

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

WP(C).No. 2255 of 2015 (F)

PETITIONER:

**MANOJ, AGED 30 YEARS, S/O.SUJATHAN,
'GANGA SARAS', TC NO.6/1588, THURUVIKKAL,
ULLOOR, CHERUVAKKAL VILLAGE, THIRUVANANTHAPURAM.**

**BY SMT.SUMATHY DANDAPANI (SENIOR ADVOCATE)
ADV. SRI.MILLU DANDAPANI**

RESPONDENT(S):

- 1. DISTRICT COLLECTOR, COLLECTORATE,
CIVIL STATION, THIRUVANANTHAPURAM-695001.**
- 2. NELLANAD GRAMA PANCHAYAT,
VENJARAMOODU, THIRUVANANTHAPURAM-695607,
REPRESENTED BY ITS SECRETARY.**
- 3. ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
PLAMOODU, PATTAM, THIRUVANANTHAPURAM-695004.**
- 4. CIRCLE INSPECTOR,
VENJARAMOODU POLICE STATION, VENJARAMOODU,
THIRUVANANTHAPURAM-695607.**
- 5. S.SURESH KUMAR, S/O.SIVASANKARAN PILLAI,
M/S.A.V.CRUSURE, MANIKKALMURIYIL,
PULLAMBRA VILLAGE, MUKKUDILIL,
THIRUVANANTHAPURAM-695607.**

**R1 & R4 BY GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN
R2 BY ADVS. SRI.NISHIL.P.S.
SRI.THIRUMALA P.K.MANI
R3 BY SRI. M.AJAY, SC
R5 BY ADV. SRI.BECHU KURIAN THOMAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-08-2015, THE COURT ON 09-10-2015 DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1 : TRUE COPY OF THE LAST LICENCE THAT HAS BEEN ISSUED IN FAVOUR OF THE 5TH RESPONDENT.
- EXT.P2 : TRUE COPY OF THE REQUEST THAT HAS MADE UNDER THE RIGHT TO INFORMATION ACT AND THE REPLY THAT HAS BEEN GIVEN IN PURSUANCE TO THE SAME ON 26-11-14.
- EXT.P3 : TRUE COPY OF THE REPRESENTATION DT.25-10-2014 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P4 : TRUE COPY OF THE RECEIPT DT.25-10-14 FROM THE OFFICE OF THE 4TH RESPONDENT.
- EXT.P5 : TRUE COPY OF THE REPRESENTATION OF THE 2ND RESPONDENT DT.25-9-13 TO THE 1ST RESPONDENT WHICH THE PETITIONER GOT UNDER THE RIGHT TO INFORMATION ACT.
- EXT.P6 : TRUE COPY OF THE REPRESENTATION OF THE 2ND RESPONDENT DT.25-9-2013 TO THE DIRECTOR, MINING AND GEOLOGY, DISTRICT OFFICE, TRIVANDRUM WHICH THE PETITIONER GOT UNDER THE RIGHT TO INFORMATION ACT.
- EXT.P7 : TRUE COPY OF THE REPRESENTATION OF THE 2ND RESPONDENT DT.25-9-2013 TO THE 3RD RESPONDENT WHICH THE PETITIONER GOT UNDER THE RIGHT TO INFORMATION ACT.

RESPONDENT(S)' EXHIBITS

- EXT.R5(A) : TRUE COPY OF THE QUARRYING LEASE DATED 17.11.2008 VALID TILL 16.11.2018.
- EXT.R5(B) : TRUE COPY OF THE CONSENT DATED 2.7.2015 VALID TILL 31.3.2016 ISSUED BY THE POLLUTION CONTROL BOARD TO OPERATE THE QUARRY.
- EXT.R5(C) : TRUE COPY OF THE PANCHAYAT LICENSE DATED 25.11.2013 VALID TILL 31.3.2016 FOR OPERATING THE QUARRY.

//TRUE COPY//

P.S. TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 2255 of 2015

Dated this the 9th day of October, 2015

J U D G M E N T

The petitioner alleges that he was conducting quarrying operation in the properties situated in Sy.Nos.85/04 and 85/10, which was purchased by him as per sale deed dated 01.04.2009 along with one Sri.Premraj. Besides these properties, the petitioner and Sri.Premraj had jointly taken on lease the properties situated in Sy.Nos.85/13, 35/14, 85/15 and 85/16. According to him, as per the D&O licence and the consent of the Pollution Control Board issued in favour of the petitioner, he had conducted the operation in the aforementioned properties till March, 2012. The petitioner alleges that thereafter, due to the objection raised by the neighbouring residents at the behest of the 5th respondent, the Pollution Control Board had not yet granted consent. The 5th respondent, who is also a

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quarrying operator, has been doing the trade in the properties situated in Sy.Nos.85/9-1 and 85/12-1, which, according to the petitioner, is adjacent to the petitioner's aforementioned properties and are not separately demarcated. The petitioner further alleges that the 5th respondent is continuing the operation even today. On making enquiry under the Right to Information Act, it is known that the 5th respondent is conducting the quarrying operation without getting D&O licence from the 2nd respondent panchayath. As per Ext.P1, the validity of the licence was up to 31.03.2014 only. The petitioner's grievance is that though he has submitted Ext.P3 representation before the 2nd respondent, no action is forthcoming and the 5th respondent has not obtained the environmental clearance certificate and D&O licence and still continuing quarrying operation. According to the petitioner, the action of the 2nd respondent is not in compliance with the provisions of the Panchayath Act and Rules. He points out that it is the 2nd

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respondent, who has to take action for stopping the illegal operation. Hence, this writ petition.

