

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937
WP(C).No. 8575 of 2014 (V)

PETITIONER:

GEORGE JOHN
S/O. JOHN, AGED 52 YEARS, PUTHENPURACKAL
MEENKUNNAM P.O., MARADI PANCHAYATH
MUVATTUPUZHA - 686 672.
BY ADVS.SRI.GEORGE CHERIAN (SR.)
SMT.K.S.SANTHI
SMT.LATHA SUSAN CHERIAN

RESPONDENTS:

1. THE DISTRICT COLLECTOR
ERNAKULAM, CIVIL STATION, KAKKANAD - 682 030.
2. THE REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA - 686 001.
3. THE KERALA STATE POLLUTION CONTROL BOARD,
GANDHI NAGAR, ERNAKULAM
REPRESENTED BY ITS CHIEF MANAGER - 682 011.
4. THE DIRECTOR OF MINING AND GEOLOGY
MINING AND GEOLOGY DEPARTMENT, TRIVANDRUM- 695 001.
5. THE TAHSILDAR
MUVATTUPUZHA - 686 001.
6. ARAKKUZHA GRAMA PANCHAYATH
ARAKKUZHA, REPRESENTED BY ITS SECRETARY - 686661.
7. MARADI GRAMA PANCHAYATH
MARADI, MUVATTUPUZHA
REPRESENTED BY ITS SECRETARY - 686 672.
8. SHANS PAUL
KOCHUKUDIYIL HOUSE, EAST MARADI P.O
MUVATTUPUZHA- 686 672.
9. LALI T.K.
W/O. SHANS PAUL, KOCHUKUDIYIL HOUSE, EAST MARADI P.O
MUVATTUPUZHA- 686 672.
10. HANNA ROCK PRODUCTS PRIVATE LIMITED
MARADI, SOUTH MARADI P.O., MUVATTUPUZHA
REPRESENTED BY ITS MANAGING DIRECTOR
SHANS PAL - 686 672.

R8-R10 BY ADV. SRI.M.K.DAMODARAN (SR.)
R8-R10 BY ADV. SRI.P.SANJAY
R8-R10 BY ADV. SMT.A.PARVATHI MENON
R6 BY ADV. SRI.REJI GEORGE
R6 BY ADV. SRI.GOPAKUMAR G. (ALUVA)
R-R7 BY ADV. SRI.JIBU P THOMAS
R-R7 BY ADV. SRI.K.RAJESH KANNAN
R1-R5 BY ADV. SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL
R3 BY ADV. SRI. M.AJAY, SC, KERALA STATE POLLUTION
CONTROL BOARD
R BY GOVERNMENT PLEADER
R BY SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BO

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: RKC

RKC

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE COMPLAINT DATED 07/11/2013 SUBMITTED TO THE 1ST RESPONDENT.

EXHIBIT-P2-TRUE COPY OF THE REPLY DATED 05/07/2013 BY THE 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT-P3-TRUE COPY OF THE LETTER DATED 13/08/2013 GIVEN TO THE 2ND RESPONDENT.

EXHIBIT-P4-TRUE COPY OF THE QUARRYING LEASE ORDER DATED 27/02/2009 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT-P5-TRUE COPY OF THE LETTER DATED 29/10/2013 ISSUED BY ARAKUZHA PANCHAYATH.

EXHIBIT-P6-TRUE COPY OF THE LICENCE ISSUED BY THE ARAKUZHA PANCHAYATH.

EXHIBIT-P7-TRUE COPY OF THE APPLICATION FOR LICENCE DATED 27/02/2010 TO MARADI PANCHAYATH.

EXHIBIT-P8-TRUE COPY OF THE CONSENT LETTER ISSUED BY THE STATE POLLUTION CONTROL BOARD.

EXHIBIT-P9-TRUE COPY OF THE LETTER DATED 14/03/2013 ISSUED BY THE 7TH RESPONDENT TOGETHER WITH MINUTES OF THE MEETING OF THE PANCHAYATH.

EXHIBIT-P10-TRUE COPY OF THE REPORT OF THE HEALTH INSPECTOR

EXHIBIT-P11-TRUE COPY OF THE PHOTOGRAPHS OF THE QUARRYING SITE.

