

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WA.No. 1810 of 2015 () IN WP(C).12620/2015

AGAINST THE ORDER IN WP(C) 12620/2015 DATED 31-07-2015

APPELLANT(S)/5TH RESPONDENT :-

SAJI K. ELIAS, AGED 45 YEARS, S/O.ELIAS,
KUZHIKANDATHIL, THIRUVANIYOOR P.O.,
ERNAKULAM, PIN - 682 308.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENT(S)/PETITIONER & RESPONDENTS 1 TO 4 :-

1. VINEESH M.V.
S/O. VISWAN, MULLANTHOTTIYIL HOUSE, PAZHUKKAMATTOM,
THIRUVANIYOOR P.O, ERNAKULAM DISTRICT - 682 308.
2. THE DISTRICT COLLECTOR
COLLECTORATE, KAKKANAD, ERNAKULAM
COCHIN - 682 030.
3. THE DISTRICT GEOLOGIST
DISTRICT OFFICE OF THE MINING AND GEOLOGY DEPARTMENT
CIVIL STATION, KAKKANAD, ERNAKULAM
COCHIN - 682 030.
4. THE ENVIORNMENTAL ENGINEER
DISTRICT OFFICE OF KERALA STATE POLLUTION CONTROL BOARD
(ERNAKULAM-II) 1ST FLOOR, MANNA RESIDENCY, M.C ROAD
PERUMBAVOOR - 683 542.
5. THIRUVANIYOOR GRAMA PANCHAYATH
THIRUVANIYOOR, ERNAKULAM DISTRICT, PIN 682 308
REPRESENTED BY ITS SECRETARY

BY SRI.T.K.AJITHKUMAR (VALATH)
BY SMT.DAISY A.PHILIPOSE
BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL
BY SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BOARD

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 13-08-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT'S EXHIBITS :-

ANNEXURE A1 :- TRUE PHOTOCOPY OF JUDGMENT DATED 3/8/2015 IN WP(C)No.21803/2015.

ANNEXURE A2 :- TRUE PHOTOCOPY OF APPLICATION DATED 6/8/2015 SUBMITTED BY THE APPELLANT BEFORE THE STATE ENVIORNMENTAL IMPACT ASSESSMENT AUTHORITY.

ANNEXURE A3 :- TRUE PHOTOCOPY OF NEWSPAPER REPORT IN THE MALAYALA MANORAMA DAILY DATED 7/8/2015 TOGETHER WITH TRANSLATION.

ANNEXURE A4 :- TRUE PHOTOCOPY OF FIR No.970/2015, PUTHENCRUZ POLICE STATION.

RESPONDENT'S EXHIBITS :- NIL.

//TRUE COPY//

P.A. TO JUDGE

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

W.A. No.1810 of 2015

Dated this the 13th day of August 2015

J U D G M E N T

Ashok Bhushan, CJ.

Heard.

2. This writ appeal has been filed against the order dated 31.7.2015 in W.P.(C) No.12620 of 2015. The appellant was the 5th respondent in the writ petition. The writ petition was filed seeking for a direction to respondents 1, 2 and 4 to take immediate steps to stop the illegal quarrying operations conducted by the 5th respondent in the property comprised in Sy.No.301/1-3, 302/7 and 302/8 of Thiruvaniyoor Village. The learned Single Judge, by the said order, directed the appellant not to carry out any quarrying operation. The learned Single Judge noted the submission made by the appellant that application has already been submitted for obtaining environmental clearance even before the present permit renewal on 5.5.2015 and hence, the appellant is entitled to carry on the quarrying operation.

3. The learned counsel for the appellant, challenging the order, submitted that the requirement of environmental clearance

was not necessary in the case of the appellant since the appellant was carrying quarrying operation from 2008 onwards. It is submitted that permits were granted for different periods on the basis of which, the appellant was continuing. He submits that where a new requirement of licence or sanction is brought into force, imposing stricter controls or standards to pre-existing units, it is the policy of the legislature to grant time for the existing units to comply with the said requirements. He further submits that since the appellant has already submitted application for environmental clearance, he ought to have been allowed to continue till a decision is taken in the said application. The learned Single Judge, in the impugned order, referred to the Division Bench judgments of this Court in **All Kerala River Protection Council v. State of Kerala** [2015 (2) KLT 78] and **Najeeb v. Shoukath Ali** [2015 (3) KLT 396].

4. We have considered the submissions made by the learned counsel for the parties and perused the records.

5. The appellant himself has filed a copy of his permit dated 5.5.2015 along with counter affidavit as Ext.R5(g). The permit has been granted to the appellant under the Kerala Minor Mineral Concession Rules, 2015. Under 2015 Rule itself, it is

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provided that permit for quarrying lease is to be issued after obtaining environmental clearance. Thus, on the strength of mining permit dated 5.5.2015, the appellant cannot be allowed to continue the mining operation unless he obtains environmental clearance certificate from the competent authority.

6. The further submission of the appellant is that some exception may be created in his favour in view of the fact that his application is pending. Merely on the ground that an application has been submitted by the appellant, which is pending consideration for environmental clearance certificate, no exception can be created in case of the appellant.

Under such circumstances, we do not find any error in the order of the learned Single Judge directing for stopping quarrying operation by the appellant. Accordingly, this writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE