

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WP(C).No. 899 of 2013 (J)

PETITIONER(S):

1. THOMAS MATHEW, AGED 50 YEARS
S/O.M.M.THOMAS, CC-48/1272A, THEVAREZHATH
BABY SMARAKA ROAD, ELAMAKKARA P.O., PIN-682 026.
2. JOLLY JOHN.P, AGED 42 YEARS
S/O.P.I.JOHN, PADIKKAPARAMBIL HOUSE, THEVARA P.O.
KOCHIN-13.

BY ADV. SRI.SAIGI JACOB PALATTY

RESPONDENT(S):

1. BABY LUKOSE
PERUMANNIKALA NIRAPPEL HOUSE, THELLAKOM P.O.
KOTTAYAM-686 001.
2. ALAXANDER CHOKKATT
CHOKKATT HOUSE, AIYAMKOMBU P.O., VELLILAPPILLY
KOTTAYAM-686 001.
3. DISTRICT COLLECTOR KOTTAYAM,
CIVIL STATION, KOTTAYAM-686 001.
4. THE SECRETARY
KADANADU GRAMA PANCHAYATH, KADANADU, MEENACHIL TALUK
KOTTAYAM-686 001.
5. CHIEF ENVIORNMENTAL ENGINEER
KERALA STATE POLLUTION CONTOROL BOARD, KOCHI-682 030.
6. SENIOR GEOLOGIST
MINING AND GEOLOGY DEPARTMENT, CIVIL STATION
KAKKANAD--686 001.
7. JOINT CHIEF CONTROLLER OF EXPLOSIVES D.C.C.E,
KOTTAYAM-686 001.
8. CHIEF CONTROLLER OF EXPLOSIVES GOVT. OF INDIA
DEPARTMENT OF EXPLOSIVES, SASTRI BHAVAN CHENNAI-600001.
9. THE DIRECTOR OF ENVIORNMENT AND CLIMATE CHANGE
GOVERNMENT OF KERALA, PALLIMUKK, PETTA
THIRUVANANTHAPURAM-695 024.

R7,R8 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
R5 BY ADV.SRI.M.AJAY,SC, KERALA STATE POLLUTION CONTROL BOARD
RR4 BY ADV. SRI.GEORGEKUTTY MATHEW
R1 BY ADV. SRI.BECHU KURIAN THOMAS
R3,R6,R9 BY GOVERNMENT PLEADER SRI NOUSHAD THOTTATHIL
R8 BY ADV. SRI.T.SANJAY, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-08-2015, ALONG WITH WPC. 19272/2013, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

EXT.P1: TRUE COPY OF THE SALE DEED NO.1251/07 OF RAMAPURAM SUB REGISTRAR'S OFFICE.

EXT.P2: TRUE COPY OF THE SALE DEED NO.2083/08 OF RAMAPURAM SUB REGISTRAR'S OFFICE.

EXT.P3: TRUE COPY OF THE REPRESENTATION TO THE 6TH RESPONDENT DATED 23.11.2012.

EXT.P4: TRUE COPY OF THE REPRESENTATION TO THE 3RD RESPONDENT DATED 23.11.2012.

EXT.P5: TRUE COPY OF THE PROPERTY TAX RECEIPT ISSUED TO THE PETITIONER.

RESPONDENTS'S EXHIBITS

EXT.R-1(a): TRUE COPY OF THE CONSENT TO OPERATE QUARRY ISSUED TO THE PETITIONER DATED 28.04.2012 ISSUED BY THE POLLUTION CONTROL BOARD.

EXT.R1(b): TRUE COPY OF THE RENEWED EXPLOSIVE LICENSE DTD 26.4.2013.

EXT.R1(c): TRUE COPY OF THE QUARRYING PERMIT ALONG WITH THE SKETCH OF THE AREA PROPOSED TO BE QUARRIED.

EXT.R1(d): TRUE COPY OF THE REPORT SUBMITTED BY THE SECRETARY OF THE PANCHAYATH.

EXT.R1(e): TRUE COPY OF THE DECISION DATED 12.3.2013 TAKEN BY THE PANCHAYATH.

EXT.R1(f): TRUE COPY OF THE PROCEEDINGS DATED 13.3.2013.

EXT.R1(g)): TRUE COPY OF THE LICENSE ISSUED BY THE PANCHAYATH.

EXT.R1(h): TRUE COPY OF THE JUDGMENT DATED 7.3.2012 IN O.S.268/2010 ON THE FILES OF THE MUNSIFF'S COURT, PALA.

