
(1997) 04 MAD CK 0132
In the Madras High Court

K.V. Shanmugam

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 30-04-1997

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2, 2(ii)

Citation : (1998) 1 MLJ 417

Hon'ble Judges : P.S. Sathasivam, J

Bench : Division Bench

Judgement

P.S. Sathasivam, J.—Since common questions involved in these writ petitions, the same may be disposed of by the following Order.

2. In W.P. No. 8505 of 1995 the petitioner has approached this Court to issue a writ of certiorarified mandamus, calling for the records of the first respondent in G.O. Ms. No. 119 Industries (E2) Department dated 5.5.1995, quash the same and direct the respondents 1 to 4 to pass orders granting lease or renewal in favour of the petitioner in respect of 18.60 acres in bit No. 5 of Badanavadi Reserve Forest, Pennagaram Taluk, Dharmapuri District by disposing of the petitioner's application, dated 9.5.1994.

3. The case of the petitioner is briefly stated hereunder:

Initially by proceedings dated 12.12.1974 the District Forest Officer, Dharmapuri has granted quarry lease in respect of 18-60 acres in Bit V of Badanavadi Reserve Forest for a period of two years and there-after by G.O. Ms. No. 382, Industries Department dated 21.3.1977 the second respondent has granted lease for a period of five years and necessary lease agreement was executed on 29.12.1978. Though the petitioner has applied for 10 years lease, the second respondent has granted lease only for give years which expired by 1982. Thereafter he has filed a writ petition in W.P. No. 11739 of 1987 before this Court for renewal of the said lease and the same is still pending. As per G.O. 1273 Industries Department dated 9.12.1988 the Tamil Nadu Minor Mineral Concession

Rules were amended and as per the then amended rules, leases in respect of Government Poramboke lands can be granted only for the persons who were having an existing Industry within the State of Tamil Nadu, or having programme to set up an industry within the State of Tamil Nadu. By G.O. 608 Industries, dated 2.9.1989, Rule 39 was amended to the Tamil Nadu Minor and Mineral Concession Rules, 1959. The first respondent by exercising powers under the said Rules, has granted renewal for the leases expired 10 years back.

4. It is further contended that Parliament has enacted Forest (Conservation) Act, 1980. As per Section 2 of the Forest (Conservation) Act, 1980, (herein referred to as "the Act"), an application for quarrying lease or renewal of the lease of forest land containing minor minerals cannot be allowed without seeking prior approval of the Central Government. In view of the above enactment the petitioner by letter, dated 28.12.1994 requested the District Forest Officer, Dharmapuri for necessary permission. The District Forest Officer after inspection of the alternative lands provided by the petitioner has estimated the value for reforestation and sent a proposal to the fourth respondent. While such is the position, the first respondent by the impugned order dated 5.5.1995 has granted lease in favour of fifth respondent in respect of 5.50 acres in the said survey Number without obtaining any approval from the Central Government and without passing orders on the petitioner's renewal application. It is Contended that the approval of the Central Government is mandatory and the State Government does not have power to grant lease in reserve forest without sending the proposal in specific for prior approval by the Central Government as per Rule 4 of the forest (Conservation) Rules, 1981 as amended. In those circumstance, he approached this Court for necessary relief as claimed above.

5. The very same petitioner has filed another writ petition namely W.P. No. 18513 of 1996 seeking a writ of declaration, declaring that the lease agreement, dated 19.5.1995 executed by the second respondent in favour of the third respondent in respect of quarry measuring 6.6 acres in Bit V of Badavadi Revenue Forest, Sunjalnatham village, Pennagaram taluk, Dharmapuri District, registered as Document No. 662 of 1995 in the Sub Registrar's Office, Pennagaram is null and void. If the petitioner is able to succeed in W.P. No. 8505 of 1995 and if the impugned Government Order therein is quashed, automatically the lease agreement which was executed subsequent to the impugned Order in the said writ petition is also liable to be held as invalid.

