

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23/02/2011

**CORAM: THE HONOURABLE MR.JUSTICE N.PAUL VASANTHAKUMAR
and
THE HONOURABLE MR.JUSTICE R.SUBBIAH**

Writ Petition (MD)No.2483 of 2008

1. A.Mahaboob Batcha
2. S.Bhuvanewari
3. G.Pandi ... Petitioners

vs

1. Union of India,
represented by its Secretary,
Ministry of Environment and Forests,
New Delhi.
2. State of Tamil Nadu,
Rep by the Chief Secretary,
Fort St., George,
Chennai.
3. The Director General,
Archaeological Survey of India,
Janpath,
New Delhi.
4. The Superintendent of Archaeology,
Archaeological Survey of India,
Chennai Circle,
Fort St., George,
Chennai-9.
5. The Senior Consultant Assistant,
Archaeological Survey of India,
Mahal Building,
Sivan Kovil Street,
Thirumayam - 622 507.
6. The District Collector,
Madurai District,
Madurai.
7. TAMIN,

represented by its
Chairman,
Managing Director,
No.31, Kamarajar Salai,
TWAD House,
Chepauk,
Post Box No.2961, Chennai.

8. The President,
Keezhavazhavu Panchayat,
Melur Taluk,
Madurai District.

... Respondents

PRAYER

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the first respondent to protect the Ancient Monument namely Jain abode at Keezhavazhavu and the hillock from the extinction and to ensure proper protection of the abode.

!For Petitioner	... Mr.T.Lajapathi Roy
^For Respondents 3-5	... Mr.M.K.Ramakrishnan
For 1st Respondent	... Mr.K.K.Senthilvelan, ASGI.
For Respondents 2&6	... Mr.R.Janakiramulu, Special Government Pleader.
For 7th Respondent	... Mrs.Jessi Jeeva Priya
For 8th Respondent	... Mr.R.Sundar

:ORDER

R.SUBBIAH, J

This writ petition is filed as public interest litigation to issue a writ of Mandamus, to direct the first respondent to protect the Ancient Monument namely Jain abode at Keezhavazhavu and the hillock from the extinction and to ensure proper protection of the abode.

2. This writ petition is filed as public interest litigation contending that the Keezhavazhavu Jain abode is a protected monument under the Ancient Monuments and Archaeological Sites and Remains Act, 1958. The ancient monument in Keezhavazhu village namely Jain abode of 2nd century A.d with Jain relief and frescoes of 9th Century A.D had important Tamil Brahmi inscription The tamil Brahmi inscriptions are of historic importance in the evolution of Tamil Language, Tamil Brahmi or Tamizhi. The sixth respondent granted lease to the seventh respondent for quarrying minerals to an extent of 8.60 hectares approximately 21.24 acres. On 30.11.2007, the Keezhavazhavu Panchayat Council had passed a resolution to prevent quarrying at the Jain abode in Keezhavazhavu and on 14.01.2008, the villages of Keezhavazhavu had made a representation to the Chief Minister

of Tamil Nadu. The Deputy Director of Minerals sent a reply stating that 300 metres safety distance would be maintained from the ancient monument while carrying out the quarrying operations. The third respondent also made a representation to stop the quarrying of Keezhavazhavu Jain monument in order to protect the Jain abode and Brahmi inscriptions. Since the representations made by the petitioner did not fetch any result, the present writ petition has been filed.

3. Pending the writ petition, this Court by order dated 05.01.2009 appointed Mr.M.Ajmal Khan and Mr.K.Srinivasan, learned counsel as Advocate Commissioners to inspect the site and file their reports.

4. The Advocate Commissioners who have inspected the site filed their reports stating that the draft notification issued in G.O.Ms.No.424, Home Department (Education) dated 19.03.1921 which was confirmed by notification No.76, dated 14.07.1921 would show the entire area measuring to an extent of 51.77 acres comprising in survey No.226/1 Keezhavazhu village has been declared in the notification as protected monument and hence the same should be declared as protected area. Further, in the report, it has been stated that the seventh respondent TAMIN had undertaken that they were carrying on the quarrying operations within the area of 8.60.5 hectares (21.275 Acres) on the eastern side of the monument in S.No.226/1 and the blasting operation is said to be undertaken by them scientifically using FRACT AG, a chemical used for demolition and splitting of rock formations. It is claimed by the officials of the seventh respondent that the blasting operation is being done without emitting any noise and the same will not in any way affect the monument which is situated 300 metres away from the blasting/quarrying operations. It is further stated in the report that when the Commissioners posed a question to the officials of TAMIN that whether there would be any damage to the monument after a decade or so, if the blasting operation is carried on continuously for over years together, they were not in a position to answer their query.

5. The 7th respondent/TAMIN filed its counter affidavit stating that it commenced the quarrying operations in the year 2007 by leaving the maximum radial safety distance of 300 mtrs + 10 mtrs from the monument site which is prescribed as enough to be left in case of open cast working even if heavy explosives are used in the quarry operations as per Regulation 164 of the Metalliferous Mines Regulation 1961 and as the maximum safety distance prescribed in the Ancient Monuments and Archaeological sites and Remains Rules, 1958.