EXHIBIT-P12-TRUE COPY OF THE PHOTOGRAPHS OF THE QUARRYING SITE.

EXHIBIT-P13-TRUE COPY OF THE PHOTOGRAPH OF THE QUARRYING SITE.

EXHIBIT-P14-TRUE COPY OF THE PHOTOGRAPH OF THE QUARRYING SITE.

EXHIBIT-P14 (A) -TRUE COPY OF THE PHOTOGRAPHS OF THE QUARRYING SITE.

EXHIBIT-P15-TRUE COPY OF THE PHOTOGRAPHS OF THE QUARRYING SITE.

EXHIBIT-P16-TRUE COPY OF THE PHOTOGRAPHS OF THE QUARRYING SITE.

EXHIBIT-P17-TRUE COPY OF THE PHOTOGRAPHS OF THE QUARRYING SITE.

EXHIBIT-P18-TRUE COPY OF THE PHOTOGRAPHS OF THE QUARRYING SITE.

EXHIBIT-P18 (A) -TRUE COPY OF THE PHOTOGRAPHS OF THE QUARRYING SITE.

EXHIBIT-P19-TRUE COPY OF THE ORDER PASSED BY THE KERALA STATE HUMAN RIGHTS COMMISSION.

EXHIBIT-20-TRUE COPY OF THE LETTER DATED 15/02/2014 BY COMMITTEE OF KERALA LEGISLATIVE ASSEMBLY TO THE PETITIONER.

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3RD RESPONDENT'S EXHIBITS

EXT.R3(A): COPY OF THE CONSENT TO ESTABLISH NO.PCB/DO-EKM/ICE-CR
05/2010 DT.18.2.10

EXT.R3(B): COPY OF THE CONSENT TO OPERATE NO.PCB/EKM/RO/DO1/ICO-CR-
01/2011 DT.19.4.11

EXT.R3(C): COPY OF THE REPLY SUBMITTED ON 30.11.11

EXT.R3(D): COPY OF THE CONSENT VARIATION ORDER NO.PCB/RO-EKM/GEN-
31/11 DT.15.2.12

EXT.R3(E): COPY OF THE CONSENT RENEWAL ORDER NO.PCB/RO-EKM/ICO-
42/R1/12 DT.22.12.12

EXT.R3(F): COPY OF THE COSNENT RENEWAL ORDER NO.PCB/DO2/EKM/ICO-
QR/R2/3/2015 DT.18.3.15

EXT.R3(G): COPY OF THE CONSENT VARIATION ORDER NO.PCB/DO-EKM/IQR-
227/09 DT.17.5.14

EXT.R3(H): COPY OF THE CONSENT VARIATION ORDER PCB/DO-EKM/IQR-
72/R/09 DT.17.5.14

RESPONDENTS 8-10'S EXHIBITS:

ANNX.1: COPY OF ROUGH SKETCH OF THE COMMISSIONER TOGETHER WITH
THE BOUNDARY BY THE RESPONDENTS

ANNX.2: PHOTOGRAPHS SHOWING THE DEPTH OF EACH LAYER

ANNX.3: ACTUAL PBOTOGRAPHS AROUND THE SITE TO SHOW THE GREENBELT

ANNX.4: PHOTOGRAPHS SHOWING BAMBOO TREES NEAR THE CRUSHER UNIT

ANNX.5: PHOTOGRAPH OF THE SIREN

ANNX.6: COPY OF THE RENEWED LICENSE OF THE QUARRY DT.4.4.14

ANNX.6(A): COPY OF THE RENEWED LICENSE OF THE QUARRY DT.5.4.14

ANNX.7: PHOTOGRAPH OF THE CRUSHER UNIT SHOWING THE HOLE.