6. Writ Petition No. 8845 of 1995 is a petition filed by a member of Tamil Nadu Legislative Assembly and he was one of the General Secretaries of the Tamil Nadu Congress Committee (I). He filed the said writ petition in public interest. The facts narrated therein are briefly stated hereunder:- Eversince the introduction of Rule 39, the Government of Tamil Nadu have been granting lease to certain interested person to quarry granite for extraneous considerations. in the matter of grant of lease to quarry granite there is abuse of power. The 1st respondent has no power to grant lease in favour of the third respondent to

exploit gran-ites in a reserved forest. u/s 2 of the Forest Conservation Act the State Government or any other authority shall not make any orders relating to use of forest land for any nonforest purpose. Notwithstanding the Forest Conservation Act, 1980 the Government of Tamil Nadu have been passing orders granting lease in favour of private parties even with respect to Forest Act. The Central Government have also not taken any action though the State Government have been passing periodically such illegal orders. The impugned Order namely G.O. Ms. No. 119, Industries Department dated 5.5.1995 has been issued for extraneous consideration. It is not a case of genuine exercise of power under Rule 39. It is further contended that indiscriminately leases are granted to quarry granite even in reserved forest and this will affect the country and ecology of the region. In those circumstance, he has approached this Court for issue of a writ of certiorari, calling for the records relating to the proceedings of the first respondent in G.O. Ms. No. 119 Industries (E2) Department dated 5.5.1995 and to quash the said Government Order.

7. A counter affidavit has been filed by the first respondent wherein they have denied the various averments made by the petitioner and they have also explained various points in detail.

8. The fifth respondent namely M/s. Golden Gran-ites has also filed a counter affidavit wherein he has raised the following defence: The petitioner has made several incorrect and false statements and made such statements in his affidavit deliberately to create an image as if he is a total stranger unconnected with the fifth respondent firm, Golden Granite at any time. He has abused the process of law and action is liable to be taken against the petitioner for suppression of material facts. The petitioner has not made any application whatsoever to the first respondent, who is the lease granting authority under Tamil Nadu Mines and Mineral Concession Rules, 1959. The petitioner has fabricated the original letter dated 9.5.1994 to create an appearance of having been addressed to the first respondent and submitted through the District Forest Officer, Dharmapuri and filed the same into this Court. He has also explained the relationship of the petitioner who is noneelse than the elder brother of the Managing partner of the firm Golden Granites, and his connection with the fifth respondent firm Golden Granites in various paragraphs. It is also explained that the Government Order issued in favour of fifth respondent firm clearly states that the grant of lease is subject to obtaining concurrence from Government of India, Ministry of Environment and Forests, New Delhi and the Government Order clearly specifies that actual quarrying operations i.e., the activity of non forest purpose, by the respondent firm in the subject forest lands shall be permitted only after obtaining the mandatory approval of the Government of India under Forest Conservation Act, 1980. The impugned Government Order is only a grant of quarrying a minor mineral under Rule 39 of Tamil Nadu Minor Mineral Concession Rules, 1959. It cannot be misconstrued in any way that the impugned grant of quarrying permission amounts to grant of permission to cut and clear the forest growth in the subject quarry lands in the Reserved Forest in violation of the objections of

the Forest Conservation Act, 1980.

9. The third respondent has filed a counter affidavit in W.P. No. 8845 of 1995 wherein it is contended that the petitioner does not have any bona fide in filing the present writ petition in public interest, and the same has not filed only to oblige the private interest of K.V. Shanmugam who has filed W.P. No. 8505 of 1995 on an identical ground. It is also contended that even though the Government have passed identical Orders, the petitioner has not chosen to challenge the same and he has filed the present writ petition only on the direction and request made by the petitioner in W.P. No. 8505 of 1995. It is also contended that the provisions of Tamil Nadu Minor Mineral Concession Rules, 1959 and Section 2 of Forest Conservation Act, 1980 though operate on a separate field tend to over-lap when the leasehold rights are granted to Minor Minerals in Forest areas. Both the enactments cannot be read in isolation but will have to be read into, harmoniously taking into consideration the object and intent of the legislature. The first respondent in the impugned Government Order has clearly stated that before the commencement of nonforest purpose activity of quarrying operation, concurrence of Central Government should be obtained for the operation of the impugned Government Order. Thus what is material is only the date of concurrence of Central Government before permitting the third respondent to enter upon the subject area to resume the nonforest purpose of quarrying operations, in the idling quarry lands.

