

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/09/2013

CORAM

THE HON'BLE MR.JUSTICE S.MANIKUMAR

MP.1 of 2013
in
WP.12454 of 2013

POONAMALLEE CIRCLE, RIVER & LORRY OWNERS ASSN TIRUVALLUR
CENTRAL DISTRICT REG. NO.609/1997 BANGALORE HIGH ROAD,
NASARATH PETTAI, CHENNAI-123, REP. BY ITS PRESIDENT
... PETITIONER

VS

R-1 THE SECRETARY TO GOVERNMENT, INDUSTRIES DEPARTMENT,
STATE OF TAMIL NADU, CHENNAI-9.

R-2 THE SECRETARY TO GOVERNMENT, PUBLIC WORKS DEPARTMENT,
FORT ST. GEORGE, CHENNAI-9.

R-3 THE DISTRICT COLLECTOR KANCHEEPURAM DISTRICT,
KANCHEEPURAM.

R-4 THE DISTRICT COLLECTOR TIRUVALLUR DISTRICT, TIRUVALLUR.

R-5 M.PALANISAMY, 107-A, SENGUPTHA STREET, RAM NAGAR,
COIMBATORE-9.

... RESPONDENTS

FOR PETITIONER : MUTHAPPAN

M.P.No.1 of 2013 in
W.P.No.12454 of 2013

S. MANIKUMAR, J.

Poonamallee Circle River Sand Lorry Owner's Association, Tiruvallur Central District, represented by its President, has filed this writ petition for a Mandamus, directing the respondents 1 to 4 to take appropriate action against 5th respondent, Mr.M.Palanisamy and his men from selling river sand by setting up stockyard, without obtaining a dealer licence from the competent authority, as required by Rule 38-A of the Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter referred to "the Rules") and also prayed for a direction to the respondents 1 to 4, to enable the members of the Association to purchase river sand, directly from PWD, at quarry pits mouth.

2. The President of the petitioner's Association, on behalf of others, has contended that members of the Association are operating lorries, exclusively for transporting construction materials, like sand,

savudu and jelly and supplying the same, to the building contractors and individual public, depending upon their requirements. As far as sand is concerned, since 01.10.2003, quarrying operation is done by Public Works Department, since 01.10.2003, onwards, pursuant to the introduction of Section 38-A of the Tamil Nadu Minor Mineral Concession Rules, 1959. As per the statutory provisions, Public Works Department is quarrying and selling sand, at the pits mouth, by collecting the sale amount and each lorry is permitted to take two units load of sand. According to the petitioner, the sale price includes, value of sand, quarrying cost, loading charges and seiniorage fee.

3. It is the case of the petitioner that the 5th respondent, along with many others, claiming themselves to be the dealers of the sand, set up stockyards, by purchasing the river sand from Public Works Department and selling the same, at a higher rate to lorry owners, like the members of the Association. According to the petitioner's association, at private stockyards, one unit load of sand is being sold at Rs.2,500/- and when it reaches the consumer, it is costly.

4. The petitioner's Association has further submitted that in order to regulate sand trade, State Government have introduced Rule 38-C in G.O.Ms.No.32, Industries (MMC02) Department, dated 10.02.2011, which mandates that the dealers should obtain a licence from the competent authority, for setting up stockyards. When the same was challenged by several dealers in W.P.Nos.14180 of 2011, etc., batch, the Hon'ble Division Bench, by order, dated 19.06.2012, has upheld the validity of the said Rule. However, during the pendency of the writ petitions, the dealers have set up stockyards and were selling sand, on the strength of interim orders. Though some of the dealers have approached the Apex Court, there is no interim stay.

5. The petitioner's Association has further contended that the main object of bringing about an amendment is to avoid illicit quarrying, transportation of sand, and also to avoid sale of sand, at escalated rates. According to the petitioner, they could not purchase sand directly from Public Works Department, at Pits Mouths of the quarry sites and that they are constrained to purchase sand only from the 5th respondent. Hence, the petitioner's Association has made a representation to the

District Collectors, Kancheepuram and Tiruvallur, to take action against the 5th respondent, who has been selling sand, at an exorbitant rate, and who has monopolized the trade, by storing sand, at various places, without valid licences. Till the date of filing of the writ petition, no action has been taken on the said representation. Hence, the present writ petition has been filed for the relief, stated supra.

6. The Government have issued G.O.Ms.No.32, Industries (MMC2) Department dated 11.02.2011, introducing Rule 38-C, by which, it has been made mandatory that a dealer in sand has to obtain a licence for setting up of a stockyard. The Rule also mandates that a sale slip, shall be obtained by the stockist from the local Deputy Tahsildar. For the said purpose, the stockist or the licensee shall send the original transport permits, issued by the authorities, while transporting the mineral, from the quarry sites. The sale slips have to be counter-signed by the Deputy Tahsildar. The said rule has been challenged in a batch of writ petitions in **W.P.Nos.14180 of 2011, etc., [M.Palanisamy v. The State of Tamil Nadu]**, wherein, it was contended that the transport permits or the sale bills issued by the PWD is pertaining to the sale and transport of a

particular quantity of mineral and the said mineral, after being transported to the stockyard will get merged with the stock, already existing in the stockyard or with the sand, subsequently purchased by the stockist from Public Works Department. Therefore, it is practically impossible to identify the quantity of the sand which relates to a particular transport permit, from the huge stock lying, at the stockyard and that too, after processing the same. Since, the processing procedure eliminates 25% of the purchased sand, the actual quantity available in the stockyard, cannot tally with the sale bills issued by Public Works Department. It is stated that the conditions imposed by way of impugned Government Order, are totally without jurisdiction, *per se* illegal and without any authority of law. According to the petitioners therein, the conditions imposed violated the provisions contained under Article 14 & 19(1)(g) of the Constitution of India and that they are against the law laid down, by the Supreme Court and the High Court.

7. Among other contentions made by the Government of Tamil Nadu, in the batch of writ petitions, to sustain Rule 38-C, the Joint Secretary to the Government, Industries Department, Government of

Tamil Nadu, in his counter affidavit, has stated as follows:

"35. It is to be noted that the then Joint Secretary to the Government, Industries Department, Government of Tamil Nadu, in his affidavit, stated that though the Public Works Department has been quarrying sand in the entire State, the Government has received reports of illicit quarrying and transportation of sand by unscrupulous elements. In order to curtail such activities of illicit quarrying in the State of Tamil Nadu, the offence of sand quarrying has been brought within the purview of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982. In order to strengthen the regulation of mineral administration, the Government has included the officials of the Police Department, not below the rank of Inspector of Police, to exercise the power contained in sub-section (4) of Section 21 of the Act."

8. The Principal Secretary to the Government, Industries Department, in his affidavit, has stated that in exercise of such a power under the amended Rules, illegal mining of sand and smuggling to

neighbouring States has been brought under control to a great extent. He has further stated that over a period of one year, 4173 cases of illegal sand mining have been filed, 5033 persons have been arrested, 5501 vehicles have been seized and dozens of persons have been taken into preventive custody and that a sum of Rs.14 Crores, has been collected as penalty, from such offenders.

9. In M.Palanisamy's case (cited supra), after considering the rival contentions and the competence of the Government to frame the rules, from prevention of illegal mining, transportation and storing of materials, The Hon'ble Division Bench of this Court, by order, dated 19.06.2012, held as follows:

"we are of the definite opinion that the statutory duty imposed upon the sand dealers under Rule 38-C of the Tamil Nadu Minor Mineral Concession Rules, 1959, for the purpose of preventing illegal mining, storage and transportation of sand, cannot be held as illegal, arbitrary, ultra vires the Constitutional provisions or any of the provisions of the Act. We hold that Rule 38-C of the said Rules is fully in conformity with the provisions of the Act and the Rules, and it cannot be held as an excessive exercise of power by the State

Government." (emphasis supplied)

10. Reverting back to the case on hand, the details of the Tax Invoices-Cash Bill/Way Bill, issued by the 5th respondent with a seal, enclosed in the Typed Set of Papers, are as follows:

Invoice No.	Tin No.	Name of the Contractor and Branch address	Date and Time of Bill	Survey Nos.	Writ Petitions and Miscellaneous Petitions	Unit	Amount with 5% VAT Tax [Rate per Unit = 2,381] Rs.
1923	33771-980893	M.Palanisamy, Palayaseevaram Village, Kancheepuram Taluk & District.	18.11.2012 10.55 AM	455/3,455/4, 455/6, 455/8, 455/9, 455/10, 456/2B	WPMP.14156, 14157 & 20591 of 2005 in W.P.12934, 12935 and 19053 of 2005, dated 08.08.2005.	4	9,524 + 476 = 10,000/-
6369	33771-980893	M.Palanisamy, Vallimedu Village, Ilayanuvvellore Madura, Kancheepuram Taluk & District.	23.11.2012 03.40 PM	212/1C, 213/6	WPMP.No.152 70 of 2011 in W.P.No.2 of 2011, dated 01.07.2011.	4	9,524 + 476 = 10,000/-
1910	33771-980893	M.Palanisamy, Gurupuram Village, Meiyur Post, Oothukkottai Taluk, Tiruvallur District.	30.11.2012 10.15 AM.,	32, 33, 36, 37A, 39/1, 2, 3, 4, 40/D, 42/2A, 2B, 3A, 3B, 3C, 3E, 3F, 51/2B, 2D, 3, 4A, 4B, 4C, 4D, 5A, 5B,	MP.No.1 of 2011, in WP.No.20588 of 2011, dated 17.09.2011	3	7,143 + 357 = 7,500/-

Invoice No.	Tin No.	Name of the Contractor and Branch address	Date and Time of Bill	Survey Nos.	Writ Petitions and Miscellaneous Petitions	Unit	Amount with 5% VAT Tax [Rate per Unit = 2,381] Rs.
				5C, 5E, 5F and 145/7B			
2947	33771-980893	M.Palanisamy, Palayaseevaram Village, Kancheepuram Taluk & District.	08.01.2013 11.15 AM.,	455/3, 455/4, 455/6, 455/8, 455/9, 455/10, 456/2B	WPMP.14156, 14157 & 20591 of 2005 in W.P.12934, 12935 and 19053 of 2005, dated 08.08.2005.	4	9,524 + 476 = 10,000/-
1530	33771-980893	M.Palanisamy, Palayaseevaram Village, Kancheepuram Taluk & District.	08.02.2013 07.10 AM.,	455/3, 455/4, 455/6, 455/8, 455/9, 455/10, 456/2B	WPMP.14156, 14157 & 20591 of 2005 in W.P.12934, 12935 and 19053 of 2005, dated 08.08.2005.	3	7,143 + 357 = 7,500/-
2033	33771-980893	M.Palanisamy, Palayaseevaram Village, Kancheepuram Taluk & District.	23.02.2013 03.45 PM.,	455/3, 455/4, 455/6, 455/8, 455/9, 455/10, 456/2B	WPMP.14156, 14157 & 20591 of 2005 in W.P.12934, 12935 and 19053 of 2005, dated 08.08.2005.	2.5	5,952 + 298 = 6,250/-
2860	33771-980893	M.Palanisamy, Palayaseevaram Village, Kancheepuram Taluk & District.	11.03.2013 09.50 AM.,	455/3, 455/4, 455/6, 455/8, 455/9, 455/10, 456/2B	WPMP.14156, 14157 & 20591 of 2005 in W.P.12934, 12935 and 19053 of 2005, dated 08.08.2005.	2.5	5,952 + 298 = 6,250/-
2822	33771-980893	M.Palanisamy, Palayaseevaram Village, Kancheepuram Taluk &	25.03.2013 07.25 AM.,	455/3, 455/4, 455/6, 455/8, 455/9,	WPMP.14156, 14157 & 20591 of 2005 in W.P.12934, 12935 and	2.5	5,452 + 298 = 6,250/-

Invoice No.	Tin No.	Name of the Contractor and Branch address	Date and Time of Bill	Survey Nos.	Writ Petitions and Miscellaneous Petitions	Unit	Amount with 5% VAT Tax [Rate per Unit = 2,381] Rs.
		District.		455/10, 456/2B	19053 of 2005, dated 08.08.2005.		
2932	33771-980893	M.Palanisamy, Vallimedu Village, Ilaiyanuvellore Madura, Kancheepuram Taluk & District.	31.03.2013 05.40 PM.,	212/1C, 213/6	--	3	5,715 + 285 = 6,000/-
234	33771-980893	M.Palanisamy, Gurupuram Village, Meiyur Post, Oothukkottai Taluk, Tiruvallur District.	01.04.2013 12.15 PM.,	32, 33, 36, 37A, 39/1, 2, 3, 4, 40/D, 42/2A, 2B, 3A, 3B, 3C, 3E, 3F, 51/2B, 2D, 3, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5E, 5F and 145/7B	--	3	7,143 + 357 = 7,500/-

The batch of writ petitions came to be dismissed on 19.06.2012, by the Hon'ble Division Bench. The interim orders have been vacated. The contentions of the petitioners in the above writ petitions, as regards the practical difficulty expressed and extracted above, have been negatived. When such is the case, it is not known, as to how the Mines, Revenue and Police Authorities, have allowed the 5th respondent to sell sand from the places, where is no licence to possess, store, sell and transport sand,

with the bills, issued after the dismissal of the writ petitions. It is apparent that the sand sold from the above places, have been permitted to be transported by the authorities.

11. Material on record discloses that on the representation of the Secretary of the petitioner's Association, dated 07.11.2012, the Executive Engineer, WRD, Kothasthalaiyaru Basin Division, Thiruvallur District, in his proceedings, dated 27.12.2012, addressed to the Executive Engineer, Lower Palar Basin Division, Kancheepuram and the Executive Engineer, WRD, Araniyar Basin Division, Chepauk, Chennai, has stated that since lower Palar Basin Division, Kancheepuram, falls within the jurisdiction of the Executive Engineer, Lower Palar Basin Division, Kancheepuram Kancheepuram District and since Gurupuram Village, Uthukottai Taluk, Tiruvallur, falls within the jurisdiction of Executive Engineer, WRD, Araniyar Basin Division, Chepauk, Chennai, he has requested that action has to be taken on the representation of the petitioner's Association, dated 07.11.2012. Along with the letter, dated 27.12.2012, the representation of the petitioner's Association has been enclosed.

12. Record of proceedings shows that when the present Writ Petition came up on 03.09.2013, the learned Additional Government Pleader has been directed to take notice, on behalf of the official respondents and get instructions. Thereafter, a Counter Affidavit, dated 05.06.2013, has been filed by Mr.L.Sitherasenan, I.A.S., District Collector, Kancheepuram, wherein, he has stated that pursuant to an order, dated 26.07.2002, made in a public interest litigation, directing the State Government to constitute a Committee of Experts to study river and river beds in the State, with reference to sand quarrying and the further direction, directing the State Government to act in conformity with the guidelines to take all necessary further steps, to arrest the exploitation, the Government have introduced Rule 38-A in Tamil Nadu Minor Mineral Concession Rules, 1959, vide G.O(Ms)No.95 Industries (MMC.I) Department, dated 01.10.2003, thereby, the right to exploit sand in the State, shall vest with the State Government, to the exclusion of others and the Government have entrusted quarrying and sale of sand to the Public Works Department vide G.O(Ms).No.451 Public Works Department (WSpl-1) Department, dated 03.10.2003.

13. It is further stated in the Counter Affidavit that the Government in G.O(Ms)No.451 Public Works Department, (W.Special-1) Department, dated 03.10.2003, have issued orders directing the Regional Chief Engineers, WRO Public Works Department to directly operate sand quarrying at 239 locations, identified by the respective Chief Engineers to be stored at 95 depots and sold to the users, at a price of Rs.1,000/- for lorry loads (2 units). Subsequently, in G.O.(Ms) No.178 Public Works (MI-2) Department, dated 31.05.2008, the cost of the sand has been reduced to Rs.600/- (2 units) and that the vehicles are permitted to carry 3 units, subject to the condition, stipulated in the Motor Vehicles Act, 1988. Subsequently due to the reduction of the flow of adequate sand to the public, for construction works and increase in the cost of sand, due to scarcity, in order to reduce the hardship to the public, supply of adequate sand, through fair price was considered and after examination, the Government have ordered that the Public Works Department have to send the proposals to the respective District Collectors and obtain the approval for opening of new sand quarries vide G.O.(Ms) No.110,- Public works (MI2) Department, dated 06.07.2006.

14. The District Collector, Kancheepuram, has further stated that though Public Works Department has been quarrying sand in the entire State, time and again, the Government have received reports, on illicit quarrying and transportation of sand, by unscrupulous elements. In order to curtail such activities of illicit quarrying etc., by Act No. 16 of 2006, the Government of Tamil Nadu have included sand offenders within the preview of Tamil Nadu Prevention of Dangerous Activity of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders Slum-grabbers and Video Piracy Act, 1982. He has further stated that in order to strengthen the regulation of mineral administration, the Government have included personnel of the police department, not below the rank of Inspector of Police, so as to enable them to exercise the provisions of sub section (4) of section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) vide G.O.(Ms)No.ll4 Industries (MMC-1) Department, dated, 18.09.2006.

