

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

WP(C).No. 16007 of 2015 (A)

PETITIONER :

K.K. ABDUL RAHIMAN, S/O.KOCHAHAMMED,
KARUKUNNATH HOUSE, PERINGALA P.O.,
ERNAKULAM DISTRICT.

BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA
SMT.D.S.THUSHARA

RESPONDENTS:-

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1. ARAKUZHA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, ARAKUZHA P.O.,
MOOVATTUPUZHA, ERNAKULAM DISTRICT - 686 672.
 2. ARAKUZHA GRAMA PANCHAYATH COMMITTEE,
REPRESENTED BY ITS PRESIDENT, ARAKUZHA P.O.,
MOOVATTUPUZHA, ERNAKULAM DISTRICT - 686 672.

*ADDL.R3 IMPEADED

*ADDL.R3: ARAKUZHA KURUSSUMALA SAMRAKSHANA SAMITHI,
REGISTER NUMBER, EKM/TC/926/2012, ARAKUZHA POST,
ERNAKULAM, REPRESENTED BY ITS SECRETARY,
MATHEW.K.V., KUREEKAL VEMBILLI VEEDU, PANDAPALLY,
ARAKUZHA POST, MOOVATTUPUZHA,
ERNAKULAM DISTRICT-686 672

*ADDL.R3 IS IMPEADED AS PER ORDER DATED 28/10/2015 IN IA.NO.12313/15

R1 BY ADVS. SRI.REJI GEORGE
SMT.ANUPAMA JOHNY
ADDL.R3 BY ADV. SRI.VINOD VALLIKAPPAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-08-2015 , THE COURT ON 28-10-2015 DELIVERED
THE FOLLOWING:

sts

WP(C).No. 16007 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE LEASE DATED 25.02.2009.**
- EXHIBIT P2. TRUE COPY OF THE PERMIT DATED 20.10.2014 OBTAINED FROM THE DEPARTMENT OF MINING AND GEOLOGY.**
- EXHIBIT P3. TRUE COPY OF THE CONSENT FROM THE KERALA STATE POLLUTION CONTROL BOARD DATED 26.05.2015.**
- EXHIBIT P4. TRUE COPY OF THE EXPLOSIVE LICENCE DATED 22.03.2013.**
- EXHIBIT P5. TRUE COPY OF THE SHORT FIRE CERTIFICATE WAS ISSUED BY THE MINISTRY OF COMMERCE, UNION OF INDIA ON 11.12.2013.**
- EXHIBIT P6. TRUE COPY OF THE REPORT DATED 17.09.2014 BY THE REVENUE DIVISIONAL OFFICER, MOOVATTUPUZHA.**
- EXHIBIT P7. TRUE COPY OF THE DECISION OF THE 1ST RESPONDENT 26.02.2015.**
- EXHIBIT P8. TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 26.03.2015.**
- EXHIBIT P9. TRUE COPY OF THE DECISION OF THE 2ND RESPONDENT DATED 16.04.2015 WITH COVERING LETTER DATED 08.05.2015.**
- EXHIBIT P10. TRUE COPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER WITH ANNEXURES DATED 12.03.2015.**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.S.TO JUDGE

sts

A.V.RAMAKRISHNA PILLAI, J

WPC No.16007 of 2015

Dated this the 28th day of October, 2015

JUDGMENT

The petitioner is in possession and enjoyment of 2.65 acres of land in Sy.No.821/1, 821/1-4 of Arakuzha Grama Panchayat. Ext.P1 is the quarrying license which would be valid up to 24.2.2021. Exts.P2 to P5 are the permits and consent issued by all the authorities. Ext.P6 is the report of the Revenue Divisional Officer which would show that there are no objectionable things within the prohibited distance. According to the petitioner, by Ext.P7, the license application for quarry was dismissed. Ext.P8 is the application for re-consideration of Ext.P7 which was also dismissed by Ext.P9. The petitioner points out that Ext.P10 would show that license has been granted to quarries by respondents in the very same area.

2. Subsequent to the filing of the writ petition, the Secretary of the Arakuzha Kurussumala Samrakshana

Samithi got himself impleaded as additional third respondent.

3. The first respondent who is the Secretary of the Arakuzha Grama Panchayat filed a counter affidavit contending as follows:

The petitioner was conducting quarrying operations in his property having an extent of 2.65 acres in Sy.No.821/1-2, 821/1-4 of Arakuzha Grama Panchayat under the license issued by the Panchayat on 27.8.2010. Thereafter, the petitioner applied for renewal of license on 25.2.2011 which was rejected by the Arakuzha Grama Panchayat. The decision of the Grama Panchayat was to reject the renewal application. It was based on a report of the PHED Executive Engineer, Muvattupuzha that the quarry would cause damage to the existing water storage tank and disrupt the drinking water distribution. The petitioner challenged the decision taken by the Grama Panchayat by filing Appeal No.787/2011 before Tribunal for Local Self Government Institutions, Thiruvananthapuram. The said appeal filed by the

petitioner was heard along with Appeal No.722/2011 filed by the petitioner challenging a stop memo issued by the Panchayat and both the appeals were dismissed by the learned Tribunal by a common order dated 30.1.2012.

