

CASE NO.:
Appeal (civil) 411 of 2007

PETITIONER:
Parthiban Blue Metal Etc.

RESPONDENT:
The Member Secy. T.N. Polln.Cont. Bd. & Ors.

DATE OF JUDGMENT: 01/02/2007

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) Nos. 19774-19782 of 2005)

Dr. ARIJIT PASAYAT, J.

Leave granted.

In these appeals challenge is to the order passed by a Division Bench of the Madras High Court dismissing the writ petitions filed by the appellants.

Background facts as projected by the appellants are as follows:

Various stone crushing units were being operated by the appellants in Trisoolam Village, Kanjipuram District, Tamil Nadu. According to the appellants they had obtained "no objection certificate" from the Tehsildar, Divisional Fire Officer and the Panchayat Union for the purpose of running the units. After Water (Prevention and Control of Pollution) Act, 1974 (in short the 'Water Act') and the Air (Prevention and Control of Pollution) Act, 1981 (in short the 'Air Act') came into force appellants applied for consent from the concerned authorities under these Acts. Considering the applications the District Environmental Engineer called for some particulars and appellants were required to remit a sum of Rs.1750/- each towards consent fee under the Acts, which was also paid. Appellants were granted permission by the Commissioner, Panchayat Union for construction of a shed and installation of 25 HP Electric Motor to run the units and as per the approved plan the shed was constructed and business was being carried out. The Principal Secretary, Tamil Nadu Pollution Control Board (in short the 'Board') issued notice to each of the appellants requiring shifting to alternative sites since the units were located at about 325 meters from the residential colony.

Appellants gave their reply stating that the units were operating since 1972 and in fact they were located in the non-urban zone. Some writ petitions were filed by the Krishna Nagar Welfare Association and Kennedy Valley Welfare Association. Since there were various reports, which were somewhat contradictory to each other, Civil Appeal No. 6742 of 2001 and W.P. (C) 2594 of 1999 were disposed of by this Court with certain directions. The Industries Department of the State Government issued G.O.Ms. No. 13 dated 22.1.2002 wherein it was declared as follows:

"In the order first read above, in adherence to the Supreme Court Order in C.A. No. 10732/95, the Government issued amendment to Rule 36(1) of Tamil Nadu Minor Mineral Concession Rules, 1959 to the effect that no quarrying shall be done within a radial distance of 500 metres from inhabited site. The position was also

informed to Supreme Court of India in connection with S.L.P.(C) No. 13564/98."

The District Environmental Officer issued a notice to each of the appellant observing that their units were located within 500 meters from the residential area and therefore, penal action was called for. A Writ Petition (Writ Petition No. 35855 of 2003) was filed before the High Court alleging pollution because of the activities of the stone crushing units. The appellants challenged the notices/orders issued by the Board. The High Court dismissed the same holding that the action initiated by the Board was justified.

During the hearing of the cases on 13.11.2006, the following order was passed:

"Our attention has been drawn to the notice dated 11 March, 1994 issued to one of the petitioners, M/s. Rathnam Blue Metals, which states that the units is located at about 325 meters from Krishna Nagar against the limit of 500 meters from residential area. The contention of the petitioners is that now the limit has been reduced to 300 meters and, therefore, their unit is located within the permissible distance. It is further submitted that all the units are in adjoining sites and are beyond the distance of 300 meters from residential area. The respondent-Tamil Nadu Pollution Control Board is directed to verify the factual scenario and file an affidavit within four weeks."

An affidavit had been filed on behalf of the respondent Nos.1 & 2 Board annexing a map and giving the following details.

Name of the Nine Stone Crushing Units and its Distance from Approved Habitation:

Sl.No.

NAME

DISTANCE

1.

PARTHIBAN BLUE METAL

330 M

2.

GEETHA BLUE METAL

352 M

3.

VETRIVELAN BLUE METAL

379 M

4.

RATHNA BLUE METAL

386 M

5.

LOGANAYAKI BLUE METAL

376 M

6.

STAR BLUE METAL

442 M

7.

ADHILAKSHMI BLUE METAL

447 M

8.

VASUPEVAN BLUE METAL

454 M

9.

SIVA BLUE METAL

510 M

We have heard learned counsel for the parties. It appears that the factual position was not examined in detail by the High Court. The affidavit filed by respondent Nos.1 & 2 alongwith the map before this Court throw some light on the controversy. In the circumstances, we think it appropriate to remit the matter to the High Court to consider the effect of the affidavit and the map. It goes without saying that the parties shall be permitted to place materials in support of their irrespective stand so that the High Court can consider the issues involved. We make it clear that we have not expressed any opinion on the merit. The appeals are accordingly disposed of without any orders as to costs.

JUDIS