

(1992) 10 MAD CK 0042
In the Madras High Court

V. Tamil Selvan

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 13-10-1992

Acts Referred:

Citation : (1993) 1 MLJ 26

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Division Bench

Judgement

A.R. Lakshmanan, J.—These two writ petitions have a chequered history. These two writ petitions can be cited as an example as to how people like the writ petitioner abuses the process of Court by obtaining orders by fraudulent means and by suppression of material and relevant facts.

2. Before advertng to the facts of the present two writ petitions, it is necessary for this Court to refer to the previous writ petitions and the writ appeal filed by the very same petitioner for the same subject matter. The first in the series is W.P. No. 1835 of 1991. The prayer in the said writ petition is as follows : - To issue a writ of certiorarified mandamus or any other appropriate writ or direction, calling for the records of the 2nd respondent/ District Collector, Salem, relating to his Proceedings Roc. No. 515 of 1989 dated 22.6.1989 and Clause 4 of the lease deed relating to the period of expiry of the lease, quash the same as illegal, and direct the 2nd respondent to grant quarry lease for complete three years from 19.7.1990 to 18.7.1993 in respect of carrying on quarry operation in Survey No. 2 (Part) and Survey No. 61/1 (part), measuring in all an extent of 6.15 acres at Ettikuttapatti Village, Omalur Taluk, Salem District.

3. The averments made by the petitioner in W.P. No. 1835 of 1991 are as follows : - According to the petitioner, he participated in the public auction conducted by the Tahsildar of Omalur, and was declared as the highest and successful bidder in the auction held on 13.2.1989 for leasing out the stone quarries situate in Survey No. 2 (part) over an extent of 5.15 acres in Adaikanur village, Omalur Taluk and in Survey No. 61/1 (part) over an extent of 1 acre in

Ettikuttapatti Village, Omalur Taluk, Salem District. He had also remitted the bid amount along with local cess and local cess surcharge into the State Bank of India and that the 2nd respondent/District Collector, Salem, in his proceedings Roc. No. 515 of 1989 (Mines-B) dated 22.6.1989 confirmed the lease in favour of the petitioner for both the quarries mentioned above, for a period of three years. According to the petitioner, the lease agreement was executed on 19.7.1990 and was registered as Document No. 1346 dated 26.9.1990 in the Office of the Sub Registrar, Omalur. He was given possession of the demised area after demarcation only on 26.9.1990 after the registration of the lease agreement.

4. Even though the petitioner has remitted the lease amount along with local cess and local cess surcharge for the second year in the State Bank of India by chalan dated 7.11.1990, he was permitted to commence quarrying operation only on 26.9.1990. The petitioner objected to the stipulation regarding expiry of the lease period as 30.6.1991. According to the petitioner, the notification granting quarry lease by public auction specifically stated that the lease would be granted for three years and on the basis of such representation, he was forced to knockdown for the highest amount. There was considerable delay in holding the public auction, confirmation of lease, execution of the lease agreement and handing over possession. Having notified that the lease would commence on 1.7.1988, the 2nd respondent/District Collector, Salem, should have arranged for holding the public auction and execution of the lease agreement well in advance to the date of commencement of the lease i.e., 1.7.1988, whereas the public auction was held on 13.2.1989 and the confirmation order was passed on 8.3.1990 and the lease was executed on 19.7.1990. The petitioner was permitted to quarry from the date of registration of the lease on 26.9.1990 and the 2nd respondent acted arbitrarily in incorporating a stipulation that the lease would expire on 30.6.1991, while the notification mentions that the lease would be for three complete years. Hence, the action of the 2nd respondent/District Collector, Salem, is arbitrary in stipulating that the period of lease would commence on 1.7.1988 and expire on 30.6.1991. According to the petitioner, the quarry operation was commenced only on 19.7.1990 and the lease would expire only on 18.7.1993 whereas the District Collector, Salem, has issued the impugned proceedings in Roc. No. 515 of 1989 dated 22.6.1989 containing a stipulation that the lease would expire on 30.6.1991.

