



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.04.2021

PRONOUNCED ON : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.18575 of 2019 &
W.P.(MD)No.13406 of 2020 and
W.M.P.(MD)Nos.14960 of 2019 & 11190 of 2020

W.P.(MD)No.18575 of 2019

K.Santhanam

... Petitioner

Vs.

1. The District Collector,
Virudhunagar.
2. The Director of Geology and Mining,
Guindy,
Chennai – 32.
3. The Deputy Director of Geology and Mining,
Virudhunagar District.
4. The Tahsildar,
Rajapalayam Taluk,
Virudhunagar District.

5. M.Sri Vidhya

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing



respondents 1 to 4 to forbear the fifth respondent to operate the quarry at S.No.846/1 of Mottamalai Village, Ayan Kollankondan Village, Rajapalayam Taluk, Virudhunagar District.

W.P.(MD)No.13406 of 2020

K.Sabarimalai

... Petitioner

Vs.

1. The Director of Geology and Mining, Alandur Road, Guindy Institutional Area, Guindy, Chennai – 600 032.
2. The District Collector, District Collector Office, Virudhunagar District.
3. The Director of Geology and Mining, O/o. The Deputy Director of Geology and Mining, Virudhunagar District, Virudhunagar.
4. The Tahsildar, Office of the Tahsildar, Rajapalayam Taluk, Virudhunagar District.

5. M.Sri Vidhya

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing respondents 1 to 4 to cancel the fifth respondent's quarry license at Survey No.846/1 of Thirupanaimalai, Ayan Kollankondan Village, Rajapalayam Taluk, Virudhunagar District.



(in both W.Ps.)

For Petitioners : Mr.V.Malaiyendran

For R-1 to R-4 : Mrs.M.Rajeswari,
Government Advocate.

For R-5 : Mr.H.Arumugam

* * *

COMMON ORDER

The petitioners in these writ petitions are brothers. Their object is also one and the same. They seek stoppage of the quarrying operations conducted by the fifth respondent who has been granted mining lease to quarry rough stone in Survey No.846/1(Part) in Mottamalai Village, Ayan Kollankondan Village, Rajapalayam Taluk, Virudhunagar District.

2.The petitioners allege that the leaseholder has breached the permit conditions. Powerful explosives are being used. The blasting operations seriously endanger the lives of the farm-hands who are working in the nearby agricultural fields. There is considerable generation of dust causing air pollution. The leaseholder has also encroached a water body. He has blocked the customary pathway of the



villagers. The local panchayat has also passed a resolution favouring the closure of the quarry.

3.The stand of the official respondents is follows:-

Survey No.846/1 measuring a total extent of 8.52.0 hectares is a government poramboke. It is a dry land. It was previously given for exploitation to a women self help group. The fifth respondent is the third such leaseholder. The tender notification was published in District Gazette No.5 dated 03.03.2017. The fifth respondent was the highest bidder. The lease agreement was executed on 24.03.2018. The lease period expires on 23.03.2023. All the statutory requirements envisaged in Tamil Nadu Minor Mineral Concession Rules, 1959 have been complied with. There is an approved mining plan. The District Level Environment Impact Assessment Authority has granted clearance on 01.11.2017. Consent orders have been obtained from the Tamil Nadu Pollution Control Board vide proceedings dated 17.11.2017. The location of the stone quarry does not breach any distance rule or safety norms. The lease area has been clearly demarcated. The fifth respondent has also not violated any of the lease



conditions. There is no statutory breach whatsoever. The rights of the petitioners have also not been infringed in any way. There is no merit in these writ petitions.

4.The fifth respondent has also filed a detailed counter affidavit. The leaseholder has characterized the writ petitions as “paise vasool litigation”. According to the fifth respondent, the petitioners demanded ransom payment. Since she declined to submit to blackmail, the present cases have been instituted. The fifth respondent adopted the stand taken by the official respondents and submitted that the quarry operations are being carried on in a scientific manner. She contested each and every allegation made by the petitioners. In particular, the allegation that the blasting operations are interfering with the agricultural activities of the petitioners has been strongly denied. The fifth respondent would assert that the quarry operations do not cause any kind of nuisance to the villagers and definitely not to the petitioners herein.