10. The second respondent, namely, Union of India has also filed a counter affidavit contending that as per Section 2 of the Forest (Conservation) Act, 1980, prior concurrence of the Central Government has to be obtained.

11. The third respondent has also filed additional counter affidavit wherein he has furnished the details regarding actual mining area. According to the third respondent, the subject land is exclusively a rocky tract of land and it is not a forest land as per the provisions of the Forest (Conservation) Act, 1980, as there exist no vegetation of any sort. The path leading to the quarry site has already been existing and hence there is no need to break any forest land and clear the same. The subject rocky lands cannot at all be used for forestation purpose and the question re-afforestation can never arise by the simple fact that there existed no forest at any point of time. Due to these facts the provisions of the Forest (Conservation) Act, 1980 cannot apply to the subject lands.

12. In W.P. No. 18513 of 1996 the third respondent has filed a counter affidavit reiterating the same de-fence as stated in the other two writ petitions.

13. In the light of the above pleadings, I have heard Mr. V.T. Gopalan, learned senior counsel for the petitioner in W.P. Nos. 8505 of 1995, 18513 of 1996 and second respondent in W.P. 8845 of 1995, Mr. V. Selvaraj, learned Counsel for petitioner in W.P. No. 8845 of 1995, Mr. N.R. Chandran, learned senior counsel for 5th respondent in W.P. No. 8505 of 1995, third respondent in W.P. No. 18513 of 1996 Mr. R. Krishnamoorthy, learned senior counsel for third respondent in

W.P. No. 8845 of 1995 and Additional Government Pleader for respondents 1 to 4 in W.P. 8505 of 1995 first respondent in W.P. No. 8845 of 1995 and respondents 1 and 2 in W.P. No. 18513 of 1996.

14. Before going into the merits of the case, I shall first deal with the contention that inasmuch as the petitioner in W.P. No. 8505 of 1995 is a rival claimant, there is no bona fide in the challenge made in the said writ petition. No doubt, the particulars furnished by the contesting respondent namely M/s. Golden Granites Limited show that the petitioner had also made an application. Even then if there is any violation of any of the mandatory provisions of the Act and Rules, petitioner in W.P. No. 8505 of 1995 is equally entitled to bring it to the notice of this Court. Hence the petitioner in the said writ petition is Competent to challenge the impugned order of the respondents 1 to 4. Apart from this, an objection has been raised against the petitioner in W.P. No. 8845 of 1995 stating that only on the direction of the petitioner in W.P. No. 8505 of 1995, he has filed the present writ petition under the guise of public interest litigation. There is no dispute that the petitioner in W.P. No. 8845 of 1995 namely Ponnusamy was a Member of Legislative Assembly representing Dharmapuri Constituency and also one of the General Secretaries of Tamil Nadu Congress Committee (I). Even though another objection was taken that without challenging the other five grants by the Government, the petitioner has chosen only the grant in favour of Messrs. Golden Granites Limited on the request made by the petitioner in W.P. No. 8505 of 1995. However, the petitioner has filed a reply affidavit stating that he has also challenged the other grants in different writ petitions. Considering the relief sought for by the petitioner, I am of the view that the petitioner in W.P. No. 8845 of 1995 is equally entitled to challenge the impugned order.

15. The main contention of V.T. Gopalan, learned senior counsel for petitioner in W.P. No. 8505 of 1995 and 18513 of 1996 and 2nd respondent in W.P. No. 8845 of 1995 is that since the claim is made for quarrying granite in Reserved Forest lands of the Government of Tamil Nadu in Pennagaram taluk, Dharmapuri district, as per Section 2 of the Forest (Conservation) Act, 1980 prior approval of the Central Government is a mandatory, hence the impugned order granting lease in favour of the petitioner cannot be sustained. Further, elaborating the above point he submitted that without prior approval of the Central Government, it is not open to the State Government to grant lease even with a special condition that the commencement of quarrying operation should be done only after obtaining concurrence of Government of India, Ministry of Environment and Forest, New Delhi. In support of his contention, he has cited the following decisions:

(i) T.N. Godavarman Thirumulkpad Vs. Union of India and others, ; (ii) Rural Litigation and Entitlement Kendra Vs. State of U. P., ; (iii) Upendra Jha v. State of Bihar AIR 1988 Patna 263; (iv) The District Forest Officer, Nilgiris North Division, Uthagamandalam v. Mohamed Hussain and another (1996) 1 M.L.J. (N.R.C. 43); (v) State of M.P. v. Krishandas Tikaram (1995) 1 S.C.C. (Supp.) 587; (vi) M.C.