5. The said W.P. No. 1835 of 1991 came up for admission before K.S. Bakthavatsalam, J., on 14.2.1991 and the learned Judge dismissed the writ petition at the admission stage itself. It is useful to extract paragraph 4 of the said order, which runs as follows:

After considering the arguments of the learned Counsel for the petitioner, I am not able to agree with the learned Counsel on the contentions raised. It is true that the auction was for three years from 1.7.1988 to 30.6.1991 and the petitioner was also given possession when the lease agreement was executed on 19.7.1990. But, there is a clause which was inserted in the lease deed, as

extracted above, which limits the period to 30.6.1991. The petitioner with open eyes has accepted the lease deed and executed the lease deed. Having executed the lease deed, I do not think, the petitioner can turn back and say that he is entitled to have the lease for three years. Even otherwise, Condition 10 of the confirmation order says that the petitioner has to remit the security deposit before the execution of the lease deed. The petitioner has not remitted the security deposit of Rs. 2,000 till November, 1989, and it is not on the part of the respondents to delay the execution of the lease deed. Taking into consideration the delay made by the petitioner in paying the security deposit, I am not able to say that the respondents are bound by the principle of promissory estoppel. Even otherwise, with open eyes, the petitioner has entered into a lease deed, in which it is stated that the lease will come to an end on 30.6.1991. In my view, it is not open to the petitioner to get out of the lease deed executed by him accepting the conditions of the lease deed.

6. Aggrieved against the order of K.S. Bakthavatsalam, J., dated 14.2.1991 in W.P. No. -1835 of 1991, the petitioner filed W.A. No. 429 of 1991. It is pertinent to notice that the Writ Appeal was filed by the very same counsel M/s. V. Santhanam and V. Seshayyan. The Division Bench consisting of the Hon'ble Chief Justice Dr. A.S. Anand (as he then was) and D. Raju, J., dismissed the Writ Appeal by order dated 9.4.1991 at the admission stage itself. The judgment of the Division Bench is reproduced hereunder.

Invoking the doctrine of promissory estoppel, the appellant herein filed W.P. No. 1835 of 1991 which came to be dismissed by a learned single Judge vide judgment dated 14th day of February, 1991. Hence this appeal.

2. The appellant participated in the auction for stone quarry over an extent of 6.15 acres in Ettikuttapatti Village. The auction was for a period of three years from 1.7.1988 to 30.6.1991. After the auction the appellant was requested to furnish the security deposit. The same was done by him on 17th November, 1989. After the security deposit was remitted, the agreement was executed between the parties on 19th of July 1990. Clause 4 of the agreement provided that the premises shall be held by the lessee for the term of period from 19th day of July, 1990, to the 30th day of June, 1991, which shall, however, be determinable in the manner provided in the agreement itself. According to Clause 4, the period of lease would expire on 30th of June, 1991. Alleging that the appellant had relied upon some representation and assurance as given by the authorities and invested huge amount and thereby changed his position, the appellant sought that the period of three years should commence from 1990 and end in 1993. This argument had been raised before the learned single Judge and was rightly repelled. It has been reiterated before us. The argument is thoroughly misconceived. Even though there is not even the minimal factual foundation laid down in the writ petition for invoking the doctrine of promissory estoppel, for the sake of argument even if it be assumed that there was some understanding between the parties prior to the execution of the lease agreement

on 19th of July, 1990, that understanding stood superseded by the document executed between the parties wherein it was clearly stipulated that the period of lease would expire on 30th of June, 1991, unless determined earlier. The appellant executed the document and he is bound by it. The so-called earlier representation cannot be preferred to the written agreement executed between the parties. The effort of the appellant appears to be to rewrite the lease agreement and substitute Clause 4 through writ proceedings. That cannot be permitted. The writ petition was rightly dismissed by the learned single Judge and we see no reason to take a different view. The appeal fails and is dismissed.

7. The very same petitioner filed another writ petition viz., W.P. No. 9008 of 1991 on 1.7.1991 through M/s. S. Silambannan and P. Venkatachalapathi. I may state here that the writ petitioner has purposely engaged a different counsel in order to obtain an order from this Court by suppressing material facts, which I will deal with in the later part of this judgment.

8. W.P. No. 9008 of 1991 was filed for the following relief : - To issue a writ of certiorari mandamus calling for the records of the 2nd respondent/ District Collector, Salem, relating to his proceedings Roc. No. 515 of 1989 dated 22.6.1989 and Clause 4 of the lease deed relating to the period of expiry of the lease, quash as illegal and direct the 2nd respondent/District Collector, Salem, to grant quarry lease for complete three years commencing from 19.7.1990 to 18.7.1993 in respect of carrying on quarry operation in Survey No. 2 (part) and Survey No. 61/1 (part), totally measuring an extent of 6.15 acres at Ettikuttapatti Village, Omalur Taluk, Salem District.