6. The sixth respondent, the District Collector who has filed his objection to the report of the Advocate Commissioners stating that the distance between the actual location of the Archaeological importance and to the boundary of the protected area on the western side is 120 mtrs. The distance between the actual location of the Archaeological importance and to the boundary of the protected area on the northern side is 135 mtrs. The distance between the actual location of the Archaeological importance and to the boundary of the protected area on the southern side is 70 mtrs. But the distance between the actual Archaeological importance and the eastern side of the protected area is 1075 mts. Hence, the ASI has not adopted any norms or rules to fix the distance between the actual Archaeological importance and the boundary of the protected monuments on all sides equally.

7. The fourth respondent/Archaeological Survey of India, has filed a counter affidavit stating that no quarrying activities should be undertaken within the protected/prohibited area even in regulated zone and a site plan marking the protected/regulated zones of the monument with survey numbers were sent to the District Collector, Madurai, vide letters dated 17.11.2006 and 26.12.2006 and other local revenue authorities to stop the illegal quarrying vide letter dated 11.12.2007. It is further stated that the entire hillock containing the above inscriptions and Jaina beds is a centrally protected monument and governed by AM & ASR Act, 1958 and Rules 1959 and it is maintained by the Archaeological Survey of India.

8. We have heard the submissions made by the learned counsel for the respective parties and perused the materials available on record.

9. It is the contention of the learned counsel for the petitioner that if quarrying operation is allowed to continue, it would cause damage to the Jain abode which has been declared as ancient monument in the year 1921.

10. Per contra, it is the contention of the seventh respondent that they are maintaining the safety distance between the ancient monument and the quarrying site, therefore, no damage would be caused to the ancient monument. Moreover, according to the respondents, the entire extent of 51.77 acres is not the hillock area. Therefore, the prayer of the writ petitioner cannot be entertained when they are prepared to maintain safety distance from the ancient monument.

11. In view of the submissions made by the respective parties, the question that falls for consideration is that whether the entire hillock area can be construed as ancient monument or protected area or as contended by the learned counsel for the respondents that the quarrying operations can be allowed by maintaining safety distance from the ancient monument.

12. A close reading of Section 2(a) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 gives the answer for this question.

Section 2 (a) of the Act reads as follows:

"2(a)"ancient monument" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock, sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes:-

- i) the remains of an ancient monument,
- ii) the site of an ancient monument,
- iii) such portion of land adjoining the site of ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and
- iv) the means of access to, and convenient inspection of an ancient monument";

13. Article 49 of the Constitution of India mandates the State Government to protect monuments and places and objects of national importance, which reads as follows:

"49. Protection of monuments and places and objects of national importance

- It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be".

Thus there is an obligation on the part of the respondents to preserve the area intact without causing any damage to the place as a whole.

14. The close reading of the said provision would show that the entire land adjacent to the site of ancient monument is required for fencing or covering in or otherwise preserving such monument. In view of the meaning envisaged in Section 2 of the Act, we are not inclined to accept the submissions made by the learned counsel for the seventh respondent since that they are maintaining the safety distance of 300 mtrs, the quarrying operations can be permitted, we find that there is no substance in the said submission. Moreover, the Archaeological Survey of India filed the counter affidavit stating that they have addressed a letter to the District Collector to stop the quarrying operations in the said site. Hence, we are of the opinion, the quarrying operations cannot be allowed in the entire hillock of Keezhavazhu village comprised in S.No.226/1 to an extent of 51.77 acres. This Court while entertaining the writ petition, having notified the grant of quarrying lease to the 7th respondent and the quarry site is coming within the notified area and in order to protect the ancient heritage, granted interim order prohibiting the 7th respondent from doing mining operations. The modification sought for to vary the said order was dismissed by this Court by its interim order dated 23.09.2008. Thus, it is evident that the 7th respondent is not doing quarrying operations all these years.

15. In view of the above, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

sms

To

1. Union of India,
represented by its Secretary,
Ministry of Environment and Forests,
New Delhi.
2. State of Tamil Nadu,
Rep by the Chief Secretary,
Fort St., George,
Chennai.
3. The Director General,
Archaeological Survey of India,
Janpath,

New Delhi.

4. The Superintendent of Archaeology,
Archaeological Survey of India,
Chennai Circle,
Fort St., George,
Chennai-9.
5. The Senior Consultant Assistant,
Archaeological Survey of India,
Mahal Building, Sivan Kovil Street,
Thirumayam - 622 507.
6. The District Collector,
Madurai District,
Madurai.
7. TAMIN,
represented by its Chairman,
Managing Director,
No.31, Kamarajar Salai,
TWAD House, Chepauk,
Post Box No.2961, Chennai.
8. The President,
Keezhavazhavu Panchayat,
Melur Taluk,
Madurai District.