

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WA.No. 929 of 2015 () IN WP(C).28518/2013

APPELLANT/ADDL.5TH RESPONDENT:

K P MANI
THEKKUMTHOTTATHIL HOUSE, OLAVATTOOR PO, PIN 673638
KONDOTTI, MALAPPURAM DIST.

BY ADV. SRI.P.BABU KUMAR

RESPONDENTS/PETITIONERS/RESPONDENTS:

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1. C ABDULI SALEEM
S/O.ALAVI HAJI, MANAGING PARTNER, AROOR GRANITE
OLAVATTOOR PO, MALAPPURAM 673638
 2. THE DISTRICT COLLECTOR
MALAPPURAM, CIVIL STATION, MALAPPURAM 676505
 3. THE TAHSILDAR
ERNADU TALUK, MANJERI, PIN 676121
 4. THE VILLAGE OFFICER
PULICKAL VILLAGE, PULIKKAL PO, PIN 673637
 5. THE KERALA STATE POLLUTION CONTROL BOARD
REP. BY ITS MEMBER SECRETARY, PATTOM PO, PLAMOODU
TRIVANDRUM

R2-R4 BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS
R1 BY SRI.P.MARTIN JOSE
R5 BY SRI.M.AJAY, SC, KERALA STATE POLLUTION CONTROL BO

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

W.A.NO.929/2015

APPELLANT'S EXHIBITS

ANNX.A : TRUE COPY OF THE W.P.C.NO.28518/13 FILED BY THE 1ST RESPONDENT BEFORE THIS HON'BLE COURT AND ITS EXHIBITS DATED 19.11.2013.

ANNX.B: TRUE COPY OF THE REPORT FILED BY THE POLLUTION CONTROL BOARD IN W.P.C.NO.28518/13 BEFORE THIS HON'BLE COURT DATED 7.1.2014.

ANNX C: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY APPELLANT/ADDL.5TH RESPONDENT IN W.P.C.NO.28518/13 BEFORE THIS HON'BLE COURT DATED 17.3.2014.

ANNX.D: TRUE COPY OF IA NO.3842/15 IN W.P.C.NO.28518/13 FILED BY THE 1ST RESPONDENT BEFORE THIS HON'BLE COURT DTD.12.3.15.

ANNX.E: TRUE COPY OF THE OBJECTION FILED BY THE APPELLANT/5TH RESPONDENT IN THE ABOVE IA DATED 17.3.2015.

//TRUE COPY//

PA TO JUDGE

**ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.**

W.A.No.929 of 2015

Dated this the 1st day of July 2015

J U D G M E N T

Shaffique, J

This appeal is filed by the additional 5th respondent challenging the interim order dated 10/04/2015 in I.A.No.3842/2015 in W.P.C.No.28518/2013. It is inter alia contended by the appellant that the learned Single Judge was not justified in issuing the interim order to permit the petitioner to operate the crusher unit on account of the fact that the report of the District Medical Officer was not obtained before granting permission.

2. While admitting the above Writ appeal, this Court had directed the learned Government Pleader to obtain a report from the D.M.O of Health, Malappuram after conducting site inspection. Report has been filed along with memo dated 08/06/2015 in which it is stated that there are four dwelling houses and one temple situated within 100 metre radius. It is also mentioned that serious health problems due to the functioning of the unit has not

been identified. However, there might be chances of nuisance to the neighbouring houses holders. If the conditions of the Pollution Control Board are strictly followed, this nuisance can be avoided.

3. Learned counsel for the appellant submits that on account of the aforesaid report, there is no reason why the crusher unit should be permitted to be operated as there are several buildings within the prohibited distance. On the other hand, learned counsel appearing for the 1st respondent/writ petitioner submits that this unit was functioning since 1992 and during the relevant time, the prohibited distance from the crusher unit to the nearby buildings was only 50 metres. Further, it is submitted that new buildings have been erected within the distance of 100 metres in order to prevent the unit from functioning. But there is dispute between the parties regarding the above factual situation.

4. After hearing the learned counsel appearing on either side and on perusal of the records, we are of the view that the impugned order is only of an interim nature. It is for the parties to appear before the learned Single Judge and seek for final disposal of the writ petition. At this stage of the proceedings, we do not

find any error in the order of the learned Single Judge. Parties shall appear before the learned Single Judge and pray for an early hearing.

With the above observation, this writ appeal is disposed of.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

jsr

