

(2017) 07 MAD CK 0002

In the Madras High Court

Case No : 5212 of 2015 and M P(MD)No 1 of 2015

Yennarkay R.Ravindran Thilagavathy Vidhyasala Matriculation Higher Secondary School, represented by The Principal, L.Murali APPELLANT

Vs

The Government of Tamil Nadu, represented by its Secretary, Industrial Department, & Ors. RESPONDENT

Date of Decision : 19-07-2017

Acts Referred:

[Tamil Nadu Minor Mineral Concession Rules, 1959](#), Rule 36, Rule 19A, Rule 36(1), Rule 36(1A), Rule 36(1A)(a)

Citation : (2017) 07 MAD CK 0002

Hon'ble Judges : R.Mahadevan

Bench : SINGLE BENCH

Advocate : R.Mahadevan

Judgement

1. Seeking a writ of Mandamus to forbear the respondents herein from granting of any quarry licence for the Survey Nos.884/1A, 884/1B,

1333/1A, 1333/1B, 1333/2, 1326, 1334/3, 1334/1, 1334/2, 1334/4, 1335/2, 1335/3, 1336/1, 1336/2, 1336/3, 1312/2, 1313/1, 1313/2,

1314/1, 1314/2, 1317 and 1312/3 in Thiruthangal Village, Sivakasi Taluk, Virudhunagar District, until the petitioner's representations dated

23.03.2015 and 25.03.2015, are disposed of, the petitioner has filed this writ petition.

2. Facts in brief, leading to the filing of this writ petition, are as follows:

2.1. The petitioner school is situated in R.S.Nos.1711, 1712, 1312/1, 1312/2, 1312/4, 1311/1, 1311/2A and 1311/2B in Thiruthangal Village,

Sivakasi Taluk, Virudhunagar District. According to the petitioner, the vacant lands situated in S.Nos.884/1A, 884/1B, 1333/1A, 1333/1B,

1333/2, 1326, 1334/3, 1334/1, 1334/2, 1334/4, 1335/2, 1335/3, 1336/1, 1336/2, 1336/3, 1312/2, 1313/1, 1313/2, 1314/1, 1314/2, 1317 and

1312/3 in Thiruthangal Village, Sivakasi Taluk, Virudhunagar District, are adjacent to the school premises and the sixth respondent applied for

quarry lease licence in 2010 to the first respondent through the third respondent in respect of those vacant lands.

2.2. Apprehending that in the event of granting quarry lease licence to the sixth respondent, the safety of the school children would be in peril, the

petitioner school made a representation dated 04.07.2012 to the respondents. In the meanwhile, the petitioner school also filed

W.P(MD)No.15753 of 2012 seeking a direction not to grant quarry lease to the sixth respondent and the said writ petition was dismissed as

withdrawn on 07.12.2012. Thereafter, the petitioner school submitted another representation on 21.12.2012, for which, the fourth respondent sent

a reply dated 19.09.2013 stating that no quarry lease licence would be granted with regard to the survey numbers in question.

2.3. However, the respondents 2 and 4 conducted a survey in the aforesaid survey numbers on 23.03.2015 and hence, the petitioner gave a

representation on that day itself, followed by reminders dated 24.03.2015 and 25.03.2015, but the survey works had been continued even

thereafter also. Since the representations submitted by the petitioner did not evoke any positive response, the petitioner is before this Court.

3. The fourth respondent - Deputy Director of Geology and Mining, Virudhunagar, Virudhunagar District, filed a counter affidavit on behalf of all

the respondents, inter alia, contending as under:

3.1. The petitioner school is run by the Standard Fire Works Group of companies and it also engaged in granite quarrying operations in the lands

adjacent to the lands in question. The petitioner is the partner of the school as well as granite quarry leases in S.F.Nos.1322, 1324 and 1325

abetting the lands in which the sixth respondent applied for quarry lease licence. The conditions specified in Rule 36 of the Tamil Nadu Minor

Mineral Concession Rules, 1959 have been taken into consideration at the time of recommending for grant of granite quarry lease licence to the

sixth respondent, to the Government for appropriate orders.

3.2. The Revenue Divisional Officer, Sivakasi, conducted an inspection on

28.09.2010 and submitted his report vide Letter

No.Na.Ka.B4/5351/2010, dated 29.09.2010, recommending for grant of granite quarry lease licence to the sixth respondent to an extent of

24.70 acres in Thiruthangal Village, Sivakasi Taluk, Virudhunagar District, for a period of 20 years.