5.The learned Government Advocate appearing for the official respondents and the learned counsel appearing for



the fifth respondent reiterated all the contentions set out in their pleadings and strongly pressed for dismissal of the writ petitions.

6. The *locus standi* of the petitioners cannot be questioned. They are residents of the village and are having agricultural lands in the vicinity. In any event, environmental litigation is not adversarial in character and the “requirement of standing” cannot stand in the way.

7. The factual controversies need not be gone into and can be conveniently skipped. It is an admitted fact that what has been leased out is a hillock, whose height is 30 meters. The dome-structured rock is bereft of vegetational cover and is rich in blue metal, which is used as construction material and is a common source for M-sand. There is no statutory prohibition against mining/quarrying such mounds.

8. The survey / FMB sketch of the locality has been enclosed in the typed set of papers. In this village, there are as many as four hillocks, namely, Sinna Rock in Survey



No.865, Tiruppani Rock in Survey No.846, Mottai Rock in Survey No.782 and Sattankovil Rock in Survey No.777. The district administration has permitted the fifth respondent to quarry Tirupani rock for the purpose of earning revenue. The lease amount is Rs.40,50,000/-. Of course the Government will be getting royalty and seigniorage fee from out of the quarry operations. But the result will be the destruction of yet another geological formation. It takes probably a million years for such rocks to be formed while it takes a few minutes to destroy them.

9. Now the question arises whether the executive authorities can permit destruction of such hillocks.

10. It is now well settled that the Government as well as the citizens have a constitutional obligation to protect environment and ecology(Article 48-A and Article 51-A(g)). The doctrine of inter-generational equity adumbrates that environment is not only for the benefit of the present but also the future generations. In ***M.C.Metha Vs. Kamal Nath and Others ((1997) 1 SCC 388***), the Supreme Court in an



eloquent enunciation of the doctrine of public trust held that the State as a trustee of all natural resources is under a duty to protect them. Resources meant for public use cannot be converted into private ownership. The health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the constitution of India (vide ***Bengaluru Development Authority Vs. Sudhakar Hegde and Others ((2020) 15 SCC 63)***). In ***Ramlila Maidan Incident, In re ((2012) 5 SCC 1)***) it was observed that the Constitution also speaks of preservation and protection of animals, all creatures, plants, rivers, hills and environment. In ***State of Uttaranchal Vs. Balwant Singh Chauhal ((2010) 3 SCC 402)***, it was noted that in the second phase of evolution of public interest litigation, because of vast destruction of environment, the Courts gave directions in a large number of cases and made a serious endeavour to protect and preserve ecology, environment, forests, hills, rivers, marine life, wildlife etc. In ***Intellectuals Forum Vs. State of A.P. ((2006) 3 SCC 549)***, it was held that it is the responsibility of the State to protect the environment. The following Clause from the 1972



Stockholm declaration was extracted:

"The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate."

11. In (2004) 9 SCC 362 (N.D.Jayal and Others V. Union of India and Others), the Supreme Court observed that the right to environment has been declared as a fundamental right. In Hanuman Laxman Aroskar V. Union of India ((2019) 15 SCC 401), it was noted that in 2016, the First World Environmental Law Congress, co-sponsored by the International Union for Conservation of Nature and UN Environment, adopted the IUCN World Declaration on the Environmental Rule of Law which outlines the following 13 principles for developing and implementing solutions for ecologically sustainable development:

- (i) Obligation to Protect Nature
- (ii) Right to Nature and Rights of Nature
- (iii) Right to Environment.
- (iv) Ecological Sustainability and Resilience



- (v) In Dubio Pro Natura
- (vi) Ecological Functions of Property
- (vii) Intragenerational Equity
- (viii) Intergenerational Equity
- (ix) Gender Equality
- (x) Participation of Minority and Vulnerable Groups
- (xi) Indigenous and Tribal Peoples
- (xii) Non-regression
- (xiii) Progression

In TN.Godavarman Thirumalpad V. Union of India ((2002) 10 SCC 606), the Supreme Court held that the right to live is now recognised as a fundamental right to an environment adequate for health and well being of human beings.