EXT.R8(A): PHOTOGRAPH OF THE SPRINKLER SYSTAME USED IN THE PREMISES

EXT.R8(B): TRUE COPY OF THE SALE DEED NO.5287/04 DT.21.10.11 AND TAX
RECEIPT DT.28.2.13 FOR SURVEY NO.80/1A

EXT.R8(C): COPY OF THE LICENSE NO.194/2011-12/4182/M3/2011 DT.2.7.11

EXT.R8(E): COPY OF THE LCIENSE DT.27.8.13

EXT.R8(F): COPY OF THE LICENSE NO.3039/M3/2014 FOR THE CRUSHER
DT.1.4.14

R8(G): COPY OF THE STATEMENT OF PETITIONER OBTAINED UNDER RTI
ACT DT.21.4.14

EXT.R8(H): COPY OF THE LICENSE NO.10/14-15 OF QUARRY DT.5.4.14

EXT.R8(I): COPY OF THE LICENSE NO.2/14-15 OF QUARRY DT.4.4.14

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EXT.R8(J): COPY OF THE LICENSE SI.NO.5 OF QUARRY DT.4.4.14

EXT.R8(K): COPY OF THE LICENSE NO.9/14-15 OF CRUSHER DT.5.4.14

EXT.R8(L): TRUE COPY OF the VIBRATION STUDY REPROT DT.24.2.14

EXT.R8(M): COPY OF THE ENVIRONMENTAL STUDY REPORT DT.18.5.12

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TRUE COPY

PA TO JUDGE

P.V.ASHA, J.,

W.P.(C) No.8575 of 2014

Dated this the 18th day of June, 2015

JUDGMENT

The grievance of the petitioner is against the functioning of quarries and M.Sand manufacturing unit at the instance of respondents 8 to 10. Various allegations have been raised in the writ petition to the effect that the conditions stipulated in the license/permit issued by the statutory authorities are violated and the statutory authorities are not taking any action, despite various complaints on account of the functioning of the quarries by respondents 8 to 10. It is stated that the the bio-diversity of the locality itself is put in peril. The nuisances on account of the transportation from and to the quarry as well the pollution caused by the activities of contesting respondents have made the life miserable to the petitioner and others. The petitioner has also got a case that the quarries are functioning in Government Puramboke land, as per the information furnished to him under the Right to Information Act. It is further alleged that even though these quarries started functioning in the year 2009, the conditions stipulated in the permits are yet to be complied with and the violation of conditions continue. It is alleged that compliance of the conditions in 2014 for the units which started in 2009, will not absolve them from its liability to run the units in

accordance with rules.

2. The petitioner has produced Ext.P1 complaint preferred by him and others before the District Collector, Ernakulam requesting to take steps to preserve the eco-system of the locality and to mitigate the air, water and dust pollution caused by the respondents. The petitioner claims that the quarrying operations are done in 1.9850 acres of patta land comprised in Sy.Nos.80/1A-10, 80/1A-11, 80/1-12, 80/1-15 and 80/1A-16 in Arakkuzha Village in Muvatupuzha Taluk. The petitioner's case is that the survey numbers mentioned in Ext.P5 letter includes the Government property also and the permission given to respondents 8 to 10 to conduct quarry in Government land is illegal. The petitioner also says that huge quantity of waste spread over the area and which flows through the thodu is adversely affecting the cultivating nilams in the area. It is also stated that the approach road does not have the proper width as stipulated in the conditions for license/permit.

3. On the basis of an application filed by the petitioner, this Court had deputed an Advocate Commissioner to inspect the property and to report the matters called for in the interlocutory application. Accordingly, the Advocate Commissioner, after inspecting the property

submitted a report before this Court on 8.4.2014.

4. The learned counsel for the petitioner referring to paragraph 8 of the counter affidavit of the 5th respondent and paragraph 11 of the counter affidavit of the 4th respondent pointed out that, the statutory authorities have not cared to inspect the site in question and therefore the distance from the quarry to the petitioner's house is stated to be 500 meters as per the counter affidavit of the 5th respondent, whereas, it is 390 meters as per the counter affidavit of the 4th respondent. Similarly, it is stated that as per the information given under the Right to Information Act, the petitioner was informed of the survey numbers in which the quarries have been functioning. As per the information given in Ext.P5, some of the quarries are in Sarkar Puramboke. But the 5th respondent in paragraph 8 of his counter affidavit stated that the quarries are not functioning in Sarkar Puramboke. Therefore, according to the petitioner, the counter affidavits filed by respondents 4 and 5 are to be disbelieved and rejected.

