

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WP(C).No. 1352 of 2014 (T)

PETITIONER:

**SHAILA NASSAR,
DIRECTOR, AL NASSAR GRANITES(P) LTD, VALIAKALAM,
IRAVOOR, ARAYANAD, THIRUVANANTHAPURAM-695541.**

**BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.RONY JOSE**

RESPONDENTS:

- 1. UZHAMALAKKAL GRAMA PANCHAYAT,
UZHAMALAKKAL, NEDUMANGAD, THIRUVANANTHAPURAM-695541,
REPRESENTED BY ITS SECRETARY.**
- 2. SECRETARY,
UZHAMALAKKAL GRAMA PANCHAYATH, UZHAMALAKKAL,
NEDUMANGAD, THIRUVANANTHAPURAM-695541.**
- 3. NIRMALAN.B,
S/O.BALAKRISHNA PILLAI, KOCHU VEEDU, IRAVOOR
ARYANAD.P.O, THIRUVANANTHAPURAM-695541.**
- 4. S.MOHANAN,
S/O.SUKUMARAPANICKER, THADATHARIKATHU VEEDU, VALIAMALA
IRAVOOR, ARAYANAD.P.O, THIRUVANANTHAPURAM-695541.**

**R1 BY ADVS. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM
R3,R4 BY ADVS. DR.K.P.PRADEEP
SMT.T.THASMI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-02-2015 ,
THE COURT ON 21-05-2015 Y DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1** TRUE COPY OF THE APPLICATION DTD.12.02.2011 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT
- EXT.P2** TRUE COPY OF THE ORDER OF THE CHIEF TOWN PLANNER DATED 8-6-2011 NO.D4/3334/2011/D.DIS.
- EXT.P3** TRUE COPY OF THE QUARRYING LEASE DATED 16.03.2011 ISSUED TO THE PETITIONER
- EXT.P3(A)** TRUE COPY OF THE CONSENT DTD.08.07.2011 ISSUED BY THE POLLUTION CONTROL BOARD VALID TILL 31.05.2014
- EXT.P3(B)** TRUE COPY OF THE LICENSE DATED 02.05.2013 ISSUED TO THE PETITIONER FOR QUARRYING AND SELLING METAL.
- EXT.P3(C)** TRUE COPY OF THE DECISION DTD.16.04.2013 AND NUMBERED AS IX (1) OF THE 1ST RESPONDENT.
- EXT.P3(D)** TRUE COPY OF THE EXPLOSIVE LICENSE.
- EXT.P3(E)** TRUE COPY OF THE REPORT DTD.25-8-2011 SUBMITTED BY THE SECRETARY
- EXT.P3(F)** TRUE COPY OF THE INSTALLATION PERMIT TO INSTALL MACHINERY BY DECISION DTD 30-9-2011 AS PER RESOLUTION NO.II(1).
- EXT.P4** TRUE COPY OF THE BUILDING PERMIT DTD.03.10.2011 AND NUMBERED AS NO.43/2011 ISSUED BY THE 2ND RESPONDENT
- EXT.P5** TRUE COPY OF THE MEMORANDUM OF APPEAL FILED BY THE 3RD RESPONDENT IN APPEAL NO.684/2013 ON THE FILES OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXT.P5(A)** TRUE COPY OF THE MEMORANDUM OF APPELA FILED BY THE 3RD RESPONDENT IN APPEAL NO.732/2013 ON THE FILES OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXT.P5(B)** TRUE COPY OF THE MEMORANDUM OF APPEAL FILED BY THE 3RD RESPONDENT IN APPEAL NO.733/2013 ON THE FILES OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXT.P6** TRUE COPY OF THE ORDER DATED 18-12-2013 IN APPEAL NO.684/2013,732/2013 AND 733/2013.

WP(C).No. 1352 of 2014 (T)

