

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 10296 of 2015 (J)

PETITIONER:

**M/S.MATHA GRANITES, OORAMANA(PO),
RAMAMANGALAM, ERNAKULAM - 686 730,
REPRESENTED BY ITS MANAGING PARTNER
MR. K.S PAULOSE, AGED 45 YEARS, S/O.SCARIA.**

BY ADV. SRI.JOBI JOSE KONDODY

RESPONDENT(S):

- 1. RAMAMANGALAM GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
RAMAMANGALAM GRAMA PANCHAYAT OFFICE,
RAMAMANGALAM(PO), ERNAKULAM DISTRICT- 686 663.**
- 2. THE PRESIDENT,
RAMAMANGALAM GRAMA PANCHAYAT,
RAMAMANGALAM GRAMA PANCHAYAT OFFICE,
RAMAMANGALAM (PO), ERNAKULAM DISTRICT-686 663.**
- 3. THE VILLAGE OFFICER,
MEMMURI VILLAGE OFFICE, PAMPAKKUDA,
ERNAKULAM DISTRICT.**

**R1 & R2 BY ADVS. SRI.JIBU P THOMAS
SRI.K.RAJESH KANNAN
R3 BY GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1 : A TRUE COPY OF THE QUARRYING LEASE EXECUTED BETWEEN THE PETITIONER AND THE GOVERNMENT OF KERALA DATED 11-06-2009.**
- EXHIBIT P2 : A TRUE COPY OF THE D & O LICENSE ISSUED BY THE FIRST RESPONDENT DATED 24-03-2014 FOR THE YEAR 2014-2015.**
- EXHIBIT P3 : A TRUE COPY OF THE LOCATION SKETCH PREPARED AND ISSUED BY THE THIRD RESPONDENT DATED 24-03-2015 FOR PRODUCING IT BEFORE THE MINING AND GEOLOGY DEPARTMENT AND ENGLISH TRANSLATION.**
- EXHIBIT P4 : A TRUE COPY OF THE PANCHAYAT COMMITTEE DECISION OF THE FIRST RESPONDENT HELD ON 25-07-2014 AND ENGLISH TRANSLATION.**
- EXHIBIT P5 : A TRUE COPY OF THE LETTER DATED 10-10-2014 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER AND ENGLISH TRANSLATION.**
- EXHIBIT P6 : A TRUE COPY OF THE REPRESENTATION DATED 25-03-2015 SUBMITTED BY THE PETITIONER TO THE THIRD RESPONDENT AND ENGLISH TRANSLATION.**

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.10296 of 2015

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Dated this the 15th day of July, 2015

JUDGMENT

The petitioner is seeking a direction to the third respondent to consider and pass orders on Ext.P6 representation after quashing Ext.P3 location sketch.

2. The petitioner is a partnership firm carrying out the business of quarry for mining building stones and a crusher unit for crushing the mined building stones from the quarry into various aggregates of building stones in Memmuri village of Muvattupuzha taluk in Ernakulam district. The partnership firm is represented by its managing partner. In order to obtain a fresh quarrying lease from the Mining and Geology Department as well as to obtain environmental clearances stipulated under Kerala Minor Mineral Concession Rules, 2015, the petitioner approached the third respondent to prepare a location sketch of the petitioner's property. He prepared Ext.P3 sketch wherein the private road constructed by the petitioner in order to reach the quarry and crusher through the middle of

the petitioner's property from the northern and southern side was marked as a panchayat road.

3. The petitioner alleges that the first respondent panchayat do not have a case that the private road of the petitioner firm belongs to them nor was it entered in the road register of the panchayat. It can also be seen from Exts.P4 and P5 that the first respondent had requested the petitioner to cut open a road through the side of the petitioner's property for the public at large; it is alleged.

4. The petitioner further alleges that he had complied with the request of the panchayat and had constructed a new road for the purpose of surrendering it to the petitioner through the eastern side of the petitioner's property. If the private road passing through the middle of the petitioner's property was a panchayat road, then there was no necessity for the panchayat requesting the petitioner vide Exts.P4 and P5 to cut open a new road for vehicular traffic through the property of the petitioner. Aggrieved by the marking of the private road in Ext.P3 as a panchayat road and non-consideration of Ext.P6 for correcting Ext.P3 sketch by the third respondent, the petitioner filed this writ petition.

5. I have heard the learned counsel for the petitioner and the learned standing counsel for the first respondent panchayat,

6. By Ext.P3, the private road of the petitioner firm has been marked as panchayat road and on account of this, the petitioner firm has become eligible to apply for fresh quarrying lease for mining building stones as well as for obtaining environmental clearance stipulated in the Kerala Minor Mineral Concession Rules, 2015.

7. From the arguments advanced by the learned standing counsel for the respondent panchayat, it appears that the panchayat is not claiming any right over the aforesaid road. It can be seen from Exts.P4 and P5 that respondents 1 and 2 had requested the petitioner to construct a new road for vehicular traffic for the convenience of the people in the panchayat to reach Manjappillikkad - Parambrakkad road on the northern side of Ext.P3 to reach Ambalappady-Manjappallikkad-Anjilichuvadu road. Since the petitioner firm was carrying out quarrying of building stones and crusher unit, the petitioner firm thought of constructing new road as requested by the first respondent for the public through the petitioner's property and the same was constructed. Under such circumstances, the

third respondent now says that the road constructed through the property of the petitioner especially through the middle of the property for transporting materials from his unit is a panchayat road.

8. The petitioner further alleges that the firm is willing to surrender the newly constructed road through the eastern side of the petitioner's property to the respondent panchayat. However, the third respondent while preparing Ext.P3 have not consulted the first respondent to ascertain whether there is any panchayat road through the petitioner's property. Had there been such a consultation, the mistake now pointed by the petitioner would not have occurred.

9. On a specific query put by me during the course of argument to the learned standing counsel for the respondent panchayat as to whether the aforesaid road is included in the road register of the first respondent panchayat, the learned standing counsel for the first respondent answered in the negative. Under such circumstances, there is no justification on the part of the third respondent in marking the private road of the petitioner firm as a panchayat road in Ext.P3.

Therefore, the writ petition is allowed. Ext.P3 is quashed. The third respondent is directed to consider and pass orders on Ext.P6 representation after obtaining necessary report from respondents 1 and 2 with regard to the ownership of the private road constructed through the middle of the petitioner's property. This shall be done within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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