5. It is pointed out that the environmental clearance has been given only for one quarry, going by paragraphs 5 and 6 of the counter affidavit of the 5th respondent. Similarly, it has been pointed out that while issuing the license, the statutory authorities have stipulated

several conditions to be complied with. These conditions were to be complied with even before starting the functioning of the units. In the relevant case, it is pointed out that, the quarries started functioning in the year 2009. Even now the conditions stipulated while granting license/permit are to be fulfilled. According to the petitioner, the compliance of conditions for the year 2014-15 of the units, which started functioning in the year 2009, will not satisfy the requirements and therefore, appropriate directions have to be issued to stop the functioning of the quarries. According to the petitioner, the counter affidavits filed by the official respondents are liable to be disbelieved and discarded.

6. It is argued that because of the functioning of the quarries, there is serious scarcity of water in the locality. The wet sand removed during the operation of the quarry are not removed. The operation is being conducted below the ground level. On account of the dust emanating from the units very serious water pollution, air pollution and noise pollution are caused and the condition continues to be the same. The learned counsel also submits that based on the report of the Advocate Commissioner, this is a fit case, where this Court shall direct to stop the functioning of the quarries.

7. On the basis of the order passed in the application for deputing Advocate Commissioner, the learned Advocate Commissioner Sri.Jamsheed Hafiz inspected the property on 3.4.2014 and submitted his report on 8.4.2014, wherein certain non-compliances have been pointed out. In answer to the question whether the quarry units and crusher units are functioning after complying with the conditions stipulated by the licensing authority, the Advocate Commissioner in his report explained the conditions as available at the time of inspection. With respect to the quarrying lease Ext.P4 it was reported that condition No.9 was complied with. With respect to condition No.10 ie. providing of retention wall/barricade/fencing/compound wall surrounding the quarry before the commencement of the quarrying operation for preventing accidents by falling of human beings, animals and materials into the quarry, the lessee should take preventive measures for the safety of the labourers as well as the general public, it was reported that the condition was partially complied as there are fences/barricades surrounding the quarrying area, but there is no barricades for the safety of the labourers as well as the general public within each layers (5 layers, with each layer having 25 meters or more depth) mined. Regarding condition No.11, ie. the lessee should leave

a distance of 7.5 metres from the adjacent boundary lands including Government puramboke land while carrying out quarrying operation, the Advocate Commissioner reported that the said condition was not complied. It was found that road access was available to the quarry on the west and northern side and to the private property on the east. But the mining operation was seen done within a meter from the barricades/fence fixed on the eastern and southern boundary of the quarry. Regarding the conditions prescribed in Ext.P6 license issued by the Panchayat, the Advocate Commissioner reported that out of the 12 conditions stipulated therein condition Nos.2 and 8 were not complied with. Condition No.2 is with respect to keeping the premises cleaned without causing any health hazards to general public and keeping the food articles neatly. Condition No.8 is that the drain to flow water and the equipment for the same should be kept clean and neat. Regarding the conditions in Ext.P8, ie. with respect to the consent to operation given by the Kerala State Pollution Control Board, it was reported that condition 2.3 is not complied with, ie. with respect to the plantation of suitable species of trees and curtain plants maintained within and along the periphery of the premises, forming a green belt to improve the environment. Stating that the said condition is not complied, it

has been noticed that there is thick vegetation on the eastern and southern side of the quarry and rubber plantations in private properties. It was found that on the north of the quarry, the sand removed for quarrying is deposited and large heaps of sand removed for quarry and waste dust particles from crusher is placed on the western boundary without barricades. It was also reported that the sand and waste particles have slip down from the top of the hill to the property lying below the hill and this has destroyed the vegetation in the area covering the plants and shrubs in the slanting area.