RESPONDENT(S)' EXHIBITS

- EXT.R3(A):** MEMORANDUM OF APPEAL WITH ANNEURE IN APPEAL NO.684 OF 2013 DATED 23/7/13 ON THE FILES OF THE HONOURABLE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM
- EXT.R3(B):** MEMORANDUM OF APPEAL WITH ANNEURE IN APPEAL NO.732 OF 2013 DATED 2/8/13 ON THE FILES OF THE HONOURABLE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM
- EXT.R3(C):** MEMORANDUM OF APPEAL WITH ANNEURE IN APPEAL NO.733 OF 2013 DATED 2/8/13 ON THE FILES OF THE HONOURABLE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM
- EXT.R3(D):** COPY OF THE REPORT NO. S 6167/12 OF THE DIVISIONAL SURVEYOR WITH RELEVANT PAGES OF THE FILES IN DIVISIONAL FOREST OFFICE AT THIRUVANANTHAPURAM
- EXT.R3(E):** COPY OF THE RELEVANT PAGES OF THE NOTIFICATION DATED 18/1/1938 OF DEWAN OF TRAVANCORE REGARDING NOTIFICATION OF RESERVE FOREST IN THOONGAMPARA
- EXT.R3(F):** COPY OF THE ORDER DATED 3/5/12 IN OP.NO.299/2012 ON THE FILES OF THE HONOURABLE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS
- EXT.R3(G):** COPY OF THE COMMUNICATION NO.E/SC/KL/22/312(E.11764) DATED 12/7/13 ISSUED BY THE CONTROLLER OF EXPLOSIVE PETROLEUM AND EXPLOSIVE SAFETY ORGANIZATION, KOCHI.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 1352 of 2014

Dated this the 21st day of May, 2015

J U D G M E N T

Under challenge in this writ petition is Ext.P6 common order passed by the Tribunal for Local Self Government Institutions, Thiruvananthapuram in Appeal Nos.684/2013, 732/2013 & 733/2013.

2. Appeal No.684/2013 was filed by the 3rd respondent challenging Ext.P4 building permit dated 03.10.2011 issued by the 1st respondent panchayath in the name of the petitioner. Appeal No.732/2013 is filed by the 4th respondent challenging the decision dated 16.04.2013 of the 1st respondent panchayath and the consequential licence dated 02.05.2013 [Ext.P3(b)] issued by the 2nd respondent, by which blasting and mining operation of granite quarry by the petitioner was permitted. Appeal No.733/2013 is filed by the 3rd respondent challenging the decision dated 30.09.2011

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[Ext.P3(f)] by the 1st respondent panchayath, by which permit was granted to the petitioner to conduct a quarry and to conduct a crusher unit in the property comprised in Block No.49 of the Uzhamalakkal Village. By Ext.P6 order, the Tribunal for Local Self Government Institutions allowed the appeals and set aside the respective proceedings issued by respondents 1 and 2. The Tribunal directed fresh consideration of the matter in a time bound manner following the legal requirements in accordance with law.

3. The petitioner alleges that the appeals were not maintainable under Section 276 of the Kerala Panchayat Raj Act, 1994 as they were miserably barred by limitation. The petitioner points out that the appeals were filed belatedly with a delay of more than 650 days. According to the petitioner, there was no provision for condonation of delay and the appeals were filed without any application for condonation of delay; and therefore, the Tribunal ought to have dismissed the appeals at the

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threshold itself. The petitioner further alleges that Ext.P6 order was passed by the Tribunal in a mechanical manner acting in excess of its jurisdiction.

4. In the detailed counter affidavit filed by respondents 3 and 4, they have justified the impugned order.

5. Arguments have been heard.

6. The main challenge against Ext.P6 order is regarding the alleged delay in filing the appeals. The learned counsel for the petitioner would argue that as per Section 276 of the Kerala Panchayath Raj Act, an appeal has to be filed within 30 days of the impugned order and the above appeals were filed belatedly. In support of the argument, the learned counsel invited my attention to a decision of this Court in **Thomas Thomas v. Kottayam Municipality** [2008 (3) KLT 964], wherein it was observed that once the statutory period of limitation has expired, the party loses its right of appeal and therefore, it is not open to him to invoke the power of this Court

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under Article 226 of the Constitution and bypass the statutory restrictions and get the delay condoned or to have the matter examined by this Court. It was observed that proviso to Rule 8(3) authorizes the Tribunal to condone delay of only one month if it is satisfied that there is sufficient reason for the delay. My attention was also brought to the decision of this Court in **Mallappally Grama Panchayath, Pathanamthitta v. Zeenath Beevi & Another** [2014 (3) KHC 32], wherein it was held that the Tribunal may admit a petition submitted within one month after the time limit if the Tribunal is satisfied that there was sufficient reason for not submitting the petition within the time limit; and though the rule does not provide for filing of a separate petition for condonation of the delay, it is always advisable to file a petition to condone the delay also so that the Tribunal can satisfy itself that there was sufficient reason for not submitting the petition within the time limit. The learned counsel for the petitioner would point out that there is inordinate

delay in filing the appeal and there was no petition to condone the delay.

