

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 571 of 2014 (V)

PETITIONER:

JOY SCARIA, AGED 51 YEARS,
S/O. SCARIA, PULIKKUNNEL HOUSE, POOVATHODE P.O.,
BHARANANGANAM, PALA, KOTTAYAM - 686 578.

BY ADVS.SRI.K.S.HARIHARAPUTHRAN
SRI.M.D.SASIKUMAR
SRI.GEORGE MATHEW
SRI.P.A.ISMAIL
SRI.SUNIL KUMAR A.G
SRI.DIPU JAMES

RESPONDENTS:

1. MEENACHIL GRAMA PANCHAYATH,
GRAMA PANCHAYATH OFFICE, EDAMATTOM P.O., PALA,
KOTTAYAM - 686 578, REP. BY ITS SECRETARY.
2. SECRETARY,
MEENACHIL GRAMA PANCHAYATH, GRAMA PANCHAYATH OFFICE,
EDAMATTOM P.O., BHARANANGANAM, PALA,
KOTTAYAM - 686 578.

R, BY ADV. SRI.P.C.HARIDAS
R3 BY ADV. SRI.AJAYA KUMAR. G

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1 : TRUE COPY OF LEASE AGREEMENT NO.1216 DATED 01.02.2012.

EXHIBIT P2 : TRUE COPY OF THE SURVEY PLAN DATED 03.12.2011.

EXHIBIT P3 : TRUE COPY OF THE REPORT DATED 17.01.2012 OF 2ND RESPONDENT.

EXHIBIT P4 : TRUE COPY OF THE ORDER DATED 10.07.2012 IN APPEAL NO.126 OF 2012 OF LSGI TRIBUNAL.

EXHIBIT P5 : TRUE COPY OF THE LICENCE NO.A8-5427/2012 DATED 18.10.2012 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P6 : TRUE COPY OF THE NOC DATED 24.04.2012 ISSUED BY THE ENVIRONMENTAL ENGINEER, PCB.

EXHIBIT P7 : TRUE COPY OF THE SITE LOCATION PLAN APPENDED TO EXT.P9.

EXHIBIT P8 : TRUE COPY OF THE APPLICATION DATED 15.11.2012 (EXPANSION).

EXHIBIT P9 : TRUE COPY OF THE LETTER DATED 03.12.2012.

EXHIBIT P10 : TRUE COPY OF THE REPLY DATED 14.12.2012 TO EXT.P9.

EXHIBIT P11 : TRUE COPY OF THE LETTER DATED 26.12.2012.

EXHIBIT P12 : TRUE COPY OF THE JUDGMENT DATED 01.11.2013 IN WP(C) NO.5957.

EXHIBIT P13 : TRUE COPY OF THE ORDER NO.A8-6601/2013 DATED 09.12.2013.

EXHIBIT P14 : TRUE COPY OF LETTER NO.1089/M3/2012 DATED ISSUED BY THE DIRECTOR OF MINING AND GEOLOGY.

EXHIBIT P15 : TRUE COPY OF THE ORDER DATED 07.08.2013 IN APPEAL NO.188 OF 2013 OF TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.

EXHIBIT P16 : TRUE COPY OF THE ORDER DATED 05.08.2013 IN O.A.NO.171 OF 2013 PASSED BY THE NGT PRINCIPAL BENCH, NEW DELHI.

EXHIBIT P17: TRUE COPY OF THE JUDGMENT DATED 16.08.2012 IN W.P.(C) NO. 19367 OF 2012.

RESPONDENTS' EXHIBITS:

EXT.R2A: TRUE COPY OF THE ORDER DATED 15.04.2013 OF THE 2ND RESPONDENT.

EXT.R2B: TRUE COPY OF THE ORDER DATED 29.08.2013 OF THE NATIONAL GREEN TRIBUNAL IN O.A. NO. 171/2013.

EXT.R2C: TRUE COPY OF THE LETTER DATED 27.11.2013 OF THE DEPARTMENT OF ENVIRONMENTAL AND CLIMATE CHANGE.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 571 of 2014 (V)

Dated this the 20th day of February, 2015.

JUDGMENT

The petitioner, who initially had a valid Ext.P1 quarrying lease, applied for expansion of his quarrying operations to the adjacent land. The second respondent, however, issued Ext.P13 proceedings to the following effect:

“It is informed to you vide Ref. No.(2) that if you are intending to expand the quarrying operation to 1.9903 hectares, you have to apply for granting of new licence for operating the quarry in 1.9903 hectore. Along with the above reference number 4 document you have not produced the new application for the above licence. You have also not produced the permission certificate (permit) of the Panchayath for conducting quarrying in 1.9903 hectore. You have to produce the environmental clearance certificate from the MOEF/SIEAA, for any type of quarrying as per the orders of the Green Tribunal.”

Aggrieved thereby, the petitioner has filed the present writ petition.

2. The learned counsel for the petitioner has contended that the extent of land into which the petitioner intends to expand his quarrying operations has already been part of Ext.P1 quarrying lease. He has further contended that none of the requirements pointed out in Ext.P13 by the second respondent is necessary for

the purpose of expanding the quarrying operations.

3. The learned counsel for the respondent Grama Panchayath, on the other hand, has submitted that all the pre-conditions pointed out in Ext.P13 communication of the second respondent are essential to be fulfilled. He has further submitted that Ext.P5 licence already came to an end, and that after certain litigation, presently the petitioner being unsuccessful in appeal, filed a revision, which is pending. According to the learned counsel, once Ext.P5 licence is not subsisting, the question of the petitioner is expanding his operations does not arise.

4. Be that as it may, this Court does not intend to adjudicate the issue on merits. From Ext.P13, it is evident that there is no express rejection of the petitioner's request for expanding the quarrying operations. At best, the second respondent has only sought certain additional information and also fulfillment of certain conditions before the petitioner's request could be processed. Accordingly, I am of the opinion that the petitioner in the first place ought to have either complied with the requirements shown in Ext.P13 or in the alternative ought to have filed his objections/explanation why the conditions

imposed in Ext.P13 are not required to be fulfilled. Without taking recourse to either of those options, the petitioner's approach to this Court, in my opinion, is premature.

In the facts and circumstances, having regard to the respective submission of the learned counsel for the petitioner and the learned counsel for the respondent Grama Panchayath, this Court without adverting to the merits of the matter, disposes of the writ petition leaving it open for the petitioner to file necessary objections/explanation regarding Ext.P13 issued by the second respondent, who, in turn, on receipt of those objections, shall consider the same in accordance with law and pass appropriate orders thereon, as expeditiously as possible.

sd/- DAMA SESHADRI NAIDU, JUDGE.