15. At Paragraph No.16 of the counter affidavit, the District Collector has further submitted that there were many sand quarries

opened in Kancheepuram District in Palar river bed. Due to objection by the public and on the Public Interest Litigation Petitions filed by the Villagers before this Court, in respect of Kavanhandalam, Pichavadi Pazhaveri and Neyyadupakkam village, etc., in W.P.Nos.22999 of 2009, 28552 of 2011 and 27347 of 2012, quarry operations in the sand quarry outlets, have been stopped. The Public Works Department is selling the sand through the sale outlets, to the consumers, builders and others on payment of Rs.626/- only per two units of lorry loads, on receipt of demand drafts. The Public Works Department is issuing transport permits, duly quoting the destination. Public Works Department is not selling sand to the 5th respondent, as alleged by the petitioner. On receipt of the demand draft from the consumers, in their individual names, Transport permits are issued in the form prescribed, duly noting the departure, arrival, destinations. The owners or drivers of the vehicles are getting sand from Public Works department outlets and no individual is selling sand, as alleged by the petitioner.

16. The District Collector, Kancheepuram, at Paragraph 19 of the counter affidavit, has further stated that there is no stock yard

maintained by the fifth respondent and that the contention that the fifth respondent and his men alone are permitted to purchase the sand from Public Works Department outlets, is incorrect. He has further stated that vehicles coming to the sale point, are being issued with transport permits, on payment of the costs, prescribed by the Government and none of the consumers/lorry drivers are denied issuance of transport permits. Sand is being sold, as per the rate prescribed by the Government from time to time and that there is no stock yard in the vicinity of the PWD outlets.

17. The District Collector, Kancheepuram, at Paragraph 21 of his counter affidavit, has further stated that the fifth respondent has not established any stockyard on his own. The fifth respondent has applied for the grant of license for 7 places in Kancheepuram District. Action has been taken to curb the illegal quarrying activities by deploying Task Force comprising of Police, Revenue, Mines and Regional Transport officers and those who are indulging illicit transport of mineral are being intercepted and imposed penalty, and criminal action is taken, wherever necessary. Further, at Paragraph

22 of the counter affidavit, the District Collector has stated that there is no stockyard maintained by the 5th respondent and the 5th respondent has applied for licence, for setting up stockyards and the applications are under progress. Counter affidavit has been signed on 05th June' 2013. Thus, it could be deduced from the counter affidavit of the District Collector, Kancheepuram, no licence has been granted by him, for storage of sand, till 5th June, 2013.

18. When the matter came up on 10.09.2013, series of photographs, showing huge heap of sand stocked, were produced by the petitioner and that the place is stated to be within the jurisdiction of the District Collector, Kancheepuram. Taking note of the counter affidavit filed by the District Collector, Kancheepuram, material on record and the photographs, on 10.09.2013, this Court has passed the following orders:

"Photographs taken on 04.09.2013, stated to have been at different places, filed before this Court, shows huge heap of sand is stocked.

2. Mr.Ayya Durai, Assistant Director (Mining), Kancheepuram District, present in the Court states that, he has joined the above said office only on 05.04.2013 and that he is not aware of any stockyard or permission granted by

the competent authority, to store sand by the 5th respondent. Bills annexed in the typed set of papers shows that the registered office of the 5th respondent is at Door N.O.107-A, Senguptha Street, Ram Nagar, Coimbatore - 9 and it has got branches.

3. Bills dated 01.04.2013, enclosed at page No.10 of the typed set of papers shows that the 5th respondent has branches at S.N.o-32, 33, 36, 37/A, 39/1, 2, 3, 4, 40/D, 42/2A, 2B, 3A, 3B, 3C, 3E, 3F, 51/2B, 2D, 3, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5E, 5F and 145/7B, Guruburam Village, Meiyur Post, Uthukottal Taluk, Tiruvallur District.

4. The District Collector, Kancheepuram District, Kancheepuram, Is directed produce the relevant files granting permission to store sand at the abovesald places and also to file a report, with all relevant documents and explain as to

- i. how such huge heap of sand, has been permitted to be stored?
- ii. the quantity of sand permitted to be purchased by the 5th respondent every month.
- iii. The quantity of sand purchased by individuals, every month.
- iv. How many lorries have been employed by the 5th respondent?
- v. how many lorries have been employed by the

private individuals for purchasing the sand?

vi. the quantity of sand purchased from the Public Works Department - monthly statements.

vii. the total extent of sand sold, so far - monthly statements.

viii. how much sand is permitted to be purchased by a contractor?

ix. what is rate of allotment, bulk order or on pro rata basis.

5. Though the Deputy Commercial Tax Officer of Thiruvallur District is not a party respondent in this writ petition, a direction is issued to him to produce the sales tax returns, of the 5th respondent for the periods between 2011-12 and 2012-13.

6. Mr.Ayya Durai, Assistant Director (Mining), Kancheepuram District, is directed to inspect the premises viz., S.No.455/13, 455/4 etc., Palayaseevaram Village, Kancheepuram District and No.32, Kallapiranpuram Village, Maduranthagam (Taluk), Kancheepuram District and file a detailed report on 13.09.2013 to the Court as to the existence of any stockyard, make a tentative report about the quantity of sand at the abovesaid place.”

19. When the matter came up on 16.09.2013, Poonamallee Circle River and Lorry Owners Association, Tiruvallur, the petitioner, who

had filed this writ petition, seeking for a Mandamus, to take appropriate action against the 5th respondent, turned turtle and replaced the earlier counsel, engaged Mr.Ramadoss, learned counsel and he has sought for permission to withdraw the writ petition and further contended that when the respondents have not raised any objection for withdrawal, permission should be granted. For the abovesaid contention, there was no response from the official respondents.

20. When Mr.L.Sitherasenan, I.A.S., District Collector, Kancheepuram, in his affidavit, dated 05.06.2013, has categorically stated that Public Works Department, is not selling sand to the 5th respondent, as alleged and further contended that no stockyard has been maintained by the 5th respondent, nor any licence for setting up a stockyard in Kancheepuram District, has been granted by the District Collector, Kancheepuram, and taking note of the averments made by both parties, and also report of the Assistant Director, Geology and Mining, Kancheepuram, this Court is not inclined to grant permission to withdraw the writ petition.

21. The report of the Assistant Director, Geology and Mining, Kancheepuram, dated 13.09.2013, is extracted hereunder:

"In pursuance to the directions of the Hon'ble High Court the sand stockyard situated at Palayaseevaram Village, Kancheepuram Taluk, was inspected on 13.09.2013, along with the Revenue Inspector and Surveyor, Walajabad. During the inspection, it is found that 9 heaps of sand stocked in patta lands in S.Nos.455/3, 455/4, 455/6, 455/8, 455/9 and 455/10, Palayaseevaram Village, Kancheepuram Taluk. The sand stocked in the area has been measured and quantity assessed to 79895 Cubic Metre (13316 lorry loads).

Further, the sand stockyard situated in S.Nos.37/3A, 65/2, 65/3, 66/2A1, etc., at Kallapiranpuram Village, Madurantakam Taluk, was also inspected along with the Revenue Inspector and Surveyor, Walajabad and it is found that 5 heap of sand stocked in Patta lands in S.Nos.37/3A, 65/2, 65/3, 66/2A1, etc., in Kallapiranpuram Village, Madurantakam Taluk. The sand stocked in the area has been measured and quantity assessed to 184737 Cubic Metre (30790 lorry loads).

It is submitted that sand stocked in respect of Palayaseevaram Village is 79895 Cubic Metre (13316 lorry loads) and in respect of Kallapiranpuram Village is 184737 Cubic Metre (30790 lorry loads)."

22. The Executive Engineer, WRD., Lower Palar Basin Division, Kancheepuram District, has given the details of the sand sold from various quarries in Kancheepuram District from 01.04.2011 to 31.03.2012, from 01.04.2012 to 31.03.2013 and 01.04.2013 to 16.09.2013. As per the report, for the period between 01.04.2011 to 31.03.2012, twelve sand quarries were operated in Kancheepuram District, viz., Athur, Puliparankoil, Vayalakkavur, Pandur, Pitchavadi, Attavattam, L.N.Puram, Pazhaveri, Palur, Neyyadupakkam, Kavanhandalam and Anur.

