quarry sand from public places like river bed and in other poromboke lands. However, he is

duty bound to inspect either himself or through his subordinate officers to see that lease or licence if any is granted to quarry sand, there may not be

any objection by the public or they may not cause any loss to any one. The report of the Sub-Collector disclosed the existence of a mosque near

the quarry site. It is not the case of the first respondent that the said mosque suddenly appeared after the grant of lease. In other words, on the date

of grant of lease, the very same mosque was in existence. It is also revealed that neither the District Collector, nor the Sub Collector made any

enquiry or inspection to find out if sand is allowed to be removed, there is likelihood of the water becoming saline or it would affect the agricultural

operations. A duty is cast on the public authorities, particularly the District Collector and the Subordinate authorities before granting long lease or

licence must ascertain that in the event of granting such lease or licence, the interests of public would not be affected. If such care is taken even

before the grant of lease either by the District Collector or by his Subordinate Officers, there is no need to cancel the lease after granting the same

by causing loss to the petitioner. No doubt, it is true that by the impugned order itself, the Collector has directed the refund of a sum of Rs.

1,24,875. However, if such direction as stated above adhered, the unfortunate incident namely, public objection, subsequent cancellation that too

without notice could have been avoided. In these circumstances, interest of justice would be met by directing the 3rd respondent to pay a sum of

Rs. 10,000 (Rupees ten thousand only) to the petitioner towards compensation for the premature cancellation of the lease. The 3rd respondent is

directed to pay the said amount within a period of four weeks from the date of receipt of a copy of this order.