

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

WP(C) .NO. 5282 OF 2012 (I)

PETITIONER:

BENNY, AGED 41 YEARS,
S/O. YOHANNAN, THORAPURAM, PATTIKKAD,
THRISSUR.

BY ADV. SRI.P.DEEPAK

RESPONDENT(S) :

1. THE DISTRICT COLLECTOR,
THRISSUR-680002.
2. THE SENIOR GEOLOGIST,
DISTRICT OFFICE OF THE DEPARTMENT OF MINING & GEOLOGY,
MINI CIVIL STATION, CHEMBUKKAVU, THRISSUR-680002.
3. THE PANANNCERRY GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, PANNANCHERRY,
THRISSUR-680514.
4. THE ASSISTANT DIRECTOR OF AGRICULTURE,
OLLUKKARA-680514.
5. C.G.ANTO,
S/O. GEORGE, CHEKKUMPADI HOUSE, CHITTISSERY P.O.,
THRISSUR-680301.

R5 BY ADV. SRI.P.B.KRISHNAN
R5 BY ADV. SMT.GEETHA P.MENON
R5 BY ADV. SRI.N.AJITH
R5 BY ADV. SRI.P.B.SUBRAMANYAN
R3 BY ADV. SRI.P.G.DEVADAS
R3 BY ADV. SRI.VINOD SINGH CHERIYAN
BY ADV. GOVERNMENT PLEADER, SRI. T.J. MICHAIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1: A TRUE COPY OF DATA BANK (RELEVANT EXTRACT) PREPARED AND APPROVED IN RELATION TO THE PADDY LANDS AND WET LANDS FALLING WITH PANNANCHERRY PANCHAYAT.

EXHIBIT P2: A TRUE COPY OF THE COMMUNICATION DATED 22-05-2011 OF THE 1ST RESPONDENT ADDRESSED TO THE 2ND RESPONDENT.

EXHIBIT P3: A TRUE COPY OF THE JUDGMENT DATED 28-06-2011 IN WPC NO. 16638 OF 2011.

EXHIBIT P4: A TRUE COPY OF THE REPORT OF THE ADDITIONAL TAHSILDAR, THRISSUR ADDRESSED TO THE 1ST RESPONDENT DATED 04-01-2010.

EXHIBIT P5: A TRUE COPY OF THE RESOLUTION DATED 07-11-2009 OF PANNANCHERRY GRAMA PANCHAYAT.

EXHIBIT P6: A TRUE COPY OF THE RESOLUTION DATED 25-05-2011 OF OLLUKKARA BLOCK PANCHAYAT.

EXHIBIT P7: A TRUE COPY OF THE MINING PERMIT DATED 21-1-2012 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P8: A TRUE COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DATED 05-09-2011.

EXHIBIT P9: A TRUE COPY OF THE REPRESENTATION DATED 22-02-2012 ADDRESSED TO THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS :

EXHIBIT R3(I): COPY OF THE RESOLUTION NO.1(14) DATED 13.3.2012 OF THE 3RD RESPONDENT PANCHAYATH.

//TRUE COPY//

P.A. TO JUDGE

DST

K. HARILAL, J.

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W.P. (C) No.5282 of 2012

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Dated this the 17th day of November, 2015

J U D G M E N T

This Writ Petition has been filed with the following prayers.

- i. Issue a writ in the nature of certiorari or such other appropriate writ, order or direction calling for the records leading to Exhibit P7 & P8 and quash the one.*
- ii. In the alternative, issue a writ in the nature of mandamus or such other appropriate writ, order or direction commanding the 1st respondent to forthwith consider and pass orders on Exhibit P9 in exercise of powers conferred under Rule 51 of the **Kerala Minor Mineral Concession Rules, 1957.***
- iii. Issue such other appropriate writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

2. According to the petitioner, he is a resident of Peechi Village in Thrissur District coming within the

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jurisdiction of the 3rd respondent Panchayat. His grievance is that the 5th respondent, who claims to have executed some agreements with owner of certain land, for mining clay, has been conducting mining operations in violation of the provisions of the Kerala Minor Mineral Concession Rules, 1967(*hereinafter referred to as 'the Rules'*). A reading of Ext.P8 would reveal the foul played on the 1st respondent. The 5th respondent appears to have contended before the 1st respondent that the land in question is not included in the Data Bank, approved under the provisions of the Kerala Conservation of Paddy Land and Wet Land Act and the same assertion appears to have been believed by the 1st respondent wholeheartedly, without ascertaining the genuineness of the said claim with the authorities concerned. Exhibit P7, quarrying permit was issued by the 2nd respondent for one month from 29.01.2012 to 20.02.2012 and the 2nd respondent has not passed any order, extending the

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validity of the same. However, the revalidation of Ext.P7 permit is a foregone conclusion in the light of Ext.P8 proceedings of the 1st respondent. In the above circumstances, the petitioner was constrained to file a representation before the 1st respondent herein praying for immediate recalling of Ext.P8 order, obtained by gross fraud and misrepresentation of facts. But, the same has not been considered so far even though, the receipt of the representation was acknowledged by Ext.P9.

