

Madras High Court

E.S.Raja Gopal vs The District Collector on 29 October, 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29/10/2010

CORAM

THE HONOURABLE MrS.JUSTICE R.BANUMATHI

AND

THE HONOURABLE Mr.JUSTICE S.NAGAMUTHU

W.P.(MD) No.12697 of 2010

and

M.P.(MD)No.1 of 2010

E.S.Raja Gopal.

... Petitioner.

vs.

The District Collector,
Collectorate,
Madurai,
Madurai Distrct.

... Respondent.

PRAYER

Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorari or any other Writ, or order, or direction, in the nature of a Writ, to call for the records and quash the impugned order passed by the Respondent in his Proceedings Na.Ka.No.241/2010 Mines dated 02.09.2010 which was published in Madurai Gazette dated 03.09.2010 (issue No.34).

!For Petitioner ... Mr.C.Selvaraj

^For Respondents... Mr.V.Rajasekaran

Spl. Government Pleader

:ORDER

R.BANUMATHI,J Petitioner seeks Writ of Certiorari to quash the Proceedings of the Respondent in Na.Ka.No.241/2010 Mines dated 02.09.2010 which was published in notification No.34 [Madurai Gazette] dated 03.09.2010 inviting application for grant of quarry lease in S.F.No.1/1 (Part) Paliyan Karadu, Ramagoundanpatti village, Vadipatti Taluk, Madurai District.

2. According to Petitioner, S.F.No.1/1 is a forest land and continuation of Sirumalai hills and the hill is situated amidst the forest, natural herbals, plants and trees. Further according to the Petitioner, Respondent-District Collector requested the District Forest Officer, Madurai Forest Division to declare S.F.No.1/1 of Ramagoundanpatti village under the category of "Reserve Forest". While so, certain persons are endeavouring to get quarry licence to quarry stones in Paliyan Karadu. The grievance of the Petitioner is that Respondent himself has taken steps to declare S.F.No.1/1 of Ramagoundanpatti village as "Reserve Forest" and is not entitled to act contrary to his own decision by calling tender to lease out the quarry and stone quarrying operation would affect the hill, natural herbals and plants.

3. Respondent-District Collector has filed counter contending that S.F.No.1/1 "Karadu" over an extent of 2.00.0 Hectares of Ramagoundanpatti village has not been leased out previously and it is treated as "Virgin Quarry". It is further averred that as per Rule 8(8) of Tamil Nadu Minor Mineral Concession Rules, 1959, it was recommended to lease out the quarry for a period of ten years and after following the rules and in compliance with the Tamil Nadu Minor Mineral Concession Rules, notification was published inviting applications for grant of rough stone quarry leases and accordingly, the Respondent proposed the area situated 16 metres away from the forest boundary and 300 metres away from inhabited site and it satisfies the rule and provision and accordingly action has been taken to lease out the quarry.

4. We have heard Mr.C.Selvaraj, learned counsel appearing for the Appellant. We have also heard Mr.V.Rajasekaran, learned Special Government Pleader for Respondent and perused the relevant documents.

5. Learned Special Government Pleader contended that S.F.No.1/1 over an extent of 2.00.0 Hectares was classified as "karadu" as per the technical report of the Assistant Geologist and the rock noticed in the proposed area is suitable for quarrying for construction purposes. After complying with the Tamil Nadu Minor Mineral Concession Rules, notification was published inviting applications for the grant of rough stone quarry leases. Even though the Respondent contends that S.F.No.1/1 of Ramagoundanpatti village was classified as 'karadu' from the report of District Forest Officer, it is seen that in the District Afforestation Meeting held on 28.05.2010, representation of Ramagoundanpatti villagers was considered. In the letter Na.K.No.5522/2010/V1 dated 19.07.2010 addressed to the District Revenue Officer, Madurai, the District Forest Officer, Madurai Forest Division requested copy of plan, adangal and 'A' register to enable him to take further steps in sending recommendation to classify S.F.No.1/1 as "Reserve Forest".

6. In continuation of the above said letter, in his letter No.Na.Ka.No.5522/2010/V1 dated 03.08.2010, the District Forest Officer has clearly stated that Paliyan karadu is in continuation of Sirumalai hills and that there are wild animals, natural herbals, plants and trees and it has got dents forest and further opined that any quarrying operation would adversely affect ecology and would be hindrance to the wild animals. The said letter of the District Forest Officer [Na.Ka.No.5522/2010/V1 dated 03.08.2010] reads as under:-

,g;gspad;fuL rpW kiyapd; bjhlh;r;rpahFk;/ tdtpy';Ffspd; elkh;l;lk; cs;s gFjpahFk;/ ,aw;if K:ypiffSk; ku';fSk; mlh;e;j tdg;gFjpahFk;/ vdnt ,t;tpl';fspy; fy;Fthhpfs; mik;j;jhy; ,aw;if jhtu';fs; K:ypiffs; khRgLtnjhL tdtpy';Ffs; elkh;l;j;jpw;Fk; kpft[k; ,ila{whf ,Uf;Fk;/ vdnt gspad;fuL tUtha; epyj;jpid ghJfhg;g[tdkhf mwptpf;if bra;a eltof;if nkwb;bfhz;Ls;jhYk;. Fthhp miktjhy; tdtpy';Ffs; ,aw;if jhtu';fs; ghjpf;fg;gLk; vd;jghYk;. ,g;gFjpfspy; muR fdpktsk; kw;Wk; Ru';fj;Jiw K:yk; fy;Fthhpfs; mikg;gjw;F vt;tpj mDkjpa[k; tH';fpl eltof;if nkwb;bfhs;s ntz;lhk; vd md;g[ld; nfl;Lf;bfhs;fpnwd;/@

