
(2005) 02 MAD CK 0164
In the Madras High Court
Case No : Writ Petition No. 490 of 2005

P.R.P. Granites

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 25-02-2005

Acts Referred:

Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 18, 2, 2(1), 38

Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 12, 19A, 2, 30, 31

Citation : (2005) 02 MAD CK 0164

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : R. Sudhakar, for the Appellant; T.R. Jannardhanan, G.A. and P. Subbaraj, for Respondents 1 to 4 and R5, for the Respondent

Judgement

K. Raviraja Pandian, J.—The above writ petition is filed seeking for the relief of issuance of a writ of mandamus to direct Respondent 1 and 2 to grant quarrying lease to the Petitioner in respect of S.F. No. 290/1 and 2 and 291/1 to 7 in Ammachatram Village, Kolathur Taluk, Pudukottai District for a period specified under the relevant rules.

2. The case of the Petitioner is that the Petitioner is a hundred percent export oriented unit and owns 1.31.0 hectaras of land in Ammachatram Village, Kulathur Taluk, Pudukottai District, which is a known quarrying area and having plenty of granite dyres of export quality. The Petitioner submitted an application to the second Respondent - Government of Tamil Nadu through first Respondent - District Collector for grant of quarrying lease in respect of the aforesaid land under Rule 19A of the Tamil Nadu Minor Mineral Concession Rules, 1959 by complying with all the formalities. The revenue authorities of the first Respondent inspected the site and recommended for mining permit. The first Respondent also in turn forwarded its recommendations to the second Respondent - the Secretary to Government, Industries Department, through the Commissioner of Geology and Mining, the third Respondent. The Petitioner

approached the first Respondent time and again, but was orally informed that there were certain objections from the Archaeological Survey of India on the ground that there is an ancient monument in Kudagumalai of Pulathur Village in S.F. No. 238/3, which is nearing to the area for which mining permission is sought for and for that reason, the application is kept pending. The Petitioner on 16.5.2003 explained to the third Respondent, the Commissioner of Geology and Mining that permission for quarrying granite has been granted to the adjacent owners in the very same survey number and the quarrying operations are going on. Apart from granite quarrying, rough stone quarrying is also permitted in that area, particularly in S.F. No. 134/1. While that being so, there is no reason for keeping the application of the Petitioner pending on the ground of objection from the Archaeological, Department but of no avail. The Archaeology Department, the fifth Respondent is also not coming out with clear details about their objections. Hence, the present writ petition with the prayer as stated above.

3. The factum of filing application of the Petitioner and the inspections by the concerned authorities and their recommendations for grant of mining lease are admitted in the counter filed by the first and fourth Respondent. However, it is submitted that the Conservation Assistant, Archaeological Survey of India at Keeranur in his letter dated 12.09.2002 has reported that quarrying operations in S.F. No. 170/1 and 170/3A in Ammachatram Village, are in progress and that area falls in the regulated area of the monuments situated in Kudagumalai and requested the first Respondent to stop the quarrying operations within 300 metres from the monuments as per Ancient Monuments and Archaeological Sites and Remains Act, 1958. On verification it was ascertained that the area applied for by the Petitioner are situated within the prohibitive and regulative distances from the boundary of S.F. No. 238/3 of Kulathur Village Kudagumalai, in which Archaeological monuments are situated. Further the specific remarks as to the existence of the quarrying operations pointed out by the Petitioner in their letter have also been sent to the Government along with the objections raised by the fifth Respondent. It is also submitted in their counter that it is true that lease, have been granted by the Government in favour of four persons pointed out by the Petitioner and the lease are in currency. The fifth Respondent has not objected to the quarrying operations within the vicinity of the monument till the year 2002 and the existing quarrying operators submitted their explanations and the same have been forwarded to the Archaeology Department on 6.11.2002 to offer the remarks and the same is awaited till date.

4. The learned Counsel representing the fifth Respondent, through not filed a counter, place the entire file before this Court and submitting that though the Pudukkottai Darbar had notified the natural caverns and inscriptions situated in Survey No. 238A of Aladipperumbarai Forest, Kudagumalai, Kolathur Village to be protected monuments under Pudukkottai Ancient Monuments Preservation Regulation 1930, after coming into force of the Ancient Monument and Archaeological site and remains Act, 1958, no such declarations has been made by the fifth Respondent declaring the monuments situated in Kudagumalai as

protected or regulated area. He also submitted that no other records were available with the Archaeology Department and that might be precisely the reason the objections raised by the four granite quarry operators, who are doing operation in the vicinity more nearer than the applied area cannot be considered and suitable orders passed. Though some steps were taken in the year 1992, for issue of notification in respect of the area, because of non-availability of materials, that has not been gone through.