12. I have culled out the case facts and the applicable legal principles. It is now time for me to walk the talk. Otherwise, I will be one more character mouthing platitudes. I am conscious that every judicial verdict must be anchored only in law and logic. But a judge must also exhibit awareness of what is going on. His inner antenna should catch the signals. To create such an ambience, before dictating this Judgment, I



listened to T.M.Krishna's "poramboke padal". I recalled the words of Nithyanand Jeyaraman that while encroachment of water bodies may be regularised by law by issuing pattas, "Nature" will not take note of the same. I think it was Pt.Deen Dayal Upadhyaya who said that we must treat Nature like a milk-yielding cow. We must milk it and not slaughter it. Of course, the capacity of Nature to put up with what we are doing is immense. That is why, in his Chapter on Forbearance, Sage Thiruvallvar sang thus:-

“அகழ்வாரைத் தாங்கும் நிலம்போலத் தம்மை
இகழ்வார்ப் பொறுத்தல் தலை.”

(To bear with those who revile us, just as the earth bears up those who dig it, is the first of virtues).

Thirukural was composed 2000 years ago. Man has continued his predatory activities without any break and Nature is losing her patience. The rubicon is about to be crossed and retribution is in the offing. The time for course correction is now or never.

13. Article 368 of the Constitution of India confers the power to amend the constitution on the Parliament. The



Hon'ble Supreme Court of India read implied limitations into the provision. It declared in ringing terms that the power cannot be so used as to destroy the very identity or framework of the Constitution. This basic structure doctrine is considered as the most important and valuable contribution to constitutional jurisprudence. It is time to implant this doctrine by way of analogy into the principle of sustainable development evolved in environmental law. While the administration can tap the hills and hillocks for mineral resources, the exploitation cannot lead to their complete destruction.

14. The official respondents state that the hillock in question was already leased out in favour of women self help groups and that the fifth respondent is third such leaseholder. The fifth respondent had been permitted to quarry two hectares. The entire extent is only 8 hectares and at the rate at which the exploitation is going on, the hillock itself will be extinct in a few years. In Madurai region, many such hillocks have been totally destroyed within a period of a little over a decade from 2000 to 2010. The ecological degradation is so



visible if only we care to see. Right in front of the Madurai Bench of Madras High Court, there is a hill known as Yanaimalai. It houses a temple dedicated to Lord Narasimha. The hill was also an abode for Jain monks. In 2008, it was rumored that the hill was to be handed over to the mining mafia. It provoked an uproar and the proposal was dropped.

15. We are a democratic republic. It is not open to the Government of the day to arbitrarily give away hills and hillocks for exploitation. Merely because the process of issuance of mining lease was conducted in consonance with the statutory procedure, that would not confer any immunity against judicial scrutiny. Unless there are supervening public interest considerations, hills and hillocks cannot be given away for mining.

16. Let me refer to a recent decision of the Supreme Court reported in **(2018) 15 SCC 407 (Lal Bahadur Vs. State of U.P. and Others)**. After tracing the evolution of environmental jurisprudence, the Supreme Court of India quashed the master plan whereby use of area in question for



green belt in the master plan was changed. If an area has been earmarked as park in the lay-out or in the master plan, conversion of the land for any other purpose is normally not permitted. If man-made demarcation is given so much importance in the laws relating to town planning and development, certainly greater sanctity must be accorded to what was earmarked by Nature. The Supreme Court called the parks as “gifts given by people to themselves”. If such human gifts have to be cherished, how much more value is to be given to gifts given by Nature?