9. It is seen from the affidavit filed in support of W.P. No. 9008 of 1991, that the very same allegations, which have been made in W.P. No. 1835 of 1991, have been repeated in this writ petition. That apart, as in W.P. No. 1835 of 1991, Clause 4 of the lease deed relating to the period of expiry of lease has also been challenged. It is significant to note that the petitioner has purposely and with an ulterior motive has failed to mention about the dismissal of his earlier writ petition (W.P. No. 1835 of 1991) for the same relief and the confirmation of the order of the learned single Judge in W.P. No. 1835 of 1991 by a Division Bench in W.A. No. 429 of 1991. The affidavit is very silent on this aspect. The prayer in the present writ petition (W.P. No. 9008 of 1991) is to grant quarry lease for complete three years commencing from 19.7.1990 to 18.7.1993 in respect of the quarry in question. W.P. No. 9008 of 1991 was dismissed by S. Ramalingam, J., at the admission stage itself on 4.7.1991 by permitting the petitioner to submit an application for renewal on or before 30.7.1991 and further directing the District Collector, Salem, to dispose of the said application for renewal within three weeks from the date of receipt of such application. The order of S. Ramalingam, J., in W.P. No. 9008 of 1991 is as follows:

The prayer in the writ petition is for quashing Clause 4 of the lease deed relating to the period of expiry of the lease and for a direction to the 2nd respondent to grant quarry lease for a complete period of three years commencing from

19.7.1990 and expiring on 18.7.1993. Since the quarry lease was only for the concerned faslis which expired on 30.6.1991, the petitioner cannot have a vested right to claim that the period of lease should be according to English Calendar year for three years commencing from 19.7.1990 and ending with 18.7.1993. However, taking note of the fact that the lease is normally granted for a period of three years and it would be economic and viable if the lessee is permitted to enjoy the quarry rights for a full period of three years, there will be an order in this writ petition directing the 2nd respondent to entertain an application from the petitioner for renewal of the quarry rights and pass orders thereon so as to enable the petitioner to have the privilege of quarrying at least for three full calendar years. The petitioner is enabled to submit an application for renewal on or before 30.7.1991 and on receipt of that application, orders thereon shall be passed by the 2nd respondent within three weeks from the date of receipt of such application. Till the disposal of the application for renewal, the quarry shall not be leased to any third parties. The writ petition is ordered on the above terms. No costs.

10. It is seen from the file produced before this Court by the learned Additional Government Pleader, that the order of S. Ramalingam, J., in W.P. No. 9008 of 1991 has not so far been challenged by the respondents by filing a Writ Appeal, though they were contemplating to file a Writ Appeal against the said order.

11. On going through the file, I also find that the very same petitioner has filed W.P. No. 5793 of 1992 to quash the proceedings of the District Collector, Salem, in Roc. No. 515 of 1989/Mines-B dated 18.3.1992. It is appropriate to notice at this stage the proceedings of the District Collector, Salem in Roc. No. 515 of 1989/Mines-B dated 18.3.1992. It is a notice issued by the District Collector, Salem, to the petitioner, on receipt of information of illicit quarrying of rough stones in Survey Nos. 2 (part) and 61/1 (part), poramboke land in Ettikuttapatti Village. It is seen from the notice that the Deputy Director of Geology and Mines, Salem, along with the Special Deputy Tahsildar, Assistant Geologist No. 1, Salem and the Sub Inspector of Survey (Mines), Salem, inspected the said land on 12.2.1992 and reported that the lessee V. Thamilselvan/writ petitioner quarried and removed the quantity of 366 lorry loads of rough stone from 1.7.1991 till date of the said notice and that the quantity of 1,905 lorry loads of rough stone was quarried and removed by the lessee upto 30.6.1991 from the date of executing the lease deed i.e., 19.7.1990 and that totally, a quantity of 2,271 lorry loads of rough stone was quarried and removed by the lessee from the date of the execution of the lease deed i.e., 19.7.1990. It is further averred in that notice that the lessee has got transport permit only for the quantity of 117 lorry loads of rough stone and that he has not got transport permit for the remaining quantity of 2,154 lorry loads of rough stone. It is also stated in that notice that the lessee/writ petitioner has violated the lease deed condition Nos. 6(4), 6(7) and 10(5). The District Collector, Salem, has directed the petitioner to show cause within 15 days from the date of receipt of the notice as to why a penalty amount of Rs. 11,50,775 should not be levied under Rule 3(3) of the T.M.M.C.

