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Court : Chennai

Decided On : Jun-29-2007

Reported in : (2007)5MLJ54

Judge : S.J. Mukhopadhaya and ;K. Suguna, JJ.

Acts : Tamil Nadu Panchayats Act, 1958; Tamil Nadu Panchayats (Amendment) Act, 1994 - Sections 131 and 131(1)

Appeal No. : W.P. No. 9566 of 1995

Appellant : M. Krishnan

Respondent : State of Tamil Nadu Rep. by Its Secretary and Commissioner to the Department of Local Administration

Advocate for Def. : D. Srinivasan, AGP for RR-1 to 4 and ;G. Jeremiah, Adv. for R-8

Advocate for Pet/Ap. : A.V. Arun, Adv. for ;S. Subbiah, Adv.

Judgement :

ORDER

S.J. Mukhopadhaya J.

1. This writ petition, in public interest, was preferred by the petitioner for direction on respondents 1 to 5 to take action against the respondents 6 to 8 for running illegal stone crushing units at Kulasekaram Village and to initiate prosecution against them.

2. The case of the petitioner was that respondents 6 to 8 have illegally installed three stone crushing units in different places and are emanating dust from the respective crushers causing health hazards to the residents of the neighbouring area and by the Tamil Nadu Panchayats Act 1958, as substituted vide Tamil Nadu Panchayats Act, 1994, though it was mandatory to obtain licence from the panchayat for running factory or workshop in the vicinity, but they are running the stone crushers without such licence.

3. A reference has been made to letter No. D.Dis.135/87 (M&M;) dated 25th Feb., 1987, written by the Collector, Kanyakumari District to the Commissioner, Agastheeswaram Panchayat Union. The complaint of the petitioner having been noticed by the Collector, the matter was inspected by the Assistant Geologist of his office and grievance was found to be genuine. The Collector enquired regarding permission of panchayat if taken for installation of stone crushers. Opinion was given that no such permission was obtained. Request was made to issue notice to the owners and to take steps for removal of such illegal crushers.

4. In the present case, interim order of injunction was passed on 21st July, 1995. The Court also directed the Tahsildar, Agastheeswaram Taluk, Nagercoil, to personally visit the crushing units along with officers of the Pollution Control Board and to submit report regarding their location, licence, etc. In the report submitted by the Tahsildar, Agastheeswaram Taluk, Nagercoil, vide letter dated 12th Oct., 2006, the following irregularity have been highlighted:

As directed by the High Court, Chennai in its W.P. 9566 of 1995, I have inspected the crusher units in Elankamanipuram in Kulasekherapuram Village along with the Assistant Director Pollution Control Board, Nagercoil.

Two crusher units are functioning at Elankamanipuram in Kulasekharapuram Village. They are:

1. DEEPAK BLUE METAL owned by Tmt.Geetha Davi W/o David Sundar Singh. It is located in S.No. 186/2A of Kulasekharapuram Village. She has obtained license from Kulasekharapuram Panchayat. The validity period it up to 31.03.2007. Pollution Control Board has also given consent order valid upto 30.9.2007. The R.C.No. 333007213. The unit is in operation. There are habitations at a distance of 100 mts from the unit.

2. The Crusher Unit owned by Thiru.Ramasamy. It is located in S.No.186/2B of Kulasekharapuram Village. It is ascertained from the panchayat that he has not obtained any licence to run the unit. The Pollution Control Board has also not issued any concerned order. The unit was not functioning at the time of my visit.

There are habitation at a distance of 100 mts from the unit

3. The crush unit M/s. KRISHNA BLUE METAL owned by Tmt.Krishnammal is located in S.No. 84/2 of Thamaraikulam Village. She has not obtained any licence from the North Thamaraikulam Panchayat. She is running the unit on the strength of an injunction in I.A.1288 of 2002 in suit O.S. 635 of 2002 of Principal District Munsif Court, Nagercoil. Now it is learnt that the suit is decreed against her and she tiled appeal AS 14 of 2006 in the Higher Court, Nagercoil. The Pollution Control Board has given consent order valid upto 31.03.2007. The unit is functioning. There are habitations at a distance of 130 mts from the unit.

The fact is submitted before the Honourable High Court, Chennai.

A sketch showing the location of 3 crusher and habitations nearby are enclosed for perusal.

Sd/... Tahsildar

Agasteeswaram

5. On the other hand, the 4th respondent, Commissioner, Agasteeswaram Panchayat Union has stated that the 6th and 7th respondents were granted licence vide Resolution Nos. 64 and 67 dated 25th May, 1988 and 24th Aug., 1984 respectively, which was renewed upto the year 1993/1995. Further renewal on the

basis of the consent of the Pollution Control Board was not made.

The 5th respondent Electricity Board, has stated that the 8th respondent has not even applied for electric power service connection from the 5th respondent.

The 7th respondent stated that four stone crushing units are existing in the area, but alleged that one of the crushing units, with an ulterior motive to stop business activities of the other three units, has got the writ petition preferred through the petitioner. The said 4th unit is also running crusher illegally.