5. I heard the arguments of the learned Counsel on either side and perused the material on record.

6. As seen from the above pleadings, it is an undisputed fact that the Petitioner's application in respect of his ryotwari land is pending with the Respondent for more than five years, as the application has been made in the year 2000 and all the authorities have recommended grant of lease in favour of the Petitioner. As there is some objections from the fifth Respondent to the effect that the area applied for by the Petitioner is within the prohibited distance of the protected monument as declared under the Ancient Monuments and Archaeological Sites and Remains Act, 1958, the further action was not taken on the application.

7. It is contended by the Petitioner that all the formalities as provided under the Tamil Nadu Minor Mineral Concession Rules, 1959 and the Granite Conservation Rules have been complied with and there is no bar for granting the lease in favour of the Petitioner as per the provisions of these rules. It is the further contention of the Petitioner that other named four persons viz., V.K. Sundaram, Palniappan, S. Baskar and S. Baskar have been granted mining permission in S.P. Nos. 290/3, 4, 289, 170/3A and 170/1 respectively, which are at a distance of 30 metres, 30 metres, 115 metres and 150 metres from the caves. But the Petitioner alone is singled out. Though apparently the said arguments are appealing, when there is a specific bar in the Central Act, this argument will not hold good.

8. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 come into force from 29.08.1958, after repealing the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Important) Act, 1951, and Section 126 of the States Re-organisation Act, 1956. As per the repealing provisions of 1958 Act, the Ancient Monuments Preservation Act, 1904 Historical Monuments and Archaeological Sites and Remains declared by or under this Act, to be of national importance except as respects, things done or omitted to be done before the commencement of 1958 Act.

9. Section 2(a) of the 1958 Act defines the expression "ancient monument" as under.

2(a) "ancient monument means any structure, erection or monument, or any timulus or place of interment, or any cave, rock sculpture, inscription or monolith, which, is historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes.

(i) the remains of an ancient monument, (ii) the site of an ancient monument, (iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and (iv) the means of access, to and convenient inspection of an ancient monument.

10. Sections 2(1) and 2(j) of the 1958 Act defines "protected area" and "protected monument" as under:

(j) protected area means any archaeological site and remains which is declared to be of national importance by or under this Act.

(j) protected monument means an ancient monument which is declared to be of national importance by or under this Act.

11. u/s 18 of the 1958 Act, power is conferred on the Central Government to make rules for carrying out the purposes of this Act. Section 38(a) which is relevant is extracted here under.

88 (e) the prohibition or regulation by licensing or otherwise mining, quarrying, excavating blasting or any monument or the construction of buildings on land adjoining such monument and the removal of unauthorised buildings

12. By virtue of the said power, the Central Government framed the Ancient Monuments and Archaeological sites and remains Rules, 1959 (for short "the Rules"). Under the said Rules 2(f) defines "Prohibited area" or "regulated area" as under:

(f) Prohibited area" or" regulated area" means an area or adjoining a protected monument which the Central Government has, by notification in the Official Gazette, declared to be a prohibited area, or as the case may be, a regulated area, for purposes of mining operation or construction or both.

13. Chapter VII of the Rules relates to mining operation and construction near protected monuments. Rule 31 of the Rules obligates the Central Government to specify its intention to declare prohibited area or regulated area to issue notice in the Gazette contained under Rule 31. Rule 31 of the Rules reads as under:

31. Notice of intention to declare a prohibited or regulated area - (1) before declaring an area near or adjoining a protected monument to be a prohibited area or regulated area for purposes of mining operation or construction or both the central Government shall, by notification in the official Gazette, give one month's notice of its intention to do so, and a copy of such notification shall be affixed in a conspicuous place near the area.

2) Every such notification shall specify the limits of the area which is to be so declared and shall also call for objection, if any, from interested persons.

14. Rule 32 of the Rules obligates declaration of prohibited or regulated area which reads as under:

32. Declaration of prohibited or regulated area.

After the expiry of one month from the date of the notification under Rule 31 and after considering the objections, if any, received within the said period, the Central Government may declare, by notification in the Official Gazette, the area specified in the notification under Rule 31 or any part of such area to be, a regulated area for purposes of mining operation or construction or both.

15. As per the above statutory provisions, power is vested with the Central Government to declare an area near or adjoining a protected, monument as prohibited or regulated area but before so declaring the Central Government is required to fulfill and comply with the provisions of Rule 31. It is the contention, rather admission of the fifth Respondent, the Archaeological Department that no such declaration was made by the Central Government to declare the area in S.F. No. 238/3, where a monument is stated to exist or the near or adjoining area, as prohibited or regulated area as per Rules.