8. Respondents 8 to 10 filed objection to the interlocutory application for appointment of Advocate Commissioner immediately after the inspection, raising objections as against the conduct of the inspection as well as of the Commissioner. They have also filed a very detailed objection as against the Commission Report. In addition to that they have filed a counter affidavit explaining the activities being carried out in the quarries, producing the licenses/permits issued by the statutory authorities from time to time. In the counter affidavit, it is stated that the quarrying operations are conducted in their own property having an extent of more than 40 acres. They oppose the writ petition pointing out that the petitioner is in fact ventilating a cause in

public interest and none of his private interests is affected by the operation of the quarrying unit. It is stated that petitioner is residing about 500 meters away from the quarries in question and is in no way affected. According to them, the petitioner has taken up the issue only because of a failed deal in land. Respondents 8 to 10 have produced the sale deed in respect of the property in Sy.No.80/1A/18 and 80/1A/17 where the quarries are functioning. They have also produced tax receipts in respect of the properties in Sy.No.80/1A2. Ext.R8(c) shows that quarrying lease was granted to the 8th respondent-Shans Paul to extract Granite Building Stone over an area of 1.0647 hectares of land comprised in Sy.Nos.85/3A1, 85/3A2, 85/3B1, 85/3B2 and 85/4A2 of Marady village for a period of 12 years from the date of execution of the lease deed and quarrying lease deed was executed on 10.1.2007 which is valid up to 9.1.2019. They have explained the manner in which the quarries are functioning and the conditions stipulated in the license and permit are observed.

9. Arakkuzha Grama Panchayat -6th respondent- filed their counter affidavit on 7.4.2015. As per this counter affidavit, respondents 8 to 10 are conducting quarry operations in both units within the area of that Panchayat in accordance with rules and

complying with all the conditions. They have also stated that whenever there were complaints they have made enquiries into it. Similarly, regarding the information furnished under the RTI Act as per Ext.P5 letter, it was stated that the survey number happened to be mentioned by mistake and happened to be stated that 7 quarries were function in Sarkar land in the Panchayat in various survey numbers given therein. On further verification, it was understood that the said survey numbers were not Government lands but those properties belong to respondents 8 to 10.

10. The 5th respondent - Tahsildar, Muvattupuzha filed a counter affidavit on 12.3.2015, wherein he has stated that the quarry operations and crusher units are running with valid license. It is also stated that he had conducted the site inspection whenever there was complaint received. The RDO had inspected the site on 3.5.2014; the report was given to the 2nd respondent and to the 1st respondent and also to the Government, on 2.5.2013, 27.1.2014 and 3.5.2014 respectively. It is also stated that environmental study has been conducted in the 3rd quarry unit in Arakkuzha and they have issued clearance on 15.3.2013. In paragraph 8 of the counter affidavit, it is stated that the quarry operations are not conducted in Sarkar land. It

is also stated that the petitioner, residing more than 500 meters away from the Unit, is not affected by functioning of the quarries in any manner and that the story of land pollution/ecology etc. are not correct.

11. This Court had by order dated 1.4.2015, directed the Kerala State Pollution Control Board to depute one of its Engineers to inspect the quarrying unit as well as the M.Sand manufacturing unit of respondents 8 to 10 and to report the same by filing a statement/counter affidavit, whether the conditions made mention of in Ext.P8 have been complied with by respondents 8 to 10. Based on the direction, the Environmental Engineer-the 3rd respondent has filed an affidavit on 29.5.2015. In the affidavit, it is stated that an inspection was conducted on 1.4.2015. It is stated that all the 3 quarries and crusher unit are functioning without violating any of the conditions. In paragraph 11 of the affidavit, it is stated that 3 quarries and the crusher unit are situated in a total area of 40 Acres of land and the minimum setback available to all the quarries is 25 meters. The distance of the nearest quarry to the residence of the petitioner is found as 390 meters. Natural green belt with rubber, mango, jack wood tree, anjili and bamboo plantation there and tarred road and

stationery sprinklers are seen provided in the area. As per the affidavit inspections are being conducted from time to time and no violation is found.

12. In the aforesaid counter affidavit, the 3rd respondent, the Environmental Engineer of Pollution Control Board found there is no violation of any condition. They have assured that they will diligently and faithfully discharge their statutory functions and obligations under the relevant statute. It is in the above circumstances that the learned counsel for the petitioner seeking direction to stop the functioning of the quarries.