23. The Executive Engineer has further reported that between 01.04.2012 and 31.03.2013, eight sand quarries were operated in Kancheepuram District, viz., at Pandur, Pitchavadi, Attavattam, Pazhaveri, Neyyadupakkam, Kavanhandalam, Anur and Vallipuram. As per the statement of Executive Engineer, WRD., Lower Palar Basin Division, Kancheepuram District, during 2011-12, there were twelve sand quarries in Kancheepuram District and during 2012-13, it has been reduced to eight. As per the report, between 01.04.2013 and

16.09.2013, only two sand quarries have operated in Kancheepuram District, viz., Manapakkam and Pinayur. That apart, there are other quarries, in Kancheepuram District, where bullock carts are permitted to transport sand. The details are as follows:

Period	No. of Quarries	Place
2011-12	Seven	Orikkal, Sevillimedu, Thenambakkam, Walajabad, Ambi, Keelkathirpur and Thiruparunthikundram
2012-13	Four	Orikkal, Sevillimedu, Thenambakkam and Walajabad
2013-14	Five	Orikkal, Sevillimedu, Thenambakkam, Walajabad and Budur

One Bullock Cart Load = 15 Cubic Metre.

24. The Executive Engineer, PWD/WRD., Araniyar Basin Division, Chepauk, Chennai, has submitted the details of the sand sold in Public Works Department Sand Quarries, for the period from 01.01.2013 to 17.09.2013, as follows:

Sl.No.	Name of Sand Quarry	Sanction Order No.	Period	Loads
1	Vadathillai (S.F.No.174)	Proceeding RC.597/Mines-2/2011, dated 05.08.2011	From 01.01.2013 to 13.04.2013	2700
2	Malanthur (S.F.Nos.82 & 84)	Proceeding RC.172/2012/Mines-2, dated 01.02.2013	From 10.04.2013 to 03.07.2013	2790
3	Rallapadi (S.F.No.1/1)	Proceeding RC.897/2012/Mines-2, dated 01.02.2013	05.06.2013 (One day only)	5
4	43. Panapakkam (S.F.No.105)	Proceeding RC.1405/2012/Mines-2, dated 22.08.2013	From 30.08.2013 to 10.09.2013	344

Sl.No.	Name of Sand Quarry	Sanction Order No.	Period	Loads
			Total	5839

Details of sand purchased from the PWD outlets, falling within his jurisdiction, for the periods between 2011-12, 2012-January' 2013, have not been furnished.

25. Mr.K.Veera Raghava Rao, District Collector, Thiruvallur, in his counter affidavit, has stated that Public Works Department is selling sand, through the sale outlets to the consumers, builders and others, on payment of Rs.626/-, by Demand Draft. He has reiterated same averments, as in the counter affidavit of the District Collector, Kancheepuram, as regards the procedure followed in the sale of sand and issuance of transport permits.

26. According to the District Collector, Thiruvallur, sand stockyard licence has been obtained by the fifth respondent in Gurupuram Village, Uthukottai Taluk, Tiruvallur District, as per Tiruvallur District Collector's proceedings in Rc.No.1177/2012/G&M-2, dated 28.01.2013, under Rule 38-C of the Tamil Nadu Minor Mineral Concession Rules, 1959. Insofar as Thiruvallur District is concerned, the District Collector, has stated that the fifth respondent has not established any

stockyard, on his own accord, but has obtained necessary licence from him.

27. The Tamilnadu Prevention of illegal mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011 has been framed under Section 23C (1) of Mines and Minerals (Development and Regulation) Act, 1957, by exercise of the powers conferred by sub-Sections (1) and (1-A) of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957). The abovesaid Rules came into force with effect from 25.01.2011, vide G.O.Ms.No.19, Industries (MMD.1), dated 25.01.2011. Some of the relevant rules are extracted hereunder:

“3. Prohibition.— (1) No person shall transport or cause to be transported any mineral by any carrier from the place of raising or from the place of stockyard or from one place to another without having a valid transit pass.

(2) No person other than the mineral dealer shall store or cause to be stored any mineral at any place for purposes of sale or consumption.

(3) No mineral dealer shall store any mineral other

than the place specified in the registration certificate granted under these Rules :

Provided that no person purchasing and transporting minerals for use or consumption by himself and such use or consumption does not involve any commercial activity and any holder of a mining lease or a quarry lease in respect of the minerals for which he holds a lease, shall not be required to register himself as a dealer.

6. Transport permit and Transit pass.— (1) No person shall transport or otherwise remove or carry away any mineral from any place without obtaining a transit pass from the Deputy Director. Person desiring such passes should file an application before the Deputy Director in **Form 'F'** duly specifying all the particulars prescribed therein.

(2) The application shall be accompanied by a copy of the permit showing payment of royalty / seigniorage on such mineral or other adequate proof of such payment.

(3) On receipt of an application under sub-rule (1), the Deputy Director may grant transit pass in **Form 'F'** for such period and subject to such terms and conditions as may be imposed by him or may refuse to grant such transit pass for the reasons to be recorded in writing and communicated to the applicant.

(4) Any person who transports the minerals and who is required to carry transit shall produce pass on demand to the authorised officer or any officer or authority who has been

empowered under sub-section (4), Section 21 of the Act.

7. Conditions.—The registration certificate shall be granted in **Form 'D'** subject to the following conditions :—

(i) "All traders in minerals should be registered as dealers. However in the case of Mineral Dealers who deal exclusively with imported minerals of a variety not available in Tamil Nadu, no inspection of the Units outside the State from which the minerals are secured will be done. The mineral traders however should file quarterly statement of their minerals imported into the State and produce proof of payment of any entry tax or other tax leviable by the State of Tamil Nadu whenever called upon to do so.

(ii) The grantee of registration shall maintain the details of minerals purchased and stocked and details of mineral transported from the stockyard and the balance of mineral available in the stockyard in **Form 'E'**. If the grantee of registration having more than one stockyard, each stockyard shall be registered separately and **Form 'E'** shall be maintained separately for each stock yard. The stockyards are liable for verification at any time by the authority or authorised officer.

(iii) The grantee of registration shall allow any authorised officer at any time to inspect the stockyard, factories to verify the stock of ores or minerals and take sample of the abstract from the records maintained by him.

(iv) Every grantee of registration shall allow the

Competent Authority or the authorised officer to enter and inspect the stockyard including the premises of the factories where such mineral is processed and he may weigh, measure or take measurements of the stocks of the minerals at such stockyard or factory.

(v) All Officers who have been authorised under Section 24 of the Act are empowered to search any place in which there is a reason to believe that offence is being committed and to seize any stock of minerals in respect of which the offence has been or is being committed.

(vi) The District Collector is empowered to issue any orders for inspections to be caused and for proper implementation of the Act and Rules within the jurisdiction of the concerned district. If any person is found to keep the mineral in the place other than in stockyard or if any grantee of registration is found to commit any offence or contravene any of the provisions of the Act or Rules including any discrepancies noted in Form 'E' in respect of any stockyard, the District Collector shall take suitable action.

8. Seizure and confiscation.— (1) Every grantee of registration permitted to stock or transport minerals shall allow the authorised officer or authority empowered by the Government under the provisions of the Act or competent authority to enter and inspect any premises where the mineral is kept or stored or transported, including the premises where imported minerals are kept or stored.

(2) Every officer seizing mineral under these Rules shall prepare the list of mineral seized and deliver a copy thereof signed by him to the person found in possession of such minerals. Thereafter the officer shall hand over such property to the concerned Tahsildar for safe custody. The Tahsildar shall fix the property with seal and send information to the District Collector for taking action.

9. Custody of the seized property .— (1) The authorised officer shall keep the seized material or property under the custody of the Institution belonging to the Government or any responsible official of the Government as far as possible. Under normal circumstances, if illegal storage or transportation of mineral is noticed, the mineral may be handed over to the concerned Tahsildar with information to the officer incharge of nearby police station in writing.

(2) If the penalty is not paid within a week from the date of receipt of the copy of the proceedings, the seized property shall become the Government property and the same will be auctioned by the officer authorised by the District Collector in this regard.

10. Penalties.— (1) Any person who contravenes any of the provisions of the Rules, sells or stores minerals except under and in accordance with the Registration certificate of Registrar or who transports the minerals not in accordance with transport permit issued shall be punishable with a

penalty upto a maximum of Rs.25,000/- by an order of the District Collector concerned.

(2) Any person who transports / stores mineral and takes minerals to a place except to the destination specified in the Transport permit, shall be punishable with the imprisonment for one year or with fine which may be extended up toRs.25,000/- or with both, if the District Collector or Revenue Divisional Officer concerned within the respective jurisdiction files FIR and tries the case in.a competent Court of Law in the District.”

