

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 16355 of 2015 (T)

PETITIONER(S) :

M/S.PALA GRANITES,
A COMPANY INCORPORATED UNDER THE COMPANIES ACT WITH
ITS REGISTERED OFFICE AT KAVANAL BUILDINGS,
OPPOSITE POST OFFICE, PUTHENCruz,
PIN-682308 REPRESENTED BY ITS MANAGING DIRECTOR K.P.BENNY,
S/O.K.C.PAILY, AGED 49 YEARS.

BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA.

RESPONDENT(S) :

1. RAMAPURAM GRAMA PANCHAYATH,
RAMAPURAM BAZAAR P.O., KOTTAYAM, PIN-686 576,
REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY,
RAMAPURAM GRAMA PANCHAYAT, RAMAPURAM BAZAAR P.O.,
KOTTAYAM, PIN-686 576.
3. JEENAS NATH,
S/O.GOPINATHAN NAIR, AGED 40, THOTTUMKAL PUTHENVEEDU,
KURINJI P.O., KOTTAYAM-686 576.
4. THOMAS AUGUSTINE,
UPPUMAKKAL HOUSE, KURINJI P.O., KOTTAYAM-686 576.

*ADDL. R5 TO R8 ARE IMPEADED

- R5. DEVASSIA JOSEPH,
S/O.JOSEPH, MUTHUPLACKAL HOUSE, KURINJI (PO),
KOTTAYAM,PIN - 686 576.
- R6. BENNYCHAN SEBASTIAN,
PADIYANIKKAL HOUSE, KURINJI (PO), KOTTAYAM, PIN - 686 576.
- R7. SONY CHANDY,
KAMBAKATHINKAL HOUSE, KURINJI (P.O), KOTTAYAM, PIN - 686 576.
- R8. WILSON AUGUSTINE,
PUTHIYAKUNNEL HOUSE, KURINJI (P.O), KOTTAYAM, PIN - 686 576.

(*ADDL.R5 TO R8 ARE IMPEADED AS PER ORDER DATED 10.06.2015 IN IA
7787/15.)

R1-R2 BY ADV. SRI.P.C.HARIDAS,
R4 BY ADV. SRI.GEORGEKUTTY MATHEW,
R3 BY ADV. SMT.P.S.SREEVIDYA,
R3 BY ADV. SRI.M.N.SASIDHARAN NAIR &
R3 BY ADV. SRI. PRADEEPKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P1 : TRUE COPY OF THE REPORT DT.7-6-2012 OF THE SECRETARY, OBTAINED UNDER THE RIGHT TO INFORMATION ACT.
- EXT.P2 : TRUE COPY OF THE MINUTES OF THE PANCHAYAT COMMITTEE DT.13-8-2012.
- EXT.P3 : TRUE COPY OF THE ORDER IN APPEAL 930/2012 DT.29-5-2013.
- EXT.P4 : TRUE COPY OF THE CONSENT DT.13-8-2012 ISSUED BY THE POLLUTION CONTROL BOARD.
- EXT.P5 : TRUE COPY OF THE CONSENT DT.22-8-2009 ISSUED BY THE POLLUTION CONTROL BOARD.
- EXT.P6 : TRUE COPY OF THE CONSENT DT.12-10-2010 ISSUED BY THE POLLUTION CONTROL BOARD RENEWING EXT.P5 UP TO 21-8-2015.
- EXT.P7 : TRUE COPY OF THE QUARRYING LEASE NO.3192/2010 DT.18-11-2010.
- EXT.P8 : TRUE COPY OF THE NOC DT.3-11-10 ISSUED BY THE FIRE AND SAFETY SERVICES FOR ESTABLISHING THE QUARRY.
- EXT.P9 : TRUE COPY OF THE NOC DT.3-11-10 ISSUED BY THE FIRE AND SAFETY SERVICES FOR ESTABLISHING THE CRUSHER UNIT.
- EXT.P10 : TRUE COPY OF THE NOC DT.1-9-2011 ISSUED BY THE ADDITIONAL DISTRICT MAGISTRATE, KOTTAYAM.
- EXT.P11 : TRUE COPY OF THE LICENSE DT.3-10-2011 GRANTED BY THE EXPLOSIVE DEPARTMENT FOR STORAGE AND POSSESSION OF EXPLOSIVES.
- EXT.P12 : TRUE COPY OF THE SHOT FIRERS CERTIFICATE DT.16-6-2011.
- EXT.P13 : TRUE COPY OF THE REPORT OF R2 SECRETARY FOR THE QUARRY OBTAINED UNDER THE RIGHT TO INFORMATION ACT.
- EXT.P14 : TRUE COPY OF THE REPORT OF R2 SECRETARY FOR THE CRUSHER UNIT OBTAINED UNDER THE RIGHT TO INFORMATION ACT.
- EXT.P15 : TRUE COPY OF THE RESOLUTION NO.16 DT.22-7-2013 PASSED BY THE PANCHAYAT COMMITTEE OBTAINED UNDER THE RIGHT TO INFORMATION ACT.
- EXT.P16 : TRUE COPY OF THE DETAILS OF THE QUARRIES AND CRUSHER UNITS FUNCTIONING WITHIN THE PANCHAYAT OBTAINED UNDER THE RIGHT TO INFORMATION ACT.
- EXT.P17 : TRUE COPY OF THE ORDER IN APPEAL NO.918/2013 DT.23-4-2015 OF TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, TRIVANDRUM.
- EXT.P18 : TRUE COPY OF THE CERTIFICATE DT.17-8-2010 ISSUED BY THE VILLAGE OFFICER.
- EXT.P19 : TRUE COPY OF THE DETAILS OF SEISMIC TREMORS EXPERIENCED IN KOTTAYAM AND IDUKKI DISTRICT ISSUED BY MINISTRY OF EARTH SCIENCES.