Rules, 1959, and u/s 25 of the Mines and Minerals (Regulation and Development) Act, 1957, for having quarried and transported blue metal without valid permits from Survey Nos. 2 (part) and 61/ 1 (part) in Ettikuttapatti Village, Omalur Taluk. The lessee/writ petitioner was also directed to explain in writing within 15 days of receipt of the said notice for having violated the lease deed conditions laid down in 6(4), 6(7) and 10(5) of the lease deed.

12. The petitioner submitted his written explanation during April, 1992. The exact date is not mentioned but the same was received by the Deputy Director of Geology and Mines, Salem, on 16.4.1992. But, however, it is seen from the letter dated 30.4.1992 of Mr. P. Gunaraj, Addl. Government Pleader, High Court, Madras, addressed to the Secretary to Government, Industries Department, Madras-9, with a copy to the District Collector, Salem, that the petitioner has challenged the proceedings of the District Collector, Salem, in Roc. No. 515 of 1989/Mines-B dated 18.3.1992 by filing W.P. No. 5793 of 1992, and the same was dismissed by this Court on 23.4.1992 by J. Kanakaraj, J. The petitioner has thereafter filed the present two writ petitions W.P. Nos. 6503 and 6504 of 1992.

13. The prayer in W.P. Nos. 6503 of 1992 is as follows : - To issue a writ of mandamus forbearing the respondents from interfering with the quarrying operations of the petitioner in Survey Nos. 2 (part) and 61/1 (part), totally measuring an extent of 6.15 acres in Ettikuttapatti Village, Omalur Taluk, Salem District, till 18.7.1993 pursuant to the proceedings of the 2nd respondent/District Collector, Salem in Roc. No. 515 of 1989/Mines-B dated 12.9.1991, for rough stones, jellies, blue metal, etc., and transporting the same to a business place of the petitioner's choice and consequently direct the respondents to issue necessary permit for the transportation of the quarried rough stones jellies, blue metal, etc.

14. The prayer in W.P. No. 6504 of 1992 is as follows : - To issue a writ of mandamus directing the respondents to allow the petitioner to execute the lease deed in favour of the respondent in respect of the quarry comprised in Survey Nos. 2 (part) and 61/1 (part), totally measuring an extent of 6.15 acres and situate in Ettikuttapatti Village, Omalur Taluk, Salem District, for a period of three years from 19.7.1990 to 18.7.1993.

15. As stated above, W.P. No. 5793 of 1992 was filed on 22.4.1992 by the petitioner challenging the proceedings of the 2nd respondent/District Collector, Salem, in Roc. No. 515 of 1989/Mines-B dated 18.3.1992, and the same was dismissed by this Court on 23.4.1992. The present writ petitions viz., W.P. Nos. 6503 and 6504 of 1992 were filed on 29.4.1992 by the petitioner through M/s. V. Santhanam and V. Seshayyan. The petitioner has signed the affidavit on 24.4.1992, i.e., the next day after the dismissal of W.P. No. 5793 of 1992, and filed the same into Court on 29.4.1992. In the affidavit filed in support of the writ petitions, after setting out the previous history, the petitioner has referred to W.P. No. 9008 of 1991 filed by him, wherein also he has challenged Clause 4 of the lease deed relating to the period of expiry of the lease. It is further stated in

the affidavit by the petitioner that as per the directions of S. Ramalingam, J., in W.P. No. 9008 of 1991, the 2nd respondent/District Collector, Salem, passed an order for carrying out quarrying operations by the petitioner in the said quarries from 19.7.1990 to 18.7.1993, that the petitioner was put in possession of the quarries and permitted to carry on mining operation by virtue of the orders passed by the District Collector, Salem, and the Deputy Director of Geology and Mines, Salem that in spite of several representations to the District Collector, Salem, to issue transport permit to the petitioner for local sales in respect of the quarried blue metal jelly, the same was not given to him and that the respondents are keeping his application pending for long time since 14.2.1992. Hence, the petitioner is approaching this Court to direct the respondents to issue necessary permits to him in respect of the quarried rough stone jellies, etc., for transporting them for local sales. Thus, the petitioner has filed W.P. No. 6503 of 1992 for a mandamus forbearing the respondents from interfering with the quarrying operations by the petitioner of the subject quarry pursuant to the proceedings of the 2nd respondent/District Collector, Salem in Roc. No. 515 of 1989/Mines-B dated 12.9.1991, and to direct the respondents to issue necessary permits for the transportation of the quarried stones, etc.

