

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 12259 of 2015 (F)

PETITIONER :

**ARAVINDAKSHAN P.,
AGED 58 YEARS, S/O. GOPALAN NAIR
POTTANATE HOUSE, AYYAPPANKAVU P.O.,
MULAYAM, THRISSUR DISTRICT.**

BY ADV. SRI.JOBI JOSE KONDODY

RESPONDENT(S) :

- 1. THE DIRECTOR
DIRECTORATE OF MINING AND GEOLOGY
PATTOM PALACE P.O.,
KESAVADASAPURAM
THIRUVANANTHAPURAM – 695 004.**
- 2. THE GEOLOGIST
MINING AND GEOLOGY, DISTRICT OFFICE
MINI CIVIL STATION, CHEMPOOKAVU P.O.,
THRISSUR – 680 020.**
- 3. STATE BANK OF TRAVANCORE
REPRESENTED BY ITS CHIEF MANAGER
OLLUKKARA BRANCH, KEPSA BUILDINGS
MANNUTHY P.O., THRISSUR DISTRICT – 680 651.**

**R1 & R2 BY SR. GOVT. PLEADER SRI. JOSEPH GEORGE
R3 BY SENIOR ADVOCATE SRI.T.SETHUMADHAVAN
BY ADV. SRI.K.JAYESH MOHANKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE QUARRYING LEASE DATED 19.1.2011 EXECUTED BY THE PETITIONER AND THE GOVERNMENT OF KERALA.
- EXT.P2 COPY OF THE PROCEEDINGS FOR THE QUARRYING PERMIT DATED 11.12.1995 VIDE NO. 100/95-96/MM/GS/QP/ROC/1352/E2/95 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.
- EXT.P3 COPY OF THE QUARRYING PERMIT DATED 11.12.1995 ISSUED BY THE SECOND RESPONDENT ON THE BASIS OF EXHIBIT P2 PROCEEDINGS VALID UPTO 10.6.1996.
- EXT.P4 COPY OF THE QUARRYING PERMIT DATED 5.3.2007 BY THE SECOND RESPONDENT TO THE PETITIONER TO MINE AND EXTRACT BUILDING STONES FROM PROPERTY COMPRISED IN 147/1250/IP OF OLLUKKARA VILLAGE IN THRISSUR TALUK OF THRISSUR DISTRICT VALID UPTO 25.4.2007.
- EXT.P5 COPY OF THE QUARRYING PERMIT DATED 7.12.2009 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER VALID UPTO 6.12.2010 FOR MINING BUILDING STONES FROM 9.72 ARES OF LAND COMPRISED IN SURVEY NO.147/1250/I OF OLLUKKARA VILLAGE IN THRISSUR TALUK OF THRISSUR DISTRICT.
- EXT.P6 COPY OF THE ACKNOWLEDGEMENT FOR RECEIPT OF MONEY DATED 20.7.1995 PAID BY THE PETITIONER BY WAY OF COMPOUNDING UNDER RULE 60-A OF THE KERALA MINOR MINERAL CONCESSION RULES, 1967.
- EXT.P7 COPY OF THE RECEIPT DATED 30.3.1998 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.
- EXT.P8 COPY OF THE RECEIPT DATED 14.4.1998 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.
- EXT.P9 COPY OF THE RECEIPT DATED 5.3.2007 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER EVIDENCING PAYMENT OF COMPOUNDING FEE UNDER RULE 60-A OF THE KERALA MINOR MINERAL CONCESSION RULES, 1967.

(Contd...)

WP(C).No. 12259 of 2015 (F)

- EXT.P10 COPY OF THE NOTICE WITHOUT DATE ISSUED BY THE GEOLOGIST, MINERAL SQUAD TO THE PETITIONER DIRECTING HIM TO APPEAR BEFORE HIM ON 7.4.2011.
- EXT.P11 COPY OF THE RECEIPT DATED 2.5.2011 ISSUED BY THE GEOLOGIST, MINERAL SQUAD TO THE PETITIONER.
- EXT.P12 COPY OF THE DEMAND NOTICE DATED 17.10.2014 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.
- EXT.P13 COPY OF THE COMMON JUDGMENT DATED 24.11.2014 IN WP(C) NO. 28018 OF 2014 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HONOURABLE COURT.
- EXT.P14 COPY OF THE BANK GUARANTEE DATED 13.1.2015 HAVING VALIDITY UPTO 12.1.2016 FURNISHED BY THE PETITIONER BEFORE THE SECOND RESPONDENT THROUGH THE THIRD RESPONDENT BANK.
- EXT.P15 COPY OF THE ORDER DATED 3.3.2015 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.
- EXT.P16 COPY OF THE DRAFT PLAINT PROPOSED TO BE FILED BY THE PETITIONER BEFORE THE MUNSIF COURT, THRISSUR WITHOUT DATE.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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P.R. RAMACHANDRA MENON, J.

