

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Application No.212 of 2016 (SZ)

In the matter of

V. Krishnamurthy
142, Eldams Road,
Teynampet, Chennai – 18
Farm House at
S.Nos.3-1A to 7.1, Elapakkam
Uthramerur Taluk
Kancheepuram Dist



.. Applicant

Vs.

1. Tamil Nadu Pollution Control Board
Anna Salai, Guindy, Chennai
Rep. by its Chairman
2. The District Environmental Engineer
Tamilnadu Pollution Control Board
Padappai, Sriperumpudur
3. Union of India,
Ministry of Environment & Forests (SZ)
Shastri Bhavan, Chennai
Rep. by its Regional Officer
4. The Commissioner of Geology & Mining
Thiru.Vi.Ka Industrial Estate,
Guindy, Chennai
5. The Asst. Director of Geology & Mining
Kancheepuram
6. District Collector
Kancheepuram
7. State Environmental Impact Assessment Authority
Saidapet, Chennai
Rep by its Chairman
8. Mr. K. Manoharan
Mangalam Village
9. Srinivasa Blue Metals,
Mangalam Village
Rep. by its Manager Mr. Govindaraj
10. Mr. Badrinath
Mangalam Village

.. Respondents

Counsel appearing for applicant

M/s. G.R. Associates

P. Kannan

Nirajan Rajagopalan

Counsel appearing for respondents

For respondent No.1 .. Mr. Mr. A. Ilango

For respondent Nos.3 & 7 .. M/s. Syed Nurullah Sheriff

For respondent Nos.4, 5 & 6 .. Mr. M.K. Subramanian, Mr. E. Manoharan
Mr. P. Velmani

For respondent No.8 .. M/s. S. Gopinathan, K. Francis

O R D E R

Present

Hon'ble Shri Justice Dr.P.Jyothimani, Judicial Member

Hon'ble Shri P.S.Rao, Expert Member

12th May, 2017

Whether judgment is allowed to be published on the Internet .. Yes/No

Whether judgment is to be published in the All India NGT Reporter .. Yes/No

The applicant, who is said to be the owner of a Farm House in Elapakkam Village, having more than 1,900 Mango trees and 1,700 Coconut trees and employing large number of labourers, has filed the present application praying for a permanent injunction against the 8th respondent - Mr. K. Manoharan or any one acting on his behalf from carrying on quarrying activities in S.FNo.113, Mangalam Village.

2. The applicant has already moved an application before this Tribunal in Application No.136 of 2014 against 10th and 11th respondents and one, M/s. Jayasakthi Blue Metals in respect of Survey No.115, Mangalam Village, Kancheepuram District, on the ground that due to blasting of stones by explosives, large quantity of stones fall on the applicant's property, endangering the life of dwellers, apart from affecting trees. That apart, the applicant has also raised that there has been noise created by blasting and vibration, polluting the entire area, thereby affecting peaceful

possession of the property by the applicant. It was also the case of the applicant that there has been depletion of ground water level due to the digging of stone and the entire activity have been carried out in violation of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and Air (Prevention and Control of Pollution) Act, 1981 (Air Act).

3. The said application came to be disposed of by this Tribunal on 11.6.2014 with a direction to the 1st respondent therein viz., Tamil Nadu Pollution Control Board (Board) to make an enquiry about the complaint made by the applicant on 4.4.2014 after giving opportunity to the applicant as well as the respondents and pass appropriate orders within a period of four weeks from the date of receipt of the copy of the order. The interim order granted already in the said application on 9.7.2014 was directed to be continued till the 1st respondent pass orders with a direction to the 1st respondent to seal the premises wherein explosives are kept for the blasting operations. We have also observed that the stone crushing operations, manually or otherwise, if it is permitted, as per the permission granted by the appropriate authority, the same shall be carried on under the supervision of the Board. There was further direction to the Board to conduct the air quality survey from time to time and take appropriate action.

