

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 6860 of 2015 (F)

PETITIONER:

SADEER GRANITES, REPRESENTED BY ITS
MANAGING PARTNER, A.R.ZULFIKAR,
6/624, SEDEER ARCADE, FEROKE,
KOZHIKODE-673 631.

BY ADVS.SRI.P.K.SURESH KUMAR (SR.)
SMT.M.R.SREELATHA

RESPONDENTS:

1. KAVILUMPARA GRAMA PANCHAYAT,
REP. BY ITS SECRETARY, KAVILUMPARA.P.O,
KOZHIKODE DISTRICT, PIN-673 513.
2. SECRETARY, DEPARTMENT OF ENVIRONMENT,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM-695 001.
3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
THIRUVANANTHAPURAM-695 001.

R1 BY ADV. SRI.P.V.KUNHIKRISHNAN
R2 & R3 BY GOVT. PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 6860 of 2015 (F)

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF PROCEEDINGS OF THE DIRECTOR OF MINING AND GEOLOGY ISSUED ON 17.3.2011

EXT.P2 TRUE COPY OF QUARRYING LEASE DATED 6.4.2011 BETWEEN THE PETITIONER AND THE GOVERNMENT

EXT.P3 TRUE COPY OF INTEGRATED CONSENT TO OPERATE DATED 11.08.2011 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD

EXT.P4 TRUE COPY OF INTEGRATED CLEARANCE TO ESTABLISH-RENEWAL DATED 16.8.2012 ISSUED BY KERALA STATE POLLUTION CONTROL BOARD

EXT. P5 TRUE COPY OF LICENCE NO.A5/59/13 DATED 20.4.2013 ISSUED BY KAVILUMPARA GRAMA PANCHAYAT ALONG WITH ITS ENGLISH TRANSLATION

EXT.P6 TRUE COPY OF NO OBJECTION CERTIFICATE DATED 24.10.2011 ISSUED BY DISTRICT MEDICAL OFFICER OF HEALTH, KOZHIKODE.

EXT.P7 TRUE COPY OF NO OBJECTION CERTIFICATE NO.A6-810/11 ISSUED BY THE 1ST RESPONDENT

EXT.P8 TRUE COPY OF RECEIPT DATED 25.2.2014 ISSUED BY THE 1ST RESPONDENT.

EXT.P9 TRUE COPY OF THE ORDER NO.A8.1152/14 DATED 24.5.2014 ISSUED BY THE 1ST RESPONDENT ALONG WITH ITS ENGLISH TRANSLATION

EXT.P10 TRUE COPY OF THE LETTER DATED 11.04.2014 ISSUED BY THE 3RD RESPONDENT ALONG WITH ITS ENGLISH TRANSLATION

EXT.P11 TRUE COPY OF THE ORDER DATED 18.10.2014 ISSUED BY THE 3RD RESPONDENT ALONG WITH ITS ENGLISH TRANSLATION

EXT.P12 TRUE COPY OF OFFICE MEMORANDUM ISSUED BY THE GOVERNMENT OF INDIA ON 20.12.2013

EXT.P13 TRUE COPY OF OFFICE MEMORANDUM DATED 4.3.2014 ISSUED BY GOVERNMENT OF INDIA, MINISTRY OF ENVIRONMENT AND FORESTS

EXT.P14 TRUE COPY OF THE GO(RT)NO.57/2014/ENVT.DATED 27.03.2014 ISSUED BY THE GOVERNMENT OF KERALA, ENVIRONMENT(A) DEPARTMENT

EXT.P15 TRUE COPY OF CADASTRAL MAP IN RESPECT OF KAVILUMPARA VILLAGE ALONG WITH COVERING LETTER DT.20.12.2014

EXT.P16 TRUE COPY OF ORDER DATED 16.12.2014 IN WPC 4662/2014 AND OTHER CONNECTED CASES PASSED BY THIS HON'BLE COURT

EXT.P17 TRUE COPY OF CERTIFICATE ISSUED BY THE FIRST RESPONDENT APPROVING THE MACHINERY TO BE INSTALLED IN THE BUILDING

RESPONDENT'S EXHIBITS:

EXT.R1(a) TRUE COPY OF LETTER NO.A6-2376/15 DATED 25.2.2015 OF THE PANCHAYAT DEPUTY DIRECTOR, KOZHIKODE TO ALL SECRETARY, GRAMA PANCHAYATS ALONG WITH THE ORDER OF THE HON'BLE HIGH COURT

EXT.R1(a)(i) ENGLISH TRANSLATION OF THE LETTER IN MALAYALAM IN EXT.R1(a)

EXT.R1(b) TRUE COPY OF THE LETTER NO.A8-7391/15 DATED 5.3.2015 FROM THE SECRETARY, KAVILUMPARA GRAMA PANCHAYAT TO THE PETITIONER

EXT.R1(b)(i) ENGLISH TRANSLATION OF EXT.R1(b)

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.6860 of 2015 F

Dated this the 27th day of March, 2015

JUDGMENT

The petitioner, having all the requisite licences and permits, applied to the respondent Grama Panchayat for renewal of the D & O licence for its mining operations within the territorial limits of the respondent Grama Panchayat. It has, however, rejected the petitioner's application for renewal through Exhibit P9 order holding that the area where the petitioner is carrying on its quarrying operations falls within the ecologically sensitive zone.