Similar plea has been taken by the 8th respondent that at the instance of another crushing unit, viz., Kailash Blue Metals, this application has been preferred. The 8th respondent has a licenced unit at S. No. 86/2 in Thamaraikulam Village, but it is not functioning. Instead another illegal unit has been established in survey No. 86/1, though it is a poramboke land. It is alleged that the petitioner has purposefully omitted to implead the owner of Kailash Blue Metals. The location of unit run by the 8th respondent is at survey No. 84/2 in Vadukku Thamaraikulam Village Panchayat and not within the Kulasekaram Panchayat. According to the 8th respondent, no pollution or health hazard is being caused by it and its name is not appearing in the list of 14 entries causing pollution, circulated vide G.O. Ms. No. 271 dated 20th Feb., 1987, issued by the Health and Family Welfare Department of the State. It further appears that a suit in O.S. No. 938/88 was instituted by one T. Mark, S/o P. Daniel against respondents 6 and 7, which was dismissed.

6. From the report submitted by the Tahsildar it appears that after the order of injunction was passed by this Court, the 8th respondent preferred a suit, O.S. No. 635/02 on the file of the Principal District Court, Nagercoil. From the judgment dated 2nd Dec., 2005, enclosed with the additional typed set, it appears that the suit was preferred for permanent injunction restraining the defendants, including the President North Thamaraikulam Special Grade Village Panchayat from disturbing or stopping the plaintiffs stone crushing unit situated in R.s. No. 84/2, Thamaraikulam Village. Initially an interim order of injunction was passed based on which a licence was obtained by the 8th respondent. Having noticed the aforesaid fact, the suit was subsequently dismissed with the following observation:

8. Neither the plaintiff, nor the defendants have produced the original writ petition order or the interim order passed in it. However, the contempt application makes it clear that the order restrains the plaintiff from running a crusher unit without obtaining a valid licence. There is no ban on running the crusher unit after obtaining licence. Plaintiff's exhibits also reveals that plaintiff has fulfilled all the formalities for granting of licence. But the order of the High Court has been misconstrued by the officials. As per Ex.B1, the President of Thamaraikulam Panchayat has declined to renew the licence and she has asked the plaintiff to stop the functioning of the factory immediately. This order is based on the letter of the B.D.O. dated 23.04.2002. This first notice has been received by the plaintiff as early as 9.5.2000. This is before suit. A second notice has been issued on 26.7.2002 which is also before suit. Against this order, the plaintiff has not preferred any appeal to the Appellate Authority. Exs.B1 and B4 are administrative orders and unless the appeal proceedings are exhausted the suit is not maintainable before a civil court.

Appeal in A.S. No. 14/06 has been preferred by the 8th respondent before the appellate court at Nagercoil, but no order of injunction has been passed therein. The Pollution Control Board, earlier, gave consent in view of the order of the court below, which remained valid upto 31st March, 2007, but, thereafter, no consent has been given.

7. Sub-section (1) to Section 131 of the Tamil Nadu Panchayats Act, 1994 deals with prohibition to do certain works without the permission of the village panchayat, which reads as follows:

(1) No person shall, except as permitted by rules made under this Act and except in accordance with the conditions imposed by any licence made requisite by such rules -

(a) build any wall or erect any fence or other obstruction or projection or make any encroachment whatsoever, whether permanent or temporary, in or over any public road or any property vested in or belonging to or regulated or owned by, a village panchayat or panchayat union council;

(b) make any hold or deposit any matter in or upon any public road or any property vested in or belonging to or regulated or owned by, a village panchayat or panchayat union council;

(c) work a quarry in or remove stone, earth or other material from any place within twenty metres of a public road or of other immovable property vesting in or belonging to a village panchayat or panchayat union council provided that nothing in this clause shall be deemed to apply to any work which, in the opinion of the Inspector, is done in connection with a bona fide agricultural operation;

8. There is also a guideline issued by the Pollution Control Board vide D.P. Ms. No. 142 dated 10th Oct., 1986, as quoted hereunder:

Stone crushing units generate considerable dust.

Rock and crushed stone products are loosened by drilling and blasting them from their deposit beds. Further processing includes crushing reminding and removal of fines. These operation cause considerable dust pollution.

The Central Board for the prevention and control of Water Pollution, New Delhi had conducted an ambient Air quality survey in and around various stone crushing units in Haryana State and suggested the following norms as remedial measures, as a first step for the prevention of Aid Pollution problems due to stone crushers.

1. No stone crushers should be located within two kilometre from any National and State Highways.
2. The distance between two stone crushers should be four kilometre to avoid dust polluttional influence of one over the other.
3. If for other pressing reasons more than one stone crushers are required to come in existence they should be as much close to each other as may be permitted without causing difficulty in operation. In such a situation the source would be recognised a collective one and the distance is to be estimated accordingly.

The matter was placed before the Board at the special meeting held on 2.6.86. The Board examined the matter carefully and decided to adopt the norms as per Appendix for new stone crushing units in the State.

Sd/. Member Secretary(i/c)

This apart it is not open to any person to run any factory without licence under the Factories Act, hut it appears that a number of stone crushing units and factories are being run without valid licence or approval of the Pollution Control Board.

9. Having regard to the facts and circumstances and in view of the rival contentions, we are of the opinion that the District Collector and the concerned officer of the Pollution Control Board as also the Commissioner of the Panchayat Union should take steps for closing the stone crushing units running illegally without valid licence, without prior approval of the Pollution Control Board and which are causing health hazards to the public in general. They will verify the functioning of all such units within the District of Kanyakumari, particularly the crushing units run by respondents 6, 7 and 8 as also Kailash Blue Metals and if so required may pass appropriate order within three months after notice to the concerned owner/unit. The Pollution Control Board will act in accordance with law and co-operate with the District Collector and the Commissioner of the Panchayat Union.

The writ petition is disposed of with the aforesaid observations and directions. There shall be no order as to costs.

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