4. It is the case of the applicant that after the above said Application No.136 of 2014 which related to Survey No.115, Mangalam Village came to be disposed of, he came to know that there is another quarrying operation in S.No.113, Mangalam Village, adjacent to his Farm House wherein 8th respondent Mr. K. Manoharan was carrying on quarrying operation in S.No.113 after obtaining Environmental Clearance (EC) from MoEF & CC

dated 13.9.2013. On the basis that the conditions of EC have not been complied with by respondents 8 to 11, thereby causing nuisance and pollution, the applicant has filed Application No.222 of 2014 before this Tribunal to declare that the EC granted by State Environment Impact Assessment Authority (SEIAA) dated 5.9.2013 in favour of the 8th respondent ceased to be valid in law and for a direction against SEIAA to cancel the EC dated 5.9.2013. The Tribunal has directed the 3rd respondent – Southern Regional Office of the MoEF & CC to conduct an inspection and file a report in the order dated 1.4.2015 and the inspection report was filed by the 3rd respondent on 5.5.2015. However, since the applicant has made an objection that no prior notice was issued to him before the inspection, re-inspection was ordered on 27.5.2015 and accordingly the 3rd respondent has conducted an inspection of not only site in S.No.113 but also the surrounding S.Nos.114 and 115 in Mangalam Village on 3.9.2015 along with the Deputy Director, Directorate of Agriculture and Plantation, Kancheepuram, the Chief Engineer, State Ground and Surface Water Resources, Data Centre, Chennai, the Tahsildar, Madhuranthagam Taluk and the Assistant Director, Geology and Mining, Kanchipuram District. The 3rd respondent has filed a Monitoring Report on 1.7.2015 and a comprehensive Final Report on 10.10.2015 after fresh inspection.

5. The consolidated report, as elicited in the final order dated 11.2.2016 passed in Application No.222 of 2014 is as follows:

“Consolidated findings from the fresh inspection of stone quarry site at Survey No.113, Mangalam Village, Madhuranthagam Taluk, Kancheepuram district and applicant’s Farm House, Mango and Coconut plantation and other farm area at Survey Nos.3-1A, to 7.1, Elapakkam Village in Uthiramerur Taluk, Kancheepuram

District in the Application No.222 of 2014 before the Hon'ble NGT (SZ), Chennai.

- (i) As per the Distance Certificate furnished by Thasildar, Madhuranthagam, the nearest residential habitations from the stone quarry is as follows:

From Survey No.113 quarry site to the residential area in S.No.136 is 882 mts.

From Survey No.113 quarry site to the residential area in S.No.226 is 1225 mts.

- (ii) *Thasildar, Uthiramerur Taluk provided the requisite information containing distance certificate on the nearest residential habitation in the applicant's farm area received by e-mail at 8.11 pm on 08.10.2015 in respect of Uthiramerur Taluk is contained in the para 4 above.*
- (iii) *As reported by the Department of Geology and Mining, the area of quarry excavated so far is 34% out of the lease granted area of 2.77 hec. And about 66% of the lease granted area is available for quarrying 33 mtrs. The project Authority (Respondent No.8) has reported that so far 1,02,600 cu.m of rough stone was excavated from the mine when compared to allowed excavation of rough stone from the quarry of 3,54,028 cu.m.*
- (iv) *As per the observations, there was no damages upto 15 m downwards from existing ground level in the Western side of the stone quarry, which is adjacent to the farm house (Survey No.113). A photograph taken at this depth of this contains the photos of representatives of the applicant, counsel for respondents 8, 9 and 11, representatives of respondent No.3 evidence thereof and the same can be visualised from video coverage also. A merger amount of seepage has been observed at a depth of about 20 to 25 mts from the existing ground level on Western side of the stone quarry site. As it may be seen from the Videograph, seepage from the Eastern side of the mine (S.No.115-1B), may be attributed to the percolation of rain water and watering the plantation from the surface of the Earth towards the interiors depths towards closed stone quarried site which is Government land as informed during inspection. Gravitational flow of the rain water towards the stone quarry excavated/closed areas of the site are the reasons that can be attributed to many contain water pools as observed/covered in the Video in the 2.77 hect. Of leased quarry site which is already used quarry site.*
- (v) *The Ambient Air Quality parameters such as PM10, SO2 and NOx are also sound within the permissible limits as reported by the Tamil Nadu Pollution Control Board.*
- (vi) *The Necrosis (depth of cell or tissue) and Chlorosis (Insufficient Chlorophyll) in Mango and Coconut plantation of the applicant farm coverage and photographs signifying luxuriant growth of mango and coconut plantation. This scenery has been observed from the watch tower located in the farm land*

adjacent to the quarry site, where in the entire stone quarry site can also be visualized.