RESPONDENT(S) ' EXHIBITS :

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J

WPC No.16355 of 2015

Dated this the 29th day of July, 2015

JUDGMENT

Under challenge in this writ petition are Ext.P15 resolution and Ext.P17 order passed by the respondent Panchayat.

2. The petitioner company proposed to establish a quarry and crusher unit in 27.250 acres of land in Ramapuram Village. The petitioner alleges that though the petitioner had obtained all the necessary permits and approval for the same, the petitioner's application to the 2nd respondent Panchayat for license to conduct the quarry and crusher unit was rejected vide Ext.P2, at the instance of a single member of the Panchayat representing the ward where the petitioner's land is situated, while other applicants were granted license, even though several members have opposed to the same. The petitioner approached the Tribunal for Local Self Government in appeal. Pursuant to Ext.P3 order of the

Tribunal which directed the petitioner to file separate applications for quarry as well as for crusher unit, the petitioner submitted separate application for the quarry and crusher unit. Vide Exts.P13 and P14, the second respondent again recommended the grant of license to the quarry and crusher unit. However, vide Ext.P15, the application for license was rejected by the first respondent on the ground that the ward member objected and that the Grama Sabha has strong objection as the area is ecologically fragile and has tourism importance. It is with this background, the petitioner has come up before this Court.

3. Subsequent to the filing of the petition, additional respondents 5 to 8 were impleaded.

4. No counter was filed by the respondent Panchayat. Respondents 4 to 8 filed a counter affidavit contending as follows:

The respondents are close neighbours of the site of the quarry unit and they are residing in the close vicinity of the unit. The 5th respondent is residing in House No.IV-

229A in Ward No.2 of the Ramapuram Panchayat which is only at a distance of less than 100 metres from the site of the quarry. This house is newly constructed and the same was given number by the Panchayat recently. The house of the 5th respondent was constructed after Ext.P13 site inspection report was submitted by the Secretary of the Panchayat on 16.8.2011. Besides the house of the respondents, there are numerous houses very close to the site of the unit. The establishment of the dangerous and offensive trade units like granite quarry in the neighbourhood of the respondents would be causing severe nuisance and pollution. The respondents and their family consisting of aged and ailing parents and school going children would be unable to reside in their houses due to the acute health hazards, if the unit of the petitioner is permitted to operate.

There are two drinking water projects, viz. 'Kurinji Kudivella Padhathi' and 'Kariyilathodu Neerthada padhathi' are very close to the site of the unit. The water reservoirs of 'Kurinji Kudivella Padhathi' is only at a

distance of 100 metres from the unit. Section 40 of the Kerala Irrigation and Water Conservation Act, 2003 prohibits the mining or quarrying operations using explosives within the radius of 1 km. of any bridge, dam, check dam or any other work, structure or constructions owned, controlled or maintained by the Government, Local Authority or any authority. The aforesaid drinking water project is controlled by Government and managed by the Grama Panchayat. Therefore, the writ petitioner is not entitled to operate the quarry at the proposed site. Besides, the 'Kariyilathodu', in which the 'Kariyilathodu Neerthada padhathi' was sanctioned, is passing within a distance of only 100 metres from the site of the quarry. These projects are sanctioned after the site inspection by the Secretary on 16.8.2011, in connection with the application of the petitioner for establishment permit. Therefore, these projects were not considered by the Secretary or the Panchayat while considering the application of the petitioner.