2. As a matter of subsequent development, the petitioner continued his efforts with the Government to have a clarification with regard to ecologically sensitive areas and obtained Exhibit P11 order, which is in addition

to Exhibit P10 issued by the Government in general prior to the respondent Grama Panchayat's Exhibit P9 proceedings though. Ventilating its grievance that notwithstanding Exhibit P11 clarification issued by the Government, the respondent Grama Panchayat has not reconsidered the petitioner's application for renewal of D & O licence, the petitioner has approached this Court.

3. The learned Senior Counsel for the petitioner, after making elaborate submissions regarding the Kasturirangan Committee Report on the issue of ecologically sensitive areas and also the subsequent orders made not only by Government of Kerala but also Union of India, has eventually submitted that as per Exhibit P11, if the lease is subsisting with regard to even those lands falling within the ecologically sensitive areas, it shall continue to be operational either till the lease period or five years, whichever is earlier.

4. In the alternative, the learned Senior Counsel has contended that despite Exhibit P12 acceptance of the report of the Kasturirangan Committee on ecologically sensitive areas, the Government of India later in Exhibit P13 proceedings dated 04.03.2014, dealing exclusively with the lands in State of Kerala, has clarified that only the areas that have been identified by Government of Kerala as ecologically sensitive areas should be adhered to and that the rest of the areas cannot be brought within the purview of the recommendations made and accepted through Exhibit P12. In expatiation of his submissions, the learned Senior counsel would contend that going by Exhibit P13 in conjunction with Exhibit P15, it is evident that the petitioner's land is situated outside the area as has been identified by Government of Kerala and accepted by Union of India in Exhibit P13 proceedings.

5. The learned counsel for the respondents, on the other hand, in tune with the averments made in the counter affidavit filed by the respondent Grama Panchayat, has submitted that this Court in W.P.(C)No.4662/2014 and connected cases issued certain general directions seeking strict compliance thereof with regard to the ecologically sensitive areas. Later, through Exhibit R1(b), the petitioner has been informed that in the light of the judgment of this Court, the petitioner ought to have obtained environmental clearance and that in its absence the application cannot be considered.

6. At any rate, the learned counsel for the respondent Grama Panchayat, in my view fairly, has submitted that though this Court initially issued interim direction in W.P.(C)No.4662/2014, eventually disposed it of on merits. Later, even Government of Kerala has brought in statutory amendments to the extant rules on the issue. In

sum and substance, the learned counsel for the respondent Grama Panchayat has submitted that in the light of Exhibit P11 and also the subsequent developments, the Grama Panchayat is willing to re-consider the petitioner's application for renewal of D & O licence.

7. Heard the learned Senior Counsel for the petitioner and the learned counsel for the respondent Grama Panchayat, apart from perusing the record.

8. Indeed, the issue lies in a narrow compass. The contention of the learned Senior Counsel for the petitioner is two fold: that in terms of Exhibit P11 there cannot be any hindrance for the respondent Grama Panchayat to renew the petitioner's D & O licence; secondly, that in terms of Exhibit P13 proceedings of Government of India, accepting the recommendation of State of Kerala, even the limitation indicated in Exhibit P11, the lease subsists either till the end of the lease period or five years, whichever is earlier,

will not have any application.

9. It is further not in dispute that the respondent Grama Panchayat passed Exhibit P9 order of rejection prior to the petitioner could obtain Exhibit P11 clarification. Even Exhibit P13 proceedings of Government of India are subsequent to Exhibit P9 and it cannot be denied that the issue of renewal of licences and leases has engaged the attention of a learned Division of this Court where the proceedings have been concluded very recently.

10. Going by the extant statutory rules or the judicial directives, apart from Exhibits P11 and P13, I do not see any impediment for the respondent Grama Panchayat to reconsider the petitioner's application for renewal of D & O licence. In other words, going by Exhibit P11, the respondent Grama Panchayat may have to be required to renew the licence, inasmuch as the petitioner would have the lease unobstructed for the next five years to come.

11. Going by Exhibit P13, if the area where the petitioner carries on its quarry operations is not within the notified area, the time cap of five years may not have any application. At this juncture, it is pertinent to note that since the licence is to be renewed on annual basis, the question of subsistence of lease for five years may not be germane.

12. In the facts and circumstances, this Court is of the considered opinion that the respondent Grama Panchayat is obligated to re-consider the petitioner's application in the light of Exhibits P11 and P13 proceedings.

13. As a result, Exhibit P9 order is set aside with a further direction to the respondent Grama Panchayat to re-consider the petitioner's application, especially in the light of Exhibits P11 and P13, and pass appropriate orders thereon as expeditiously as possible, at any rate, within one

month from the date of receipt of a copy of this judgment.

It is further made clear that the issue concerning the validity of lease period, i.e. whether it will have any time cap of five years or only till the expiry of the original period granted in terms of Exhibit P13, is left open to be adjudicated upon at an appropriate time.

Dama Seshadri Naidu, Judge

tkv