3. The 2nd respondent has filed a counter statement contending as follows: Earlier, the 1st respondent by an order dated 17.05.2011, issued NOC for mining to the 5th respondent and subsequently the same was recalled and cancelled by the order dated 22.05.2011.

"Against the order of cancellation, the 5th respondent filed W.P.(C) No. 16291/2011 before this Honourable Court and as directed by this

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Honourable Court, the District Collector conducted hearing on 25.08.2011 and directed this respondent to include the land of the 5th respondent in Sy.No. 1119/3 of Peechi Village in the new list of clay bearing areas and also to grant permit to the 5th respondent. Subsequently, the 5th respondent submitted an application to this respondent on 10.01.2012. This respondent inspected the site and granted permit for clay mining after realizing royalty and surface rent. However, the 5th respondent could not carried out the mining activity within the validity period of the permit. Therefore, a renewal application was submitted after site inspection, this respondent was convinced that no mining activity was carried out on the basis of the earlier permit and therefore the permit was renewed after realizing royalty. After filling a mined area with cultivable red earth, the 5th respondent again submitted an application in the District Office for clay permit from another 10 cents of land in the above survey number. On inspection by this respondent, it was found that no rules have been violated and the mined area has already been filled up using red earth. Therefore, the permit was renewed for another 10 cents of land on 5.03.2012, which was valid up to 31.03.2012. No complaints have been received in this office with regard to the issuance

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of the above permit. It is submitted that the permit has been granted by this respondent in strict compliance of the orders of this Honourable Court in the Judgment dated 25.06.2011 in WP(C) No. 16291/2011 and the directions of the District Collector vide letter No. B3/22101/11 dated 5.09.2011.

4. Heard the learned counsel for the petitioner and the learned counsel for the 5th respondent.

5. Going by the sequence of events narrated in the counter affidavit filed by the 5th respondent, it could be seen that this is the second round of litigation before this Court, relating to the same matter in issue. Even though, earlier No Objection Certificate was granted to the 5th respondent for mining operation vide order dated 17.05.2011, by the 1st respondent, on the request of the Panchayat and petitioner herein, the said order was recalled and cancelled vide order dated 22.05.2011, by the 1st respondent himself. Feeling aggrieved, the 5th respondent approached this Court by filing W.P.(C)

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No.16291 of 2011 and pursuant to the order passed by this Court, all the parties were heard and permit has been granted to the 5th respondent, in strict compliance of the order passed by this Court in W.P.(C) No.16291 of 2011.

6. The point to be considered in this Writ Petition is, whether there is any reason or circumstance warranting interference with Ext.P7 mining permit and Ext.P8 order passed by the District Collector.

7. The mining of minerals is not a prohibited activity, but the same is an activity regulated and controlled by the Rules. In the instant case, the petitioner has no case that the 5th respondent has been conducting quarrying operations without permit, in violation of the said Rules. Respondents 1 and 2 are the competent authorities under the Rules, to grant permit for quarrying operations.

8. Going by Exts.P7 and P8, it could be seen that

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they have exercised power vested in them, in accordance with law, and all the affected parties, including the petitioner were heard before the issuance of Exts.P7 and P8. The petitioner has no case that Exts.P7 and P8 were issued in violation of the procedure prescribed by the Rules. Even though, the petitioner has contended that Exts.P7 and P8 were obtained, by employing fraud and misrepresentation of facts, nothing has been brought on record to indicate a *prime facie* case disclosing either fraud or misrepresentation.

9. Going by Ext.P8, it is seen that the 2nd respondent has made a scientific analysis, as to whether quarrying operations can be permitted in the disputed land and made recommendation by Ext.P7 to the 1st respondent to grant quarrying permit. Going by Ext.P7, it is seen that the 2nd respondent has made all precautions, so as to maintain the protection of environment. Though, the petitioner contended that the

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disputed land is a paddy land, going by Ext.P8, it is seen that the competent officers under the Agricultural Department also had opined that quarrying operations can be done in the disputed property provided that the pits formed by quarrying must be filled up by putting earth and if that be done, the quarrying operations will not cause any harm to cultivation or environmental condition of the said property. In view of the opinion expressed by the competent officers under the Agricultural Department, it can be found that the allegation of the petitioner that the disputed land is a paddy land, where quarrying operation makes it unsuitable for paddy cultivation, pales to insignificance and the same is of no consequence at all. However, this Court is not sitting in appeal over the quarrying permit issued by the 1st respondent under the Rules. In the absence of any kind of procedural irregularity, in issuing of Exts.P7 and P8, this Court is not inclined to interfere

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with the same, in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. In this analysis, this Court declines jurisdiction.

10. However, in this Writ Petition, it is also averred that aggrieved by Exts.P7 and P8, the petitioner has preferred Review Petition under Rule 51 of the Rules before the 1st respondent. If the said Review Petition is still pending before the 1st respondent, the 1st respondent is directed to consider the same and pass orders accordingly, at the earliest.

This Writ Petition is dismissed accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

//True copy//

P.A. To Judge