

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 507 of 2014 (K)

PETITIONER(S):

**SIJU MATHEW
S/O. MATHEW, KUZHIKANNIYIL HOUSE, THAZHUVANKUNNU.P.O.
KALLOORKKAD, MUVATTUPUZHA, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR**

RESPONDENT(S):

- 1. THE RAMAPURAM GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, RAMAPURAM.P.O.
KOTTAYAM-686576.**
- 2. THE SECRETARY
RAMAPURAM GRAMA PANCHAYAT, RAMAPURAM.P.O.
KOTTAYAM-686576.**
- 3. SINNY SEBASTIAN,
THACHAMPURATH HOUSE, PIZHAKU.P.O., KOTTAYAM-686651.**

**ADDL.4. STATE OF KERALA
REPRESENTED BY THE SECRETARY
MINING & GEOLOGY DEPARTMENT.**

(ADDL. R4 IS IMPEADED SUO MOTU AS PER ORDER DATED 19/02/2014)

**ADDL.5. THE PIZHAKU NAVAMAITHRI RESIDENTS ASSOCIATION,
REG.NO.KTM/TC/802/13,
PIZHAKU PO, KOTTAYAM DISTRICT,
PIN 686651 REPRESENTED BY ITS PRESIDENT,
K.M.CHERIAN, KAITHAKKAL HOUSE,
PIZHAKU PO, KOTTAYAM (DIST.) PIN 686651)**

(ADDL.R5 IS IMPEADED AS PER ORDER DATED 18/12/14 IN IA NO.12510/14)

**R1 BY ADV. SRI.P.C.HARIDAS
R5 BY ADV. SRI.GEORGEKUTTY MATHEW
BY ADV. SRI.JAISHANKAR V.NAIR (ADVOCATE COMMISSIONER)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 507 of 2014 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1. COPY OF THE LOCATION SKETCH OF THE QUARRY PREPARED BY THE VILLAGE OFFICER, VELLILAPPALLY.**
- P2. COPY OF THE LICENCE NBO. B3-208/12-13 DATED 11-9-2012 ISSUED BY THE 2ND RESPONDENT.**
- P3. COPY OF THE STOP MEMO NO. B5-9900/12 DATED 16-10-2012 ISSUED BY THE TAHSILDAR, MEENACHIL.**
- P4. COPY OF THE INTERIM ORDER DATED 19-10-2012 IN WPC 25031 OF 2012.**
- P5. COPY OF THE ORDER DATED 26-11-12 IN APPEAL NO. 864 OF 2012 OF THE TRIBUNAL FOR SELF GOVERNMENT INSTITUTIONS.**
- P6. COPY OF THE RESOLUTION NO. IX DATED 31-5-2013 OF THE PANCHAYAT COMMITTEE OF THE 1ST RESPONDENT.**
- P7. A COPY OF THE SITE INSPECTION REPORT NO. B3-242/13 DATED 9-4-2012 SUBMITTED BY THE 2ND RESPONDENT.**
- P8. COPY OF THE RESOLUTION NO. X TAKEN IN THE PANCHAYAT COMMITTEE MEETING HELD ON 31-5-2013.**
- P9. COPY OF THE INTERIM ORDER DATED 16-8-2013 IN WPC NO. 16809 OF 2013.**
- P10. COPY OF THE JUDGMENT DATED 23-10-2013 IN WPC NO. 16809 OF 2013.**
- P11. COPY OF THE COMMUNICATION NO. B3-5688/11 DATED 30-11-2013 OF THE 2ND RESPONDENT.**
- P12. COPY OF THE RESOLUTION NO.1 DATED 23-10-2013 OF THE PANCHAYAT COMMITTEE OF THE 1ST RESPONDENT.**
- P13. COPY OF THE REPORT DATED NIL PREPARED BY THE PANCHAYAT COMMITTEE OF THE 1ST RESPONDENT.**
- P14. COPY OF THE REPORT DATED NIL SUBMITTED BY THE 2ND RESPONDENT.**
- P15. TRUE COPY OF THE QUARRYING PERMIT NO.85/GBS/CRPS/2013-14/144/DOY/2014 DATED 14.2.2014 ALONG WITH LOCATION SKETCH PREPARED BY THE VILLAGE OFFICER, VELLILAPPILLY.**