16. In the counter filed by the first and fourth Respondents, a mention was made to the effect that as per the Gazette Notification No. 8/240M dated 16.6.1992, the fifth Respondent declared 100 meters from the protected limit and further beyond 200 meters near or adjoining protected monuments to be prohibited and regulated areas respectively for the purposes, both mining operation and construction as per the Ancient Monuments and Archeological Sites and remains Rules, 1959. A copy of the notification is made available in the last page of the file produced by the fifth Respondent, which reads thus:

whereas the Central Government is of the opinion that the areas upto 100 meters from the protected limits and further beyond it upto 200 meters near or adjoining protected monuments be declared to be prohibited and regulated area respectively for purposes of both mining operations and construction.

Now, therefore an exercise of the powers conferred by Rule 31 of the Ancient Monuments and Archeological Sites and Remains Rules, 1959, the Central Government hereby gives notice of its intention to declare the said areas as prohibited and regulated areas. This shall be in addition to and shall not in any way prejudice the similar declarations made in respect of monuments at Fatehpur Sikri; Mahabailipuram; Golconda Fort, Hyderabad (Andhra Pradesh); Thousand Pillarad Temple; Hanamkonda District Warangal (Andhra Pradesh); Sher Shah's Tomb, Sasaram (Bihar); Rock Edict of Ashoka, Kopbal, District Raichur (Karnataka), Fort Wall, Bijapur (Karnataka); Gomateswarn Statue at Sreanbelgola, District Hassan (Karnataka); Elephant Caves, Charapurai District, Kolaba (Maharashtra).

Any objection made within one month of the date of issue of this notification by any person interested in the said area will be considered by the Central Government. The Objection may be of the Director General, Archeological Survey of India, Janpath, New Delhi- 110011.

(M.C. Joshi) Director General

17. In the said notification, the areas which are to be declared as prohibited and regulated areas have not been indicated. Even assuming if the disputed area was intended to be declared so by the notification the said notification was issued only under Rule 31 of the 1959 Rules calling for objections. No declaration prescribing prohibited or regulated area was issued as required under Rule 32 of the Rules. A reading of Rules 31 and 32 further makes it clear that after calling for objections by notification under Rule 31 a declaration has to be made under Rule 12. Then only it would be regarded as a declaration as per law. The above rules further requires declaration of prohibited and protected area in respect of each individual monument has to be made separately for the reason that all the monuments are not identical in size, design, area, position, etc., and earmaking of prohibited and protected area varies from monument to monument depending upon location, size and area, etc.

18. As seen from the above, though some efforts have been taken under Rule 30, which is pointed out by the Respondents to keep the application of the Petitioner pending, no final declaration has been made under Rule 32, which factum is also admitted by the fifth Respondent through counsel. In the absence of any notification under Rule 32, the area cannot be stated to be declared as prohibited and protected area under the Ancient Monuments and Archaeological Sites and Remains Rules, 1959. It is held by the Supreme Court in the case of *A.R. Antulay Vs. Ramdas Srinivas Nayak and Another*, as follows:

it is unnecessary to refer to the long line of decisions commencing from, *Nazir Ahmed v. King Emperor* and ending with *Chettiam Veetil Amman v. Taluk Land Board* laying down hitherto uncontroverted legal principal that where a statute requires to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden

19. In such circumstances, the area in S. No. 238/3 of the Kolathur Village cannot be stated to be declared as a protected and prohibitive area as per Rule 32 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959. Hence, the one and only point that has been put against the Petitioner is not in existence. In addition to that, it is also admitted by the Respondent uniformly that four persons were doing quarrying operations within the vicinity of the area, where the monument is stated to be in existence. Those four areas were more closer than the Petitioner's area for which permission is sought for. Pursuant to the letter of the fifth Respondent directing the District Collector to order stop quarrying in respect of those four persons, objections were called for from them and sent to the fifth Respondent for further action. Admittedly, the fifth Respondent is keeping those objections in cold storage and has not replied to the District Collector for the obvious reason that no declaration has been made as required by Rule 32. It is seen from the files that there are certain representations from Panchayat President and others taking exception in granting quarry lease in general in Kolathur Village. That might be the reason for

Conservation Assistant, Archaeology Survey of India at Keelanur to request the Collector to stop quarrying operations. Hence, I am of the view that there is no point in singling out the Petitioner by stating the objections of the fifth Respondent. However, in order to protect the monument, the Petitioner is directed to take all precautionary measures such as fencing or covering in or otherwise preserving the monuments that would be suggested by the District Collector, the first Respondent and the State, the Second Respondent

20. In view of the above reasoning, the Respondents are directed to proceed further in processing the application of the Petitioner and while granting the permission, necessary protective conditions can also be incorporated so as to protect the monument. The exercise can be done within a period of four months from today.

21. With this observation, the writ petition is disposed of. However, there is no order as to costs.