Mehta v. Kalanath (1997) 1 S.C.C. 389

16. An identical contention was raised by Mr. V. Selvaraj, learned Counsel for the petitioner in W.P. No. 8845 of 1995.

17. On the other hand, Mr. R. Krishnamoorthy, learned senior counsel and Mr. N.R. Chandran, learned senior counsel representing the 5th respondent, Messrs. Golden Granites Limited in W.P. No. 8805 of 1995, third respondent in W.P. No. 8845 of 1995 and W.P. No. 18513 of 1996 submitted the following points.

(i) Both the writ petitions are liable to be dismissed on the ground of suppression of material facts.

(ii) The various decisions referred to by the learned senior counsel for the petitioner are not applicable to the facts of the present case.

(iii) The attempt of the petitioners are not genu-ine, since they have not challenged the other grants.

(iv) A joint reading of Section 2 of the Forest (Conservation) Act, 1980 and Rule 39 of the Minor Mineral Concession Rules clearly shows that the Government have not exceeded their limits in passing the impugned order, since it is open to the petitioner to commence mining operation only after getting approval of the Central Government. In support of their above contention, they also relied on the following decisions:-(i) Hyderabad Abrasive and Minerals, rep. by its Managing Partners Sri M. KG. Subrahmanyam, Hyderabad (1990) 1 A.W.R. 240 (F.B.) ; (ii) Union of India and others Vs. Kamath Holiday Resorts Pvt. Ltd.,

18. The learned Additional Government Pleader appearing for the first respondent though has filed a counter affidavit disputing the various averments made by the petitioners without making separate ar-gument adopted the arguments of Mr. V.T. Gopalan.

19. I have considered the rival submissions.

20. One and the larger question to be decided in the these writ petitions is whether inspite of Section 2 of the Forest (Conservation) Act, 1980, it is open to the State Government to grant lease in respect of forest lands without prior approval of the Central Government. In order to appreciate the contentions of all the counsel, I hereby extract the relevant provision namely Section 2 of the said Act:

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, exempt with the prior approval of the Central Government any order directing (i) that any reserve for-est (within the meaning of the expression "Revenue Forest" in any law for the time being in force in the State) or any portion thereof shall cease to be reserved.

(ii) that any forest land or any portion thereof may be used for any non forest purpose. Explanation:- For the purpose of this section "nonforest" purposes

means breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil rearing plants, horticultural crops or medicinal plants;

(b) any purpose other than reafforestation.

In the impugned order in para 7 a special condition is imposed namely that the commencement of quarrying operation should be done only after obtaining concurrence of Government of India, Ministry of Environment and Forest, New Delhi. A reading of the impugned order further clarifies that on the application of the petitioner for quarrying Black Gran-ite in Badanavadi Reserve Forest in Bit No. 5, Over an extent of 6.60 acres of Government Reserve Forest land in Pennagaram Taluk, Dharmapuri District, under Rule 39 of Tamil Nadu Minor Mineral Con-cession Rules, 1959 after obtaining reports from the Principal Chief Conservator of Forest, Madras, the District Collector, Dharmapuri, Director of Geology and Mining as well as on the basis of the recommendation of the High Level Committee. The Government of Tamil Nadu granted lease over an extent of 6.60 acres in the said area for a period of ten years subject to the usual conditions specified in the Annexure to the said Order. However, it is the vehement argument of Mr. V.T. Gopalan, learned senior counsel that in view of Section 2 of the Forest (Conser-vation) Act, 1980 no State Government or any other authority have power to grant lease of any area from the reserve forest or any portion thereof without the prior approval of the Central Government. To put it in a nut-shell, according to him, before making any decision, a duty is cast on the State Government to get the prior approval of the Central Government. As per Section 2 of the Act and after getting approval only it is open to the State Government to process the application of the petitioner and grant lease in respect of forest land. In those circumstance, now I have to decide whether the said condition in the impugned Order is legal and valid.