28. Upon perusal of the proceedings of the District Collector, Tiruvallur, in Rc.No.1177/2012/G&M-2, dated 28.01.2013, it is evident that licence has been granted for storage and transportation of sand in Survey Nos.40/1A, 1B, 1C, 2, 41/1B, 1C, 2, 51/1, 2A and 51/2C, measuring an extent of 1.71.5 Hectares, Gurupuram Village, Uthukottai Taluk, Tiruvallur District. Some of the conditions incorporated in the licence for storage and transportation of sand, are as follows:

"ii) The licensee shall submit a monthly return as in appendix XXII to the District Collector before 10th of succeeding month.

iii) Non possession of transport permit or sale slip for transport the sand shall be construed as illicit transportation

of sand.

iv) Whenever any person stocks the sand or transports or causes to be transported the sand without any lawful authority and for that purpose any tool, equipment, vehicle or any other thing, shall be liable to be seized by the competent authorities and shall also liable for confiscation of the same.

v) If any violation of condition of licence is found, the licence is liable for cancellation.

viii) Only permitted quantity shall be stored, if excess is found action will be taken as per the rule.

ix) 7.5 mts. safety distance shall be given to the adjoining patta lands.

xi) They should maintain register for quantity of sand purchased and quantity of sand sale at the stockyard.

xiv) Sand purchased from the PWD authority can only be stored at the stockyard.

xv) Quantity of sand purchased and quantity of sand sold should be maintained in the registers and same may be produced to the concerned officials at the time of inspection.

xvi) No sand shall be stocked other than the licence granted area,

xvii) Documentary evidence/ proof should be submitted to the officials of the PWD at the time of inspection for verification.”

As per the licence, the Executive Engineer, PWD (WRO), Araniyar Basin Division, Chepauk, Chennai-5, has been instructed strictly to adhere to the rules, while issuing sale slips to the licensee, after verification of the original permits issued by the Public Works Department.

29. In the Bill, dated 01.04.2013, enclosed at Page 10 of the typed set of papers, the 5th respondent has claimed to have branches, at Survey Nos.32, 33, 36, 37A, 39/1, 2, 3, 4, 40/D, 42/2A, 2B, 3A, 3B, 3C, 3E, 3F, 51/2B, 2D, 3, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5E, 5F and 145/7B, in Gurupuram Village, Meiyur Post, Oothukkottai Taluk, Tiruvallur District. Apparently, vehicles carrying the abovesaid Bill has been permitted to transport sand. Insofar as Tiruvallur District, is concerned, the 5th respondent has been granted licence for storage and transportation of sand, only in respect of Survey Nos.40/1A, 1B, 1C, 2, 41/1B, 1C, 2, 51/1, 2A and 51/2C, in Gurupuram Village, Oothukkottai Taluk, Tiruvallur District. It is not known, as to how, the 5th respondent could claim to have branches, at the abovesaid places, in Survey Nos.32, 33, 36, 37A, 39/1, 2, 3, 4, 40/D, 42/2A, 2B, 3A, 3B, 3C, 3E, 3F, 51/2B, 2D, 3, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5E, 5F and 145/7B, to store sand and transport from the abovesaid places, as mentioned in Invoice No.234 - Cash Bill/Way

Bill. There is no explanation in the counter affidavit filed by the District Collector, Tiruvallur.

30. In terms of the provisions of the Tamilnadu Prevention of illegal mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011 and in order to ascertain, how much quantity of sand has been purchased by the 5th respondent, from Public Works Department outlets, in Tiruvallur Department and sold, during the period from 2011-12 and 2012-13, vide order, dated 10.09.2013, the Deputy Commercial Tax Officer of Tiruvallur District, was directed to produce the sales tax returns of the 5th respondent, for the periods between 2011-12 and 2012-13 and that the same has not been produced. As per the Statement furnished by the Executive Engineer, WRD, Araniyar Basin Division, Chepauk, Chennai, 5839 loads of sand alone has been sold in Public Works Department Sand Quarries, for the period between 01.01.2013 to 17.09.2013.

31. Mr.K.Veera Raghava Rao, District Collector, Thiruvallur, has

not furnished any details of the quantity of sand purchased by the 5th respondent, every month. The existence of the stockyard in Survey Nos.455/3,455/4, 455/6, 455/8, 455/9, 455/10, 456/2B, Palayaseevaram Village, Kancheepuram Taluk & District, mentioned in the abovesaid Invoices-Cash Bill/Way Bill, is fortified by the report of the Assistant Director of Geology and Mining, Kancheepuram. At the risk of repetition, the report is reproduced hereunder:

"In pursuance to the directions of the Hon'ble High Court the sand stockyard situated at Palayaseevaram Village, Kancheepuram Taluk, was inspected on 13.09.2013, along with the Revenue Inspector and Surveyor, Walajabad. During the inspection, it is found that 9 heaps of sand stocked in patta lands in S.Nos.455/3, 455/4, 455/6, 455/8, 455/9 and 455/10, Palayaseevaram Village, Kancheepuram Taluk. The sand stocked in the area has been measured and quantity assessed to 79895 Cubic Metre (13316 lorry loads).

Further, the sand stockyard situated in S.Nos.37/3A, 65/2, 65/3, 66/2A1, etc., at Kallapiranpuram Village, Madurantakam Taluk, was also inspected along with the Revenue Inspector and Surveyor, Walajabad and it is found that 5 heap of sand stocked in Patta lands in S.Nos.37/3A, 65/2, 65/3, 66/2A1, etc., in Kallapiranpuram Village, Madurantakam Taluk. The sand stocked in the area has been

measured and quantity assessed to 184737 Cubic Metre (30790 lorry loads).

It is submitted that sand stocked in respect of Palayaseevaram Village is 79895 Cubic Metre (13316 lorry loads) and in respect of Kallapiranpuram Village is 184737 Cubic Metre (30790 lorry loads)."

32. As per the sworn statement of Mr.L.Sitherasenan, I.A.S., District Collector, Kancheepuram, PWD Department is not selling sand to the 5th respondent, as alleged by the petitioner's Association. At Paragraphs 19, 20 and 22 of the counter affidavit, the District Collector, Kancheepuram, has stated as follows:

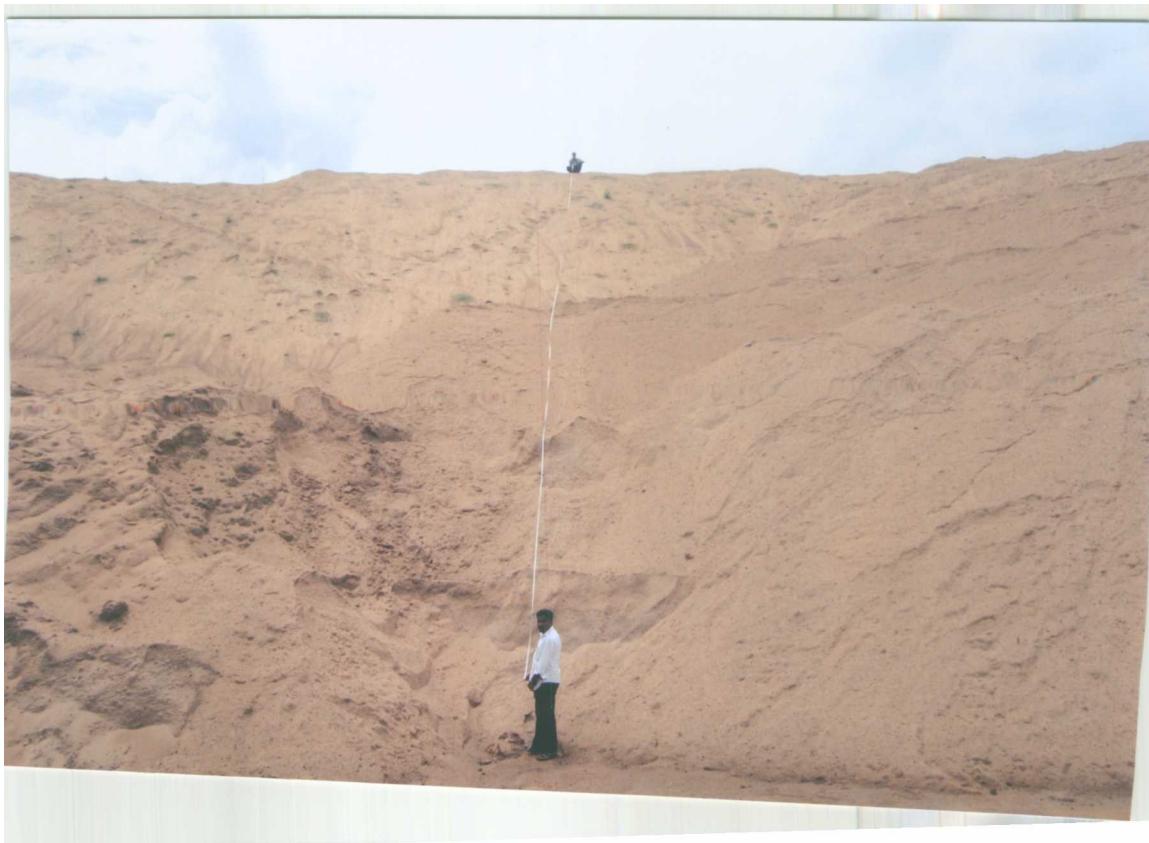
"19.It is submitted that there is no stockyard maintained by the fifth respondent.