13. I heard the learned Senior Counsel appearing for the petitioner, the learned counsel for respondents 8 to 10, the learned Govt Pleader and the learned standing counsel appearing for the respective statutory bodies.

14. Sri.P.Sanjay, the learned Counsel for respondents 8 to 10 stoutly opposed the reliefs prayed for in the writ petition; firstly on the ground that the writ petition is in the nature of public interest litigation and so far as the petitioner is in no way affected by the functioning of the quarry. It is argued that the petitioner is residing 500 meters away from the quarry that is far beyond the prohibitory limit of 100 meters.

Apart from that, it is pointed out that there is no specific allegation regarding any specific violation of any of the conditions stipulated in the permit/license, in any of the complaints preferred by the petitioner or in this writ petition. The learned counsel submits that the quarries run by respondents 8 to 10 are among those very few which are being run with utmost adherence to the legal provisions and maintaining the ecological balance. It is argued that even the Advocate Commissioner has found thick vegetation on one side of the quarry and the respondents are very particular to see that no harm is caused to the environment while running these units. According to him novel technologies are adopted in order to see that there is no emanation of dust, by spraying water in truckers. Similarly, the noise produced is only the minimum because of the technology adopted. It is also argued that there are no residential houses anywhere near the quarries, which are functioning in more than 40 Acres of property owned by them. The adjacent residential properties are beyond the 40 Acres property and even those are purchased by the respondents.

15. With reference to the noncompliances found by the Advocate Commissioner in his report regarding the absence of barricades, it is argued that the barricade around each belt is not

necessary and is not possible and there is no such provision in the conditions stipulated. The Advocate Commissioner has found that there is violation of condition Nos.10 and 11. Condition No.10 in Ext.P4 is regarding providing of retention wall/barricade/fencing/ compound wall surrounding the quarry. The Advocate Commissioner has found that the said condition is partially complied with, as there is no barricade for the safety of general public or labourers within each layers mined. With reference to this finding of the Commissioner, respondents 8 to 10 in their objection stated that the general public does not get access into the mining area. With the support of Annexure-2 photographs, it is stated that the layer is having only around 5 meters depth. The finding that each layer is having 25 meters or more depth is not correct. It is also stated that fencing is not possible in each of the layers, since it is the working area of the quarry and each layer is cut and removed after breaking it into pieces and the layers keep changing with the quarrying site moving on according to the mining activity. It is stated that the area of layers that keep changing on a daily basis as quarrying work continues. Regarding the finding with reference to condition No.11, it is argued that there should be a distance of 7.5 meters from the adjacent

boundary lands including Government Puramboke land while carrying out quarrying operation. It is pointed out that the adjacent property is beyond more than 40 Acres and there is no basis for the finding that the distance of 7.5 meters from the adjacent boundary is not complied with. With reference to the findings of violation on conditions Nos.2 and 8 in Ext.P6 license given by the 6th respondent Panchayat, the respondents have in their objection stated that the conditions stipulated in the license are general in nature with respect to all the establishments coming under the D&O Rules of Panchayat Raj Act. Condition No.2 relates to food articles kept for trading purpose. As far as the quarries are concerned, this condition is not at all relevant and more over there is no instance where any contagious deceases are caused by the operation of the quarries on account of the storage of food articles. Regarding condition No.8, it is argued by the learned counsel for respondents 8 to 10 that there is no waste water and no equipment for discharge of the same in the premises of the respondents. Similarly it is also argued that there is no drain or 'ovuchal' adjacent to the property or in direct contact with the property. It is argued therein that there is not even an equipment to flow water. The respondents have produced various photographs to