7. In spite of such clear assertion by the District Forest Officer, the impugned notification was published inviting applications for grant of quarry lease. The learned Special Government Pleader contended that the proposed area is not the "forest land" as per the revenue records and that the same stands classified as "un-assessed waste - karadu" and so far no proposal has been sent to the Government to change the classification into forest land. By perusal of records, it appears that in the meeting held on 28.05.2010, the Respondent himself felt that the proposed area could be reserved as forest land. Thereafter, examining the matter the District Forest Officer recommended for classification of the area as "Reserve Forest". In our considered view, Respondent ought to have kept in view the opinion of the District Forest Officer and forwarded the recommendation of the District Forest Officer to the Government rather than proceed to publishing the notification.

8. Learned counsel for Petitioner submitted that earlier, Panchayat has passed a Resolution No.27 dated 28.03.2007 to the effect that no licence shall be granted for stone quarrying in S.F.No.1/1 of Ramagoundanpatti village. On behalf of Respondent, it was contended that in Ramagoundanpatti village there is acute drinking water scarcity and to earn income for the Panchayat, Panchayat has passed a Resolution No.51 dated 29.07.2010 consenting and recommending to let S.F.No.1/1 of Paliyan karadu for stone quarrying under tender-cum-auction. Mere statement that Panchayat is to augment its income cannot stand.

9. Article 48-A of the Constitution of India mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wild life of the country. Article 51-A of the Constitution of India, enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve national environment including forests, lakes, rivers, wild life and to have compassion for living creatures. These two Articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed under Article 21 by the Constitution including Articles 14, 19 and 21 of the Constitution of India and also the various laws enacted by the Parliament and the State Legislature in this regard.

10. In (1996) 5 SCC 647 [Vellore Citizens' Welfare Forum v. Union of India] and (2002) 4 SCC 356 [M.C.Mehta v. Union of India], it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of "sustainable development".

11. In 2004 (2) SCC 392 [Essar Oil v. Halar Utkarsh Samiti], the Supreme Court held as under:-

"This, therefore, is the sole aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in population together with the consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, filling up of lakes and the pollution of water resources and the very air that we breathe. However there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other."

12. Similar view was taken by the Supreme Court in 1996 (5) SCC 281 [Indian Council for Enviro-Legal Action v. Union of India] wherein it has been held as under:-

"While economic development should not be allowed to take place at the cost of ecology or by causing widespread environmental destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment should go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of the environment."

13. The concept of "sustainable development" also finds support in the decisions of the Supreme Court in 1997 (2) SCC 653 [M.C.Mehta v. Union of India]; 1995 (3) SCC 363 [State of Himachal Pradesh v. Ganesh Wood Products] and 2002 (1) SCC 664 [Narmada Bachao Andolan v. Union of India].

14. In various decisions, the Supreme Court also incorporated Doctrine of Public Trust. In 1997 (2) SCC 653 [M.C.Mehta v. Kamal Nath] and 1999 (6) SCC 464 [M.I.Builders v. Radhey Shyam Sahu], it was held that our legal system includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. The State as a trustee is under the legal duty to protect the natural resources. In this regard, we may also refer to the decision of the Supreme Court in (2006) 1 SCC 1 [T.N.Godavarman Thirumulpad v. Union of India and others] wherein the Supreme Court has considered the importance of maintaining the forest and also going for afforestation while deforestation takes simultaneously. In Paragraph (85), the Supreme Court held as follows:- "85. The importance of conserving and managing existing natural forests and forest soils, which are very large stores of carbon, has been emphasised as it will significantly reduce greenhouse gas emissions. To develop and protect forests, a scientific management is necessary so as to enhance productivity, density and health. Forestry projects have to lay emphasis on management and rejuvenation of natural forests. The fragile ecosystems should be properly managed in order to safeguard the livelihood of millions of people."

15. After examining the matter, the District Forest Officer took the view that Paliyan karadu is in continuation of Sirumalai hills and that there are wild animals, natural herbals, plants and trees and it has got dense forest. We are of the view that to protect the environment, the same has to be maintained. Quarrying would affect not only ecology but also the wild animals thereon. Having regard to the recommendation of the District Forest Officer, the impugned notification No.34 dated

03.09.2010 is liable to be quashed in so far as S.F.No.1/1 (Part) to an extent of 2.00.0 Hectares of Paliyan karadu, Ramagoundanpatti village.

16. In the result, the impugned notification No.34 dated 03.09.2010 is quashed in so far as S.F.No.1/1 (Part) to an extent of 2.00.0 Hectares of Paliyan karadu, Ramagoundanpatti village, Vadipatti Taluk, Madurai District and the Writ Petition is allowed. Respondent-District Collector, Madurai is directed to forward the recommendation of the District Forest Officer, Madurai Forest Division e/f/vz;/5222-2010 dated 03/08/2010 addressed to the District Revenue Officer within a period of two weeks from the date of receipt of copy of this order. On receipt of such proposal, Government shall consider the same in the light of the above cited decisions of the Supreme Court and pass appropriate orders within eight weeks from the date of receipt of the recommendation. Consequently, M.P.(MD) No.1 of 2010 is closed. No costs.

bbr To The District Collector, Madurai District, Madurai.