
(2011) 01 MAD CK 0047

In the Madras High Court

Case No : Writ Petition (MD) No. 6390 of 2009 and M.P. (MD) No. 1 of 2009

Sri Meenakshi Granites

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Constitution of India, 1950 — Article 51A
Tamil Nadu Ancient and Historical Monuments and Archeological Sites and Remains
Rules, 1971 — Rule 33, 33(2)
Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 19

Citation : (2011) 2 CTC 684

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. Mahendran, for the Appellant; R. Janakiramulu, Spl. G.P., for the Respondent

Judgement

1. The Petitioner is M/s. Sri Meenakshi Granites, represented by its Proprietor. He has filed the present writ petition seeking to challenge the stop

work notice of the Respondent District Collector, dated 6.7.2009 pertaining to the lands measuring 0.26.0 hectares in Survey No. 532/2A,

532/2B, 532/5, 532/8, 525/2 and 525/3 at Thiruvadavur village, Melur Taluk, Madurai District and after setting aside the same, seeks for a

direction to forbear the Respondent from interfering with the rights of the Petitioner to continue quarrying operations during the pendency of the

earlier writ petition in W.P. No. 29050 of 2005.

2. The Petitioner in his individual capacity, earlier filed W.P. No. 29050 of 2005, wherein he had filed an interim injunction application seeking for

an injunction against the State of Tamil Nadu and the District Collector, Madurai from in any way interfering with his right to quarry and transport

granite from the Petitioner's patta land measuring 0.26.0 hectares comprised in the same survey numbers pending disposal of the writ petition.

3. The case of the Petitioner was that by G.O.(3D) No. 75, Industries Department, dated 9.5.1997, the Petitioner was given grant of lease to

quarry the M.C. Granite in various survey numbers (set out in the prayer) situated in Thiruvadavur village, Melur Taluk. In paragraph 4 of the

order, the State Government had stated as follows:

4. In exercise of powers conferred under Rule 19a of Tamil Nadu minor Mineral Concession Rules, 1959, the Governor of Tamil Nadu hereby

grants quarrying lease to M/s. Meenakshi Granites for quarrying Multi-colored granite over an extent of 0.26.0 hectare in S. No. 532/2A, 532/2B,

532/5, 532/8, 525/2 and 525/3 in Thiruvadavur village, Melur Taluk, Madurai District for the period till 12.12.2003 (i.e. 8 years and 7 months)

subject to conditions specified in the annexure to this order. This quarrying lease is subject to any such further modifications, additions and

alterations that may be included in the agreement to be executed.

4. Pursuant to the said order of the Government, the District Collector had entered into an agreement for quarrying multi-colored Granite in respect

of survey numbers. It was for a period from 9.5.1997 to 12.12.2005 for a period of 8 years and 7 months. The same agreement had also

contained several conditions including the conditions which are extracted below:

5(c). The Register holder/lessee shall carry out quarrying operations in a skilful, scientific and systematic manner keeping in view proper safety of

the labor, 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.

....

(h). In case of breach by the lessee of any of these rules or the conditions of the lease, the Director/Commissioner of Geology and mining or the

District Collector 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 lessee.

5. However, the Respondent District Collector had issued Stop Work notice, dated 6.7.2009 directing the Petitioner to stop quarrying operations

carried out in the area. An attention of the Petitioner was also drawn to Rule 33 of the Tamilnadu Ancient and Historical Monuments and

Archeological Sites and Remains Rules, 1971. Under the said rule, mining operations are prohibited within 300 meters from the ancient

monuments. It was also stated that the Assistant Geologist (Mines) had inspected the leasehold area on 3.7.2009 and 4.7.2009 and detected that

the Petitioner had carried out quarrying operations within a distance of 151 meters from the Ancient monuments located in S.F. No. 525/1 of