17. Mountains, forests, hills, hillocks and rivers are Nature's gifts and it is the duty of the Government and the administration to ensure that they are preserved for future generations. This principle of inter-generational equity has been highlighted in a catena of cases. At the same time, we cannot lose sight of the harm caused to the present generation. It is not as if the benefits of exploitation are equitably distributed among all. Invariably a miniscule minority corners the benefits, while the burden falls on the rest. That is why, the Supreme Court has read the right to



environment as embedded in the right to life enshrined in Article 21 of the Constitution of India. When we speak of the right to environment, it means that one has the right to retain the advantages and benefits conferred naturally on the environment. It must be conceded that no right can be enforced absolutely. Need may often arise to balance the said right with the right to development. But then the onus lies on the executive to demonstrate that there is a need to subordinate the right to environment to the right to development. In the counter affidavit, it has been contended that the land in question is a poramboke and that the mining activity will not have any adverse impact on the surroundings. This justification is absolutely insufficient. Poramboke land cannot be arbitrarily given away for private exploitation by the Government. The ways of Nature are inscrutable. Only after tsunami struck us, we were told that mangrove forests act as natural barriers against such oceanic onslaughts. Villages in a particular District never faced storms because a hill range acted as protection wall. The recent catastrophic events at Uttarakhand are a direct fall-out of construction of huge dams. We do not know the purpose served by such rock formations.



It is facile to assume that destroying the hillock in question is of no consequence. In all such cases, it must be demonstrated that all the other avenues have been exhausted and that in the interest of the general public, it is necessary to carry out limited mining in the hillock in question. The official respondents have not demonstrated as to why the hillock in question should be destroyed to enrich the exchequer of the day by a few million rupees. It is not as if such minerals are not available or cannot be sourced from elsewhere. No compelling public interest has been shown to exist. The District Collector in his affidavit has merely asserted the power and prerogative of the department to lease out the property. No doubt, Tamil Nadu Minerals Minor Concession Rules, 1959, applies to all the lands in the State of Tamil Nadu and this includes hills and hillocks too. Applying the principles laid down by the Hon'ble Apex Court, time has come to read limitations into the exercise of the statutory power conferred by the said Rules. One such limitation is that the authorities will not allow destruction of hills and hillocks by mechanically issuing mining licenses. In the case on hand, the hillock in question had already been leased out twice. Fortunately, the



leaseholders were women self help groups. Obviously, they tapped the mineral resources only manually. However, the fifth respondent whose lease commenced in the year 2018 has been using explosives. The photographs enclosed in the typed set of papers clearly show that a substantial part of the hillock had already been blasted away. Permitting quarry operations to continue any further would lead to its total destruction. A hill can be allowed to be exploited under certain circumstances but post-exploitation, the hill must still remain. Since in this case the exploitation has gone beyond the threshold level, it is necessary to issue a writ of mandamus directing stoppage of further quarry operations.

18. I am conscious of the fact that the fifth respondent cannot be faulted. For the reasons mentioned above, she has been restrained from enjoying the fruits of the lease well before the expiry of the lease period. Therefore, the fifth respondent is permitted to make representation to the authorities for refund of the proportionate lease amount for the unexpired period. Orders will be passed on the said representation and refund will be made by the second



respondent within a period of eight weeks from the date of receipt of such representation from the fifth respondent.

19. The writ petitions are allowed and the fifth respondent is restrained from carrying on any further quarrying operations in Tiruppani Rock situated in Survey No.846/1 of Mottamalai Village, Ayan Kollankondan Village, Rajapalayam Taluk, Virudhunagar District. No costs. Consequently, connected miscellaneous are closed.

26.04.2021

Index : Yes / No
Internet : Yes/ No
PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To:

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Virudhunagar.
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Guindy,
Chennai – 32.
3. The Deputy Director of Geology and Mining,
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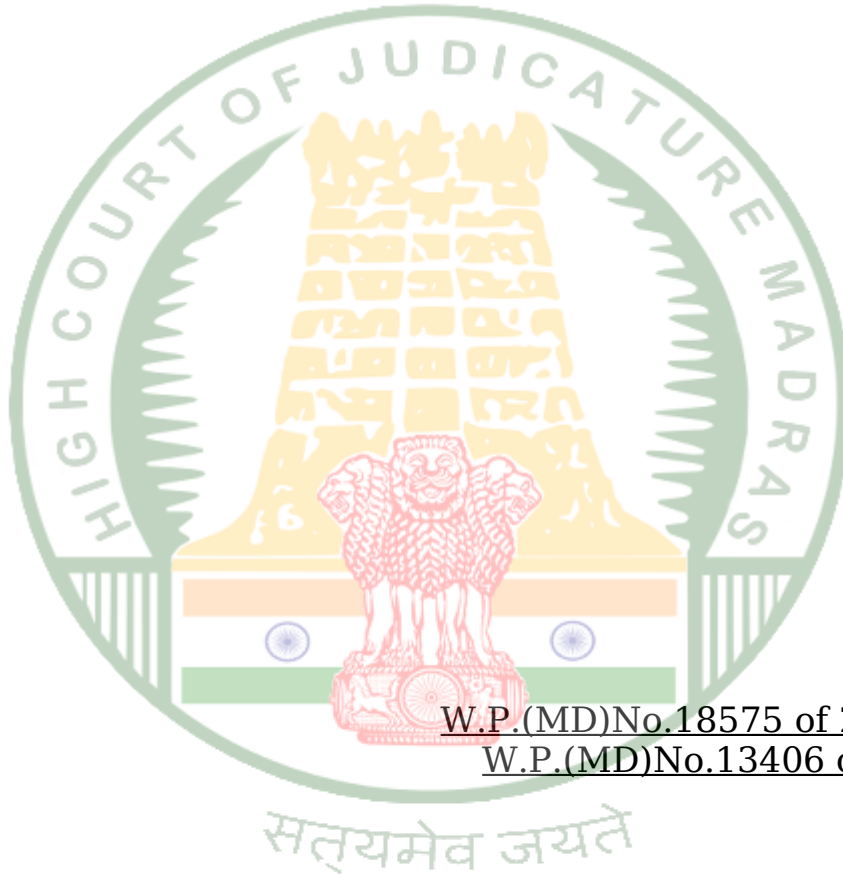


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G.R.SWAMINATHAN,J.

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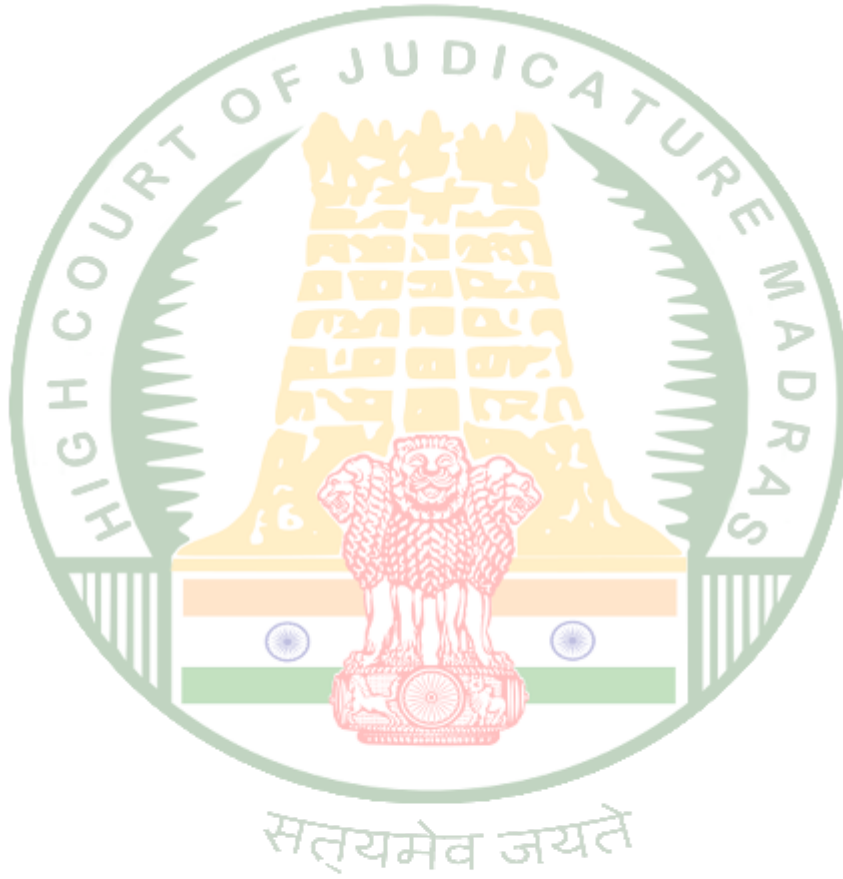


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