16. On the very same allegations, W.P. No. 6504 of 1992 was filed by the petitioner through the very same counsel and on the very same date. In this writ petition also, the petitioner has made a reference only to W.P. No. 9008 of 1991 wherein he prayed for extension of lease, and after referring to the order of S. Ramalingam, J., the petitioner has prayed to issue a writ of mandamus directing the respondents to allow the petitioner to execute the lease deed in favour of the respondents in respect of the quarry in question for a period of three years from 19.7.1990 to 18.7.1993.

17. Both the writ petitions were admitted by J. Kanakaraj, J., on 30.4.1992, and on the same date notice was ordered to the respondents in the two Writ Miscellaneous Petitions viz., W.M.P. Nos. 9339 and 9340 of 1992, which are for interim injunction restraining the respondents from interfering with the quarrying operations and to direct the respondents to allow the petitioner to execute the lease in respect of the quarry in question respectively.

18. I have carefully gone through the averments made in the above two writ petitions. It is rather unfortunate and painful to notice that the petitioner has purposely omitted and suppressed very important and relevant factors such as filing of W.P. No. 1835 of 1991, which was dismissed by K.S. Bakthavatsalam, J., on 14.2.1991, W.A. No. 429 of 1991, which was dismissed by the First Bench of this Court on 19.4.1991 and the filing of W.P. No. 5793 of 1992 and its dismissal on 23.4.1992 by this Court. The petitioner has conveniently mentioned only his filing of W.P. No. 9008 of 1991 and the exparte order passed by S. Ramalingam, J., on 4.7.1991 at the admission stage. In my view, the petitioner has suppressed very many material facts. The affidavits filed in support of W.P. No. 9008 of 1991 and W.P. No. 5793 of 1992 and in the present two writ petitions

W.P. Nos. 6503 and 6504 of 1992, were not candid and do not fully state the facts but suppressed the material facts. The petitioner has stated certain facts in such a way as to mislead the Court as to the true facts. It is the well settled proposition of law that it is the duty of a person invoking the special writ jurisdiction of a Court to make a full and true disclosure of all relevant facts. He could not suppress any fact. The Court ought, for its own protection, and to prevent an abuse of its process, can always refuse to proceed any further with the examination of the merits in the present two writ petitions. In my view, the petitioner has suppressed material and relevant facts with regard to the earlier Court proceedings, which, if brought to the notice of S. Ramalingam, J., in W.P. No. 9008 of 1991 when applying for a rule nisi, should certainly have influenced the said Court in deciding one way or the other, and such suppression, in my view, was certainly calculated to deceive the Court into granting the order of rule nisi. The petitioner is not entitled to any relief in the present two writ petitions since the whole claim of the writ petitioner is based on the earlier order obtained by him from S. Ramalingam, J., in W.P. No. 9008 of 1991, which, as I have stated above, was obtained on suppression of material and relevant facts. Hence, on this short ground, both the writ petitions are liable to be dismissed.

19. It is also to be noticed that W.P. No. 9008 of 1991 was disposed of by the learned Judge at the time of admission itself by giving certain directions to consider the application for renewal. That writ petition was not even admitted, though it is seen from the order, that the name of Mr. J.R.K. Bhavanantham, Additional Government Pleader was mentioned in the order. It appears that the Additional Government Pleader, who was present in Court, was asked to take notice on behalf of the respondents.

20. As stated above, W.P. No. 1835 of 1991, W.A. No. 429 of 1991, W.P. No. 9008 of 1991, and W.P. No. 5793 of 1992 were disposed of by this Court at the admission stage itself. It is seen from the file produced by the learned Additional Government Pleader, that the copy of the order in W.P. No. 1835 of 1991 was received by the District Collector's Office, Salem, on 28.1.1992, and the order in W.A. No. 429 of 1991 was received by District Collector's Office, Salem, on 17.7.1991, i.e., after the order of S. Ramalingam, J., in W.P. No. 9008 of 1991 dated 4.7.1991, which was sent by the petitioner to the District Collector on 15.7.1991.

21. After receipt of conflicting orders from this Court, the District Collector, Salem, and other authorities came to know about the writ proceedings initiated by the petitioner without mentioning the true and correct facts. In the meanwhile, the petitioner has sent a petition for renewal, which was received by the Collector's Office, Salem, on 15.7.1991, and the three weeks time granted by this Court would expire on 1.8.1991. In the above circumstances, the matter was referred to Mr. K. Ravirajapandian, Additional Government Pleader, High Court, Madras, for his opinion on the orders of the High Court, Madras, in W.P. No. 9008 of 1991, for taking further action, as to how two different orders for

one and the same case can be given effect to, and also to take necessary action to file an appeal against the order dated 4.7.1991 in W.P. No. 9008 of 1991. On 25.7.1991, the then Additional Government Pleader, Mr. K. Ravirajapandian, has stated thus as his opinion:

It is a good case to expose the petitioner before the Court. Please send the entire file with the affidavits filed in the earlier W.P. No. 1835 of 1991 immediately.