3.3. The quarrying operation would not cause any hindrance or damage to the school and the play ground as the applied area is a granite quarry

zone, wherein several granite quarries are functioning in the vicinity and taking into all those facts, the fourth respondent recommended for grant of

granite quarry lease for 20 years under Rule 19-A of the Tamil Nadu Minor Mineral Concession Rules, 1959, subject to certain conditions.

3.4. The third respondent - District Collector, Virudhunagar, after personal inspection of the area on 11.11.2010 and having satisfied with the

location of the area, recommended for grant of quarry lease licence by his letter in Roc.No.KV2/1390/2010, dated 16.11.2010 to the

Government through the Commissioner of Geology and Mining, Chennai.

3.5. On careful consideration of the quarry lease application submitted by the sixth respondent, the Government directed the sixth respondent to

submit the approved mining plan. Meanwhile, the Government directed the Commissioner of Geology and Mining to depute officers to re-inspect

the area in question and to submit a comprehensive report. Thereafter, the Joint Director of Geology and Mining inspected the site in question and

submitted a report on 23.03.2015 stating that 50 metres safety distance to be maintained for the odais and 7.5 metres safety distance to be

maintained for the adjacent patta lands.

3.6. Considering the allegation of the petitioner that if the request of the sixth respondent for grant of quarry lease licence is considered, then it will

endanger the safety of the students and the school premises, this Court, by order dated 08.04.2015, appointed an Advocate Commissioner to

inspect the site in question and ascertain whether the norms laid down for grant of lease is fulfilled including the distance and to file a report.

However, the respondents refuted the report of the Advocate Commissioner as the same had not reflected the actual field conditions. It is further

stated that there are 12 granite quarries in existence, out of which, 6 granite quarries are run by the petitioner group of companies and so far, no

huge water scarcity has been reported. Therefore, the respondents prayed for the dismissal of the writ petition.

4. A reply affidavit has been filed by the petitioner contending that the fourth respondent is not competent to file the counter affidavit on behalf of all

the respondents and the first respondent is the competent authority to decide the issue and further the first respondent cannot delegate his powers

to the fourth respondent. Further, it is averred that the quarry leases cited by the fourth respondent are situated beyond 500 metres from the

school.

5. Mr.AR.L.Sundaresan, learned Senior Counsel appearing on behalf of Mr.K.Vamanan, learned Counsel for the petitioner made the following

submissions:

5.1. The prime contention of the petitioner is that if the Government grants quarry lease licence to the sixth respondent in the site in question, then

the safety and interest of the school children and the people living in and around that area would definitely get affected.

5.2. Despite the petitioner made several representations to reconsider the claim of the sixth respondent for grant of quarry lease licence, all ended

in vain.

5.3. Though there are 12 granite quarries situated in the site in question, they are actually situated beyond 500 metres from the vicinity of the

school, but, the sixth respondent is now trying to start quarrying operations nearby the school premises and it causes pollution, besides

endangerment to the safety of the school children.

5.4. The first respondent being the competent authority, is not entitled to authorise the fourth respondent to file the counter affidavit on his behalf

and the averments in the counter affidavit are against the reality.

5.5. The Advocate Commissioner has filed his report clearly stating that there are violations in considering the claim of the sixth respondent for

grant of quarry lease licence as no licence for quarrying can be granted within 300 metres from the inhabited area and the sixth respondent violated

that criteria.

5.6. Therefore, the claim of the sixth respondent cannot be accepted and thus, prayed for a direction to forbear the respondents 1 to 4 from

granting quarry lease licence to the sixth respondent in the aforesaid survey numbers, taking into consideration the violation of the Rules governing the quarrying operations.

6. Per contra, Mr.B.Pugalendhi, learned Additional Advocate General assisted by Mr.S.Kumar, learned Additional Government Pleader

appearing for the respondents 1 to 4, while refuting the case of the petitioner, contended thus:

6.1. The petitioner school is run by Standard Fireworks group of companies and they are also engaged in granite quarrying operations in the lands

adjacent to the site in question.