W.P(C). No. 12259 of 2015

Dated this the 10th day of April, 2015

J U D G M E N T

The petitioner has approached this Court with the following prayers:

- "i. Call for the records relating to Exhibit P15 order and issue a writ or certiorari and quash the same;*
- ii. Issue a writ of mandamus directing the first respondent to conduct an enquiry as to whether the second respondent while issuing Exhibit P2 proceedings and subsequent quarrying permits to mine building stones in Survey No.147/1250/1 of Ollukkara Village in Thrissur Taluk of Thrissur District mistakenly demarcated Survey No.1252/1 instead of Survey No.147/1250/1 of Ollukkara Village in Thrissur Taluk of Thrissur District.*
- iii Issue a writ of mandamus directing the first respondent to adjust the amount collected by way of royalty and the compounding fee collected under Rule 60(A) while assessing the petitioner for payment of royalty and fine for mining building stones from Survey No.1252/1 as stated in Exhibit P15;*
and
- iv. Issue such other reliefs which this Honourable Court may deems fit and appropriate in the facts and circumstances of this case."*

2. It is stated that the liability of the petitioner was sought

to be mulcted to an unconscionable extent, which was sought to be resisted by the petitioner with reference to the facts and figures. In the course of earlier round of litigation, the petitioner had approached this Court by filing WP(C) No.28018 & 29828 of 2014, which was disposed of vide Ext.P13 judgment dated 24.11.2014, directing the petitioner to satisfy the Bank Guarantee for the sum of ₹17,49,200/- and to have the matter considered and disposed of after conducting an enquiry. According to the petitioner, though the petitioner satisfied the Bank Guarantee vide Ext.P14 for the requisite amount, no proper enquiry was conducted and the proceedings were finalised by the 1st respondent vide Ext.P15 order dated 03.03.2015, whereby the liability which was originally sought to be fixed as Rs.17,49,200/- was further enhanced to 29,97,120/-. Met with the situation, the petitioner is intending to approach the Munsiff's Court, Thrissur and a draft copy of the plaint has been produced as Ext.P16. Prayer is to intercept the proceedings to encash the Bank Guarantee and the attempt to realise the balance amount flowing from Ext.P15.

3. Heard the learned Government Pleader as well, who

submits that, the version of the petitioner that no enquiry was conducted is not correct. The sequence of events is clearly discernible from Ext.P15 itself and the various proceedings including the site inspection with notice to the parties concerned, the report of the concerned Tahsildar and the communication issued by the Village Officer etc. have been referred to in Ext.P15. The proceedings were finalised with reference to actual facts and figures and the relevant provisions of law. This being the position, the said order is not liable to be assailed under any circumstance, submits the learned Government Pleader.

4. After hearing both the sides, this Court finds that the petitioner was required to satisfy the Bank Guarantee with a specific purpose, ordering enquiry and to have the matter finalised accordingly. It is seen that the proceedings have been finalised by the 1st respondent vide Ext.P15 after conducting the enquiry as referred to therein. Whether the enquiry was adequate enough, is a different question and whether the petitioner can seek to establish the facts and figures by resorting to Civil Court is yet another question. Since the petitioner has already opted to approach the Civil Court, this Court does not find

it necessary to deal with the merits of the case. The Apex Court has made it clear on many an occasion that when the Bank Guarantee is furnished, interference of Court shall be a matter of exception and not a matter of course.

5. In the said circumstance, the respondents are set at liberty to encash the Bank Guarantee which was furnished by the petitioner vide Ext.P14, pursuant to Ext.P13 judgment. But encashment shall be subject to the outcome of the suit, if any, stated as being filed by the petitioner and the fixation of quantum by the Civil Court. It is open for the respondents to file other appropriate proceedings, so as to have the liability quantified, if there is any dispute or to file a counter claim in the suit, once summons is obtained.

Interference is declined and the writ petition is disposed of accordingly.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.