

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON**

**MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937**

**WP(C).No. 9181 of 2015 (W)**  
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**PETITIONER :**  
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**P.K.ABDUL RAZAK,  
MANAGING DIRECTOR, M/S.OTHAYI GRANITES (P) LTD.,  
ALANGADANMALA P.O., PERAKKAMANNA,  
MALAPPURAM DISTRICT.**

**BY ADV. DR.GEORGE ABRAHAM**

**RESPONDENT(S):**  
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- 1. VILLAGE OFFICER,  
EDAVANNA VILLAGE,  
MALAPPURAM DISTRICT, PIN - 676 641.**
- 2. DISTRICT COLLECTOR, MALAPPURAM DISTRICT,  
PIN -676 505.**
- 3. TAHSILDHAR, ERANAD TALUK,  
MALAPPURAM DISTRICT, PIN -676 641**
- 4. DIVISIONAL FOREST OFFICER,  
DIVISIONAL FOREST OFFICE, NILAMBUR NORTH-676 641**
- 5. STATE OF KERALA,  
REPRESENTED BY THE SECRETARY TO GOVERNMENT,  
REVENUE DEPARTMENT, TRIVANDRUM-695 001**

**BY SPL.GOV'T. PLEADER (FOREST) SRI.M.P.MADHAVANKUTTY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 23-03-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**sts**

APPENDIX

PETITIONER(S)' EXHIBITS

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- P1- TRUE COPY OF THE CONSENT RECEIVED FROM THE KERALA STATE POLLUTION CONTROL BOARD, WHICH IS VALID UP TO 30.6.2016
- P2- TRUE COPY OF THE LICENCE DATED 1.5.2014 ISSUED TO THE PETITIONERS FIRM BY THE CONTROLLER OF EXPLOSIVES
- P3- TRUE COPY OF THE LICENCE DATED 2.7.2014 ISSUED BY THE EDAVANNA GRAMA PANCHAYATH TO THE PETITIONER
- P4- TRUE COPY OF THE QUARRYING LEASE GIVEN TO THE PETITIONER BY THE GEOLOGIST, WITH RESPECT TO SURVEY NOS.193/1, 193/2 AND 173/1 HAVING AN EXTENT OF 2.6305 HECTARES OF LAND IN EDAVANNA VILLAGE OF MALAPPURAM DISTRICT ISSUED IN FORM -H, RULE 32, DATED 29.12.2014
- P5- TRUE COPY OF THE STOP MEMO DATED 21.10.2014 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT VILLAGE OFFICER
- P6- TRUE COPY OF THE JUDGMENT IN WP(C) NO.30016/2014
- P7- TRUE COPY OF THE ORDER OF THE DISTRICT COLLECTOR
- P8- TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE 5TH RESPONDENT

RESPONDENT(S)' EXHIBITS:

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NIL

/TRUE COPY/

P.S.TO JUDGE

**P.R. RAMACHANDRA MENON, J.**

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**W.P.(C)No. 9181 OF 2015**  
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**Dated this the 23<sup>rd</sup> March, 2015**

**J U D G M E N T**

The petitioner has approached this Court with the following prayers:

*"a) to issue a writ of certiorari or any other appropriate writ, direction or order and quash Ext.P7 order issued to the petitioner by the District Collector;*

*b) to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to permit the quarrying operations with respect to the properties covered by Exhibit P4;*

*c) to issue a writ of mandamus or any other appropriate writ, order or direction, directing the 5<sup>th</sup> respondent to consider and pass orders from Exhibit P8 appeal filed by the petitioner;*

*d) to grant such other appropriate reliefs to the petitioner as this Hon'ble Court may deem fit and proper in the interest of justice."*

2. The petitioner is aggrieved of Ext.P7 order issued by the second respondent/District Collector whereby the permit already

granted to the petitioner to conduct quarrying activity in the concerned property has been cancelled. Being aggrieved of Ext.P7, the petitioner has already moved the Government/5th respondent by filing Ext.P8 appeal , which is still to be acted upon. Hence the writ petition.

3. Heard the learned Government Pleader as well.

4. During the course of hearing, the learned Counsel for the petitioner points out that the purpose of assignment , as discernible under Rule 6 has to be read and understood in the light of contents of the 'Form No.5', forming part of Rule 21 of the above Rules. Particular reference is made to Clause '10'.

5. The learned Counsel points out that assignment shall be without prejudice to the rights of the Government to have a share in mines and quarries adjacent to the said land, which stands reserved. This according to the petitioner is a pointer that the Government will be having a share in the mines and quarries and as such, mining and quarrying operation in the concerned property is not banned under any circumstance.

6. The learned Government Pleader seeks to draw a distinction and submits that the terminology used in the

provision with regard to the right of the Government, is in respect of mines and quarries adjacent to the land and not with respect to the mines and quarries in the land which has been assigned. It is also pointed out that, if the land concerned is consisting of mines and quarries, the purpose of assignment for effecting personal cultivation cannot be satisfied. The learned Counsel for the petitioner submits that in the Gazette copy of the notification, the word used in Clause '10' of Form No.5 of the Kerala Private Forests (Vesting and Assignment) Rules, 1974 is not 'adjacent' but '**subjascent**'

7. However, this Court does not find it necessary to express anything with regard to the merits in this regard, as the matter is required to be considered by the competent authority; more so when the petitioner has already moved the Government by way of Ext.P8 appeal.

8. The learned Counsel also points out that in view of the mandate under Rules 26, the appellate authority is none other than the Government and it was in the said circumstance, that Ext.P8 has been preferred.

9. In the above circumstance, there will be a direction to

the fifth respondent/State to consider and pass appropriate orders on Ext.P8, after affording an opportunity of hearing to the petitioner. It is made clear that further activity shall be continued only subject to the concurrence if any given by the fifth respondent/State.

The writ petition is disposed of. The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the 6th respondent/State for further steps

**P.R.RAMACHANDRA MENON  
JUDGE**

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