

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No. 5815 of 2015 (B)

PETITIONER :

**ALEX P. CYRIAC, PROPRIETOR,
M/S.PERUMALIL GRANITE CONSTRUCTIONS,
ARUNNOOTTUMANGALAM, KOTTAYAM - 686 604.**

ADV. SRI.ROY CHACKO

RESPONDENT(S):

- 1. THE DISTRICT GEOLOGIST, DISTRICT OFFICE,
PATHANAMTHITTA - 686 013.**
- 2. THE CHIEF ENGINEER, CONSTRUCTIONS,
OFFICE OF THE ADMINISTRATIVE OFFICER,
(CONSTRUCTIONS), SOUTHERN RAILWAY, ERNAKULAM- 682 016.**
- 3. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF INDUSTRIES, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 4. THE DISTRICT COLLECTOR, PATHANAMTHITTA- 686 013.**
- 5. HAJAYAKUMAR, SON OF KRISHNAN,
MATHANPARAMBIL CHETHIPUZHA,
CHANGANCHERRY, KOTTAYAM -686 604.**
- 6. B.LAKSHMI,
W/O.HAJAYAKUMAR, MATHANPARAMBIL CHETHIPUZHA,
CHANGANACHERRY, KOTTAYAM -686 604.**

**R1,R3 & R4 BY SR GOVERNMENT PLEADER SRI.JOSEPH GEORGE
R2 BY SRI.C.S.DIAS,SC, RAILWAYS**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).No. 5815 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF RELEVANT PAGES OF AGREEMENT DT 22/3/2012 WITH INDIAN RAILWAYS**
- P2: TRUE COPY OF THE AGREEMENT DATED 16/02/2015 BETWEEN THE PETITIONER AND RESPONDENTS 5 AND 6**
- P3: TRUE COPY OF THE COMMUNICATION DT. 12/2/2015 ISSUED BY THE 2ND RESPONDENT**
- P4: TRUE COPY OF THE PREVIOUS PERMIT DT. 15/4/2014 ISSUED BY THE 1ST RESPONDENT RELATING TO THE SAME PROPERTY**
- P5: TRUE COPY OF THE JUDGMENT DT. 2/12/2014 IN WPC.NO. 29439/2014.**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO.JUDGE

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P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 5815 of 2015

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Dated, this the 27th day of February, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers :

"(i) Issue a declaration that the petitioner being a contractor entrusted with a work by the railway administration, is having the benefit of Section 11 of Railways Act 1989.

(ii) Issue a writ of mandamus or any other appropriate writ, direction or order directing the 1st respondent to issue necessary permit and transit passes for extracting ordinary earth from the lands mentioned in Ext. P2 and to transport the same to the railway site mentioned in Ext. P1.

(iii) Issue such other writ, order or direction as this Honourable Court deems fit and proper to grant in the facts and circumstances of the case.

2. The learned counsel for the petitioner points out that the petitioner is a contractor, who has been awarded work directly by the Railways, as borne by Ext. P1 and as such the works undertaken by

him is virtually saved by the provisions of the Railways Act 1989, particularly under Section 11. As a result of this, the adverse circumstances, if at all any, by virtue of the Mines and Mineral (Development and Regulation) Act, 1957/Kerala Minor Mineral Concession Rules, 1967 cannot bar the way of the petitioner in carrying out the operation. It is also pointed out that the issue is squarely covered by Ext. P5 judgment passed by this Court in W.P. (C) No. 29439 of 2014. The learned counsel for the petitioner also points out that the factual position has been clearly revealed from the writ petition,. It is stated point blank in Ground B that, Ext.P5 sought to be challenged by the State/Revenue by filing W.A. No. 232 of 2015, is by contending that the petitioner therein was only a sub contractor who is not entitled to have exemption under Section 11, whereas in the case of the petitioner herein, he being the concerned contractor, who has been identified and awarded work by the Railways squarely comes within the purview of Section 11 and is not covered by interim order stated as passed in W.A. No. 232 of 2015.

3. Heard the learned standing counsel for the Railways as well, who supports the version of the petitioner, asserting that the work has been directly assigned to the petitioner herein.

4. In the said circumstances, the first respondent is directed to issue necessary permit, for extracting the required extent of earth from the lands concerned, as mentioned in Ext. P1, without insisting for environmental clearance, within one week. It is made clear that the removal shall be only for the purpose of doubling the Railway track, which will be done after ascertaining the quantity that is required for the doubling work. This will stand confined to Ext. P3 and the petitioner shall not carry out any other operation under the cover of Ext. P3. This however will be subject to the outcome of W.A. No. 232 of 2015.

The petitioner shall produce a copy of this judgment along with copy of the writ petition before the first respondent for further steps.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

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