COMMISSIONER'S EXHIBITS

- ANNEXURE C1: TRUE COPY OF THE NOTICE ISSUED TO THE PARTIES.
ANNEXURE C2: TRUE COPY OF THE WORK MEMO ISSUED BY THE COUNSEL FOR THE PETITIONERS.
ANNEXURE C3: TRUE COPY OF THE WORK MEMO GIVEN BY THE 3RD RESPONDENT.
ANNEXURE C4: TRUE COPIES OF THE PHOTOGRAPHS.
ANNEXURE C5: TRUE COPY OF THE NOTICE.
ANNEXURE C6: PHOTOGRAPHS
ANNEXURE C7: PHOTOGRAPH OF THE THODU
ANNEXURE C8: PHOTOGRAPHS OF THE SAID PADAM.
ANNEXURE C9: PHOTOGRAPHS MARKING THE SURVEY STONES.
ANNEXURE C10: PHOTOGRAPH OF THE SAID BOUNDARY.
ANNEXURE C11: PHOTOGRAPH OF THE ROAD
ANNEXURE C12: A ROUGH SKETCH.
ANNEXURE C13: PHOTOGRAPHS OF THE DAMAGES.
ANNEXURE C14: PHOTOGRAPHS OF THE DAMAGES SHOWN TO ME BY THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS

EXT.R3(a): TRUE COPY OF THE CIRCULAR ISSUED BY THE KERALA STATE POLLUTON CONTROL BOARD, DATED 20.7.2011.

EXT.R3(b): TRUE COPY OF THE PROCEEDINGS OF THE VILLAGE OFFICER, VELLILAPPILLY VILLAGE, DATED 4.3.2014.

EXT.R3(c): TRUE COPY OF THE PROCEEDINGS ISSUED BY THE TAHSILDAR, MEENACHIL TALUK DT 12.3.2014.

EXT.R3(d): TRUE COPY OF THE LOCATION SKETCH AND REPROT PREPARED BY THE TALUK SURVEYOR, PALA DATED 16.8.2014.

EXT.R3(e): TRUE COPY OF THE REGULATION NO.164 OF THE METALIFEROUS MINE REGULATIONS.

Rp

//True Copy//

P.S to Judge

A.M. SHAFFIQUE, J.

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W.P. (C) No. 507 of 2014

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Dated this, the 19th day of November, 2015

J U D G M E N T

Petitioner challenges Ext.P12 by which Ramapuram Grama Panchayat Committee had taken a decision not to grant licence to establish the quarry of the petitioner.

2. The short facts involved in the writ petition would disclose that the petitioner started quarrying operations after obtaining all necessary licences/permissions including the permission under Section 232 of the Kerala Panchayat Raj Act read with Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules. However, the same came to be challenged before the Tribunal. The Tribunal came to a finding that no permission was obtained by the petitioner under Section 233 of the Kerala Panchayat Raj Act and therefore, unless such permission is granted, petitioner will not be in a position to operate the quarry. Petitioner applied for permission under Section 233 of the Act, which was rejected as per Ext.P6. Petitioner challenged the same before this Court by filing WP(C)

No.16809/2013. By judgment dated 23/10/2013, this Court by setting aside Ext.P6 directed the respondent Panchayat to consider the matter afresh. Panchayat Committee again considered the matter, which ultimately resulted in Ext.P12 order. In Ext.P12 order, a resolution seems to have been passed by the Committee after conducting an inspection by a Samithi constituted by the Panchayat. It was *inter alia* observed that the existence of the establishment may cause serious damage to the nearby locality and that there is large scale objection from the people in the locality. It is also observed that after evaluation of various parameters as specified under the respective statutes, there is no reason to grant permission.

3. Counter affidavit has been filed by the Panchayat supporting their stand in the matter. According to them, the existence of the quarry will create substantial pollution in the locality and it is not desirous to have a quarry in the said area.

4. 3rd respondent has also filed a counter affidavit supporting the stand taken by the Panchayat.

5. During the pendency of the writ petition, this Court had appointed an Advocate Commissioner to verify whether the

factual findings by the Committee of the Panchayat are justifiable or not. Advocate Commissioner has filed a report, which is also placed on record for which the Panchayat has filed their objections.

6. It is now submitted by the learned counsel appearing on either side that the petitioner is not in possession of necessary licenses/permission or permit for conducting the quarry operations as on date. Under such circumstances, I do not think it necessary to consider the entire matter on merits. Unless the petitioner is having a valid quarrying permit, it will not be possible for the petitioner to obtain other permissions/licenses from the competent authorities including that from the Panchayat. Learned counsel for the petitioner also submitted that he was not even permitted to remove the quarried granite from the locality. Learned counsel for the Panchayat as well as the 3rd respondent submit that no one may have any objection regarding the removal of the quarried granite, but no quarrying activities shall be permitted unless appropriate licence/permission is obtained from the Panchayat as well as the competent authorities.

Having regard to this factual situation, this writ petition is

disposed of as under;

(1) That it shall be open for the petitioner to approach the Panchayat for a fresh licence/permission after getting all necessary permit and consent from the Pollution Control Board and on compliance of other statutory formalities.

(2) Panchayat shall consider the application in accordance with law untrammelled by any of the findings in Ext.P12.

(3) Petitioner shall be permitted to remove the quarried granite or any other material from the site. But it is made clear that the petitioner shall not be permitted to carry on any further quarrying activity.

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp
20/11/2015

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P.S to Judge