6.2. The sixth respondent applied for grant of granite quarry lease on 25.08.2010 to an extent of 24.70 acres of patta lands comprised in

S.Nos.884/1B, 1326, 1333/1A, 1333/1B, 1333/2, 1334/1, 1334/2, 1334/3 and 1334/4 of Thiruthangal Village, Sivakasi Taluk, Virudhunagar

District, for 20 years under Rule 19-A of the Tamil Nadu Minor Mineral Concession Rules, 1959.

6.3. The conditions stipulated under Rule 36 of the above Rules have been strictly adhered to by the authorities while recommending the claim of

the sixth respondent to the Government for grant of granite quarry lease licence for 20 years.

6.4. The petitioner objected to the claim of the sixth respondent for quarrying operations, based on which, several spot inspections have been

conducted and reports have also been received from the authorities concerned.

6.5. It is pertinent to note that the petitioner group of companies is also running several granite quarries in that vicinity and it is alleged that there is a

business rivalry among the lessees of the granite quarries.

6.6. In any event, the claim of the sixth respondent for grant of granite quarry lease licence would be considered in the light of the objections raised

by the petitioner as well as in accordance with the relevant rules governing grant of quarry lease licence.

7. Mr.M.Ajmal Khan, learned Senior Counsel appearing on behalf of Mr.K.K.Senthil, learned Counsel for the respondents 5 and 6 submitted that

the sixth respondent applied for grant of quarry lease licence with the Government and the same is pending for appropriate orders and that the

authorities concerned conducted many spot inspections at the site in question

and a comprehensive report has already been sent to the

Government for passing necessary orders and that the objections of the petitioner have already been considered at the time of inspection by the

authorities concerned and moreover, the recommendations have been made by the authorities concerned for grant of granite quarry lease licence in

accordance with Rule 36(1) and (1-A) of the Tamil Nadu Minor Mineral Concession Rules, 1959 and there is no violation of any provisions of the

said Rules and therefore, prayed for the dismissal of this writ petition.

8. I have carefully considered the rival submissions and meticulously perused the materials available on record.

9. A deep scrutiny of the materials in the form of affidavit, counter affidavit, reply affidavit and the typed set of papers, would make it crystal clear

the following facts:

9.1. The sixth respondent applied for grant of quarry lease licence in respect of S.Nos.884/1A, 884/1B, 1333/1A, 1333/1B, 1333/2, 1326,

1334/3, 1334/1, 1334/2, 1334/4, 1335/2, 1335/3, 1336/1, 1336/2, 1336/3, 1312/2, 1313/1, 1313/2, 1314/1, 1314/2, 1317 and 1312/3 in

Thiruthangal Village, Sivakasi Taluk, Virudhunagar District and the same is pending.

9.2. The petitioner school raised objections by way of several representations against the claim of the sixth respondent for grant of quarry lease

licence stating that if the Government grants quarry lease licence to the sixth respondent, the safety of the school children would be defeated.

9.3. The petitioner also alleged that there would be noise pollution while the sixth respondent is quarrying the granite stones.

9.4. The authorities concerned conducted spot inspections at the site in question and submitted their reports to the Government after considering

the objections raised by the petitioner.

9.5. This Court, by order dated 08.04.2015, appointed an Advocate Commissioner to inspect the site in question and ascertain whether the norms

laid down for granting of quarry licence are fulfilled including the distance and file a report before this Court within the stipulated time.

9.6. The Advocate Commissioner inspected the site in question and submitted his report dated 28.04.2015, inter alia, stating that Rule 36 (1-A)(a)

of the Tamil Nadu Minor Mineral Concession Rules, 1959 has not been complied

with as no licence for quarrying stone can be granted within 300 metres from any inhabited site.

9.7. It is also alleged that due to business rivalry, the petitioner objected to the grant of granite quarry lease licence to the sixth respondent, however, the disputed questions of facts cannot be gone into by this Court.