Thiruvavatavur village. Subsequent to the stop work notice, a show cause notice, dated 9.7.2009 was given to the Petitioner. In that notice, it was

stated that the lease period of the Petitioner had expired. Despite the same, the Petitioner has been continuing to quarry on the basis of the order of

this Court in W.P. No. 29050 of 2005. The inspections of the Assistant Director (Survey and Land Records) and the Assistant Geologist (Mines)

on 3.7.2009 and 4.7.2009 had showed that quarrying area in the place where ancient monument is located in S.F. No. 525/1 of Thiruvadavur

village is only within 151 meters. The Tahsildar, Melur in his report, dated 6.7.2009 had furnished the distance between the quarry lease granted to

the Petitioner and to the Archaeological monument located in S.F. No. 525/1 which comes to only 151 meters. There has been unauthorized

quarrying operations in that area for which no lease has been granted. They were also informed that the excess quarrying done in an unauthorized

area and removing the same to an extent of 2163.75 Cbm of multi coloured granite block was also unauthorized. Since the Petitioner had violated

Rule 32(2) of the Tamil Nadu Ancient and Historical Monuments and Archaeological Sites and Remains Rules, 1971, the lease is liable to be

cancelled. Therefore, the Petitioner was asked to show cause as to why the lease should not be cancelled.

6. Instead of answering the show cause notice, the Petitioner has moved this Court and obtained an interim order pending notice of motion. In the

interim order, it was stated that the Respondent has no jurisdiction to give stop work notice. Subsequently, when the matter came up on 4.1.2010,

the main writ petition was directed to be posted for a final hearing and the interim order came to be extended from time to time.

7. On notice from this Court, the Respondent has filed a counter affidavit, dated 4.8.2009. In the counter affidavit, it was stated that under Rule 32

of the Tamil Nadu Ancient and Historical Monuments and Archaeological Sites and Remains Rules, 1971, 300 meters safety distance has to be

maintained. In the Thiruvadavur village, Brahmi inscription is found in S. No. 525 (Part). By G.O. Ms. No. 7, Tamil Development Culture

Department, dated 6.1.1990, a notification has been published by the Government declaring the Ancient Monuments located in S.F. No.

525(Part) over an area of 400 square meter in Thiruvadavur village and it is maintained by the State Archaeological Department. In order to

protect the ""Thiruvadavur Brahmi inscription"" located in the above quarrying area, the quarrying operations have been stopped.

8. The Petitioner has not filed any reply affidavit , but chose to rely upon the final order passed by this Court in W.P. No. 29050 of 2005, wherein

he had been given right to carry on quarrying operations till his application for renewal his considered and disposed of vide order, dated

18.4.2009. Subsequently, by filing W.P. No. 14596 of 2009, he got a direction to issue transport permits for removing the quarried materials even

though renewal of lease was rejected on 29.6.2009. Further, he had filed W.P. (MD) No. 11935 of 2009 challenging the refusal to renew the

lease. That writ petition was allowed on 23.11.2009. The Petitioner was permitted to keep his machineries in his patta land and also to remove the

already quarried materials.

9. It is not clear as to how these orders will help the case of the Petitioner. The Petitioner had also brought to the notice of this Court an order

passed by this Court in W.P. (MD) Nos. 6113 and 6114 of 2009 in M/s. Sindhu Granites and Ors. v. The District Collector, Madurai, dated

19.3.2010. In that case, more or less an identical question came up for consideration. In paragraphs 22 to 27, it was observed as follows:

22... Further it is brought to my notice that the Government Order, dated 6.1.1990 in G.O. Ms. No. 7 Tamil Development Culture Department

issued regarding the ancient monuments, based on which, the impugned stop work notices were issued, was in fact, in existence prior to the

respective lease agreements of the Petitioners, dated 20.6.1996 and 12.7.2005. While that being the situation, now the Respondent cannot take

different stand that the Thiruvathavoor Brahmi Kalvettu located in the quarrying area would be affected. Therefore, in the light of the above

decisions and discussion, I have no hesitation to hold that the impugned stop work notices were issued by the Respondent without having

jurisdiction and in the absence of power to suspend the quarry while the lease has been subsisting and therefore, the same cannot be sustained in

law.