7. The learned counsel for the party respondents per contra would contend that the decisions, reported above, have no relevance in this case as those decisions were rendered in different situations. It was pointed out that the challenges in those cases made beyond the period stipulated in the Act; and therefore, this Court held that the petitioner cannot bypass the statutory restrictions. From the side of the party respondents, they have produced the copies of memorandum of appeals before the Tribunal as Exts.R3(a), R3(b) & R3(c). It can be seen from Ext.R3(a) that Annexure 1 order to that exhibit was issued to the appellant therein on 08.07.2013 in response to an application dated 12.06.2013 filed under the Right to Information Act, 2005 and the date of knowledge of the impugned permit was 08.07.2013. The appeal was filed on 23.07.2013. Therefore, it was argued that the said appeal was filed within time. I see valid

force in the said submission.

8. Similarly, from Ext.R3(b), it can be seen that Annexures 1 and 2 in that exhibit were put to the knowledge of the appellant therein only on 08.07.2013 as per Annexure 4 letter consequent to an application dated 12.06.2013, Annexure 3; and the appeal against Annexures 1 and 2 was filed within 30 days.

9. It is evident from Ext.R3(c) that Annexure A1 decision appended to the same was challenged on getting a copy of its order along with Annexure 3 letter, which was also obtained consequent to Annexure 2 application filed under the Right to Information Act, 2005; and the existence of Annexure 1 was put to the knowledge of the appellant only on 08.07.2013. There also, it can be seen that the appeal is filed in time. Therefore, there is no justification for contending that the appeals are barred by limitation referring to the provisions under Section 276 of the Kerala Panchayath Raj Act, 1994. This aspect was considered by the Tribunal as issue No.(i) in Ext.P6 order.

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In para 16 and 17 of Ext.P6 order, the Tribunal has considered the rival submissions of the parties and came to the conclusion that the petitioner, who was the 3rd respondent in the respective appeals, has adduced no evidence on her side to disturb the documents produced by the appellants to prove the date of knowledge of the impugned proceedings. The Tribunal arrived into a finding after perusing the records available and a decision was rendered on a factual matrix. The learned Tribunal found so many procedural irregularities on the side of respondents 1 and 2 while finalizing the proceedings and directed them to reconsider the applications of the petitioner and to take a fresh decision. A time limit was also fixed in that regard.

10. Evidently, the starting of quarrying and blasting operations in Uzhamalakkal Village of Nedumangad Taluk was objected to by the local people. The party respondents have a definite case that mining permission was granted to the petitioner without considering the

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objections from the Forest Department; and therefore, the orders passed by respondents 1 and 2 are ill-motivated. They contended before the Tribunal that the impugned decision was taken without application of mind and without following the procedure of law. The party respondents have a definite case that the decision to grant licence to operate a quarry in the land under consideration is taken without appreciating the objections of the Forest Department, which is the nodal agency to protect the environment and forest in the State. In this context, the party respondents relied on Ext.R3(d), which is the copy of the report of the Divisional Surveyor and the connected office files issued from the office of the Divisional Forest Officer, Thiruvananthapuram. It appears that the land under consideration is part of a Reserve Forest notified in the year 1938. Copy of the relevant pages of the notification issued by the then Dewan Travancore dated 18.01.1938 is produced as Ext.R3(e).

11. The respondents further point out that after the

disposal of the appeals by the Tribunal, they were informed by the office of the Aryanadu Grama Panchayath that the panchayath has already taken proceedings as per the direction of the Ombudsman for Local Self Government Institutions to restore the natural water channel, which was converted as private road by the petitioner herein. Ext.R3(f) is the copy of the said order. Now, it is well settled that for running a granite quarry, environmental clearance from the State Environmental Impact Assessment Authority is a mandatory prerequisite (See the decision of the Division Bench of this Court in **All Kerala River Protection Council v. State of Kerala** [2015 (2) KLT 78]).

12. The party respondents have a further case that the genuineness of Ext.P3(d) licence issued under the Explosive Rules is also doubtful and a complaint filed against the same is pending enquiry as evident from Ext.R3(g).

13. The Tribunal, after a consideration of the entire

materials placed before it, has arrived at a finding that gross illegalities were committed by respondents 1 and 2 while processing the applications; and ultimately, respondents 1 and 2 were directed to reconsider the issue within a time frame.

This Court is of the definite view that there is no justifiable reason to interfere with the impugned order.

Therefore, the writ petition fails; and accordingly, it is dismissed.

Sd/-

A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-