- (vii) As reported by the applicant, the yield from Mango and Coconut trees in their farm land is 200 to 250 tons of Mangoes and 10,000 – 12,000 numbers of Coconut per year for the last 10 years. This, keeping in view of the fact that the entire farm area is not only mango and coconut tree but also the average of horticulture/floriculture area and shade net nursery of ornamental plantation about 1000 sq.mts. adjoined to the farm house (not reported by the applicant). The farm land is irrigated by ad libitum of water by way of flood irrigation with underground pipe lines land in the midst of the farm with wells and bore well as information by the representatives of the applicant at the site.'
- (viii) The applicant has not reported in spite of reminders about the presence of bore well which is located at 57 mts from the stone quarry site. Total depth of the bore well is 60 mts a reported by Ground Water Division, PWD. The trend of annual rainfall since 2005 (covering the Madhuranthagam Taluk where the quarry site is located and in Uthiramerur Taluk where the applicant's farm land is located is mentioned in the Table at para 2 above (vii.c). In the farm house, there is a three storied building godown, small rooms adjacent to the godown, and pump houses adjoining to five open wells etc., were observed and as evident in the video coverage about 10 workers were present at different places in the farm land during inspection of the farm land. No habitation of the workers in the farm land has been observed. No cattle were observed in the farm land of the Applicant during inspection.
- (vii.c) It is pertinent to state that inter alia the details of list of farm workers, their wages and details of the work for which the workers were deployed in the mango/coconut plantation of the applicant located in the farm house for the last 10 years is not furnished by the applicant in spite of reminder. No details of the farm house, its maintainer etc. as requested are also not furnished by the applicant.
- (ix) The Project Authority (Respondent No.8) installed fencing with 200 feet height iron sheet all along western side i.e., between quarry site and applicant's farm land. It adds upto the safety blasting operation for stone quarry. There is no complant reported by the applicant during site inspection about stone falling into the mango and coconut farm from quarry blasting operation by the respondent detailed safety operation by the blasting being carried out using hand-jack hammer driller and using mild explosives i.e., Nitrate mixture with Delayed Electronic detonator of low power carried out by certified fore man, mine and licensed explosive holders as detailed in the para 7 above of the report."

6. As the said case was relating to other quarrying site other than S.F. No.113 belonging to the 8th respondent Mr.K. Manoharan, the Tribunal, while referring to K. Manoharan's quarry has held as follows:

“Manoharan quarry the 8th respondent herein has been in operation with all necessary consents and EC and its operation has been stopped by an interim order passed by us during the course of the proceedings.”

It was also held as follows:

“Issues raised by the applicant in respect of air pollution, depletion in ground water/water table, effects of quarrying on vegetation and plantation have not been proved to be true and correct by the scientific survey and inspections carried out by the authorities as per direction of this Tribunal”

With the above observations, the application came to be dismissed, as devoid of merit, however, with the following observation:

“While dismissing the application, we give the following directions to the concerned respondents:

1. The 8th respondent, Manoharan quarry shall not carry on the quarrying activity until it is granted the Consent to Operate by the Board. As the earlier Consent to Operate issued by the Board expired during the pendency of the present application for adjudication before this Tribunal, we permit the 8th respondent to file a fresh application for renewal of the Consent to Operate before the Board As and when such an application is made by the 8th respondent, the Board shall consider the same and pass orders in accordance with law expeditiously, in any case within a period of four weeks from the date of filing of such application before the Board. The 8th respondent is permitted to recommence its operations only after receiving the Consent to Operate from the Board.’

2. The Board is directed to make periodic inspection of the 8th respondent quarry unit after its operations are restored, in order to ensure that all environmental safeguard measures prescribed by the Board are scrupulously followed by the proponent and to take necessary action in the event of noticing any violation.

3. The 11th respondent, Badrinath quarry and the 12th respondent, Premalatha quarry shall not carry out any quarrying activity till such time they are granted EC, Consent to Establish, Consent to Operate and also the lease for carrying the quarrying from appropriate authorities.

4. It is needles to state that the operative direction, namely the complete stoppage of the quarrying activities by the 8th respondent, given in the interim order gets merged with this order.

5. Application stands dismissed in the above terms.”

7. It is the case of the applicant that after the above said order was passed, the Board has granted 'consent to operate' to the 8th respondent against which the applicant intends to take independent action. However, it is stated that taking advantage of the permission granted in respect of Survey No.113, the 8th respondent is misusing the permission for quarrying in Survey No.115 also and therefore the conduct of the 8th respondent is in violation of the conditions of EC. The official respondents who are expected to take action have been keeping quiet.