23. The learned Special Government Pleader appearing for the Respondent has submitted that subsequent to the impugned notices, the

Respondent has issued show cause notices, dated 9.7.2009 against the Petitioners directing them to offer their explanation as to why the lease

granted in their favor cannot be cancelled. It is submitted that without challenging the said show cause notices, the Petitioners have come forward

with the present writ petitions challenging the impugned notices alone and therefore, the same cannot be entertained.

24. In reply to this, the learned Counsel appearing for the Petitioners would submit that the Respondent has issued the show cause notices dated

9.7.2009 and, pending adjudication of the matter, enforced the suspension of lease. He has further submitted that the main issue involved in the

writ petitions pertains to suspension of lease and once it is decided, the subsequent actions arising there from would automatically get fructified

based on the outcome of the issue and therefore, the Petitioners have challenged the impugned notices at the first instance appropriately, which, in

my opinion, is acceptable.

25. At the end, the learned Counsel for the Petitioners has produced the affidavit of undertaking duly sworn to by the Petitioners regarding the

damage to the so-called Thiruvathavoor Brahmi Kalvettu and submitted that the Petitioners would carry on the quarry operations in accordance

with the conditions of the original lease agreement as well as the Rules and will not cause any damage to the monument.

26. In para 5 of the affidavit of undertaking duly sworn to by the Petitioners, it has been undertaken as follows:

5.I hereby undertake on behalf of the Petitioner that the quarry operations will be strictly carried on in accordance with the conditions of the

original lease agreement dated 20.2.1996 and also the Tamil Nadu Minor Mineral Concession Rules and Explosive Act and will not cause any

damage to the monument.

27. In the light of my elaborate discussion in the foregoing paragraphs and following the decisions of this Court, I am of the view that the impugned

notices, dated 6.7.2009 issued by the Respondent while the lease is subsisting cannot be legally sustained and accordingly, they are set aside.

(Emphasis added)

10. This matter was also taken on appeal by the District Collector in W.A. (MD)Nos.617 and 618 of 2010. The writ appeals came to be

dismissed on 8.10.2010. The Division Bench in paragraphs 2 to 4 observed as follows:

2. Now, it is submitted by the learned Counsel appearing for the Respondents that subsequently, show cause notice dated 09.07.2009 has been

issued to the Respondents in both the writ appeals, against which the Respondents have given their reply. 3. In the facts and circumstances of the

case, it is for the Appellant to consider the reply given by the Respondents herein to the show cause notice dated 09.07.2009 and pass

appropriate orders on merits and in accordance with law.

4. Except clarifying the same, we do not see any reason to interfere with the order of the learned Single Judge. Therefore, these writ appeals fail

and they are dismissed....

11. It is rather unfortunate that the larger issue relating to protection of ""Brahmi scripts"" found in Thiruvadavur village were not gone into.

Preservation of those ""Brahmi kalvettu"" were at stake. Going into the question of nitty-gritty of notice need not deter this Court from passing an

appropriate order. If the fear expressed by the District Collector comes true, then the ""Brahmi kalvettu"" can be destroyed for ever, thereby

endangering the archaeological monuments notified by the State Government validly in law. The Brahmi inscriptions of Thiruvadavur are known for

its antiquity. Their existence were faithfully reported in the Annual reports of Epigraphy right from the year 1903. They speak volume of culture and

life of the people who lived more than 10 centuries before.

12. With reference to Brahmi Scripts of Thiruvadavur, the famous scholar Iravatham Mahadevan had stated that the Tamil Brahmi inscriptions are

the only record of old Tamil which are even prior to Sangam poetry. In his interview published in Frontline, a fortnightly English magazine, dated

17.7.2009, he had stated as follows:

Tamil-Brahmi inscriptions are important not only in the history of Tamil Nadu and the rest of South India but for the whole country. They have

many unique distinctions. They are the oldest writings in any Dravidian language. They are also the oldest Jaina inscriptions in India. I believe that

the Mankulam Tamil-Brahmi inscription of [Pandyan king] Nedunchezhiyan is older than the Karavela inscription at Udayagiri in Orissa.

