

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 18571 of 2014 (V)

PETITIONER:

**RENNY K.JOHN
PROPRIETOR
M/S.DAYASAGAR HOLLOW BRICKS AND M-SAND UNIT
VANNAPPURAM POST
THODUPUZHA - 685 607 IDUKKI DISTRICT.**

**BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH**

RESPONDENTS:

- 1. THE SECRETARY
THE VANNAPPURAM GRAMA PANCHAYATH, VANNAPPURAM POST
THODUPUZHA - 685 607.**
- 2. THE VANNAPPURAM GRAMA PANCHAYATH
VANNAPPURAM POST, THODUPUZHA - 685 607
REPRESENTED BY THE SECRETARY.**
- 3. THE DISTRICT COLLECTOR
IDUKKI 685 584.**
- 4. GEORGE SEBASTIAN
S/O.E.M.DEVASIA, EDASSERY HOUSE, BYEPASS ROAD
VANNAPPURAM POST, THODUPUZHA TALUK
IDUKKI DISTRICT 685 584.**

**R4 BY ADV. SMT.DAISY A.PHILIPOSE
R4 BY ADV. SRI.JAI GEORGE
R1 & R2 BY ADV. SRI.GEORGE MATHEW
GOVERNMENT PLEADER SRI. NOUSHAD THOTTATHIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P-1: A TRUE COPY OF THE CONSENT ISSUED BY THE POLLUTION CONTROL BOARD DATED 9.5.2012

EXT.P-1(A): A TRUE COPY OF THE CONSENT ISSUED BY THE POLLUTION CONTROL BOARD DATED 9.5.2012

EXT.P-2: A TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE IST RESPONDENT DATED 21.11.2012

EXT.P-3: A TRUE COPY OF THE STOP MEMO ISSUED BY THE IST RESPONDENT DATED 19.2.2013

EXT.P-4: A TRUE COPY OF THE COMMUNICATION DATED 2.3.2013 BY THE IST RESPONDENT

EXT.P-5: A TRUE COPY OF THE JUDGEMENT DATED 24.7.2013 IN WPC NO.7661 OF 2013

EXT.P-6: A TRUE COPY OF THE NOTICE DATED 31.10.2013 BY THE IST RESPONDENT

EXT.P-7: A TRUE COPY OF THE LETTER DATED 2.12.2013 BY THE IST RESPONDENT

EXT.P-8: A TRUE COPY OF THE LETTER DATED 6.12.2013 BY THE PETITIONER AND THE RECEIPT

EXT.P-9: A TRUE COPY OF THE ORDER DATED 18.12.2013 BY THE IST RESPONDENT

EXT.P-10: A TRUE COPY OF THE MEMORANDUM OF APPEAL BY THE PETITIONER DATED 11.1.2013

EXT.P-11: A TRUE COPY OF THE ORDER DATED 3.6.2014 IN APPEAL NO.128 OF 2014, BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTION, THIRUVANANTHAPURAM

EXT.P-12: A TRUE COPY OF THE PROCEEDINGS OF THE IST RESPONDENT DATED 17.7.2014

EXT.P-13: A TRUE COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR, IDUKKI.

RESPONDENT(S)' EXHIBITS

R4(a) : A TRUE COPY OF THE APPLICATION DATED 31.12.2011 SUBMITTED BY THE PETITIONER BEFORE THE KERALA STATE POLLUTION CONTROL BOARD.

R4(b) : A TRUE COPY OF THE LETTER DATED 1.9.2014 ISSUED BY THE SUB REGISTRAR, KARIKODE.

R4(c) : A TRUE COPY OF THE COMMISSION REPORT FILED IN O.S. NO.87 OF 2014 DATED 21.5.2014.

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R4(d) : A TRUE COPY OF THE CIRCULAR DATED 24.11.2009 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD.

R4(e) : A TRUE COPY OF THE APPLICATION DATED 31.12.2011 SUBMITTED BY THE PETITIONER FOR OBTAINING CONSENT IN RESPECT OF M-SAND UNIT, BEFORE THE KERALA STATE POLLUTION CONTROL BOARD.