20.It is further submitted that the fifth respondent has not established any stockyard on his own accord.

22.Further, there are no stockyard maintained by the fifth respondent. The fifth respondent has also applied for licence for setting up for stockyard and the applications are under process."

33. Photographs produced before this Court by the learned Additional Government Pleader, along with the report of the Assistant

Director, Geology and Mining, Kancheepuram District, clearly shows that the sand stored at the places, inspected by the Assistant Director of Geology and Mining, Kancheepuram, looks like mountains. It is shocking to the conscience of this Court, as to how Mr.L.Sitherasenan, District Collector, Kancheepuram, has filed an affidavit, before this Court, as if, there is no stockyard maintained by the fifth respondent in Kancheepuram District. The Photographs produced by the petitioner on 04.09.2013, before this Court, are as follows:



















34. When the Assistant Director, Geology and Mining, Kancheepuram District, has submitted a report to this Court, stating that a huge quantity of sand is heaped at two different villages, viz., Palayaseevaram Village, Kancheepuram Taluk and Kallapiranpuram Village, Madurantakam Taluk, both places falling within Kancheepuram District, the District Collector, Kancheepuram, has filed an affidavit on oath and stated that no stockyard is maintained by the 5th respondent. If no stockyard is maintained by the 5th respondent, at the abovesaid survey

numbers and no licence is granted to the 5th respondent, as per the Tamilnadu Prevention of illegal mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011, it is not known, as to how, about 79895 Cubic Metre (13316 lorry loads) were allowed to be stored and transported from S.Nos.455/3, 455/4, 455/6, 455/8, 455/9 and 455/10, Palayaseevaram Village, Kancheepuram Taluk. So also, the quantity of sand stored in Kallapuram Village, Madurantakam Taluk, Kancheepuram District, is alarming. It is stated by the Assistant Director, Geology and Mining, Kancheepuram District, 184737 Cubic Metre (30790 lorry loads) is stocked in the said Village. Again, it is not known as to how, such a large quantity of sand has been allowed to be stored and transported from the said Village. Though Mr.Iyathurai, Assistant Director of Geology and Mining, Kancheepuram, who is present in the Court, has stated that vehicles transporting sand have been seized and action has been taken, as per the Tamilnadu Prevention of illegal mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011, he is not in a position to explain, as to how, such a mountain like sand, has been allowed to be stored in the abovesaid Villages, without any licence from the competent authority. He has

confirmed that the photographs produced before this Court along with his report, dated 13.09.2013, pertain to the abovesaid Villages.

35. When the District Collector, Kancheepuram, Kancheepuram District, at Paragraph 16 of the counter affidavit, dated 05.06.2013, has categorically admitted that Public Works Department is not selling sand to the 5th respondent and no licence has been given to the 5th respondent to store and sell sand, it is not known, as to how, the 5th respondent or other persons, involved in such illegal activity of storing and transporting such a huge quantity of sand have been permitted by the District Collector, Kancheepuram and his subordinates. Possession, storage and transportation of such huge quantity of sand from the abovesaid places, is apparent and can be seen from naked eyes.

36. From the bundle of facts and the materials on record, it is apparent that the Officials, right from Village Administrative officer, Revenue Inspector, Tahsildar and other officials of the Mines and Minerals Department, Police, Public Works Department and including the District Collector, Kancheepuram, have not taken any action the

concerned person or persons, who has/have illegal stockyards at S.Nos.455/3, 455/4, 455/6, 455/8, 455/9 and 455/10, Palayaseevaram Village, Kancheepuram Taluk and S.Nos.37/3A, 65/2, 65/3, 66/2A1, etc., at Kallapiranpuram Village, Madurantakam Taluk. Such a huge heaps of sand at the abovesaid two different places, cannot be stored in a single day. The illegal activity should be for a long period. The total number of loads of sand, as per the report of the Assistant Director, Geology and Mining, Kancheepuram, from the abovesaid Villages, in Kancheepuram District, works out to 2,64,632 Cubic Metre (44,106 lorry loads).

37. When the matter came up on 16.09.2013, the Assistant Director, Geology and Mining, Kancheepuram, has stated that Mr.L.Sitherasenan is functioning as District Collector, Kancheepuram, for nearly two years. The Assistant Director, Mines and Minerals, Kancheepuram, has further stated that earlier, he was functioning in the same capacity in Tiruvallur District and now for the past four months, he is working as Assistant Director, Geoloy and Mining, Kancheepuram District.

38. From the perusal of the bills, enclosed in the typed set of papers, filed by the petitioner, it could be deduced that even after the dismissal of the writ petitions filed by the petitioner herein in **W.P.Nos.14180 of 2011, etc., [M.Palanisamy v. The State of Tamil Nadu]**, sand is being sold from the Survey numbers, mentioned therein. Though Mr.L.Sitherasenan, I.A.S., is functioning as District Collector, Kancheepuram, for nearly two years and Mr.Iyyathurai, is functioning as Assistant Director of Mines, Kancheepuram, for nearly four months, no details have been submitted to prove that the abovesaid authority or any other competent authority under the Mines and Minerals (Development and Regulation) Act, 1957 and the Tamilnadu Prevention of illegal mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011, have taken any action against such huge storage, sale and transportation of the sand, from the abovesaid survey numbers in Palayaseevaram Village, Kancheepuram Taluk and Kallapiranpuram Village, Madurantakam Taluk, both falling within the Kancheepuram District, even though no licence has been granted by the District Collector, Kancheepuram.

39. The batch of Writ Petitions in **M.Palanisamy v. The State of Tamil Nadu** reported in 2012 (4) CTC 1, have been disposed of on 19.06.2012 and interim orders have been vacated. The invoices, annexed in the typed set of papers, makes it clear that the 5th respondent has issued Invoices-Cash Bill/Way Bill, stating that he has branch offices, at various survey numbers and the numbers of the writ petitions have also been given. Though the abovesaid invoices disclose various survey numbers, the petitioner has not enclosed any bill in the typed of papers, pertaining to S.Nos.37/3A, 65/2, 65/3, 66/2A1, etc., at Kallapiranpuram Village, Madurantakam Taluk, which is now inspected by the Assistant Director of Geology and Mining, Kancheepuram District, where, 9 heaps of sand have been stocked in patta lands in S.Nos.455/3, 455/4, 455/6, 455/8, 455/9 and 455/10, Palayaseevaram Village, Kancheepuram Taluk. The sand stocked in the area has been measured and quantity assessed to 79895 Cubic Metre (13316 lorry loads). Even the Assistant Director of Geology and Mining, Kancheepuram, has not given full survey numbers in his report and in that, he has merely stated as "etc.,". The other survey numbers are not given.

40. When this Court, vide order, dated 10.09.2013, has directed the District Collector, Kancheepuram District, to produce the relevant details, as to how much quantity of sand has been purchased by the 5th respondent, every month, and the number of lorries employed by the 5th respondent, the District Collector has clearly stated that no sand has been sold to the 5th respondent. As regards the existence of two illegal stockyards in Kancheepuram District, “to dump a pumpkin in a morsel of food”, the District Collector has stated that no stockyard is maintained by the 5th respondent. When the bills disclose storage and sale from Survey Nos.455/3,455/4, 455/6, 455/8, 455/9, 455/10, 456/2B, Palayaseevaram Village, Kancheepuram Taluk & District, by the 5th respondent, the District Collector, Kancheepuram, feigning total ignorance, of storage of such huge quantities of sand, has denied even the existence of any stockyard in the abovesaid Survey Numbers, contrary to the truth, proof of physical examination and production of documentary evidence, including photographs, by the Assistant Director of Geology and Mining, Kancheepuram.

41. Though the Deputy Commercial Tax Officer of Tiruvallur District, has been directed to produce sales tax returns of the 5th respondent, for the periods between 2011-12 and 2012-13, he has not produced the same. The District Collector, Tiruvallur, has not produced the details of the sales effected to the 5th respondent and others, for the period between 2011-12 and 2012-13, as directed by this Court. The Executive Engineer, PWD/WRD., Araniyar Basin Division, Chepauk, Chennai, has stated that only 5839 loads of sand, has been sold from the four quarries, viz., Vadathillai (S.F.No.174), Malanthur (S.F.Nos.82 & 84), Rallapadi (S.F.No.1/1) and 43. Panapakkam (S.F.No.105), in Tiruvallur District.