This opinion is available at page 160 of the file.

22. Since there was delay in obtaining the opinion from the then Additional Government Pleader, the matter was referred to Mr. M.A. Sadanand, Government Pleader, High Court, Madras, on 17.8.1991, as by that time Mr. K. Ravirajapandian, Additional Government Pleader, handed over charge to the Government Pleader. Mr. M.A. Sadanand, Government Pleader, High Court, Madras, has given his opinion as follows:

Though a Division Bench has held that the lease date is the one mentioned in the deed, since no appeal has been filed against the instant order, which is to be implemented on or before 19.8.1991, there is no option but to obey the order which may be a wrong one. Delay in seeking advice has caused this apparent subversion of justice. Please pass orders lest you should be hauled up for Contempt of Court.

(Sd.) M.A. Sadanand, 17.8.1991, G.P.

In order to avoid contempt proceedings, orders were passed by the District Collector, Salem, in Roc. No. 515 of 1991/Mines-B dated 12.9.1991 granting the lease to quarry rough stones, etc., for the period from 19.7.1990 to 18.7.1993, subject to the provisions contained in Tamil Nadu Minor Mineral Concession Rules," 1959.

23. As stated above, this is a typical case of gross abuse of the process of Court. Admittedly, the petitioner filed W.P. No. 1835 of 1991 through his counsel M/s. V. Santhanam and V. Seshayyan seeking a writ of certiorarified mandamus to quash Clause 4 of the lease deed dated 19.7.1990 relating to the period of the lease executed by the petitioner in favour of the District Collector, Salem. That writ petition was dismissed in limine by my learned Brother K.S. Bakthavatsalam, J. The petitioner herein unsuccessfully challenged the said order in W.A. No. 429 of 1991, As a matter of fact, the First Bench consisting of Hon'ble Chief Justice A.S. Anand, as he then was, and D. Raju, J., while dismissing the writ appeal in limine, has held that the petitioner having signed the lease agreement, is bound by Clause 4 of the lease deed, which provided that the lease shall be valid for the term from 19.7.1990 to 30.6.1991 and that the effort of the petitioner was to re-write the lease agreement and substitute clause 4 of the lease deed through writ proceedings, which is impermissible.

24. However, the writ petitioner, totally suppressing the above writ petition (W.P. No. 1835 of 1991) and the Writ Appeal (W.P. No. 429 of 1991), filed W.P. No.

9008 of 1991 with the identical prayer as in W.P. No. 1835 of 1991. In W.P. No. 9008 of 1991, an order was passed by this Court directing the District Collector, Salem, to entertain an application from the petitioner for renewal of the quarry right and pass orders thereon so as to enable the petitioner to have the privilege of quarrying at least for three full calendar years. The writ petitioner got the above order from this Court by misleading the Court as if he is approaching the court for the first time and also by totally suppressing the material fact that an identical prayer was denied and declined by a learned single Judge and the same was confirmed by a Division Bench.

25. It is on the strength of the above order dated 4.7.1991 in W.P. No. 9008 of 1991, the petitioner obtained lease of the quarry for the period from 19.7.1990 to 18.7.1993. There is also no dispute that no lease deed has been executed by the District Collector, Salem, pursuant to the proceedings in Roc. No. 515 of 1989/Mines-B dated 12.9.1991 of the District Collector, Salem.

26. In the above background, the petitioner has filed W.P. No. 6503 of 1992 for issuing a writ of mandamus forbearing the respondents from interfering with the quarry operations of the petitioner pursuant to the proceedings in Roc. No. 515 of 1989/Mines-B dated 12.9.1991 of the District Collector, Salem, and W.P. No. 6504 of 1992 has been filed for directing the respondents to allow the petitioner to execute the lease deed for a period of three years from 19.7.1990 to 18.7.1993.

27. The conduct of the petitioner deserves strong condemnation. On the strength of the order W.P. No. 9008 of 1991, the petitioner had managed to obtain the proceedings in Roc. No. 515 of 1989/ Mines-B dated 12.9.1991 from the District Collector, Salem. Based on the aforesaid proceedings of the District Collector, Salem, the petitioner is seeking certain reliefs in W.P. Nos. 6503 and 6504 of 1992.