8. It is stated that against the order of the Tribunal passed in Application No.222 of 2014 dated 11.2.2016, the applicant has filed a Civil Appeal before the Hon'ble Supreme Court in Civil Appeal No.5039 of 2016. The Hon'ble Supreme Court, having referred to para 41 of the order of this Tribunal, has granted leave and liberty to the applicant to assail the 'consent to operate' granted in favour of the 8th respondent and disposed the appeal in the order dated 4.7.2016. The order of the Hon'ble Supreme Court reads as follows:

“We have heard learned counsel for the appellant.

Having invited our attention to paragraph 41 of the impugned order, learned counsel for the appellant states, that consequent upon further consideration respondent no.8 – Manoharan Quarry has been granted 'Consent to Operate' by the Board.

Since the said order of 'Consent to Operate' has not been granted at the time of filing the instant civil appeal, the same could not be assailed by the appellant. It is pointed out, that quarrying operation being conducted by respondent no.8 are causing serious pollution which have adverse effect on the appellant. He therefore seeks liberty from this Court to assail the order of 'Consent to Operate' granting in favour of respondent no.8, by

initiating proceedings as may be available to the appellant, in accordance with law. Leave and liberty sought is granted.”

9. The applicant, even though raises objection in respect of the quarry of the 8th respondent in respect of which final order has been passed by this Tribunal, as stated above in Application No.222 of 2014 which has been finally decided by the Hon'ble Apex Court, giving liberty to the applicant to challenge the 'consent to operate' granted to the 8th respondent, has chosen to include respondents 9 to 11 who are stated to be having their neighbouring quarry sites to have binding effect on them also. With the above averments, the applicant has filed the application with the prayer, as state above.

10. Mr. Niranjana Rajagopalan, learned counsel appearing for the applicant, while admitting about the earlier order passed by this Tribunal which has become final except in respect of 'consent to operate' to be granted in favour of the 8th respondent which can be assailed before the learned Appellate Authority created under Water Act and Act Air respectively, would submit that the 8th respondent, in respect of Survey No.113 has not made physical fencing of the leased area and therefore if appropriate fencing is made within the leased area by the respondent, the impact will be minimised to the neighbours. It was in those circumstance, the Tribunal has directed the respondents 4 to 6 to produce the lease deed granted to the 8th respondent and also directed the learned counsel appearing for the Board to find out as to whether physical fencing of the leased area has been effected. In the order dated 6.10.2016 the Tribunal has directed the Southern Regional Office of the MoEF & CC viz., the 3rd respondent to file status report, after making spot inspection. In our further order dated 21.11.2016 we directed that while spot inspection is made by