Tamil-Brahmi inscriptions are the only record of the old Tamil, the one prior to Sangam poetry. Many Tamil-Brahmi inscriptions are important

landmarks in our history. For example, the inscriptions of Nedunchezhiyan at Mankulam, the Irumporai inscriptions at Pugalur near Karur and the

Jambai inscription of Adhiyaman Neduman Anji link the Sangam age with the Tamil-Brahmi age. It is the Jambai inscription that prove that the

Satyaputo"" mentioned by Asoka was none other than the Adhiyaman dynasty, which ruled from Tagadur, modern Dharmapuri.

Recently, Tamil-Brahmi inscriptions have been found on hero stones in the upper Vaigai valley near megalithic graves, thus providing a link, for the

first time, between the megalithic and the early historical periods of Tamil Nadu. The Tamil-Brahmi inscriptions occurring on coins, rings, potsherds

and seals add another dimension to the history of Tamil Nadu. For example, the Pandyan coin of Peruvazhuthi or the silver portrait coins of

Cheras. There are also numerous gold, silver and bronze rings of merchants and noblemen from the prosperous trading town of Karur of the

Sangam age. Again, recently, excavations at Pattanam in Kerala have brought to light the remains of the ancient and famous Sangam age port of

Musiri, known as Muziris to the classical historians of the West. These facts demonstrate the importance of Tamil-Brahmi inscriptions to our

history.

It is, therefore, a great tragedy that the cave inscriptions of Tamil-Brahmi and Jaina sculptures [and beds] are being systematically vandalized by

ignorant tourists and destroyed by granite quarries. It is impossible to stop quarrying because of vested interests and the money power and the

muscle power at their disposal. Already, in my lifetime, many Tamil-Brahmi cave inscriptions have been lost or have been damaged severely. I

understand from scholars undertaking recent field work that the destruction is now proceeding much faster. It is sad that the public are indifferent

[to this], and the State government and the Central government are helpless to stop this wanton destruction of our cultural heritage. Perhaps all the

Tamil-Brahmi cave inscriptions will disappear within a decade.

The only consolation I have is that a serious attempt to record whatever remains by means of video photography and digitization has been made by

the classical Tamil project authorities. In *Early Tamil Epigraphy: From the Earliest Times to the Sixth Century A.D.*, I had anticipated this

disastrous development and I had pleaded for greater awareness of our cultural heritage and more purposeful steps for their conservation. What I

did not expect was that the destruction would be so swift and so colossal. I can only shed tears at whatever has been lost as, frankly, I am not

hopeful that whatever remains will be saved.

13. Further, with reference to preservation of those sites, he had stated as follows:

Just as sand quarrying is destroying the water wealth, granite quarrying is destroying the cultural wealth of Tamil Nadu. I am not hopeful,

considering the money involved, that anything can be done to stop the destruction in either case in the near future.

14. With reference to scripts at Thiruvadavur, the same magazine quoted Mr. K.T. Gandhirajan, a specialist in Art History, which is as follows:

K.T. Gandhirajan, specialist in art history who recently documented the Tamil-Brahmi sites in Tamil Nadu, said, "It is at Mankulam, Arittapatti,

Tiruvadavur, Mannarkovil, and so on that we get the evidence that Tamil is a classical language." He is pained that the ambience of these sites are

marred by the activities of quarry contractors, vandals and others. Sridhar said the State Archaeology Department was "totally helpless" in the

matter. "We can only protect the monument by fencing it," he said.

(Emphasis added)

15. The said magazine also quoted Ms. Sathyabhama Badhreenath, Superintending Archaeologist, ASI (Chennai Circle). She had expressed her

apprehension in the following lines:

Sathyabhama Badhreenath is unhappy that the district administration does not consult the ASI when the rights for quarrying around a protected

monument are granted. "We continuously write to the Collector or the Assistant Director. We give them a copy of our rules. I have written to all

the Collectors with a list of protected monuments in their districts so that they are at least aware that there are archaeological sites of importance in

their districts,"" she said. She said she wrote to the Madurai Collector and was able to prevent quarrying at Keezhaiyur. A heritage enthusiast

suggested that the ASI or the State Archaeology Department be empowered to grant licenses for quarrying near protected monuments.