21. The contention of the petitioner is that Section 2 (ii) of the Forest (Conservation) Act, 1980 is mandatory and the same provides that no State Government or other authority shall make except with the prior approval of the Central Government, any order directing that any forest land or any portion thereof may be used for any nonforest purpose. " Nonforest purpose has been defined in Explanation to Section 2 of the Act. Section 3-A of the Act provides penalty for contravention of the provision of Section 2 of the Act. A plain reading of Section 2 (ii) and Section 3-A of the Act makes it clear that no order can be made directing any forest area to be used for nonforest purpose without prior approval of the Central Government which requirement is mandatory. The mining activities being nonforest purpose is beyond dispute. In Gujarat Pottery Works Vs. B.P. Sood, Controller of Mining Leases for India and Others, the Apex Court has held that it is really the sanctioning of the lease which amounts to the granting of the lease, and that the execution of the formal lease is only Compliance with the legal requirements to make the grant legally enforceable.

22. The Supreme Court in the following decisions, namely,

(1) *Ambalal Manibhai Patel Vs. State of Gujarat*, (2) *Rural Litigation and Entitlement Kendra v. State of U.P.* (1989) 1 S.C.C. (Supp.) 504 and (3) *State of Madhya Pradesh v. Krishnadas Tikaram* (1995) 1 S.C.C. (Supp.) 587 has held that prior approval of the Central Government is a condition precedent for the grant of lease u/s 2 (ii) of the Forest (Conservation) Act, 1980. The same view has been taken by the Division Bench of this Court in a decision reported in *The District Forest Officer, Nilgiris North Division, Uthagamandalam v. Mohamed Hussain* (1996) 1 M.L.J. (N.R.C. 34). The conclusion arrived at by the Division Bench of this Court is extracted hereunder:

There is no dispute that the mining area in respect of which the lease was granted to the petitioner comprised in S. Nos. 254/1 and 255/3 in the reserve forest land is situate inside the reserve forest area. That being so, the provisions contained in the Forest Conservation Act (LXIX of 1980) are attracted in the instant case, it is not in dispute and it is also not the case of the petitioner that the mining lease is for nonforest purpose and it is not for reforestation. That being so, the restriction as to obtaining of prior approval either for granting or renewing the lease for quarrying the mineral in the area situated in the reserve forest comes into operation and State Government cannot grant or renew the lease for quarrying the mineral situate within the reserve forest area without obtaining the prior approval of the Central Government. This development of law which has taken place during the subsistence of the lease and before the expiry of the lease period is applicable to the renewal of such a lease because an application for renewal of the lease shall have to be considered having regard to the provisions contained in Act LXIX of 1980 and also the amendment effected to Section 8 by Central Act XXXVII of 1986 as an application for grant of a fresh lease. No doubt such a condition or restriction was not existing when the lease was granted. The law prevailing on the date of granting the renewal will apply. It may also be further pointed out that Section 2 of the Act LXIX of 1980 opens with a non obstante clause notwithstanding any thing contained in any other law for the time being in force in a State". Therefore, the provisions contained in Section 2 of Act LXIX of 1980 will have an overriding effect on the provisions contained in the Act or any other law for the time being in force in a State. In addition to the fact that Section 2 of Act LXIX of 1980 overrides the provisions contained in any other law. Section 8 of the Act itself which deals with the periods for which the mining leases may be granted or renewed provides that no lease in respect of the minerals specified in the First Schedule shall be granted or renewed except with the previous approval of the Central Government. Section 8 came to be amended by Central Act XXXVII of 1986 and bauxite is one of the minerals included in the first Schedule. When once it is found that the renewal can be granted without the approval of the Central Government and the application for renewal has to be considered as an application for grant of a fresh lease, the petitioner/1st respondent cannot take advantage of Sub-rule (6) of Rule 24-A of the Rules as amended by 27.9.1993. It may be pointed out that the

Act, as such, does not provide for granting permission for continuing the mining operations pending disposal of the application for renewal of a mining. Further, in a case where the renewal has to be granted by the state Government with the prior approval of the Central Government governed by Section 2 of Act LXIX of 1980, Sub-rule (6) of Rule 24-A cannot be Invoked and the lease cannot be deemed to have been extended for a further period till the State Government passes an order thereon, because the case is not only governed by Section 8 of the Act but also governed by Section 2 of the LXIX of 1980 as the mining area is situate in the reserve forest.

