

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 19237 of 2009 (Y)

PETITIONER(S):

**JOSE CHERIAN, VADAYIL,
PANNIMATTOM KARA, VELLIAMATTOM VILLAGE,
THODUPUZHA TALUK, IDUKKI DIST.**

BY ADV. SRI.GEORGEKUTTY MATHEW

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
COLLECTORATE, IDUKKI DISTRICT.**
- 2. THE VELLIYAMATTOM GRAMA
PANCHAYATH, REPRESENTED BY ITS SECRETARY,
PANNIMATTOM P.O., IDUKKI DIST.**
- 3. THE CIRCLE INSPECTOR OF POLICE,
KANJAR, THODUPUZHA, IDUKKI DIST.**
- 4. THE GEOLOGIST, THE DISTRICT OFFICE
OF MINING AND GEOLOGY DEPARTMENT, MINI CIVIL STATION,
THODUPUZHA, IDUKKI DIST.**
- 5. GLADY JOHN, MADHURUMCHERIL
HOUSE, PANNIMATTOM P.O., IDUKKI DISTRICT.**
- 6. ROY, S/O. JOSE, KATTAKKAYAMVAYALIL,
PANNIMATTOM P.O., IDUKKI DIST.**

**R1, R3 & R4 BY GOVERNMENT PLEADER SMT. ANITHA RAVINDRAN
R2 BY ADV. SRI.GEORGE MATHEW
R5 & R6 BY ADV. SRI.TOM JOSE (PADINJAREKARA)**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: TRUE COPY OF THE LETTER DATED 12.1.2009 ISSUED BY THE
2ND RESPONDENT PANCHAYATH TO THE PETITIONER.**

**EXT.P2: TRUE COPY OF THE PETITION DATED 31.1.2009 FILED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT.**

EXT.P3: TRUE COPY OF THE JUDGMENT DATED 27.2.2009 IN WP(C) NO.4648/23009.

**EXT.P4: TRUE COPY OF THE PETITION DATED 5.6.2009 SUBMITTED BY THE
PETITIONER BEFORE THE 2ND RESPONDENT.**

**EXT.P5: TRUE COPY OF THE LETTER DATED 23.6.2009 ISSUED BY THE
2ND RESPONDENT PANCHAYATH TO THE PETITIONER.**

**EXT.P6: TRUE COPY OF THE RESIDENTIAL CERTIFICATE DATED 21.8.2007 ISSUED BY
THE 2ND RESPONDENT GRAMA PANCHAYATH.**

RESPONDENT(S)' EXHIBITS:

EXT.R2(a): TRUE COPY OF UNDER TAKING DTD.6.8.2009.

**EXT.R5(a): TRUE COPY OF THE LICENCE NO.90/09-10 DATED 6.8.2009 ISSUED BY THE
2ND RESPONDENT TO THIS RESPONDENT.**

**EXT.R5(b): TRUE COPY OF ONE OF THE CONSENT LETTERS DATED 10.9.2008
RECEIVED BY THE PETITIONER FROM THE VILLAGE OFFICER,
VELLIAMATTOM.**

EXT.R5(c): TRUE COPY OF THE SITE PLAN OF THE QUARRY.

**EXT.R5(d): TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER TO
THE TAHSILDAR, THODUPUZZHA DATED 19.8.2008.**

**EXT.R5(e): TRUE COPY OF THE CONSENT LETTER NO.PCB/IDKICO/146/09
DATED 10/6/2009 ISSUED BY THE KERALA STATE POLLUTION CONTROL
BOARD, DISTRICT OFFICE, IDUKKI ISSUED TO THE PETITIONER.**

**EXT.R5(f): TRUE COPY OF THE QUARRYING PERMIT BEARING
NO.CRPS-51/08-9/DO1/1385/ M/08 DATED 3.11.2008 ISSUED BY THE
DEPARTMENT OF MINING AND GEOLOGY, DISTRICT OFFICE IDUKKI TO
THE PETITIONER.**

Msv/

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**EXT.R5(g): TRUE COPY OF THE SHOT FIRE PERMIT ISSUED BY THE JT. CONTROLLER
OF EXPLOSIVES.**

