

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Application No. 131 of 2015 (SZ)

IN THE MATTER OF:

D. Gopinath,
No.56, Thottakkara Street,
Arani, Thiruvallur District- 601 101



.. Applicant

AND

- 1) The District Collector,
Thiruvallur District,
District Collectorate,
Thiruvallur.
- 2) Assistant Director of Mines and Minerals,
District Head Quarters,
Thiruvallur District,
Thiruvallur.
- 3) Executive Engineer,
Public Works Department (Arani Riverbed Block),
Ezhilagam, Chepauk,
Chennai-600 005.

.. Respondent(s)

Counsel appearing for the Applicant:

M/s. Arul Manickam and E.B. Suresh Prakash

Counsel appearing for the Respondents:

**M/s. M.K. Subramanian and
P. Velmani for R-1 and R-2
M/s. Abdul Saleem, S.Saravanan and
Mrs. Vidyalakshmi Vipin for R-3**

ORDER

PRESENT:

HON'BLE SHRI JUSTICE DR. P. JYOTHIMANI, JUDICIAL MEMBER

HON'BLE SHRI P.S. RAO, EXPERT MEMBER

Dated 9th August, 2016

Whether the Judgement is allowed to be published on the Internet – Yes/No

Whether the Judgement is to be published in the All India NGT Reporter – Yes/No

We have heard the learned counsel for the applicant as well as the respondents.

The applicant, who is a resident of Arani Village, which is within the revenue District of Thiruvallur, has filed the present application to restrain the 1st respondent from granting permission to any person or group of persons or company to remove 'savudu' from Maduravasal Lake for commercial purposes in future and also to direct the respondents to assess the damage caused to the lake by the excessive excavation of soil by quarry operator.

The case of the applicant is that the 1st respondent has been granting permission to the private parties based on the recommendations of the 2nd and 3rd respondents for quarrying savudu soil which is a fertile sediment deposited on the tank / lake bed. Further, it is the case of the applicant that the 1st respondent has granted permission to a private party on 06.06.2015 to remove savudu in Maduravasal Lake between 08.06.2015 to 22.07.2015, based on the recommendations of the 2nd and 3rd respondents. The 3rd party, who has obtained the permission, has not only removed the soil beyond the prescribed depth from the Maduravasal Lake to a very large extent, but also from the adjoining area illegally going beyond the limits and the respondents have not taken any action against him. Such conduct is against the Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959, which contemplates prior notification by the

District Collector so as to enable the people living in the local area to get permission to remove savudu free of cost. By the conduct of the District Collector, in choosing persons based on the recommendations, not only there is violation of Rule 12, but also in the name of desilting, such 3rd parties have started indiscriminately digging the area by quarrying sand / soil more than the permissible limit, which has caused environmental hazards and fertility of the soil is being affected, apart from the restriction of porous nature of tank bed and free flow of water. Therefore, the applicant has prayed for the above said prayer as elicited.

The 3rd respondent, the Executive Engineer, Public Works Department (PWD) in his reply dated 23.09.2015, has stated that Maduravasal Lake is one of the storage lakes located in Maduravasal Village, Uthukottai Taulk, Thiruvallur District. Necessary desilting of the lake improves the storage capacity and useful for agricultural activities and rearing of live stock in surrounding villages. According to the 3rd respondent, the licence holder of the Maduravasal quarry excavated only in the approved area as per the terms and conditions of the permission granted by the District Collector and the respondent has not found any illegal excavation in the site. It is stated that the PWD officials on receipt of the application from the applicant have made an inspection on 29.06.2015 and during the site inspection it was found that excavation made by the permitted quarry operator in the approved area, is within the limits prescribed.

After hearing the learned counsel for the applicant on an earlier occasion, that such permission has been granted by the District Collector to 3rd parties in a mechanical manner based on the recommendations of PWD though the same is not permissible under the Tamil Nadu Minor Mineral Concession Rules, 1959, we have directed the 1st respondent District Collector to produce the original record relating to the grant of permission to the private persons. Accordingly, the learned counsel appearing for the 1st respondent has produced the copies of the original records. The record shows that one, Mr. B. Vetrivel Murugan has been granted permission for removal of 4837 lorry loads or 29025 cubic metre of savudu from Survey No. 377/2 of PWD tank for an extent of 215m in length, 150m in breadth and 0.90m depth in Maduravasal Village on collection of

necessary seigniorage fees. The record shows that said permission has been granted to the said Vetrivel Murugan in accordance with Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959 and that permission was granted for a period of 45 days.

The record further shows that the said Vetrivel Murugan has obtained an Environmental Clearance (EC) from SEIAA on 01.04.2015 for quarrying savudu deposit in Survey No. 377/2 (P) of Maduravasal Village, Uthukottai Taulk, Thiruvallur District with the least extent of 3.22.50 hectares. Eventhough the period of EC has not been mentioned in the EC granted by SEIAA, admittedly, the lease granted to the said Vetrivel Murugan has expired on 22.07.2015 and from that date onwards, nobody has been permitted to remove the silt / soil.

