

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C).No. 8574 of 2015 (V)

PETITIONER(S):

1. ABHILASH N., AGED 36 YEARS
S/O.RAJAN, NAIKATH PARAMBIL HOUSE, NAJNGATTIRI P.O.
PATTAMBI, PALAKKAD DISTRICT, PIN - 679 311.
2. K.SUKUMARAN,
PRESIDENT,
M/S.OTTAPPALAM TALUK KARINKAL QUARRY OPERATORS VYAVASAYA
SAHAKARANA SANGHAM LTD. SIND (P)178
VADANAMKURRISSI P.O., ONGALLUR - I VILLAGE, PATTAMBI
PALAKKAD DISTRICT, PIN - 679 124.

**BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.P.T.ABHILASH**

RESPONDENT(S):

1. GOVERNMENT OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF INDUSTRIES, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. GEOLOGIST,
MINING AND GEOLOGY DEPARTMENT,
TOWN BUS STAND COMPLEX, PALAKKAD, PIN - 678 001.

BY SENIOR GOVERNMENT PLEADER SRI. K.C. VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

MJS

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE QUARRYING PERMIT DATED 18.06.2014 ISSUED BY THE 2ND PETITIONER TO THE 1ST PETITIONER VALID UP TO 17.06.2015.
- EXHIBIT P2. TRUE COPY OF THE CONSENT NO.PCB/PLKD/IC/CO/F/3029/2014 DATED 26.09.2014 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD TO THE 1ST PETITIONER, VALID UP TO 09.02.2015.
- EXHIBIT P3. TRUE COPY OF HTE SHORTFIRER'S CERTIFICATE DATED 05.09.2013 ISSUED BY THE CONTROLLER OF EXPLOSIVES, ERNAKULAM, TO THE 1ST PETITIONER
- EXHIBIT P4. TRUE COPY OF THE NOC DATED 16.09.2014 ISSUED BY THE ASSISTANT DIVISIONAL OFFICER, FIRE & RESCUE SERVICES, PALAKKAD, TO THE 1ST PETITIONER.
- EXHIBIT P5. TRUE COPY OF THE LICENCE DATED 02.12.2014 ISSUED BY THE PATTAMBI GRAMA PANCHAYAT TO THE 1ST PETITIONER, VALID UP TO 09.02.2015.
- EXHIBIT P6. TRUE COPY OF THE ORDER DATED 28.03.2014 ISSUED BY THE DEPUTY CHIEF CONTROLLER OF EXPLOSIVES, CHENNAI, TO THE 1ST PETITIONER TO POSSESS THE EXPLOSIVES BY ESTABLISHING MAGAZINE.
- EXHIBIT P7. TRUE COPY OF THE QUARRYING PERMIT DATED 16.06.2014 ISSUED BY THE 2ND RESPONDENT TO THE 2ND PETITIONER, VALID UP TO 15.06.2015.
- EXHIBIT P8. TRUE COPY OF THE REPRESENTATION DATED 23.02.2015 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P9. TRUE COPY OF THE REPRESENTATION DATED 27.02.2015 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P10. TRUE COPY OF THE JUDGMENT DATED 01.09.2014 IN W.P.(C) NO.21852/2014 OF THIS HON'BLE COURT.
- EXHIBIT P11. COPY OF THE INTERIM ORDER DATED 16.02.2015 IN W.P.(C) NO.3400/2015 OF THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

MJS

P.S. TO JUDGE

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 8574 of 2015

Dated this the 24th day of March, 2015

JUDGMENT

The petitioners have approached this Court with the following prayers:

"i. Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to issue sufficient number of P-Forms to the petitioners, for transporting the granite pieces extracted and removed by the petitioners upto 9.2.2015, on the strength of Exts. P1 and P7 quarrying permits issued by the 2nd respondent.

ii. Issue a writ of mandamus or any other appropriate writ, order or direction commanding the 2nd respondent to consider and dispose of Exts. P8 and P9 representations in the light of Ext.P10 judgment and Ext.P11 interim order of this Hon'ble Court.

iii. Issue such other writ, order or direction which may deem fit in the facts and circumstances of the case."