16. Subsequently, in an interview given by Mr. Gautam Sengupta, Director General of the Archeology Survey of India in the Frontline magazine

referred to the inability of the department to protect the destruction of scripts at Thiruvadavur. He had answered the questions posed by the

magazine. They are as follows:

Q: Frontline" published a story in July 17, 2009, on the Tamil-Brahmi site at Tiruvadavur, near Madurai, that is being vandalized by granite

quarries in the prohibited and regulated areas of this protected monument.

A: I read that article.

Q: The story made the State government stop the quarrying, but the quarry owners went to court saying that the original lease agreement with the

State Mining Department mentioned 50 m as the safe distance. The Madras High Court allowed their plea and so the quarrying has resumed now.

How can you stop the quarrying?

A: Let me tell you that the ASI is a highly understaffed organization. The government is aware of the problem and is making its best efforts to

strengthen the ASI by providing additional manpower. Whatever may be the extent of additional manpower, such problems cannot be tackled by

government initiatives alone. Unless civil society comes forward to defend our heritage, there is very little hope for our monuments. I am not saying

this in order to evade our responsibility. Monuments in remote areas are guarded by one attendant. In many cases, the nationally protected

monuments do not have the minimum requirement of attendants. So by the time the communication reaches the authorities, the damage is already

done. As I said earlier, the ASI must put in its best efforts to stop these. But civil society and people in the neighborhood too should take proactive

steps on these matters. The ASI or the State governments cannot really make much progress on their own.

17. Therefore, the prayer made by the Petitioner will have to be seen only in this

context. If there is a clear conflict between public interest and private interest, the court cannot go by the undertaking given by a greedy mine operator who is determined to make as much money as possible within the quickest time with little regard to any reverence to either Heritage or Archaeology. In such a situation, the court will have to come to the rescue for preserving the monuments as required in law. It is not as if the Respondent lacks power in issuing such notices. The lease deed signed by the District Collector on behalf of the State contains ample power to cancel the lease deed. A statutory notification had been issued as early as 1990. Therefore, any license granted in violation of the notification itself was illegal. When a license to operate the quarry given to the Petitioner if they put the monuments in jeopardy, the license itself will be void ab initio from the day one.

18. As per the condition of lease deed extracted elsewhere, if there was violation, there is always power vested to the Collector to cancel the same. An aggrieved lease holder can only claim damages if there was breach of the agreement. When the initial lease period itself had expired in the year 2005 and in the absence of any renewal, the very challenge to the show cause notice on the basis of an interim order passed by this Court itself is reprehensible. In such circumstances, the question of grant of notice will not arise as what will be lost can never be reconstructed either by the mine operator or by other persons who had granted lease unmindful of the statutory restrictions.

19. Even if the Tamilnadu Ancient and Historical Monuments and Archeological Sites and Remains Rules, 1971 provides only 300 meters as prohibited distance from monuments, that rule can be observed for grant of license by the authorities. But by the quarrying operations area outside the prohibited distance is likely to damage the ancient monuments, certainly the hands of this Court will not be tied by such statutory prescriptions. The court will have to come to the rescue of preserving ancient monuments at all costs and prevent mining operations by the operators who seeks unjust enrichment at the cost of nation's wealth.

20. In this context, it is necessary to refer to the fundamental duties enshrined under Article 51-A of the Constitution, more particularly Article 51-A(f), wherein it is the duty of every citizen to value and preserve the rich

heritage of our composite culture.

21. By taking an undertaking from a quarry operator that he will strictly carryout quarrying operations as per rule will not guarantee the existing

monuments and it cannot preserve those ancient monuments. The apprehension expressed by the scholars in the field like Iravatham Mahadevan

and the Director General of the ASI Gautam Sengupta is not an imaginary, but based on concrete ground level situation.

22. In the light of the above, this Court is not inclined to interfere with the impugned show cause notice. It is open to the District Collector to stop

the quarrying by the Petitioner, so as to preserve the precious Brahmi inscriptions at Thiruvadavur. It is his fundamental duty as enjoined by the

Constitution. Hence the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petition stands closed.