It is contended that after a lapse of about three years, the petitioner submitted a fresh application for license under Section 232, along with an application for permit under Section 233 of the Kerala Panchayat Raj Act, 1994. A true copy of the application dated 1.1.2015 for license submitted by the petitioner is produced and marked as Ext.R1(b). On receipt of Ext.R1(a) application, the first respondent informed the petitioner that his application for license would be considered only after the Panchayat takes a decision on Ext.R1(b) application filed by him for permit under Section 233 of the Act. A true copy of the intimation dated 24.1.2015 issued to the petitioner is produced and marked as Ext.R1(c).

It is contended that while so, the Executive Engineer, Kerala Water Authority, Muvattupuzha issued letter No.DB/55 Vol.VI dated 23.2.2015 requesting that any

decision in the matter be taken only after considering the letter issued by the Kerala Water Authority on 25.8.2011 also. A true copy of the said letter No.DB/55 Vol.VI dated 23.2.2015 issued by the Kerala Water Authority, Muvattupuzha is produced and marked as Ext.R1(d). A true copy of the letter No.DB/55 Vol.VI dated 25.8.2011 issued by the Kerala Water Authority, Muvattupuzha is produced and marked as Ext.R1(e).

Thereafter the matter was placed before the Panchayat Committee and the Panchayat Committee considered the application for permit submitted by the petitioner in its meeting held on 26.2.2015 and decided to reject the application vide Ext.P7 decision. It is contended that even though the petitioner submitted Ext.P8 representation before the Arakkuzha Grama Panchayat to review Ext.P7 decision taken by the committee, the same was also rejected by the Panchayat vide Ext.P9 decision taken on 16.4.2015. Since the application for permit submitted by the petitioner was rejected by the Panchayat committee, no license under Section 232 was

either issued to him.

4. Arguments have been heard.

5. The learned counsel for the petitioner would submit that the respondent Panchayat is duty bound to issue license to the petitioner. The petitioner obtained all required license and permission from all the authorities mandated by the relevant statutes and rules. The respondents would say that there is a water tank and church within a prohibited distance. However, the petitioner would point out that there is no residential house within a radius of 100 metres. The learned counsel for the petitioner invited my attention to Ext.P6 report in support of the case and submitted that there is no legal bar in granting license to the petitioner. It is relevant to note from Ext.P10 that almost all the neighbouring properties in the very same Panchayat has been granted license for quarrying operations. However, the petitioner alone is discriminated. Ext.P10 resolution would reveal that the Panchayat has decided to issue about eight licenses.

6. The definite case of the petitioner is that the refusal on the part of the respondents is only because of the influence exerted by the other quarry owners who are enjoying the fruits of the license.

7. The learned standing counsel for the respondents would submit that the Secretary of the Grama Panachayat can issue a license to conduct quarrying operations under Section 232 of the Act only if the Panchayat committee issues permit for the same under Section 233 of the Act. It is pointed out that in the case of the petitioner, the Panchayat committee has rejected the application for permit as per Exts.P7 and P9.

8. It was strenuously argued by the respondents that if the petitioner is permitted to operate the quarry, the same would create environmental imbalance and therefore, the clearance of the Kerala State Environmental Impact Assessment Authority is required.

9. In this regard it is relevant to note that this Court in **Najeeb v Shoukath Ali** (2015(3) KLT 396) has clarified a previous decision of the Division Bench in **All Kerala**

River Protection Council v State of Kerala (2015(2) KLT 78) in which it is held that after the judgment in ***Deepak Kumar v Union of India***(2012(4) SCC 629) and the Government notification issued on 18.5.2012, no mining operation either by mining lease or mining permit is permissible without obtaining environmental clearance. However, the Division Bench has held that in so far as mining leases which were existing at the relevant time is concerned, environmental clearance was not required till the leases come for renewal. In this case, the mining lease obtained by the petitioner is continuing and therefore, there cannot be any question of environmental clearance as stated in the *Deepak Kumar's case* (supra). Here, the petitioner has obtained permission from the Government on the strength of Ext.P1 quarrying license which is valid up to 24.1.2021. He has also obtained all other clearances from the concerned authorities. The rejection of the petitioner's application for license is quite untenable in the light of what has been stated above. Therefore, the petitioner is entitled to get the relief as

prayed for.

In the result, Exts.P7 and P9 are quashed. The first respondent is directed to issue license to the petitioner for conducting quarry operations in the property covered by Ext.P1 within a period of one month from the date of receipt of a copy of this judgment.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/

true copy

P.S.TO JUDGE

A.V.RAMAKRISHNA PILLAI, J

I.A.No.9487/2015 in
WPC No.16007 of 2015

Dated this the 14th day of July, 2015

ORDER

I.A. allowed. Adv.Animon A.John is appointed as the Advocate Commissioner.

The petitioner shall directly pay an amount of Rs.25,000/- as initial batta to the Advocate Commissioner. The petitioner shall also bear the other incidental expenses incurred by the Commissioner.

The Commissioner shall file the report ascertaining the facts made mention of in the I.A. within two weeks.

Post after two weeks.

A.V.RAMAKRISHNA PILLAI

JUDGE

CSS/