R4(f) : A TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR OBTAINING SINGLE WINDOW CLEARANCE, BEFORE THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, IDUKKI.

R4(g) : A TRUE COPY OF THE ACKNOWLEDGMENT DATED 23.3.2013 ISSUED TO THE PETITIONER BY THE MANAGER, DISTRICT INDUSTRIES CENTRE, IDUKKI.

//TRUE COPY//

P.A. TO JUDGE

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.18571 of 2014

Dated this the 12th day of March, 2015

JUDGMENT

Ext.P12 and P13 are under challenge in this writ petition.

2. The petitioner who decided to set up a small scale M-sand unit and hollow bricks unit submitted an application for building permit before the first respondent. Pending consideration of the application, he moved the Kerala State Pollution Control Board for the consent to establish the unit. After evaluating the factual situation, the Board issued Ext.P1 and P1(a) consent to operate. The petitioner had to contest a series of litigations which ultimately resulted in Ext.P11 order of the Tribunal for Local Self Government. According to the petitioner, the Secretary of the respondent - Panchayat is legally obliged to pass final orders as directed in Ext.P11 within 30 days from the date of receipt of Ext.P11. However the first respondent did not pass orders as directed in Ext.P11. Later on 17.7.2014, the petitioner received Ext.P12 from the first

respondent asking the petitioner to show cause within 7 days as to why the building permit issued in favour of the petitioner shall not be suspended as provided under Rule 18 of the Kerala Panchayat Building Rules. In Ext.P2, there was a reference of the proceedings of the District Collector, Idukki. The petitioner under Right to Information Act, obtained the copy of the said proceedings which is marked and produced as Ext.P13. In Ext.P13 the District Collector even without issuing a notice to the petitioner has unilaterally restricted the validity of Ext.P1 and P1(a) consent of the Pollution Control Board to 31.03.2014. According to the petitioner, the District Collector has no power or jurisdiction to issue such an order in the nature of Ext.P13.

3. In the counter affidavit filed by the 4th respondent he contended that construction of the structures by the petitioners is unauthorised and the industrial unit of the petitioner would cause pollution. It is further contended that petitioner submitted false information before the Pollution Control Board for obtaining consent.

4. In the counter affidavit filed by respondents 1 and 2, it is contended that when the petitioner started construction of structures wide spread protest was raised by the local public.

Accordingly an enquiry was conducted by the Panchayat. According to them, Ext.P12 was issued as the 3rd respondent was issued Ext.P13.

5. Arguments have been heard.

6. Ext.P11 order of the Tribunal for Local Self Government would show that the Tribunal in unambiguous terms has required the first respondent who is the Secretary of the Panchayat to pass orders granting licence to the petitioner within one month from the date of receipt of Ext.P11. This period expired long back. The 1st respondent has not chosen to comply with the direction in the Tribunal. Now the respondent - Panchayat has issued Ext.P12 . A reference to Ext.P12 would show that the solitary reason referred to by the first respondent in Ext.P12 show cause notice to cancel the permit of the petitioner is Ext.P13 order of the District Collector. So the question to be considered is whether Ext.P13 is legally sustainable. If Ext.P13 falls to ground, the substratum of Ext.P12 would be lost.

7. Ext.P1 and P1(a) are issued by the Kerala State Pollution control Board which is the competent authority to issue consent. The District Collector by Ext.P13 order has curtailed the validity

period of Ext.P1 and P1(a). The District Collector is totally incompetent to issue such a direction as none of the statute empowers the District Collector to do so. Therefore, Ext.P13 is without jurisdiction and is liable to be quashed.

In the result, this writ petition is disposed of directing the first respondent - Panchayat to proceed in accordance with the directions contained in Ext.P11 order passed by the Tribunal for Local Self Government de hors Ext.P12 and P14. This shall be done within a period of three weeks from the date of receipt a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI,
JUDGE

//true copy// P.A. To Judge

smv