In the subsequent affidavit filed by the Executive Engineer dated 08.07.2016, the respondents have raised maintainability of the application on the ground that no substantial question relating to the environment arises for consideration in this case. That apart, while denying the allegation that by mechanically following the recommendations of the 2nd and 3rd respondents, the 3rd party has been given permission. The total number of loads approved by the District Collector, Thiruvallur was 4837 while the quantity of savudu / soil excavated by the operator was 4741 loads which is within the prescribed limit and according to the Department, there was no damage to Maduravasal Lake during the quarry operation. As submitted by the learned counsel appearing for the applicant, when once it is admitted by the respondents that for the purpose of removal of sand etc., Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959, has to be followed, it is necessary to refer to the said rule.

“ 12. Removal of sand etc., from lands and tanks in-charge of some departments.-

(1) The preceding Rules, however, do not govern the removal of sand, etc., from works and lands in-charge of the Public Works Departments and tanks in-charge of Revenue Department.

[(2) The public may be allowed to quarry free of charge for *bona fide* domestic of agricultural purposes sand, earth or silt from the beds of tanks under the control of the Public Works Departments or Revenue Department which are notified by the Collector under this Rule without obtaining permits for quarrying,

provided that the dwelling place or agricultural land of the person concerned and the quarrying place shall be in the same revenue village or in the adjoining revenue village. Quarrying for other *bona fide* domestic or agricultural purposes shall be subject to the previous permission being obtained from the District Collector concerned and to the payment of seigniorage fee for the quantity of the mineral sought to be removed at the rates specified, from time to time, in **Appendix-II** to these Rules. Any removal of mineral from these lands shall be subject to the restrictions mentioned below:-

(i) Pits shall be at a distance of atleast twice the height of the bund from the toe of the bund and they shall not be more than one metre in depth (the depth shall be less, if pits one metre deep are likely to expose *porous strata*);

(ii) Earth shall not be carted along the tank bund unless the bund is a recognised road or cart-track;

(iii) Bunds shall not be cut to enable to pass;

(iv) Silt removed not to be stacked on tank beds, sluice or any other masonry works of the tanks and causeways or slopes of bunds; and

(v) Carts shall not touch any portion of the revetment, sluice or any masonry works of the tanks and cause damage to them]

(3) Before issuing the notification mentioned in sub-rule (2), the Collector shall consult the Executive Engineer concerned in respect of tanks in-charge of Public Works Department.

(4) The village officer shall, every year, report to the Tahsildar or Deputy Tahsildar concerned, the tanks in-charge of both the Public Works Department and Revenue Department from which further removal of sand, earth or silt be prohibited temporarily. They shall also send a report about the tank in-charge of the Revenue Department from which such removal may be permitted again. The Tahsildar or Deputy Tahsildar shall scrutinise the lists and submit his proposals to the Collector. On receipt of the reports from the Tahsildar or Deputy Tahsildar, the Collector shall, every year, issue a revised notification if he considers the revision necessary. Extracts from the revised notification shall be sent to the Executive Engineers whenever tanks in-charge of Public Works Department are excluded from the list of tanks from which removal of sand, earth or silt had been permitted.”

The above Rule takes care of environmental issues and makes it abundantly clear that before granting any permission for the purpose of removal of sand, earth or silt from the tank beds which come under the control of PWD or Revenue Department, the Collector concerned has to issue a notification and thereafter permit the persons by giving preference to the local residents for the removal of sand, earth or silt free of cost to be used for *bona fide* domestic and agricultural purposes. Therefore, the intent and

the purport of the Rule appears to give preferential treatment to the persons living in the villages to enable them to remove silt free of cost to be used for the agricultural purposes.

On going through the records, it is clearly seen that the District Collector, Thiruvallur has given a clear go-by to the provisions of Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959. Eventhough following of such procedure may not be a matter of environmental issue, we are sure that by allowing such indiscriminate removal of sand, earth or silt, the ecological character of the area is going to be affected, which is definitely an environmental hazard. The photographs filed by the applicant clearly show that removing of soil, earth or silt to a large extent appears to have been done in the tank beds, thereby creating deep and irregular pits and such pits not only affect the *porous strata* and prevent percolation and free flow of water but also result in endangering the human and animal life. The Sub-Rule 2 of Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959 imposes various conditions which are restrictive in nature and makes it very clear that the removal of silt or soil or cannot be more than 1 metre in depth. In fact, this is conformed in the EC granted by SEIAA, which gives permission for removal of silt only to a depth of 0.90 metre. On the other hand, a perusal of the photographs show that the quarrying has been effected to a very large extent creating large number of deep pits of 2-3 mt. Depth. Eventhough the lease granted in favour of Vetrivel Murugan has expired, we are of the view that the respondents shall further investigate about the conduct of the said Vetrivel Murugan and find out that if he has exceeded the limit prescribed in the permission as well as EC, appropriate action shall be taken against the person by imposing cost for the purpose of restoration of the place to its original state.

We also make it clear that in future if the District Collector decides to give permission for removal of sand, earth or silt in the tank bed, he shall scrupulously follow Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959 in true spirit giving pre-emption right to the persons living in the revenue village concerned to enable them to get the benefit of the said rules.

We direct that a copy of this order to be sent to the Secretary, PWD, Government of Tamil Nadu to communicate to all the District Collectors in the State with a direction that desilting and the removal of sand, earth or silt from the tank bed shall be effected only in accordance with Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959.

With the above direction, the application stands closed. There shall be no order as to costs.

Justice Dr.P. Jyothimani
Judicial Member

P.S. Rao
Expert Member

NGT