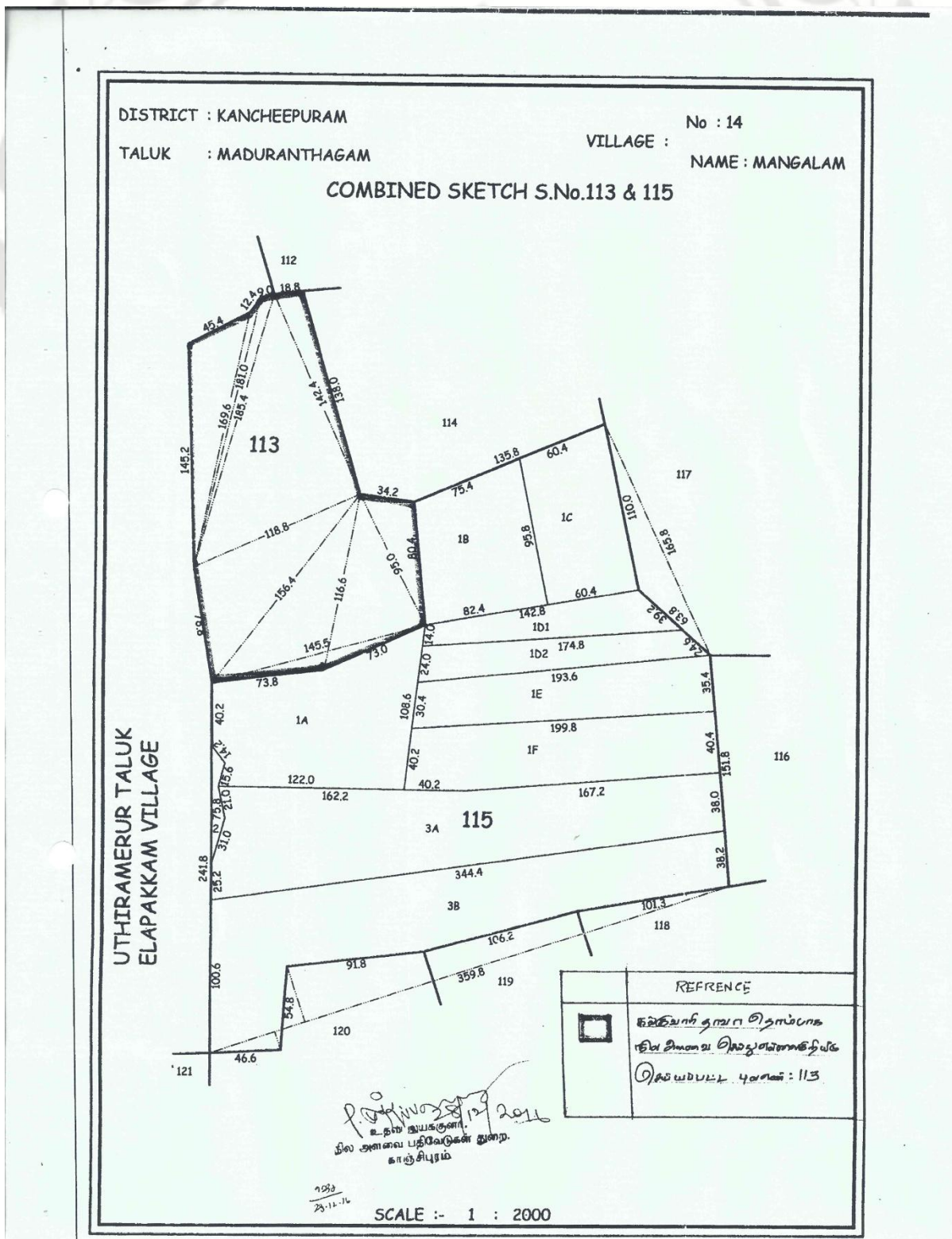
the 3rd respondent for demarcation, the Tahsildar shall assist the 5th respondent – the Assistant Director of Geology and Mining, Kancheepuram along with revenue records to enable the 3rd respondent to complete the process. We have also directed that at the time of inspection, the parties shall be intimated to be present. Since the inspection was not carried out, in our further order dated 7.12.2016, we directed the MoEF & CC through their Regional Office represented by Scientist C – Grade to conduct inspection on 19.12.2016 at 11.00 AM stating that during the time of inspection, the Assistant Director of Geology and Mining, Kancheepuram as well as the Senior Officer from the office of the District Collector, Kancheepuram and the District Environmental Engineer of the Tamil Nadu Pollution Control Board, Padappai must be present along with records for the purpose of demarcation of the area leased out to the 8th respondent and the Tribunal has also directed the applicant and the 8th respondent to be present at the time of inspection. We also directed that if there is a finding that the 8th respondent has quarried beyond the area which is leased out, it will be open to the MoEF & CC and SEIAA to pass appropriate order under Section 5 of the Environment (Protection) Act, 1986.

11. On 6.1.2017 a Joint Inspection Report was filed by the respondents 3 and 7 for which the learned counsel appearing for the applicant has filed objection. In the Joint Inspection Report it is stated that the Land Survey Report along with demarcation of S.F.No.113 received from the District Collector, Kancheepuram was submitted by the Assistant Director of Survey. The Land Survey Report is as follows:

“As ordered by the District Collector, Kancheepuram vide letter No.268/Q2/2014 dated 08.12.2016 the Assistant Director of

Survey Kancheepuram myself reported before Dr. S.V. Reddy, Scientist "F" Regional Office, MoEF and Dr.N. Somasundaram, Assistant Engineer, SEIAA, Tamil Nadu on 19.12.2016 at 11.00 AM in S.F.No.113 of Mangalam Village of Maduranthagam Taluk. The roughstone quarry in S.F.No.113 was identified by the Tahsildar, Maduranthagam. The stone quarry situated in S.F.No.113 was demarcated by me before the officials from MoEF and SEIAA, Deputy Director of Geology and Mining, Kancheepuram and representatives of Applicant and Respondent No.8. The stone quarry in S.F.No.113 was entirely surveyed and demarcated to the satisfaction of the above said officials, applicant's and respondent's representatives."

