

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

WP(C).No. 3506 of 2015 (K)

PETITIONER(S):

**MEMI GRANITES PVT. LTD.,
REP. BY ITS MANAGING DIRECTOR, K.T. ZIYAD,
BUILDING NO.IP IV/40, SIDDIQUE NAGAR,
P.O. IRIKKUR, KANNUR DISTRICT, PIN -670 593.**

**BY ADVS.SRI.K.V.SOHAN,
SMT.SREEJA SOHAN.K.,
SRI.ROVIN RODRIGUES.**

RESPONDENT(S):

- 1. NADUVIL GRAMA PANCHAYAT,
REP. BY ITS SECRETARY, P.O. NADUVIL,
KANNUR DISTRICT, PIN- 670 582.**
- 2. THE SECRETARY,
NADUVIL GRAMA PANCHAYAT,
P.O. NADUVIL, KANNUR DISTRICT, PIN- 670 582.**

**BY ADVS. SRI.K.M.MOHAMMED KUNHI,
SMT.RUKHIYABI MOHD KUNHI.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONERS' EXHIBITS:

- EXHIBIT-P1:** TRUE COPY OF THE CONSENT LETTER DT. 20.10.2011 ISSUED BY THE MANAGING DIRECTOR, M/S.AYSHA PLANTATION IN FAVOUR OF THE PETITIONER COMPANY. WITH ENGLISH TRANSLATION OF EXT.P1.
- EXHIBIT-P2:** TRUE COPY OF THE POSSESSION CERTIFICATE AND SITE PLAN PREPARED BY THE VILLAGE OFFICER, NADUVIL, DT. 17.10.2011. WITH ENGLISH TRANSLATION OF EXT.P2.
- EXHIBIT-P3:** TRUE COPY OF THE QUARRYING PERMIT ISSUED BY THE DEPARTMENT OF MINING AND GEOLOGY, DISTRICT OFFICE, KANNUR, DT. 09.11.2011.
- EXHIBIT-P4:** TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE FIRE AND RESCUE SERVICES, DT. 08.05.2010. WITH ENGLISH TRANSLATION OF EXT.P4.
- EXHIBIT-P5:** TRUE COPY OF THE PERMISSION ISSUED BY THE INSPECTOR OF FACTORIES AND BOILERS, DT. 09.06.2010.
- EXHIBIT-P6:** TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE DISTRICT MEDICAL OFFICER, KANNUR, DT. 21.07.2010. WITH ENGLISH TRANSLATION OF EXT.P6.
- EXHIBIT-P7:** TRUE COPY OF THE RECOMMENDATION LETTER ISSUED BY THE TOWN PLANNER, KANNUR TO THE CHIEF TOWN PLANNER, TRIVANDRUM, DT. 30.06.2010. ENGLISH TRANSLATION OF EXT.P7.
- EXHIBIT-P8:** TRUE COPY OF THE COMMUNICATION ISSUED BY RESPONDENT NO.2 TO THE PETITIONER, DT. 03.09.2010. ENGLISH TRANSLATION OF EXT.P8.
- EXHIBIT-P9:** TRUE COPY OF THE LETTER ISSUED BY RESPONDENT NO.2 TO THE PETITIONER, DT. 30.09.2010. ENGLISH TRANSLATION OF EXT.P9.
- EXHIBIT-P10:** TRUE COPY OF THE ORDER OF THE SINGLE WINDOW CLEARANCE BOARD, DT. 30.09.2010. ENGLISH TRANSLATION OF EXT.P10.
- EXHIBIT-P11:** TRUE COPY OF THE CONSENT TO ESTABLISH THE STONE CRUSHER UNIT ISSUED TO THE PETITIONER BY THE KERALA POLLUTION CONTROL BOARD, DT. 19.07.2010.

- EXHIBIT-P12: TRUE COPY OF THE CONSENT FOR CONSTRUCTION OF THE MAGAZINE FOR STORAGE OF EXPLOSIVES ISSUED BY THE JOINT CHIEF CONTROLLER OF EXPLOSIVES, SOUTH CIRCLE, CHENNAI, DT. 08.12.2011.
- EXHIBIT-P13: TRUE COPY OF THE CONSENT TO OPERATE THE QUARRY ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD, DT. 27.06.2012.
- EXHIBIT-P14: TRUE COPY OF THE DECISION OF RESPONDENT NO.1, THE PANCHAYAT, DT. 03.07.2012. ENGLISH TRANSLATION OF EXT.P14.
- EXHIBIT-P15: TRUE COPY OF THE REQUEST SUBMITTED BY THE PETITIONER, DT. 30.07.2012 FOR RE-CONSIDERING THE DECISION, DT. 03.07.2012.
- EXHIBIT-P15(A): TRUE COPY OF THE RECEIPT ACKNOWLEDGING THE RECEIPT OF EXT.P15 ISSUED BY RESPONDENT NO.1, DT. 31.07.2012. ENGLISH TRANSLATION OF EXT.P15(A).
- EXHIBIT-P16: TRUE COPY OF THE JUDGMENT IN CONTEMPT CASE NO.572/2013, DT. 28.06.2013.
- EXHIBIT-P17: TRUE COPY OF THE RESOLUTION OF RESPONDENT NO.1, DT. 25.03.2013. ENGLISH TRANSLATION OF EXT.P17.
- EXHIBIT-P18: TRUE COPY OF THE JUDGMENT DT. 28.05.2014 IN APPEAL NO.698/2013 ON THE FILE OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTION, TRIVANDRUM.
- EXHIBIT-P19: TRUE COPY OF THE RENEWED LICENSE UP TO 05.07.2014 ISSUED BY THE DEPARTMENT OF MINING AND GEOLOGY, DT. 06.07.2013.