The same view has been taken by a Division Bench of Patna High Court in Upendra Jha Vs. State of Bihar and Others, . At this stage, on behalf of the contesting respondents, a Full Bench decision of the Andhra Pradesh High Court reported in Hyderabad Abrasives and Minerals v. Government of A.P. (1990) 1 A.W. R 240 has been pressed into service. It is true that in the said decision it is observed that the State Government is obliged to seek the prior approval of the Central Government before permitting the clearing and cutting of forest growth on the land leased out to the lessee. But, however, in view of the law laid down by the Supreme Court in the above mentioned decisions with great respect, I am not in a position to follow the decision of the Andhra Pradesh High Court. As a matter of fact, a perusal of the Full Bench decision of the Andhra Pradesh High Court shows that the aforesaid decision of the Supreme Court were not cited before it. The Supreme Court has construed the ear-lier decision of the Supreme Court rendered in State of Bihar Vs. Banshi Ram Modi and Others, in the aforesaid decisions namely Ambalal Manibhai Patel Vs. State of Gujarat, and Rural Liti-gation and Entitlement Kendra v. State of U.P. (1989) 1 S.C.C. (Supp.) 504. I am of the view differ-ent interpretation given by the Full Bench of the Andhra Pradesh High Court is inconsistent with the interpretation given by Their Lordships of the Supreme Court in the above referred decisions. The recent decision of the Supreme Court reported in T.N. Godavarman Thirumulkpad Vs. Union of India and others, clears all the doubts in this regard. In the said decisions, Their Loreships have considered all the earlier judgments of the Supreme Court interpreting the judgment of the Supreme Court in State of Bihar Vs. Banshi Ram Modi and Others, had been quoted with the approval and a general direction was given in para 5 of the order to the effect that prior approval of the Central Government shall be required for any nonforest activity within the area of any forest. The aforesaid general direction to all in para 5 of the above said decision of the Supreme Court makes the position very clear and in those circumstance, the contention advanced on behalf of the learned Counsel for the fifth respondent that in view of the judgment of this Court dated 17.3.1995 in W.P. No. 19868 of 1994 etc, batch the provision of Section 2 (ii) of the Forest (Conservation) Act, 1980 could not be complied with cannot be accepted in law. Further, in view of the general direction of the latest decision of the Supreme Court mentioned above T.N. Godavarman Thirumulkpad Vs. Union of India and others, the contention based on the aforesaid Full Bench Judgment of the Andhra

Pradesh High Court that is prior permission of the Central Government would be necessary for breaking open the land for nonforest purpose cannot be countenanced since such contention will run counter to Section 2 (ii) of the Act as interpreted by the Apex Court. As rightly contended by Mr. V.T. Gopalan, learned senior counsel appearing for Union of India, applying well-known principles of interpretation that the expressed intention of the statute must be given effect to, it would be impermissible to find out the object of the said provision and to say that in any event such an object has not been defeated. Where a power has been given to do a thing in a particular manner, then it should be done in that manner and all other modes of performance are prohibited.

23. The impugned Government Order granting lease in favour of the fifth respondent in W.P. No. 8505 of 1995 subject to the concurrence of the Central Government is therefore violative of the provisions of Section 2 (ii) of the Forest (Conservation) Act, 1980 as interpreted by the aforesaid decisions.