Ext.P12 short fire's permit does not enable blasting

operations in granite quarry. Even though it is endorsed in Ext.P12 itself that 'certificate of competency to carry out blasting of explosives in area not coming under the Mines Act', it is partially covered by affixing photograph. Ext.P12 is in Form LE-10 under Rule 107(5) of the Explosives Rules. It is clear from Form LE-10 that the same enables to do blasting operation in area not coming under the Mines Act. This Court considered the competency of the short Fire's permit to do blasting operations in granite quarry in ***Senso V.Scaria v Director of Mines Safety, Chennai Region and others*** (2009(3) KHC 651) and held that the certificate like Ext.P12 is not intended for blasting works in granite quarry.

It is pointed out that Regulation No.164 of the Metaliferous Mine Regulations defines the radius of 300 metres from the site of blasting as dangerous zone and makes it mandatory to ensure that all the persons within the dangerous zone have taken proper shelter before charging. Since there are numerous residential houses including that of the respondents within the dangerous

zone of the quarry of the petitioner, he is not entitled to be permitted to operate the same. The Division Bench of this Court made it clear that all the provisions of Metalliferous Mine regulations including Regulation No.164 are to be necessarily followed in granite quarries; it is alleged.

The site of the quarry of the petitioner is having huge collection of bio-diversities including numerous small creatures and herbs which are facing threat of existence. It is the mandatory duty of the Panchayat to ensure the protection of bio-diversities in its area by the provisions of the Bio-Diversities Act, 2002. These aspects are not considered by the Secretary or Panchayat while taking decision in the application for establishment permit of the petitioner. The petitioner has not obtained environmental clearance so far.

5. Respondents 4 to 8 filed an additional counter affidavit contending that Ext.P7 executed on 18.11.2011 expired and therefore, the petitioner cannot claim to run the quarry operation by virtue of Ext.P7.

6. Arguments have been heard.

7. The learned counsel for the petitioner would argue that the petitioner has obtained all statutory consents and licenses for conducting the quarry and establishing the crusher unit. It was pointed out that the Secretary of the respondent Panchayat had recommended for grant of license as evident from Exts.P13 and P14 reports. The second respondent could not find any exceptional circumstances like ecological importance, tourism importance and the like in the land belonging to the petitioner; it was argued. It was pointed out that there are no materials to hold that the locality is of any tourism importance or there are flora and fauna facing extinction in the property of the petitioner in the locality. It was also pointed out that the petitioner has produced Exts.P4, P5 and P6 consents from the Pollution Control Board and hence, non-production of the consent from the District Medical Officer shall not a ground to non-suit the petitioner. The petitioner has been issued with Ext.P7 quarrying license for conducting quarrying operation in

1.62 hectares of land.

8. Rule 33 of the Kerala Minor Mineral concession Rules, 2015 deals with the application for grant or renewal of quarrying lease. The Rule came into force with effect from 7.2.2015. As the petitioner has been issued with quarrying lease as early as on 18.11.2010, the insistence of environmental clearance in Ext.P17 is illegal and against the statute.

9. It was argued by the learned counsel for the petitioner that the finding of the respondent that the quarry of the appellant has not been started and hence liable to produce environmental clearance is wrong and faulty.

10. It is crucial to note that an application for license shall be governed by section 233 of the Act and not by any extraneous circumstances. If at all any quarry or crusher unit causes any nuisance, the Panchayat can act only under Section 233 of the Act and not otherwise.

As the petitioner has complied with all statutory requirements under Section 233(4) of the Act and the

second respondent submitted a report under Section 233 (3) of the Act, Ext.P15 decision on irrelevant materials has no legal basis at all. Therefore, this Court is of the view that the petitioner is entitled to get the relief as prayed for.

In the result, this writ petition is allowed. Exts.P15 and P17 are quashed.

Respondent Panchayat is directed to issue license to the petitioner to conduct the quarry and establish the crusher unit on the basis of Exts.P13 and P14 recommendation for the second respondent within a period of two weeks from the date of receipt of a copy of this judgment, if the same is otherwise in order.

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

CSS/

true copy

P.S.TO JUDGE