

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C) .No. 14231 of 2015 (D)  
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PETITIONER(S) :  
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SUPER STONE BUILDERS & GRANITES,  
CHERIYA AREEKKAMALA, P.O.KUNYAMPUZHA,  
KANNUR DISTRICT-670 632,  
REPRESENTED BY ITS MANAGING PARTNER C.K.ABDUL RAHMAN.

BY ADV. SRI.P.M.PAREETH.

RESPONDENT(S) :  
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1. ERUVESY GRAMA PANCHAYATH,  
CHEMPERI P.O.,  
KANNUR DISTRICT-670 632,  
REPRESENTED BY ITS SECRETARY.
2. SECRETARY,  
ERUVESY GRAMA PANCHAYATH, CHEMPERI P.O.,  
KANNUR DISTRICT-670 632.

R1 & 2 BY ADV. SRI.P.B.AJOY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

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- EXT.P1 : TRUE COPY OF THE SALE DEED NO.3119 DT.9-10-2009 OF SREEKANDAPURAM SUB REGISTRY.
- EXT.P2 : TRUE COPY OF THE ORDER NO.B2-2636/09 DT.8-7-09 ISSUED BY R2.
- EXT.P3 : TRUE COPY OF THE ORDER NO.D1-9257/2013/D DIS DT.13-2-14.
- EXT.P4 : TRUE COPY OF THE INTEGRATED CLEARANCE DT.18-2-13 ISSUED BY THE SENIOR ENVIRONMENTAL ENGINEER, REGIONAL OFFICE, KOZHIKODE.
- EXT.P5 : TRUE COPY OF THE NOC DT.30-4-13 ISSUED BY THE ASSISTANT DIVISIONAL OFFICER, FIRE AND RESCUE SERVICES KANNUR.
- EXT.P6 : TRUE COPY OF THE LETTER NO.DOECC/E3/2755/2014 DT.13-6-14 ISSUED BY THE DIRECTOR, STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY, THIRUVANANTHAPURAM.
- EXT.P7 : TRUE COPY OF THE INTEGRATE CONCERN TO OPERATE NO.PCB/RO/KNR/IC/101/2013 DT.19-2-15 ISSUED BY SENIOR ENVIRONMENTAL ENGINEER, REGIONAL OFFICE, KOZHIKODE.
- EXT.P8 : TRUE COPY OF THE LETTER NO.A4/1115/15 DT.6-3-15 ISSUED BY R2.
- EXT.P9 : TRUE COPY OF THE LETTER NO.A4 1115/15 DT.20-3-15 ISSUED BY R2 TOGETHER WITH THE RESOLUTION NO.35/15 DT.17-3-15 PASSED BY THE PANCHAYATH.

RESPONDENT(S) ' EXHIBITS :

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- EXT.R1 (A) : TRUE COPY OF THE COMPLAINT DATED 10/03/2015 SUBMITTED BY THE CHERIYA ARIKAMALA CRUSHER-QUARRY VIRUDHA SAMATHI TO THE 1ST RESPONDENT.

/TRUE COPY/

P.A.TO JUDGE

RVS.

**A.V.RAMAKRISHNA PILLAI, J**

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WPC No.14231 of 2015  
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Dated this the 22<sup>nd</sup> day of July, 2015

**JUDGMENT**

The petitioner is aggrieved by the denial of the respondent Panchayat in issuing a license to operate a stone crusher unit despite complying with all statutory requirements by the petitioner.

2. The petitioner is a partnership firm engaged in the business of crushing, storing and sale of granite stones. The grievance of the petitioner is that despite satisfying all statutory obligations, the first respondent Panchayat has rejected its claim for license to operate a crusher for no valid reason. The petitioner has purchased 50 cents of land along with a running crusher in R.S.No.4/1 of Eruvessy Village situated in the first respondent Panchayat from Smt.Claramma Varkey as per Ext.P1 sale deed dated 9.10.2009. After acquiring the property covered by Ext.P1, the petitioner has purchased some other properties also in the very same survey number.