42. Though the District Collector, Tiruvallur District, in his counter affidavit, has stated that licence has been granted for storage and transportation of sand from patta land in Survey Nos.40/1A, 1B, 1C, 2, 41/1B, 1C, 2, 51/1, 2A and 51/2C, he has not furnished any comparative statement of the details of the sand purchased by the 5th respondent and others, the extent of sand, stocked, sold and transported from the abovesaid survey Numbers, for which, licence has been granted.

43. As per Section 4(2)(1-A) of the Mines and Minerals (Development and Regulation) Act, no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

44. Sections 21, 22, 23, 23-A, 23-B, 23-C, 24 and 24-A of the Act, deals with Penalties, Cognizance of offence, Offences by companies, Compounding of offences, Power to search, Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals, Power of entry and inspection and Rights and liabilities of a holder of reconnaissance permit, prospecting licence or mining lease, respectively, are extracted hereunder:

“21. Penalties:- (1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of Sec. 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty five thousand rupees, or with both;

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may

extend to one year, or with fine which may extend to five thousand rupees or with both, and in the case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

.....

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the Court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such Court.

5) Whenever any person raises without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax as the case may be, for the

period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.

22. Cognizance of offences:- No Court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

23. Offences by companies:- (1) If the person committing an offence under this Act or any rules made thereunder is a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed with the consent or connivance of any director,

manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

- (a) "company" means any body corporate and includes a firm or other association of individuals;
- (b) "director" in relation to a firm means a partner in the firm.

23A. Compounding of offences:- (1) Any offence punishable under this Act, or any rules made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under Sec. 22 to make a complaint, to the Court with respect to that offence, on payment to that person for credit to the Government, of such sum as that person may specify:

Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith.

23B. Power to search:- If any Gazetted Officer of the

Central or a State Government authorised by the Central Government or a State Government, as the case may be in this behalf by general or special order has reason to believe that any mineral has been raised in contravention of the provisions of this Act or the rules made thereunder or any document or thing in relation to such mineral is secreted in any place or vehicle he may search for such mineral, document or thing and the provisions of Sec. 100 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to every such search.

23C. Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals.— (1) The State Government may, by notification, in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) establishment of check-posts for checking of minerals under transit;

(b) establishment of weigh-bridges to measure the quantity of mineral being transported;

(c) regulation of mineral being transported from the area granted under a prospecting licence or a mining lease

or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given;

(d) inspection, checking and search of minerals at the place of excavation or storage or during transit;

(e) maintenance of registers and forms for the purposes of these rules;

(f) the period within which and the authority to which applications for revision of any order passed by any authority be preferred under any rule made under this section and the fees to be paid therefor and powers of such authority for disposing of such applications; and

(g) any other matter which is required to be, or may be, prescribed for the purpose of prevention of illegal mining, transportation and storage of minerals.

(3) Notwithstanding anything contained in Sec. 30, the Central Government shall have no power to revise any order passed by a State Government or any of its authorised officers or any authority under the rules made under sub-sections(l) and (2).

24. Power of entry and inspection:- (1) For the purpose of ascertaining the position of the working, actual or prospective, of any mine or abandoned mine or for any other purpose connected with this Act or the rules made thereunder, any person authorised by the ⁵[Central Government or a State Government] in this behalf by

general order, may—

- (a) enter and inspect any mine;
- (b) survey and take measurements in any such mine;
- (c) weigh, measure or take measurements of the stocks of minerals lying at any mine;
- (d) examine any document, book, register or record or record in the possession or power of any person having the control of, or connected with, any mine and place marks of identification thereon, and take extracts from or make copies of such documents, book, register or record;
- (e) order the production of any such document, book, register, record as is referred to in Cl. (d); and
- (f) examine any person having the control, or connected with any mine.

(2) Every person authorised by the Central Government or a State Government under sub-section (1) shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code (45 of 1860) and every person to whom an order or summons is issued by virtue of the powers conferred by Cl. (e) or Cl. (f) of that sub-section shall be legally bound to comply with such order or summons as the case may be.

24A. Rights and liabilities of a holder of reconnaissance permit, prospecting licence or mining lease:- (1) On the issue of a reconnaissance permit, prospecting licence or mining lease under this Act and the

rules made thereunder, it shall be lawful for the holder of such permit, licence or lease, his agents or his servants or workmen to enter the lands over which such permit, lease or licence had been granted at all times during its currency and carry out all such reconnaissance, prospecting or mining operations] as may be prescribed:

Provided that no person shall enter into any building or upon an enclosed Court or garden attached to a dwelling-house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

(2) The holder of a ^reconnaissance permit, prospecting licence or mining lease] referred to in subsection (1) shall be liable to pay compensation in such manner as may be prescribed to the occupier of the surface of the land granted under such permit, licence or lease] for any loss or damage which is likely to arise or has arisen from or in consequence of the reconnaissance mining or prospecting operations].

(3) The amount of compensation payable under subsection (2) shall be determined by the State Government in the manner prescribed”

45. Though the District Collector, Kancheepuram, in his counter affidavit, dated 05.06.2013, has categorically averred that no sand has

been sold to the 5th respondent and further stated that no licence has been issued to the 5th respondent to set up a stockyard in Kancheepuram District, Officers of the Public Works Department, the Revenue and Mining Authorities have conspicuously failed to discharge their duties and allowed the 5th respondent and others, to store, sell and transport sand, at the places mentioned in the Invoices, annexed in the typed set of papers, even after the dismissal of the writ petitions in **M.Palanisamy v.**

The State of Tamil Nadu reported in 2012 (4) CTC 1. From the above, it could be deduced that large scale irregularities have been committed in the matter of procurement, storage and transportation of sand, inspite of the orders of the Hon'ble Division Bench and statutory provisions. The contentions of the District Collector, Kancheepuram, that action has been taken to curb illicit mining, storage and transport of sand is a farce and it does not reflect the correct picture. Unless there is an active support and collusion of some of the officers, belonging to Public Works Department, Revenue, Mining and other authorities, or with the external support of others, such huge heaps of sand cannot be stored in a short span of time. This Court is of the view that large scale irregularities and offences have been committed, punishable under law and insofar as

these stockyards are concerned, the offenders have been allowed, Scot-free. Two I.A.S., Officers and other officers, at the level of Assistant Director of Geology and Mining and the officials of Public Works Department, are primarily responsible for not enforcing the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the Tamilnadu Prevention of illegal mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011.

46. On this day, when the matter came up for hearing, learned Additional Government Pleader submitted an action taken report of the District Collector, Kancheepuram and it reads as follows:

"The inspection made by the Assistant Director (Mines) on 13.09.2013 and it is found that there are unauthorised sand stockyard noticed in patta lands in S.Nos.455/3, 455/4, 455/6, 455/8, 455/9, 455/10, Pazhiyasivaram Village, Kancheepuram Taluk and in S.Nos.37/3A, 65/2, 65/3, 66/2A1, etc., Kallapiranpuram Village in Maduranthagam Taluk. Immediately, I directed the authorities to seize the unauthorised stocking of sand in the abovesaid premises and taken custody of the District Administration.

I also instructed concern official to take appropriate action against the persons operated the sand stockyard under

the Tamil Nadu Minor Mineral Concession Rules, 1959.

Further, I have instructed all the official to verify the unauthorised sand stockyard noticed, if any, in their jurisdiction and take appropriate action in accordance with the provisions and the relevant rules."

47. The action now taken by the District Collector Kancheepuram, on 17.09.2013, only fortifies the view of this Court that what is stated at various paragraphs in the counter affidavit filed by Mr.L.Sitherasenan, the District Collector, Kancheepuram, dated 05.06.2013, that there is no stockyard maintained by the 5th respondent, is a false statement.

48. Statutory provisions from the Tamilnadu Prevention of illegal mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011, have already been extracted. Violation of these rules is apparent. Gross failure on the part of the officers, lend support to the irregularities. Perpetuation with their support, by their inaction is writ large. As per the conditions of stockyard licence, the licensee shall submit a monthly return, as in appendix XXII to the District Collector, before 10th of Succeeding month. Whenever any person stocks stand or

transports or causes to be transported the sand, without any lawful authority and for that purpose, any tool, equipment, vehicle or any other thing, shall be liable to be seized by the competent authorities and shall also be liable for confiscation of the same. Only permitted quantity shall be stored, if excess is found, action will be taken, as per rule. They should maintain register for quantity of sand purchased and quantity of sand sale at stockyard. Sand purchased from the Public Works Department authority, can only be stored at the stockyard. Quantity of sand purchased and quantity of sand sold should be maintained in the registers and the same may be produced to the concerned officials at the time of inspection. No sand shall be stocked other than the licence granted area. Documentary evidence/proof should be submitted to the officials of the Public Works Department, at the time of verification. Statutory provisions from the Tamilnadu Prevention of illegal mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011, have already been extracted.