12. The said Land Survey Report also contains the combined sketch of Survey Nos.113 and 115 which is as follows:



13. In the Inspection Report dated 22.12.2016 it is stated that S.F.No.113 relating to the rough stone quarry lease granted to Mr. Manohran is an extent of 2.77.0 ha and it is stated that as per the demarcation by the Assistant Director of Survey there is no stone quarry operation found beyond the lease granted in the extent of 2.77.0 ha and it was shown to the officials and representatives of the applicant. For proper appreciation, it is relevant to extract the Inspection Report which is as follows:

“As ordered by the National Green Tribunal (SZ) in Application No.212/2016 dated 07.12.2016 myself along with Special Deputy Tahsildar (Mines) were reported before Dr.S.V. Reddy Scientist “F” Regional Office, MoEF and Dr.N. Somasundaram, Assistant Engineer, SEIAA, Tamil Nadu on 19.12.2016 at 11.00 AM in S.F.No.113 of Mangalam Village in Maduranthagam Taluk. The rough stone quarry lease granted to Thiru. Manoharan in S.F.No.113 over an extent of 2.77.0 hecets. of patta land in Mangalam Village, Maduranthagam Taluk was identified by the Tahsildar, Maduranthagam. The entire S.F.No.113 was surveyed and demarcated by the Assistant Director of Survey, Kancheepuram, before the officials from MoEF, SEIAA and the Tamil Nadu Pollution Control Board and the applicant’s representatives and the representative of respondent 8 in Application No.212/2016. As per the demarcation of S.F.No.113 by the Assistant Director of Survey there is no stone quarry operation found beyond the lease granted extent of 2.77.0 hecets, and is shown before the above said officials and representatives of the applicant and respondent – 8 in Application No.212/2016.”

14. Ultimately, in the Joint Inspection Report, the 3rd and 7th respondents have stated as follows:

“It is humbly submitted that as per the survey conducted and report submitted by the 6th respondent, it is clear that there is no violation done in the mining activity or any kind of mining encroached activity observed by the 6th respondent, than the demarcated and allocated area as per the records. Hence, the 7th respondent submits that comparing the report submitted by the 6th respondent and Environmental Clearance (EC) granted by the 7th respondent, there is no such violation observed and reported the same to the 3rd respondent herein.

Hence, we hereby humbly submit, considering all the above reports by the 2nd, 6th and 7th respondents, we came to the conclusion that, there is no such violation in the mining activity by the 8th respondent as alleged by the applicant herein and we kindly request the Hon'ble Tribunal to pass suitable order in accordance with law."

15. Therefore, it is clear that the leased land for which EC has been granted to the 8th respondent in S.F.No.113 to an extent of 2.77.0 ha, has been demarcated in the presence of the applicant as well as the 8th respondent in the joint inspection conducted by the 3rd and 7th respondents. Even though the applicant has chosen to file the objection, it is admitted that the Assistant of the applicant and Junior Advocate of the counsel were present, it is stated that the entire exercise was farce. We are unable to accept the stand taken by the applicant not only because the applicant has chosen to make objection regarding the quarry of 8th respondent and all other quarries in the surrounding area, but he has also chosen to state that certain posts between the two survey numbers have been erected to show that excess quarrying is effected. He has also stated that there was no wire fencing done on the date of inspection. It is unfortunate that the applicant has not chosen to raise the objection at the time of joint inspection but has chosen to sign the proceeding through his representative as well as the learned counsel.

16. In these circumstances and in the light of the Joint Inspection report filed by respondents 3 and 7 dated 22.12.2016 and filed on 6.1.2017, we have no doubt that clear demarcation has been made in respect of the quarrying site of the leased area given to the 8th respondent and therefore there is no merit in the application and accordingly the application stands dismissed.

17. Even though we find no merit in the application, as the applicant has raised an issue by way of objection to the Inspection Report that no fencing has taken place and taking note of the fact that the parties have started to demarcate the exact area of lease granted in favour of the 8th respondent in S.F.No.113, we are of the considered view that the 5th respondent - Assistant Director of Geology and Mines shall make necessary arrangement in making proper physical fencing, based on the demarcation made in the Joint Inspection Report and see that the 8th respondent does not cross the fencing and carry on the quarrying operation strictly within the leased area and subject to the conditions imposed not only in the EC but also in the lease and license granted by the authorities competent in law. The Board shall also closely monitor along with the department of Geology in this regard, apart from directing the 8th respondent to maintain ambient air quality within the prescribed limit and appropriate monitoring shall take place to ensure the compliance of various terms and conditions, as stated supra once in three months and during those inspections, the applicant shall be issued notice along with the 8th respondent to be present.

With the above observation, the application stands dismissed. There shall be no order as to cost.

Justice Dr.P.Jyothimani

Judicial Member

Shri P.S.Rao

Expert Member



NGT