28. I am concerned with the question whether the petitioner can claim any relief in the present two writ petitions. The remedy under Article 226 of the Constitution is an extra-ordinary and discretionary remedy. This Court would be fully justified in refusing to exercise its discretion in favour of a person who has abused the process of court and suppressed material and relevant factors and obtained orders from the High Court. It is on the strength of such orders, the petitioner is now claiming relief in the present writ petitions. In my view, Court should not be a party and extend its helping hand to a person who has played a fraud on court.

29. It is also significant to notice that the writ petitioner has not chosen to mention about W.P. No. 1835 of 1991 and W.A. No. 429 of 1991 in the present two writ petitions. The petitioner has not come to court with clean hands and failed to disclose material facts. The reason for not mentioning the above facts is also obvious. If the petitioner were to disclose the earlier writ proceedings in W.P. No. 9008 of 1991, the Court would have not only declined the relief but also

frowned on the petitioner. Equally, if all the relevant facts are mentioned in the present writ petitions, the court would not have even entertained the writ petitions. I have no doubt in my mind that the petitioner has been misleading the court and obtained favourable orders and is trying to mislead the court further. Though I would be justified in not embarking on the merits of the case, yet, I do not find any ground to grant the reliefs claimed. The relief asked for in W.P. No. 6503 of 1992 cannot be granted unless the petitioner succeeds in W.P. No. 6504 of 1992. No relief can be granted in W.P. No. 6504 of 1992 because the proceedings dated 12.9.1991 of the District Collector, Salem, came to be issued because of the orders of this Court in W.P. No. 9008 of 1991, and the favourable orders in the above writ petition (W.P. No. 9008 of 1991) has been passed because the petitioner has misled the Court by suppressing the material facts.

30. It is also necessary to mention that a show cause notice dated 18.3.1992 has been issued by the District Collector, Salem, to the petitioner for violation of the lease deed conditions in Clauses 6(4), 6(7) and 10(5), and the petitioner has sent a reply on 16.4.1992.

31. The learned Additional Government Pleader produced all the records. On going through the records, I find that the writ petitioner has filed another W.P. No. 5793 of 1992 challenging the proceedings in Roc. No. 515 of 1989/Mines-B dated 18.3.1992, The very same counsel who filed W.P. No. 1835 of 1991 and W.A. No. 429 of 1991 have filed W.P. No. 5793 of 1992. W.P. No. 5793 of 1992 was dismissed by J. Kanakaraj, J., on 23.4.1992. The order passed by J. Kanakaraj, J. is as follows:

The petitioner challenges the show cause notice dated 18.3.1992. It is stated in the show cause notice that the Sub Inspector of Survey (Mines), Salem, inspected the land on 12.2.1992 and reported the lessee (petitioner) quarried and removed the quantity of 366 lorry loads of rough stones from 1.7.1991 till date of show cause notice. Based on the date of execution of the lease deed, the show cause notice called upon the petitioner to show cause as to why penalty should not be levied for conducting quarry operations contrary to the lease deed and the provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959. The cost of the rough stones quarried from the lands is also worked out and the petitioner is asked to show cause as to why the said sum should not be demanded from the petitioner. The contention of the petitioner is that he has a subsisting lease and therefore, the show cause notice is not warranted. I do not think that this contention can be accepted at this stage because it has to be seen whether the lease deed authorises the petitioner to quarry rough stones and whether the lease deed was subsisting during the period when the illicit quarrying is said to have taken place. These are all matters which the authority has to enquire into on the basis of the explanation that the petitioner will submit, in response to the show cause notice. It is too early to come to any conclusion one way or the other. Therefore, I am not inclined to interfere at this stage. It is open to the petitioner to submit his explanation. If he is ultimately aggrieved by

the order, it is open to him to challenge the same in the manner known to law. The writ petition is dismissed.