49. From the materials on record, it could be deduced that the

officials of the Revenue Districts, Kancheepuram and Tiruvallur Districts, Public Works Department and the Police, who is now entrusted with the power to enforce the provisions of Sections 4(1-A) and 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and who are duty bound to exercise proper administrative control to prevent any contravention of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules framed thereunder, particularly, Tamilnadu Prevention of illegal mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011, take appropriate action, if there is any violation or contravention, have remained silent and in a way responsible for the illegalities and irregularities, now stated to have been noticed by them, for the first time, after the directions issued by this Court on 04.09.2013. They have not only failed to meet the expected standards of performance of their duties and their inaction, in the opinion of this Court, is not short of dereliction of their duties or abetting the crime. Their omission to prevent storage, sale from the unlicensed stockyards diminishes the confidence, which the law, has reposed on them. The report of the Assistant Director of Geology and Mines, Kancheepuram, the action now taken by the District

Collector, Kancheepuram, to effect seizure of the place and the ocular evidence, available on the face of record, makes it clear that something grave has been shielded by many persons.

50. This Court takes it for granted that neither the State or the Central Government, would contend that if any authority, who is the empowered to inspect, search and strictly enforce the mining and the environmental laws, to preserve and conserve the natural resources, failed to do so, causing huge loss to the Government, they should be allowed to go scot-free. Offences under the Mining laws are offences against the State and unless a specialised agency conducts a thorough investigation, as to whether, who are all the persons involved in the illegal activities, persons, who are shielding the offenders, the network and the illegalities and irregularities are bound to continue. It is the duty of the Constitutional Court to ensure that minerals should not be illegally exported. If such heaps of sand are to be stored at two different villages, either the person in possession and enjoyment of the properties, where the sand is stocked should have quarried the mineral from some place or places or transported sand from one district to another. It

should be borne in mind that after 2003, the State has taken over the quarrying activity. Therefore, the State and the District Administration, particularly, the Collectors of Tiruvallur and Kancheepuram, Public Works Department and others, are bound to explain, as to why, they have not taken action, so far. What prevented them from enforcing the penal laws. While considering the issue, as to whether, any independent external agency, has to conduct an impartial and fair investigation, this Court has taken cognizance of the conduct of the Collector, Kancheepuram District, set out supra, the conduct of the Commercial Tax Officer, in not producing the returns submitted by the 5th respondent, the public accountability of the District Collectors of Kancheepuram and Tiruvallur Districts, Public Works Department and other officials, under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, and the Rules framed thereunder, in particular, to the enforcement of the Tamilnadu Prevention of illegal mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011, the Hon'ble Division Bench judgment in **M.Palanisamy v. The State of Tamil Nadu** reported in 2012 (4) CTC 1, the mandate of the Constitutional Court, to enforce the above mining

and environmental laws and to protect the revenue of the Government, deems it fit, to order for an investigation, by an external agency.

51. Notwithstanding the action taken by the District Collector, Kancheepuram, this Court is of the view that a thorough investigation has to be conducted. Having regard to the entirety of the facts, stated supra, this Court directs Central Bureau of Investigation, Government of India, New Delhi, to nominate an Officer, in the rank of an Inspector General of Police, to conduct a fair and proper investigation into,

- (i) As to whether the 5th respondent or any other person, in charge in S.Nos.455/3, 455/4, 455/6, 455/8, 455/9, 455/10, Pazhiyavaram Village, Kancheepuram Taluk and in S.Nos.37/3A, 65/2, 65/3, 66/2A1, etc., Kallapuram Village in Madurantagam Taluk, has illegally quarried sand from the quarry sites in Tamil Nadu.
- (ii) Collect details of the extent of sand sold from PWD outlets in Kancheepuram and Tiruvallur Districts to various dealers and individuals, particularly to the 5th respondent or his men.
- (iii) Collect details from the Commercial Tax Department, Kancheepuram and Tiruvallur Districts, about the extent of sand purchased by the 5th respondent or person, incharge of stockyard at Palayaseevaram Village and Kallapuram Village, Kancheepuram District.

- (iv) Enquire the concerned officials, Commercial Tax, Revenue and Mining Department, Public Works Department and others, who have served the abovesaid Districts between 2011-13, or even prior to the years, as to the details of quarry operations in the Districts.
- (v) Enquire as to why action has not been taken under the Tamil Nadu Mineral Concession Rules, 1959 and the Tamilnadu Prevention of illegal mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011, when the stockyard is visible even to naked eyes.
- (vi) Enquire as to, how many vehicles owned by the 5th respondent or any other persons, engaged by him, in possession of the stockyard at Palayaseevaram Village and Kallapiranpuram Village, Maduranthagam Taluk, Kancheepuram District, have been issued transport permits, during the period 2011-13.
- (vii) Collect materials, as to the extent of sand purchased from the PWD outlets in Tiruvallur District, for which, licence has been granted for Survey Nos.40/1A, 1B, 1C, 2, 41/1B, 1C, 2, 51/1, 2A and 51/2C.
- (viii) Enquire, as to whether, the Mining Autorities have issued any transport slips to the vehicles owned by the 5th respondent or any other person, where sand is stocked at Palayaseevaram Village, Kancheepuram District and Kallapiranpuram Village, Maduranthagam Taluk and any other stockyards, mentioned in the Invoices-Cash Bills/Way Bills, enclosed in the typed set of papers, after the dismissal of the writ petitions and consequently, when

interim orders have been vacated.

- (ix) Conduct a thorough enquiry and investigation, as to how many illegal stockyards are functioning within Thiruvallur and Kancheepuram Districts, without licence, from the competent authorities and what action has been taken by the District Administration, as against the owners of the Stockyards.
- (x) Enquire into all acts, with specific reference to the statutory provisions, under Sections 4(1-A), 21, etc., of the Mines and Minerals (Development and Regulation) Act, 1957, and the rules framed and in particular, Tamilnadu Prevention of illegal mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011.
- (xi) Collect the Vouchers or bills submitted by the Public Works Department Contractors, to ascertain from where the said is purchased.
- (xii) Crack the network, if any, and find out the external support.
- (xiii) After the completion of the Investigation and detailed enquiry, as ordered by this Court, if prima facie materials indicate that cognizable offences are committed by the Revenue and Mining Authorities, Public Works Department and others, the Central Bureau of Investigation is directed to initiate prosecution against them, who have abetted the offences under the Mines and Minerals (Development and Regulation) Act, 1957 and the Tamilnadu Prevention of illegal mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011.
- (xiv) The Central Bureau of Investigation, is directed to forward the

investigation report to the Chief Secretary, Government of Tamil Nadu, to ascertain the revenue loss to the Government. The Government of Tamil Nadu shall take appropriate action under the Mining Laws, to impose penalty and collect the seiniorage fee and revenue loss, from those, who are responsible.

52. Since the District Collector, Kancheepuram, in his counter affidavit, has stated that no licence has been issued for stocking sand at Palayaseevaram Village, Kancheepuram District and Kallapiranpuram Village, Maduranthagam Taluk and considering the fact that now, the authorities have been directed to seize the unauthorised stocking of sand in the abovesaid premises, the Police authorities of the State shall prevent transport of sand from the abovesaid stockyards, till the investigation is completed. Both the District Collectors, Kancheepuram and Tiruvallur, Public Works Department officials and such other persons, entrusted with a duty to enforce the mining laws, are directed to provide all information required by the Inspector General of Police, Central Bureau of Investigation, to conduct a fair and proper enquiry. The Government of Tamil Nadu is directed to issue appropriate instructions forthwith to the District Heads, Public Works Department and Mining Officials to make inspection, search of the stockyard in the State, with or

without licence, collect all the details, required to be done, as per the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules framed thereunder, and particularly, the Tamilnadu Prevention of illegal mining, Transportation and Storage of Minerals and Mineral Dealers' Rules, 2011 and take action against the offenders and submit the Action Report to the Court, with all connected records and documents, within a period of four weeks from the date of receipt of a copy of this order.

53. Registry is directed to send Certified Photocopies of all the materials on record, Affidavit, Counter Affidavit and Reports, Certified copies of Photographs produced by the petitioner and Assistant Director of Geology and Mining, Kancheepuram, duly scanned and certified, to the Central Bureau of Investigation, Government of India, New Delhi, for appropriate action.

S. MANIKUMAR, J.

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Issue notice to the 5th respondent, returnable in four weeks. Post after four Weeks.

.09.2013

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M.P.No.1 of 2013 in
W.P.No.12454 of 2013