2. In the counter affidavit filed by the 5th respondent, it is contended that he has been conducting a quarry in 0.7280 hectares of property in Nellanadu Village of Nedumangadu Taluk on the basis of valid licences and leases issued by the competent authorities for the past several years. According to him, he possesses all valid licences, permits and lease for conducting the quarry and he has been granted a quarrying lease for conducting the quarry. In support of the said contention, he has produced the quarrying lease dated 17.11.2008 marked as Ext.R5(a), which is valid till 16.11.2018; consent from the Pollution Control Board marked as Ext.R5(b); and licence from panchayath for operating quarry marked as Ext.R5(c). Thus, according to him, he is in possession of all the requisite licences and permits for conducting a quarry. It is contended that the petitioner was conducting quarrying without any licence

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and permit. According to the 5th respondent, due to public protests, the authorities closed down the quarry for want of requisite licences and permits. It is contended that ever since the petitioner has been trying to close down the establishment of the 5th respondent and has always been compelling the 5th respondent to purchase the petitioner's properties at the rates quoted by him, which are far beyond the existing market rates. It is further contended that the petitioner had threatened him stating that if he fails to heed to his demands, he would ensure that the business of the 5th respondent is closed down one way or the other. Since the prices quoted by the petitioner were exorbitant, the 5th respondent did not heed to the petitioner's demand; and infuriated by the same, the petitioner has resorted to filing complaints, instituting cases before various authorities and this writ petition is also a part of his machination to compel the 5th respondent to purchase the petitioner's property at the rates quoted by him.

According to the 5th respondent, the writ petition is filed with mala fides and by suppressing material facts. Hence, he prayed for a dismissal of the writ petition.

3. Arguments have been heard.

4. According to the petitioner, the Secretary of the respondent panchayth admitted in Exts.P5 to P7 that renewal has not been granted as per the decision taken by the panchayath. The Secretary should have taken steps for stopping the illegal operation of the quarry conducted by the 5th respondent. It is pointed out that it is the Secretary himself, who has to take action to stop the illegal operation, if necessary, by invoking the provision of getting police aid for the lawful exercise of his powers under Section 252(b). It was pointed out that no environmental clearance certificate was obtained by the 5th respondent, which is mandatory in all mining and quarrying activities. The learned counsel for the petitioner, in support of his argument, also invited my attention to the decision of the apex court in **Deepak**

Kumar v. Union of India [(2012) 4 SCC 629].

5. The learned counsel for the 5th respondent, per contra, would submit that the consent was not renewed by the Pollution Control Board only for the reason that the petitioner has not satisfied the criteria for obtaining consent. However, it was pointed out that the 5th respondent has been issued with all the requisite licences and permits for carrying out quarrying operations including the licence from the panchayath as evident from Ext.R5(c). According to the 5th respondent, quarrying operations are conducted only in the property, over which he has been granted quarrying lease and the quarry is functioning with due consent from the Pollution Control Board as evident from Ext.R5(b). According to the 5th respondent, the representations were not taken by the authorities only because of the fact that the officials were convinced that the complaint was false and ill-motivated. In answer to the submission of the learned counsel for the petitioner that clearance from the

Environmental Impact Assessment Authority is required, it was submitted by the learned counsel for the 5th respondent that the decision in **Deepak Kumar**'s case (supra) is not applicable to this case as he was not required to obtain environmental clearance for conducting quarry as he was issued with Ext.R1(a) quarrying lease prior to the decision in the aforesaid case.

6. The learned counsel for the 5th respondent invited my attention to a decision of this Court in **Najeeb v. Shoukath Ali** [2015 (3) KLT 396], wherein the Division Bench has clarified a previous decision in **All Kerala River Protection Council v. State of Kerala** [2015 (2) KLT 78]. The Division Bench has held that after the judgment in **Deepak Kumar**'s case (supra) and the Government notification issued on 18.05.2012, no mining operation either by mining lease or mining permit is permissible without obtaining environmental clearance. However, the Division Bench has held that in so far as

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mining leases which were existing at the relevant time is concerned, environmental clearance was not required till the leases come for renewal. In this case, the mining lease obtained by the 5th respondent is continuing; and therefore, there cannot be any question of getting environmental clearance as stated in **Deepak Kumar**'s case (supra).

On a consideration of the entire materials now placed on board, this Court is of the view that the petitioner is not entitled to get the relief as prayed for.

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

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

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