RESPONDENT(S) ' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) Nos.899 of 2013-J and
19272 of 2013-H

Dated this the 10th day of August, 2015

JUDGMENT

The petitioner in W.P(C) No.19272 of 2013 is the 1st respondent in W.P© No.899 of 2013. While the petitioner in W.P.(C) 19272 of 2013 is challenging the order of the Tribunal for Local Self Govt Institutions by which the decision of the Panchayat Committee to grant premit to petitioner to conduct the quarry and consequential license issued by the Secretary of the Panchayat were set aside. W.P. (C) No. 899/2013 is filed by the owners of land adjacent to the quarry, seek orders for stopping the quarrying operation by the petitioner in W.P.(C) No. 19272/2013. I shall deal with the quarry owners case first.

Writ Petition (C) No.19272 of 2013

2. Petitioner is challenging Ext P6 order passed by the the Tribunal for Local Self Government Institutions ('Tribunal' for short) in Appeal No.392 of 2013 filed by the 3rd respondent against the decision of the 2nd respondent-Kadanadu Grama

Panchayat to grant permit for conducting quarry and the consequential grant of license to petitioner to install machineries and license for conducting quarry, as per Exts.P4 series. The appeal was filed on the ground that the Panchayat Committee took the decision to grant permit, without following the provisions contained in the Panchayat Raj Act and Rules;, no report under Section 233(3) of the Act was obtained and the petitioner was permitted to operate a quarry, despite the report of the DMO that the dwelling house of the appellant was located just 75 metres away from the quarry.

3. The 3rd respondent had earlier filed Appeal No.767 of 2012 before the Tribunal as against the decision taken by the committee of the Grama Panchayat on 20.4.2012 to renew the license in favour of the petitioner for running the quarry. In that case it was found that the grant and renewal of license come within the powers of the Secretary to Grama Panchayat and hence the decision of the committee of the Panchayat was without jurisdiction. It was further found that the petitioner was using machineries having a total capacity of 124.6 H.P for which permit under Section 233 of the Kerala Panchayat Raj Act,1994 (the Act for short) is necessary and conducting of the quarry

without getting an establishment permit under Section 233 of the Act was illegal. The Tribunal set aside the decision of the Grama Panchayat and the consequential license issued in favour of the petitioner, observing that the petitioner may apply for an establishment permit under Section 233 of the Act in accordance with Rule 12(2) of the Kerala Panchayat Raj (Issue of License to Dangerous and Offensive Trades and Factories) Rules, 1996 ('D&O Rules' for short). On receipt of such application, the Secretary was directed to inspect the site and furnish reports to the Panchayat as provided under Section 233(3) of the Act, and the Panchayat was directed to take a decision on the request for establishment permit, after considering all reports, NOC, etc, as provided under Section 233(4) of the Act. With the above directions, the Tribunal set aside the decision as well as permit and license. The petitioner challenged the order of the Tribunal in W.P.(C) No.30854/2005. As per Ext.P2(a) judgment, this Court dismissed the Writ Petition, at the same time directed consideration of application for license. Thereafter the Panchayat committee, in its meeting held on 12.3.2013, decided to grant permit to the petitioner as per Ext.P4, and based on the said decision the Secretary Grama Panchayat issued permit and

license for conducting a quarry and to install machineries as per Exts.P4(a) and P4(b).

4. The 3rd respondent challenged the said decision and consequential grant of permit and license again in Appeal No. 392/2013. The petitioner and Panchayat filed written statements. Panchayat stated that Secretary submitted a report and decision was taken on such report. The Tribunal, after perusing the records including the report, found that the said report cannot be treated as a report at all and a report under Section 233(3) should specify as to whether the setting up of the unit is objectionable due to density of population or due to nuisance or pollution. As no such conclusion was not available in the report cannot be acted upon.

5. The Tribunal found that the action of the Panchayat was contrary to the direction issued by it in its order in Appeal No.767 of 2012. The Tribunal found that in the absence of a proper report under Section 233, it was not permissible for the Panchayat to consider the application for permit and to pass orders thereon, as held earlier in the order in the appeal. It was further held that the Panchayat did not have the statutory authority to consider the application for permit in the absence of

such a report and the proceedings which resulted in the impugned decision granting establishment permit was not only in violation of the provisions contained in the Panchayat Raj Act under Section 233(3&4) but also was in flagrant violation of the directions contained in the order of the Tribunal. It was clear from the plan approved by the Mining and Geology Department that the house of the the 3rd respondent was just 70 meters from the quarry which is in violation of the Rules and hence it was not permissible for the Panchayat to grant permit causing danger to the 3rd respondent and severe environmental pollution. It was further found that from the DMO's report also it was clear that the house was located only 70 meters away from the site of the quarry. The Tribunal found that the decision of the Panchayat committee as well as the consequential action of the Secretary were liable to be set aside and that the Panchayat committee as well as the Secretary acted in gross disregard of the plan of Mining and Geology Department as well as the report of the DMO in furtherance of their personal interest. It was also found that when the license already granted was found illegal in the previous appeal and the procedure to be followed was explained therein, the Secretary ought not have accepted the application

for renewal before complying with the procedure.