**EXT.R5(h): TRUE COPY OF THE LICENCE NO.E/SC/KL/22/944 (E45835) DATED 8.9.2008
ISSUED BY THE JOINT CHIEF CONTROLLER OF EXPLOSIVES.**

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.19237 of 2009

Dated this the 5th day of January, 2015

JUDGMENT

Grievance of the petitioner is mainly with regard to the running of a quarry by the 5th respondent, absolutely without obtaining any licence as contemplated under the relevant provisions of law and in particular from the Local Authority, Explosive Controller, Geologist, Pollution Control Board etc. The prayers raised in the writ petition are in the following terms:

"(i) Issue a writ of mandamus directing the respondent No.1 to 4 to stop the illegal quarry operations done by the respondent No.5 in the land of respondent No.6 without obtaining the required licenses and certificates from Grama Panchayath, Explosives Controller, Geologist, Pollution Control Board, Police, Fire and Rescue Department and appointing qualified blaster and following the conditions of benches stipulated in the Metalliferous Mines Regulations 1961.

(ii) Issue any other appropriate writ order or direction that this Hon'ble Court deems fit under the facts and circumstances of the case."

2. A Counter Affidavit has been filed by the 2nd respondent Panchayat and also by the 5th respondent, producing copies of the relevant documents. The petitioner has filed a Reply Affidavit as well. Subsequently, some additional documents have been

produced as Exts.R5(e) to R5(h) by the 5th respondent, along with I.A. No.11138 of 2009.

3. Heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for respondents 1,3 and 4.

4. When the matter came up for consideration before this Court on 17.07.2009, the following interim order was passed:

"Counsel for R2 seeks time to file a counter affidavit. Counsel for R5 also seeks time to file a counter. Counsel for the petitioner submits that R5 is conducting a quarry without licence. Counsel for R5 and counsel for R2 submits that, hitherto no licence has been granted by the Panchayat. R5 is therefore restrained from conducting a quarry in the property belonging to R6, until furthers on obtaining a license from the Panchayat, it is open to R5 to move this Court for appropriate variation of this order."

5. Subsequently, it was submitted from the part of the petitioner that the licence stated as obtained by the 5th respondent from the Panchayat was not for the 'magazine' under the Explosive Rules. The Government was required as per interim order dated 15.09.2009 to ascertain and submit whether Ext.R5 (h) licence related to the premises involved in the writ petition. After hearing both the sides, it was held by this Court on 26.11.2009 that the petitioner had not approached this Court

with clean hands and that there was suppression of material facts; by virtue of which, the interim order was vacated. The said order reads as follows:

"Heard the learned counsel appearing on both sides.

The petitioner has filed this writ petition seeking to restrain the 5th respondent from conducting quarrying operations in the lands belonging to the 6th respondent. In paragraphs 1 and 2 of the writ petition, the petitioner has averred that he is residing in a house in Survey No.84/2 of Velliamattom Village and that the land where the 5th respondent proposes to conduct quarrying operations is lying adjacent to it. Ext.R5(c) sketch which is not disputed by the petitioner establishes beyond doubt that the said statement does not represent the correct state of affairs. Further the pleadings disclose that the petitioner has also applied for starting a quarry. It is also evident from the pleadings that the petitioner was formerly employed by the 5th respondent and that his services were terminated. In such circumstances, I am prima facie satisfied that the petitioner has not come to this Court with clean hands. He has, as a matter of fact, suppressed relevant and material facts. I therefore find no ground to maintain the interim order passed by this Court on 17.07.2009. It is accordingly vacated.

The official respondents shall however ensure that the 5th respondent conducts quarrying operations only in accordance with law."

6. Obviously, this Court while vacating the interim order, made it clear that the official respondents should ensure that the 5th respondent conducted the quarrying operations only in accordance with law.

The said order is made absolute and the writ petition is

disposed of, making it clear that the quarrying operation if at all any, shall be permitted to be continued only subject to satisfaction of all the requisite licenses and in conformity with the orders, if any, passed by the Apex Court, by this Court or other competent authority governing the issues.

The writ petition is disposed of.

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

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