The crusher in Ext.P1 property was granted license to operate by the first respondent Panchayat on 8.7.2009 by Ext.P2. The petitioner has taken steps to establish another crusher in the same place after demolishing the present one. The Chief Town Planner, Thiruvananthapuram has granted permission for the layout for the construction of the building for the stone crusher unit with an area of 141.32 sq.metres vide order dated 28.8.2010. However, since the capacity of the machinery was greater, the petitioner requested for a revised sanction for the layout. This was recommended by the 2<sup>nd</sup> respondent to the Chief Town Planner. Accordingly, the Chief Town Planner vide Ext.P3 order dated 13.2.2014 issued revised sanction after cancelling the order dated 28.8.2010. The petitioner has produced all positive certificates and NOC's as stipulated in the Kerala Panchayat Raj Act and D & O Rules as evidenced by Exts.P4 to P8. However, the license to operate the crusher was rejected by Ext.P9 on the basis of resolution by the Panchayat on the ground that there is protest by

the anti-crusher agitation samithy. As per the rules, the order rejecting the license should contain cogent reasons and it should be issued by the president.

3. The petitioner points out that it is a settled position of law as laid down by a Division Bench of this Court in **Action Council v Benny Abraham** (2001(2) KLT 690) that in case an entrepreneur/applicant submits all positive certificates as laid down by the law, the Panchayat is bound to issue license. It is also held by this Court that the application has to be decided on its merits and it should not be rejected on the basis of any protests; it is alleged. The petitioner has availed loan from financial institutions to the tune of more than 1.5 crores and because of the delay in granting license and in starting operation, no income is generated from the project. Consequently, the financial institutions have taken recovery steps. Therefore, the first respondent has to be directed to issue license to operate to the petitioner at the earliest. It is with this background, the petitioner has come up before this Court.

4. The first and second respondent filed a counter affidavit.

The first and second respondents contended that the petitioner's application was rejected by the first respondent due to a number of written complaints submitted by the Cheriya Arikamala Crusher Quarry Virudha Samithi, a copy of which was produced and marked as Ext.R1(a). They maintained the stand that there is no illegality in Ext.P9 order rejecting the application of the petitioner.

5. Arguments have been heard.

6. It is evident from Exts.P1 to P8 that the petitioner has complied with all the statutory requirements for the issue of license to operate the unit. The learned counsel for the petitioner would submit that another crusher unit was functioning in the very same place under a valid license from the first respondent as evident from Ext.P2. After getting the ownership of the property with the said crusher unit from the predecessor in interest as per Ext.P1, the petitioner operated the same till November

2013. Thereafter the unit was demolished as directed in Ext.P3 and a new crusher unit was erected in the same property. Therefore, according to the learned counsel for the petitioner, the first respondent Panchayat ought to have granted a license to the petitioner on compliance with all statutory formalities.

7. As per Rule 6 of the Kerala Panchayat (Issue of license to dangerous and offensive trades and factories) Rules, 1999, the order in writing has to be issued by the President. In case of refusal of a license, the reason for rejection shall be mentioned in the order. Ext.P9 shows that apart from the fact that some anti crusher quarry agitation samithy has objected to the issue of license, nothing is discernible from Ext.P9 as to the exact nature of the objection.

8. This Court in ***Santhi Joseph v Poyya Grma Panchayat*** (1999(1) KLT 695) has observed that the application for license has to be decided on its merits and not on mere protest from the people of the locality. It is relevant to note that a license had already been issued for

another crusher unit in the same property and it was functioning up to November 2013. The present crusher unit was erected in its place after demolishing the same. That was also on the basis of the valid permit issued from the first respondent. There cannot be any relevance for the protest at this point of time from the residents of the locality.

9. The learned counsel for the petitioner would point out that there are no residents within 400 metres of the present crusher. The learned counsel also points out that the crusher unit was installed after availing a loan from a financial institution and at present, the petitioner is incapable of making repayment on monthly instalments.

On a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is entitled to the relief as prayed for.

In the result, this writ petition is allowed.

In view of the compliance of all statutory requirements by the petitioner to issue license to operate, it is hereby declared that the petitioner is entitled to get

license from the first respondent Panchayat. The first respondent is directed to issue license to operate stone crusher situated in R.S.No.4/Pt of Eruvessy Village in Building No.808 in Ward No III of the first respondent Panchayat by erecting 600 HP machinery within a period of one week from the date of receipt of a copy of this judgment, if the application is in order.

**sd/- A.V.RAMAKRISHNA PILLAI  
JUDGE**

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**true copy**

**P.S.TO JUDGE**