6. The learned counsel for the petitioner argued that an installation permit was not at all required in the present case and Section 233 and 232 are in different areas. According to the petitioner, the only application required under the Statute is an application under Rule 12 read with Section 233(2) of the Act. The learned counsel appearing for the petitioner relied on the judgment in **Kadaplamattom Grama Panchayat v. Johnny Roy** [2013(3) KHC 857(DB)] in support of his contention. It is argued that a permit is not required when **mechanical or electrical power is used**. In this case the petitioner was using only Jack Hammer. Therefore it did not require permit. According to him, the decision of the Division Bench in paragraphs 8,9 and 14 conclude the issue.

7. The 3rd respondent has filed a counter affidavit in support of the order passed by the Tribunal. According to him, Section 233 of the Act mandates the first step to be taken by the petitioner for starting the quarry by obtaining permit from the Grama Panchayat, for which the Secretary has to conduct a detailed enquiry as to density of pollution in the neighbourhood and the possibility to cause pollution due to the proposed

activity. It was stated that the quarry if permitted in the site of the petitioner will result in loss of life and property. According to him, application under Section 236 can be only after complying with the procedure under Section 233 of the Act.

8. I heard the learned counsel appearing for the petitioner as well as the respondents in both the cases and the learned Government Pleader as well as the learned counsel for the additional respondents. According to the learned counsel for the petitioner, the issue is covered by the judgment in **Kadaplamattom Grama Panchayat v. Johnny Roy** (supra) and separate permit as directed by the Tribunal is not necessary. Paragraph 14 of the said judgment reads as follows:

“14. But it is relevant to note that consideration of the application for establishing a factory or a workplace where power is used in any form is purely within the authority of the Village Panchayat. It is only on the basis of a decision taken by the Village Panchayat that the Secretary could issue a license in terms of Section 233 of the Act. Further in instances covered by Section 233 of the Act, only after permission is obtained under Section 233 does the question of granting license under Section 232 arises. But in a case where the applicant does not employ power of any form, apparently a situation as contemplated under Section 233 may not arise. There could be a situation where even

without an application being filed under Section 233 an application is required to be submitted under Section 232 read with D&O Rules. In such situations, the Secretary will be the only authority to decide whether the license could be granted or not. But such conferment of power does not mean to indicate that the Village Panchayat has no powers in the matter relating to the grant or refusal of permission under Section 233 of the Act.”

In the light of the above judgment it is submitted that the application for establishing a factory employing power alone is within the authority of Village Panchayat; but in this case petitioner does not employ power of any form situations contemplated under Section 233 do not arise and when there will be situations where an application under Section 233 is not required, then the Secretary can issue permit.

9. On the other hand the learned counsel appearing for the 3rd respondent and petitioners in W.P(c) No.899 of 2013, relied on the judgment of this Court dated 29.01.2015 in W.P© No.14951/14 Mathai John Vs District Collector [2015(3) KHC 371] which considered the question whether the quarrying operation using Jack Hammer requires any permit. It was held therein that drilling machine for construction purposes alone are exempted. Interpreting provisions contained in Section 233(B)

(d) which provides that no permission shall be required for installation of establishment of machineries or manufacturing plants or industrial units, as the case may be which includes **portable drilling machines and portable engines used for construction purposes such as concrete mixers**, this Court held that the provision under clause (d) of Section 233 had to be read with specific reference to “such as” occurring in “portable drilling machines and portable engines used for construction purposes such as concrete mixers”. It was found that portable drilling machines along with portable engines used for construction purposes stand exempted and in other cases exemption cannot be claimed under that provision. On a perusal of the judgment, it can be seen that the issue considered therein and the issue arising in this case are similar. The petitioner does not have a case that he is using jack hammer which is used for construction purposes, for the purpose of quarrying operation. Therefore, the Division Bench judgment relied on by the learned counsel for the petitioner will not apply in the circumstances of the cases.

10. Moreover, the Tribunal has considered the matter in the light of the earlier order passed by it in the appeal filed by

the petitioner against the decision of the Panchayat and the Tribunal had already directed the procedure to be followed before issuing permit, which Panchayat and its Secretary did not choose to follow. The Tribunal, set aside the decision and orders, after examining all the points. Therefore there is no circumstance which warrants an interference under Article 226 of the Constitution of India, with the impugned order passed by the Tribunal.

In the above circumstances Writ Petition No.19272 of 2013 fails and is accordingly dismissed.