32. It is after the dismissal of the aforesaid writ petition (W.P. No. 5793 of 1992) on 23.4.1992, the petitioner has filed the two writ petitions in question on 29.4.1992. The petitioner has sworn to the affidavit on 24.4.1992 and the writ petitions have been signed by the advocates on the very same day viz., 24.4.1992. Significantly, the very same counsel had appeared in W.P. No. 5793 of 1992 as well as in the present two writ petitions. I have absolutely no hesitation in my mind in coming to the conclusion that a member of the Bar, who is expected to assist the court, has joined hands with the unscrupulous petitioner and has taken the Court for a ride. It is very painful to note that a member of the Bar has failed in his duty to the Court and has been a party to the unholy act of the petitioner. I must also mention the fact that when the learned Additional Government Pleader brought to my notice about the filing of W.P. No. 6504 of 1992, I confronted the petitioner's counsel Mr. V. Santhanam and asked him to tell the Court whether any such writ petition has been filed. Mr. V. Santhanam, learned Counsel for the petitioner, gave an evasive answer that he has to verify the same even though he himself has filed both the writ petitions together on the very same day.

33. Again, these material facts have been suppressed in W.P. Nos. 5793, 6503 and 6504 of 1992. Consequently, the petitioner is not entitled to any consideration at the hands of this Court in view of the landmark decision of Rajagopalan, J., in the case reported in K. Marappa Gounder, K.M.S. Bus Service Vs. The Central Road Traffic Board and Others, . Hence this Court should decline to grant any relief to the writ petitioner in the exercise of its jurisdiction under Article 226 of the Constitution of India. Accordingly, both the writ petitions (W.P. Nos. 6503 and 6504 of 1992) are dismissed with costs of Rs. 5,000 i.e., Rs. 2,500 in each case. The award of heavy cost is justified in view of the unfair conduct of the petitioner. Such award of cost has been held to be proper and justified by the Apex Court in the decision reported in Hindustan Transport Co. and Another Vs. State of U. P. and Others, .

34. Out of the costs of Rs. 5,000 awarded, a sum of Rs. 2,000 (Rs. 1,000 in each case) shall be paid to Mr. P. Shanmugham, learned Additional Government Pleader, towards his fees, but for whom the fraudulent and unfair conduct of the writ petitioner would not have been unearthed and brought to the notice of the Court. The fee of Rs. 2,000 (in both the cases) is fixed by the Court to Mr. P. Shanmugham, learned Additional Government Pleader, taking into consideration of the excellent work done by him in protecting the interest of the State.

35. Further, I direct the respondents to remove all the materials quarried by the petitioner, sell the same and appropriate the sale proceeds towards the amounts due to the State from the petitioner and take further action for recovery of the balance, if any.

36. Before parting with this case, I must also point out that the lawyers as officers of court, owe a duty to the court to place all matters before the court. The earlier proceedings in W.P. No. 1835 of 1991, W.A. No. 429 of 1991 and W.P. No. 5793 of 1992, and the present writ petitions have been filed by one and the same counsel. Hence, it was obligatory on the part of the lawyers to have ascertained as to how the petitioner has obtained the order in W.P. No. 9008 of 1991 inspite of the dismissal of the earlier W.P. No. 1835 of 1991 and W.A. No. 429 of 1991, and mentioned all the facts in the present writ proceedings. I am also tempted to feel that the petitioner has changed the counsel for appearing in W.P. No. 9008 of 1991 with a view to wriggle out of the legal implications flowing from the dismissal of W.P. No. 1835 of 1991, as confirmed in W.A. No. 429 of 1991 since the present counsel appearing for the petitioner are fully aware of the same. It would be the saddest day if counsel behave in a manner making the court lose faith in the words and representations of lawyers. However, I cannot help observing that the conduct and behaviour of the petitioner as well as his counsel M/s. V. Santhanam and V. Seshayyan, are most reprehensible and deserve to be deprecated. The petitioner and his counsel have not even tendered unqualified apology and sought mercy from the Court. However, M/s. V. Santhanam and V. Seshayyan have very cleverly sought permission of this Court to permit them to withdraw the writ petitions, which was rejected by me. They wanted to withdraw the writ petitions on coming to know of the turn of events that has taken place in the present writ petitions during the course of hearing. I, however, part with this case with a heavy heart expressing my strong disapproval of their conduct and behaviour.

37. In the result, both the writ petitions are dismissed with costs of Rs. 5,000 i.e., Rs. 2,500 in each case. Out of the costs a sum of Rs. 2,000 (Rs. 1,000 in each case) is fixed by me as the fees of Mr. P. Shanmugham, Additional Government Pleader, for the reasons mentioned supra. As directed earlier, the respondents are at liberty to forthwith remove all the materials quarried by the petitioner pursuant to the order obtained by him by suppression of material facts in W.P. No. 9008 of 1991, sell the same and appropriate the sale proceeds towards the amount due to the State from the petitioner, and take further appropriate action for recovery of the balance, if any.