2. Heard the learned counsel for the petitioners and the learned Government Pleader for the respondents.

3. The learned counsel for the petitioners points out that the petitioners' quarrying permit was valid till 9.02.2015. On the

strength of Exts. P1 and P7 permits, the petitioners have already excavated granite rock to an extent of 10,000 MT and the same is stored in the premises. The request made by the petitioners to issue necessary transporting permit in the prescribed form is not entertained for want of Environmental Clearance certificate which made the petitioners to approach this Court by filing this writ petition.

4. The learned Government Pleader appearing for the respondents submits that, no applications as per Exts. P8 and P9 stated as preferred by the petitioners have actually been preferred before the 2nd respondent. During the course of hearing, it is brought to the notice of this Court that renewal of the permit and the requirement to have environmental clearance for quarries, including the closed quarries, were subject matter of consideration of a Division Bench this Court in W.P.(C) No. 31148 of 2014 and connected cases including W.A No. 1566 of 2014. It is stated that final verdict has already been pronounced by the Division Bench yesterday [23.03.2015]. The learned Government Pleader points out that the Division Bench has made clear that the Government Order dated 10.01.2014 cannot be relied on by the parties in view of the restraint order issued by the National Green Tribunal dated 27.09.2013 till such time the restraint order continues. The observation of the Bench in

paragraph 82 of the said judgment is relevant, which is extracted below :

82. In view of the foregoing discussion, we come to the following conclusions.

(i) In case where quarrying/mining/lease which were existing on the date of issuance of Notification dated 14.09.2006 or on the date of issue of the order dated 18.05.2012 by the Government of India, Ministry of Environment and Forests with regard to area less than 5 hectares no environmental clearance with regard to extraction of minor mineral is required. Notification dated 14.09.2006 contemplated obtaining environmental clearance only with regard to new projects/new activities.

(ii) Government Order dated 10.01.2014 cannot be relied on by the parties in view of the restraint order issued by the National Green Tribunal dated 27.09.2013 till such time the restraint order continues.

(iii) By amendment of Section 14 by Act 37 of 1986 making Section 4 applicable to minor minerals also the provision contained in Section 4 shall be applicable to mining operations by a person holding mining lease or any other kind of mineral concession. It cannot be accepted that mining operation with effect from 10.02.1987 cannot be continued by a person holding any other mineral concession apart from mining lease.

(iv) Judgment of the Apex Court in **Deepak Kumar's case (supra)** did not contemplate environmental clearance for an area less than 5 hectares with regard to

existing mining lease/mining permits on the date of judgment. Paragraph 29 of the judgment clearly directed that leases of minor minerals including their renewal for an area of less than five hectares be granted by the State/Union Territories only after getting environmental clearance.

(v) Environmental clearance as contemplated by Notification dated 14.09.2006 required environmental clearance for new projects/new activities.

(vi) The Notification dated 14.09.2006 having been applied vide order dated 18.05.2012 of the Government of India, Ministry of Environment and Forests all mining operations for new project and new activities for an area less than 5 hectares after 18.05.2012 required environmental clearance carried through either a mining lease or mining permit.

(vii) Interim order passed by the Apex Court on 27.01.2012 was intended by the Supreme Court to operate till the Rules have been framed by the States taking into consideration the guidelines and recommendations of the Ministry of Environment and Forests.

(viii) As per Rule 68 no mining/quarrying operations can be permitted without there being an approved mining plan. But such rule is subject to exception as engrafted in Rule 66, i.e., for existing lease holders, time has been allowed to submit mining plan.

5. In the above circumstance, the 2nd respondent/Geologist

is required to conduct a spot inspection with notice to the petitioners to ascertain the factual position and issue sufficient number of Mineral Transit Pass (MTP) in Form O(A) to the petitioners to transport the excavated quantity of granite rocks stored in the premises. This shall be done at the earliest, at any rate, within 'two weeks' from the date of receipt of a copy of this judgment. It is made clear that, no further blasting operation or excavation shall be conducted in the premises, unless valid permit/sanction is obtained by the petitioners from the concerned authority. The petitioners shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

The writ petition is disposed of.

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