W.P.(C) No. 899/2013

11. W.P(c) No.899 of 2013 is filed by two persons who own land near the quarry of the 1st respondent in Vellilappilly Village in Kadanadu Panchayat. There are yielding rubber trees and a building is also situated therein. The 1st respondent is operating a quarry in the land owned by the 2nd respondent who has leased out a portion of the land to the 1st respondent. According to the petitioners, the quarrying operations conducted by the 1st respondent, rubbles are protruded upto 200 metres in the explosions carried out there which causes damage to their buildings and threat to the life of the workers employed in their

properties.

12. According to the petitioners, the 1st respondent has removed stones upto the boundary of the petitioners without maintaining any lateral support to the property or the road. Similarly the depth of the quarry has exceeded 40 metres and the quarry is being operated in gross violation of all rules. It is stated that there is no barricade to protect the vehicles or passengers passing through the road and there is every likelihood of the passengers falling down into the quarry. Even though they had approached the statutory authorities - the 6th respondent, Senior Geologist and the District Collector, the 3rd respondent, no positive action was taken. According to them the 1st respondent does not have any license also for conducting the quarrying operations. As per the Kerala Minor Mineral Concession Rules, the depth of the pit shall not exceed 20 feet whereas that of the respondent's quarry has exceeded 60 metres.

13. The 1st respondent has filed a counter affidavit producing the consent letter issued by the Pollution Control Board on 28.04.2012, as per which the respondent could operate the quarry from 28.04.2012 to 30.06.2015. He has produced

Ext.R1(b) explosive licence which was issued on 26.04.13 and valid upto 31.03.2015 and Ext.R1(c) quarrying permit issued on 6.8.12 for a period of one year, along with a sketch. He has further produced the permit issued by the Panchayat on the basis of the decision taken on 12.3.13 and the license Ext.R1(g), which were under challenge before the Tribunal for Local Self Government Institutions and is the subject matter of W.P(c) No.19272/2013. Further he has produced the judgment in O.S.268 of 2010, by which the suit filed by one Mr.K.P.Rajan of Vellilappally Village against the party respondents seeking permanent injunction restraining the respondents from conducting the quarrying operations, alleging that blasting operations are being conducted within a distance of 100 metres from his house on account of which rubble pieces are falling in his courtyard causing damages to the rubber plantations and rubber trees, was dismissed.

14. The 6th respondent -Senior Geologist has filed a counter affidavit, after conducting a site inspection on 3.12.2013 as directed by this court in its order dated 20.11.2013. The 6th respondent had issued a quarrying permit to the 1st respondent on 6.8.2012 and it was to extract granite building stones for an

area of 81 ares and the same was valid upto 5.8.2013. . He stated that a site inspection was conducted on 15.1.2013, based on joint complaint of petitioners when he found that there was excess extraction, without maintaining protection barriers to alleviate incidents of insecurity. He found violation of clause 1 and 12 of quarrying permit. And accordingly a stop memo was issued to 1st respondent on 15.1.2013. In the site inspection conducted on 3.12.2013, based on direction from this court. It was found that the house of Sri. Rajan one of the complainants was found located at a distance of 39 meters from the boundary of the abandoned quarry face and more than 50 meters from the face where quarrying operations are carried out. It was further found that the depth of the quarry exceeded 20 feet which is beyond the permissible limit. He further noticed another construction of newly built shed made of bricks with aluminium roof within 24 meter from quarry face, which is not numbered. The petitioner has filed a reply affidavit stating that it is his building that is noticed and that Panchayat has allotted building no.3/315A and he has been paying property tax for the building. The respondents 7 and 8 have filed a counter affidavit stating that 1st respondent has been granted license on 4.1.2000 for his

high explosive magazines.

15. Respondents 7 and 8 have filed a counter affidavit stating that the 1st respondent has been granted license on 4.1.2000 for his high explosive magazines.

6. A Division Bench of this Court has already held in the judgment reported in **All Kerala River Protection Council v. State of Kerala** [2015 (2) KLT 78] that environmental clearance is necessary in respect of the quarries operating in an area less than 5 hectares. As far as the quarrying operations of the 1st respondent is concerned, the said judgment will apply. As at present there is no quarrying permit for the the 1st respondent as seen from the counter affidavit of the 6th respondent. Moreover the Tribunal has issued orders setting aside the license already issued by the Panchayat, which this Court has already upheld. In the above circumstances, the petitioners in W.P(c) No.899 of 2013 cannot have any serious grievances for the time being, as the 1st respondent is bound to carry on the quarrying operation strictly in accordance with the Kerala Minor Mineral Concession Rules, 2015. Therefore preserving the right of the petitioners to

take up the contentions if necessary in the event of any
grievances in future, this Writ Petition is closed.

Sd/-
(P.V.ASHA, JUDGE)

rtr/