RESPONDENTS' EXHIBITS:

- EXT.R1A COPY OF THE DECISION INVESTIGATION REPORT SUBMITTED BY THE MEDICAL OFFICER.

//TRUE COPY//

PA. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.3506 of 2015

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Dated this the 2nd day of June, 2015

JUDGMENT

The petitioner is challenging the legality and propriety of Ext.P17 decision of the respondent panchayat and Ext.P18 order passed by the Tribunal for Local Self Government Institution in Appeal No.698 of 2013.

2. The petitioner obtained permission for establishing a quarrying and stone crusher unit in Sy. No.292/IA of Naduvil village. The application was forwarded to Single Window Clearance Board for Industries, Kannur and the department of mining and geology board granted permission for the conduct of quarry from 12 cents of property by Ext.P3. The Fire and Rescue Department granted Ext.P4 NOC. The Inspector of Factories and Boilers granted Ext.P5 permission. The District Medical Officer issued Ext.P6 no objection. For approval of the layout for construction of Stone Crusher Unit, the petitioner submitted an application before the Chief Town Planner who conducted an enquiry through the Town Planner, Kannur who recommended the grant of permission subject

to the condition of widening the road through the property of the Town Planner. The second respondent by Ext.P9 refused to grant permission for construction of a building stating that the panchayat road beyond the property of the petitioner is not having 7 metre width.

3. The Single Window Clearance Board which considered the statement of second respondent over-ruling the objections of the respondent panchayat directed to grant installation permission and also Ext.P10 licence. In the light of the said direction, the second respondent cannot refuse to issue permission for construction of the building for installing stone crusher unit or for quarry. By Ext.P14, the respondent panchayat delayed the decision to grant quarrying permit to the petitioner on the ground of health hazard to the neighbours.

4. The petitioner alleges that there are no residential houses within the radius of 500 metres and all statutory authorities after conduct of inspection and enquiry recommended the grant of permission for conduct of quarry. The petitioner further alleges that the Pollution Control Board also has granted consent to operate by Ext.P13. Therefore, he submitted Ext.P15 request before the first

respondent to reconsider Ext.P14 resolution in the light of the facts pointed out as well as the permission and no objection granted by all the authorities. However, the first respondent again delayed to reconsider its decision in the light of the decision of the Single Window Clearance Board and the Pollution Control Board. Therefore, the petitioner filed Contempt Case No.572 of 2013 before this Court and during the pendency of the contempt, Ext.P17 resolution was passed dated 25.3.2013 refusing to grant consent.

5. The petitioner challenged Ext.P17 before the statutory authority i.e. the Tribunal for Local Self Government Institutions, by filing appeal who dismissed the same by Ext.P18 judgment. It is with this background, the petitioner has come up before this Court.

6. Respondents 1 and 2 filed a detailed counter affidavit wherein it was contended that permit was denied to the petitioner for the reason that the quarrying operations would harm the source of Kollithode, a tributary of Chemperi river. According to them it was found that it would be dangerous to the inhabitants, the students of the nearby school and detrimental to the environment. They would further contend that the quarrying permits from the Mining and Geology Department and other authorities do not bind

the respondent panchayat to issue NOC. They also produced Ext.R1 (a) report of the Medical officer who conducted investigation on the issue in support of their claim.

7. I have heard the learned counsel for the petitioner and the learned counsel for the respondent panchayat.

8. The learned counsel for the petitioner inviting my attention to Ext.P10 decision of the Single Window Clearance Board submitted that the same is binding on the respondent panchayat. It was submitted that it was after considering the decision of all the statutory authorities, the Single Window Clearance Board directed to grant permission and also issued D&O licence. The petitioner submits that the panchayat being a party to the decision of the board cannot subsequently take a contrary decision.

9. The respondent panchayat which is a body under a State enactment is bound by the decision of the Single Window Clearance Board. It has to be noticed that all the authorities under the various State enactment are bound by the Single Window Clearance Board's decision to which all of them are parties. Subsequently, the Kerala Pollution Control Board issued Exts.P11 and P13 by which, the consent to operate was granted. Therefore, the panchayat now

cannot take a stand that the same would disturb the environmental imbalance. Apart from stating health reasons and other environmental problems, nothing is stated in Ext.P17 to deny the permit. The statutory authorities after conducting site inspection and an objective study granted permission for establishing a quarry and stone crusher unit.

10. In Ext.P18 the learned Tribunal has observed that the petitioner, who is having only 12 cents of property comprised in Sy. No.292/1A, would utilise the licence for conducting quarrying operations from a larger extent.

11. On a specific query put by me during the course of argument, the learned counsel for the petitioner would submit that the petitioner could confine his quarrying operations to the aforesaid 12 cents of property which he had obtained by way of lease.

As the petitioner has obtained all clearance from the authorities concerned, on the basis of the undertaking by the petitioner that he shall confine his quarrying operations in the aforesaid 12 cents, this writ petition is disposed of directing the respondent panchayat to grant licence as prayed for by the

petitioner. It is hereby made clear that the operation of the petitioner's quarry shall be confined to the 12 cents in the aforesaid survey numbers which they have obtained by way of lease. It shall be open to the respondent panchayat to survey the quarrying operations and to see that the operations are done only over the aforesaid 12 cents.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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