show the functioning of the quarry, in the property. Pointing out Annexures 2 and 3 photographs, it is submitted that barricading of the quarry is not practicable and is not required at all. They have produced Annexures 3(1) to 3(4) in order to show the vegetation preserved and maintained by them in order to see that the ecological balance is always maintained. Regarding the approach road referred to with respect to condition No.3.11, it is stated that it is physically impossible to tar the road up to the quarry because earthmoving vehicles are used for the work and as far as the access from the crusher unit to the public road is concerned, it is suitably tarred. With reference to this finding of the Commissioner, respondents 8 to 10 in their objection stated that the general public does not get access into the mining area. With the support of Annexure-2 photographs it is stated that the layer is having only around 5 meters depth. The finding that each layer is having 25 meters or more depth is not correct. Objecting to this finding, respondents 8 to 10 in their counter affidavit stated that the 7.5 meters prescribed is not from the quarry to the barricade, but it is the distance to be left from the adjacent boundary land including the Government puramboke land to the quarry. The distance from the edge of the quarry to the boundary of adjacent land after the

petitioner's property is around 70 meters on the east and more than 25 meters on the south, as can be seen from Annexure-1. Objecting to the finding of the Commissioner, respondents 8 to 10 stated that condition No.2 in Ext.P6 license issued by the Panchayat is not at all relevant for the purpose of quarrying, because no food articles are stored in the premises of the quarry. Regarding the cleanliness to ensure that contagious diseases are not caused, it is stated that there is no case that there are any such diseases caused by the operation of the quarry. In respect of condition No.8, it is stated that the said condition is intended for establishments that have waste water flow into drains. In the case of quarry, there is no waste water and there is no equipment for discharge of the same into the premises of the respondents. There is no drain or ovuchal adjacent to the property and the property is not in direct contact with any drain or ovuchal.

16. The learned counsel for respondents 8 to 10, with reference to the counter affidavit of the 5th respondent argued that the site inspection was conducted from time to time. There was an inspection of the site by the Tahsildar on 26.4.2013 and by the R.D.O on 3.5.2014. There was no violation found in the functioning of the quarries and accordingly reports were submitted before the

appropriate authorities. With reference to this finding of the Commissioner, respondents 8 to 10 in their objection stated that the general public does not get access into the mining area. With the support of Annexure-2 photographs, it is stated that the layer is having only around 5 meters depth. The finding that each layer is having 25 meters or more depth is not correct. Objecting to the finding of the Commissioner, respondents 8 to 10 stated that condition No.2 in Ext.P6 license issued by the Panchayat is not at all relevant for the purpose of quarrying, because no food articles are stored in the premises of the quarry. In respect of condition No.8, it is stated that the said condition is intended for establishments that have waste water flow into drains. In the case of quarry, there is no waste water and there is no equipment for discharge of the same into the premises of the respondents. There is no drain or ovuchal adjacent to the property and the property is not in direct contact with any drain or ovuchal.

17. The learned counsel for respondents 8 to 10, with reference to the counter affidavit of the 5th respondent argued that the site inspection was conducted from time to time. There was an inspection of the site by the Tahsildar on 26.4.2013 and by the R.D.O

on 3.5.2014. There was no violation found in the functioning of the quarries and accordingly reports were submitted before the appropriate authorities.

18. According to the learned Senior Counsel Sri.George Cheriyan the report filed by the Advocate Commissioner shows the functioning of the quarries flouting the conditions stipulated in the permits and therefore this Court has to direct respondents 8 to 10 to stop the functioning.

19. On consideration of the Commission Report with reference to the objections filed against it by respondents 8 to 10, their counter affidavit, as well as the counter affidavits of the statutory authorities like Grama Panchayat, Pollution Control Board and Tahsildar, filed subsequent to the filing of the Commission Report, it can be seen that respondents 8 to 10 are running the quarries observing the conditions stipulated in the respective permits/license. Therefore it will not be proper for this Court to issue directions against the functioning of the quarries, on the basis of the Commission Report alone. It is true that the Advocate Commissioner is an Officer of the Court and the report has to be considered with due weight.

In the above circumstances, this writ petition is disposed of

W.P.(C) No.8575 of 2014

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directing respondents 1 to 7 to ensure that the quarrying operations are being conducted by respondents 8 to 10 in due compliance of all conditions stipulated in the permits/license by conducting regular inspections and verifications every fortnight. In the event of any violation being found, appropriate proceedings shall be initiated against respondents 8 to 10.

The writ petition is disposed of accordingly.

Sd/-

**P.V.ASHA
JUDGE.**

rkc