10. It is relevant to extract hereunder Rule 36(1) and (1-A)(a) of the Tamil Nadu Minor Mineral Concession Rules, 1959:

36. General restrictions in respect of quarrying operations.-

(1) The quarrying permit holder or the Lessee or their men shall not work or carry on or allow to be worked or carried on any mining

operations at or to any point within a distance of 50 metres from any railway line except with the previous written permission of the

Railway administration concerned or under or beneath any ropeway or any ropeway trestle or station except under and in

accordance with the written permission of the authority owning the ropeway or from any reservoir, canal or other public works such

as public roads and buildings except with the previous written permission of the Collector of the district or any other officer

authorised by the State Government in this behalf and otherwise than in accordance with such instructions, restrictions and conditions,

either general or special, which may be attached to such permissions. The said distance of 50 metres shall be measured in the case of

railway, reservoir or canal horizontally from the outer toe of the bank or the outer edge of the cutting, as the case may be, and in case

of building horizontally from the plinth thereof. In the case of village roads, no working shall be carried out within a distance of 10

metres and except with the previous permission of the Collector of the district or any other officer duly authorised by the State

Government in this behalf and otherwise than in accordance with such directions, restrictions and additions, either general or special,

which may be attached to such permission:

Provided that notwithstanding anything contained in any law for the time being in force or any provision in any lease deed or

agreement already executed under these Rules, there shall be no quarrying of sand in any river bed or adjoining area or any other

area which is located within 500 metres radial distances from the location of any bridge, water supply system, infiltration well or

pumping installation of any of the local bodies or Central or State Government Department or the Tamil Nadu Water Supply and

Drainage Board head works or any area identified for locating water supply schemes by any of the above-mentioned Government

Departments or other bodies.

(1-A)(a) No lease shall be granted for quarrying stone within 300 metres (three hundred metres) from any inhabited site:

Provided that the existing quarries which are subsisting under current leases shall be entitled for continuance till the expiry of the lease

period. The Lessees whose quarries lie within a radius of 300 metres from the inhabited site shall undertake blasting operations only

after getting permission of the Director of Mines Safety, Gorgaum:

Provided further that the new and existing units of quarries shall also be required to comply with the pollution control measures [i.e.,

dust control measures] besides complying with the other conditions in regard to Pollution Control Measures.

11. From the above, it is clear that Rule 36(1) of the Tamil Nadu Minor Mineral Concession Rules, 1959, mandates that the quarrying permit

holder or the Lessee or their men shall not work or carry on or allow to be worked or carried on any mining operations at or to any point within a

distance of 50 metres from any railway line except with the previous written permission of the Railway administration concerned or under or

beneath any ropeway or any ropeway trestle or station except under and in accordance with the written permission of the authority owning the

ropeway or from any reservoir, canal or other public works such as public roads and buildings except with the previous written permission of the

Collector of the district or any other officer authorised by the State Government in this behalf. Similarly, Rule 36(1-A) also makes it clear that no

lease shall be granted for quarrying stone within 300 metres (three hundred metres) from any inhabited site.

12. It is seen that the sixth respondent applied for grant of quarry lease licence in the vicinity, wherein the petitioner school is located and the

petitioner raised objections to the same, on the ground of safety of the school

children.

13. No doubt, any quarrying operations can be permitted by the Government only on compliance of relevant Rules governing the grant of quarry

lease licence and any deviance would lead to irreparable damage to the inhabited area.

14. In the case on hand, it is alleged that there are 12 granite quarries located in that area, out of which, 6 quarries are in existence, but, they are

located as per the Rules. However, this Court is not inclined to go into that aspect.

15. Considering the issue involved in this matter, it is for the Government to consider any claim for grant of granite quarry lease licence strictly in

accordance with the provisions of the Tamil Nadu Minor Mineral Concession Rules, 1959, after considering the objections, if any, raised by the

residents of the inhabited area concerned.

16. In such view of the matter, this Court, without going into the merits of the contentions raised by the rival parties, observes that the competent

authority concerned shall conduct spot inspection in S.Nos. 884/1A, 884/1B, 1333/1A, 1333/1B, 1333/2, 1326, 1334/3, 1334/1, 1334/2,

1334/4, 1335/2, 1335/3, 1336/1, 1336/2, 1336/3, 1312/2, 1313/1, 1313/2, 1314/1, 1314/2, 1317 and 1312/3 in Thiruthangal Village, Sivakasi

Taluk, Virudhunagar District, in the presence of the petitioner as well as the sixth respondent, after issuing due notice well in advance, within a

period of two weeks from the date of receipt of a copy of this order and thereafter, consider the claim of the sixth respondent for grant of granite

quarry lease licence in the aforesaid survey numbers strictly in accordance with the provisions of the Tamil Nadu Minor Mineral Concession Rules,

1959, in the light of the objections raised by the petitioner as well as any other persons, if any, and pass appropriate orders within a period of four

weeks thereafter.

17. With the above observations, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.