24. Even at the out-set, I have held that both the petitioners are entitled to challenge the impugned order, more particularly the petitioner in the first case also was an applicant for the grant of lease for the same grant in question. When such violation is brought to the notice of the Court, the Public Trust Doctrine propounded by the Supreme Court in the decision reported in M.C. Mehta Vs. Kamal Nath and Others, and the other decision of the Supreme Court reported in T.N. Godavarman Thirumulkpad Vs. Union of India and others, comes into play and makes the question of locus standi wholly irrelevant and immaterial. In M.C. Mehta Vs. Kamal Nath and Others, . Their Lordships with regard to legal theory known as Doctrine of Public Trust after referring various English United States cases have observed thus:

The State is the trustee of all natural resources which are by nature meant for public use and en-joyment. Public at large is the beneficiary of the seashore, running waters, airs, forests and eco-logically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. Thus the Public Trust doctrine is a part of the law of the land.

The same has been reiterated in the later case namely T.N. Godavarman Thirumulkpad Vs. Union of India and others, .

25. Since arguments were also advanced with regard to merits of the case, I consider the same in the following paragraphs.

The impugned Government Order granting lease in favour of the fifth respondent according to the petitioners is vitiated by total non-application of mind. The very application that was granted that is application, dated 9.9.1994 of the fifth respondent which is stated to have been granted in the impugned Government Order stands to have been altered as the application of the 5th respondent dated 13.1.1993 according to the counter affidavit filed by the first respondent. Except

stating that the application of the fifth respondent dated 18.1.1993 was disposed of under Rule 39 nothing has been explained in the impugned Order. On the other hand, the fifth respondent in the counter would clarify the action of the first respondent stating that by clerical mistake the first respondent has issued the impugned Government Order in which the application of the fifth respondent is stated as made on 9.9.1994. According to the petitioner, the application of the petitioner made to the District For-est Officer, dated 9.5.1994 and as such was earlier to the application of the fifth respondent, dated 9.9.1994 as mentioned in the impugned Government Order. Rule 39 itself came into force on 9.3.1994. It is also seen that the fifth respondent-Managing Partner viz., K.V. Narayanasamy has made an application on 18.1.93 for grant of lease to quarry black granite in the very same land namely Bit No. 5 over an extent of 18.60 acres and after Rule 39 came into force the said application was rejected by the Government. In those circumstance, it is highly doubtful whether the application, dated 18.1.1993 could have still kept pending anticipating Rule 39. By showing the documents filed in the typed set of papers, the learned Counsel for the petitioner brought to my notice that the petitioner has made an application before proper channel that is through the District Forest Officer. As rightly pointed out by the learned senior counsel for the petitioner inter se dispute between the petitioner and the respondent are quite immaterial for the purpose of granting or refusing the lease applied for by either petitioner or the fifth respondent. The other factual position brought to my notice is that there was an order of injunction against the petitioner in C.M.P. No. 9013 of 1994 in C.M.A. No. 316 of 1994. However, it was brought to my notice that ultimately the C.M.A., itself is withdrawn and therefore, there would be no claim of any interim order since the C.M.A. itself has been dismissed as withdrawn. In those circumstance, the objection regarding the merits of the petitioner's case in W.P. No. 8505 of 1995 cannot be countenanced.

26. During the hearing of the case, on direction by the Court, the learned Additional Government Pleader has also placed the files relating to the impugned Government Order. A perusal of the file clearly show that the Government was sounded and cautioned the implication of Section 2 of the Forest (Conservation) Act and as a matter of fact, the Forest Department has prepared a notes that prior approval of the Central Government is to be obtained before taking any decision in respect of the application of the 5th respondent. Unfortunately that suggestion has not been followed before passing the impugned order.

27. In view of the above said decisions, more par-ticularly, the law laid down by the Apex Court in various decisions referred by me in the earlier paragraphs, the impugned Government Order cannot be sustained. Accordingly, G.O. Ms. No. 119 Industries (E2) Department dated 5.5.1995 is quashed. In view of the quashing the impugned Order, I make it clear that in all the cases in which the Government desire to grant lease of reserve forest lands for mining operations, the mandatory provisions of Section 2 of Forest (Conservation) Act, 1980 has to be strictly complied with. In this view the writ petitions are allowed to the extent

indicated above. No costs. (W.P. No. 14359 of 1996 which is posted along with these batch of cases, is separated and posted in the usual course.)