
(2016) 11 MAD CK 0133

In the Madras High Court

Case No : Writ Petition (MD). Nos. 12637 and 18431 of 2016 and W.M.P. (MD). Nos. 9551 and 9552 of 2016 in W.P. (MD). No. 12637 of 2016 and W.M.P. (MD). Nos. 13266 and 13267 of 2016 in W.P. (MD). No. 18931 of 2016 W.P. (MD). No. 12637 of 2016

St. Michael High School

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 01-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Minor Concession Rules, 1959 — Rule 36

Citation : (2017) 7 FLT 205 : (2016) 8 MLJ 734

Hon'ble Judges : Mr. S. Nagamuthu and Mrs. J. Nisha Banu, JJ.

Bench : Division Bench

Advocate : Mr. B. Saravanan, Advocate, for the Respondent No. 4 in W.P. (MD). No. 18431/2016; Mr. B. Saravanan, Advocate, for the Petitioner in W.P. (MD). No. 12637 of 2016; Mr. A. Rahul, Advocate, for the Petitioner in W.P. (MD). No. 18431 of 2016; Mr. M. Govindan,

Final Decision : Allowed

Judgement

S. Nagamuthu, J. - The petitioner in W.P.(MD).No.12637 of 2016 is a Government aided school known as M/s.St. Michael High School, Kumarapuram Thoppur Post, Agastheeswaram Taluk, Kanyakumari District and it is represented by its Correspondent. W.P.(MD).No.18431 of 2016 has been filed by the President of the Parent Teachers Association of the said school. In both the writ petitions, one and the same order is challenged on common grounds. Therefore, we have heard both the Writ Petitions together and dispose of the same by means of this common order.

2. The challenge in these writ petitions is to the order of the District Collector, Kanyakumari District in R.C. No. 216/G & M/2015, dated 03.07.2016 where under, the District Collector has granted lease to quarry rough stone/jelly for a period of five years in S.F.No.331/1 to the extent of 1.69.5 hectares under Rules

19(1) and 22 of the Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter referred to as "the Rule"). The above said land comprised in Survey Nos.331/1, 240/3, 240/4, 240/10 and 240/11 at Nalloor Village, Agastheeswaram Taluk, belongs to one Mr. J. Godwin Moses (5th respondent). He applied for lease to quarry rough stone/jelly in the above stated survey numbers. By means of the impugned order, the District Collector granted licence to quarry only in S.F. No. 331/1. The petitioners are aggrieved by the same. That is how they are before this Court with these Writ Petitions.

3. In these writ petitions, one of the main grounds upon which the impugned is assailed is that the petitioner school viz., St. Michael High School is situated at a distance of 153.81 meters from the site where quarry has been permitted by means of lease. According to the petitioners, as per Rule 36(1)(A) of the Tamil Nadu Minor Mineral Concession Rules 1959, since the school falls within the definition of "inhabited site", the minimum distance between the quarry site and such a inhabited site shall be not less than 300 meters. Since in the instant case the distance is only 153.81 meters and thus, the quarry site falls within the prohibited distance, considering the danger to the lives and safety of the children studying in the school, they seek to quash the impugned order.

4. The District Collector has filed a detailed counter wherein, inter alia he has stated that the expression "inhabited site" does not include any building other than a house site and since, according to him, the school in question is not the "inhabited site", the prohibited distance is not 300 meters. According to him, as per Sub Rule (1) of Rule 36, it is enough, if the distance is only 50 meters. Thus, according to the District Collector, the quarry site, in the instant case, is not within the prohibited distance and therefore, the impugned order is sustainable.

5. The 5th respondent in whose favour lease has been granted has also filed a detailed counter wherein, he has stated that the order under challenge is an appealable order. Thus, the Writ Petitions are not maintainable. He would also reiterate that the school in question is not an "inhabited site" and it is only a public building and therefore, the distance, as provided in Rule 36(1)(A), is not applicable. According to him, as per Sub Rule (1) Rule 36 it is enough, if the distance is 50 meters. He would further submit that there is a Government Order which clarifies the above aspect.

6. We have considered the above submissions. It is really not only surprising but also shocking to hear from the learned Special Government Pleader and the learned counsel for the fifth respondent as well as to know from the counter, the stand of the District Collector as well as the fifth respondent that the school in question is not an "inhabited site", but a public building. The fallacy of this argument is quite obvious from the very fact that the sub rule (1) of Rule 36 serves a vital purpose to ensure the safety of the people, who have habitations in that locality. When the distance between a house which would accommodate a few persons and the quarry site should be 300 meters or more, it is not understandable as to how it could be contented that a school which has got 380

students could be located within a distance of 300 meters and above 50 meters. As we have already pointed out, the purpose of the said Rule is to ensure the safety of the people who have habitations in the locality. In our considered view, the school viz., St. Michael High School, which has got 380 students, would squarely fall within the definition of "inhabited site" and therefore, the distance rule contained in Rule 36(1)(A) alone is applicable. Thus, the minimum distance between the quarry site and the school shall be at least 300 meters and in this case, admittedly, it is only 153.81 meters. Thus, the quarry site in question is within the prohibited distance from the school.

7. The learned counsel for the fifth respondent would submit that there is a Government order, which also clarifies that the school is not a habitation, but the learned counsel for the fifth respondent has not produced any such Government order. We are unable to express our views about the non existent G.O. or a G.O. which has not been produced before us.

8. The learned counsel for the fifth respondent would submit that the order under challenge is an appealable order and therefore, it is for the petitioners to work out their remedy before the appellate authority. We are not prepared to concede to the said submission of the learned counsel for the fifth respondent, because we are concerned with the safety of 381 children studying in the school and several other staff working in the school. It is not as though the school has come into being in the recent past. It is an undisputed fact that the school has been in existence for several decades. In fact, upto 8th standard, the school is aided by the Government. As we deal with the safety and security of the young children, we cannot drive the parties to approach the appellate authority, when we are sure that there is glaring violation of Rule 37(1)(A) of the Rules.

9. The learned counsel for the fifth respondent would further submit that there was no objection raised at the appropriate stage ie., when the District Collector was considering the grant of licence to the fifth respondent. In our considered view, on that score, we cannot now hold that the lease granted is valid in law. As we have already pointed out, the lease has been granted by the District Collector in gross violation of the mandatory provision contained in Rule 36(1)(A) of the Rules and therefore, the same is liable to be set aside.

10. The learned counsel Mr. R. Anand appearing for the fifth respondent further submitted that the village panchayat president and few others demanded bribe from the fifth respondent and since the fifth respondent did not concede to the said demand, they have instigated the school authorities to file these Writ Petitions. According to him, the fifth respondent was prevented from quarrying and therefore, he had to file a petition under Section 482 Cr.P.C. for a direction to the Police to give protection to the fifth respondent to quarry. That was also ordered. But, in our considered view, the said order of a learned Single Judge cannot be now enforced since, the order granting lease itself is set aside by this order.

11. The narration of the above facts would give a clear indication that all was not well with the authorities. We are pained to make this kind of observation.

12. In the result, both the writ petitions are allowed and the impugned order dated 03.07.2016 passed by the first respondent is quashed. No costs. Consequently, connected miscellaneous petitions are closed.