

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

WP(C).No. 19503 of 2015 (K)

PETITIONER :

ST. BASIL INDUSTRIES INDIA (P) LTD.,
P.B.NO.2MMC VI 710C9, II FLOOR, SURYA TOWER,
VELLOORKUNNAM, MUVATTUPUZHA, ERNAKULAM,
PIN-686 673, REPRESENTED BY ITS DIRECTOR, SHANS PAUL.

BY SRI.P.K.SURESH KUMAR,SENIOR ADVOCATE
ADV. SRI.BIBIN KUMAR

RESPONDENT :

RAMAPURAM GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
RAMAPURAM BAZAR P.O.,
KOTTAYAM DISTRICT, PIN-686 576.

*ADDL.R2 TO R4 IMPEADED

*Addl.R2. K.N.THANKAPPAN,
S/O.NARAYANAN, KAZHUNNUKANDATHIL HOUSE,
KIZHATHIRI P.O., KOTTAYAM DISTRICT, PIN - 686 576.

*Addl.R3. SARASWATHIAMMA K.,
KOCHUMADATHIL HOUSE, KIZHATHIRI P.O.,
KOTTAYAM DISTRICT, PIN - 686 576.

*Addl.R4. C.N.PRABHAKARAN,
VADAKKEL HOUSE, KIZHATHIRI P.O.,
KOTTAYAM DISTRICT, PIN - 686 576.

*ADDL.R2 TO R4 ARE IMPEADED AS PER ORDER DATED 27.07.2015 IN
IA.NO.10506/2015.

R1 BY ADV. SRI.P.C.HARIDAS
ADDL.R2 TO R4 BY ADV. SRI.GEORGEKUTTY MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-08-2015, THE COURT ON 17-11-2015 DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : A TRUE COPY OF THE ENVIRONMENTAL CLEARANCE CERTIFICATE FOR THE PROJECT ISSUED BY THE STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY BEARING NO.72/SEIAA/KL/167/2013 DATED 25-4-2013.
- P2 : A TRUE COPY OF THE QUARRYING LEASE DT 26-9-2013.
- P3 : A TRUE COPY OF THE CONSENT ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD FOR THE PERIOD FROM 10-12-2014 TO 31-12-2015 DT 6-1-2015.
- P4 : A TRUE COPY OF THE GRANT AND PERMIT ISSUED BY CONTROLLER OF EXPLOSIVES DT 30-8-2013.
- P5 : A TRUE COPY OF THE CERTIFICATE ISSUED BY THE DISTRICT MEDICAL OFFICER DT 24-4-2014.
- P6 : A TRUE COPY OF THE REJECTION ORDER OF THE RAMAPURAM GRAMA PANCHAYAT DT 14-3-2014.
- P7 : A TRUE COPY OF THE RESOLUTION OF THE RAMAPURAM GRAMA PANCHAYAT.
- P8 : A TRUE COPY OF THE JUDGMENT IN WPC.NO.8123/2014 DT 28-5-2014.
- P9 : A TRUE COPY OF THE ORDER IN IA.NO.2503/2014 IN APPEAL NO.798/2014 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM DT 18-11-2014
- P10 : A TRUE COPY OF THE JUDGEMENT IN WPC.NO. 35078/2014 DT 3-6-2014

RESPONDENT(S)' EXHIBITS

- EXT.R1(A). COPY OF THE WRIT PETITION NO.8123/14
- EXT.R1(B). COPY OF THE COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT IN WP(C).NO.8123/14
- EXT.R1(C). COPY OF THE STATEMENT OF MINISTRY OF EARTH SCIENCES.

/TRUE COPY/

P.A.TO JUDGE

C.R

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19503 of 2015

Dated this the 17th day of November, 2015

J U D G M E N T

Under challenge in this writ petition is Ext.P6 order dated 14.03.2014 of the respondent panchayath and Ext.P7 decision of its committee formed on the basis of Ext.P6 order.

2. The petitioner is the holder of a quarrying lease granted by the Government of Kerala. It is alleged that the petitioner has got environmental clearance by the State Level Environment Impact Assessment Authority for running the quarry and consent from the Pollution Control Board and all the other authorities. However, the respondent panchayath declined licence solely on environmental grounds as if it has got expertise in such matters. Ext.P6 order issued by the panchayath in this regard was originally challenged in WP(C) No.8123/2014; and this Court, without going into the merits of the case,

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directed the petitioner to approach the Tribunal for Local Self Government Institutions. However, by the time the appeal was presented before the tribunal, there was a delay of 12 days; and though the tribunal passed an order condoning the delay, this Court, as per Ext.P10 judgment, held that it did not have the power to do so. Thus, the statutory remedy available to the petitioner was held to be barred by limitation. According to the petitioner, in the circumstances, it has got only the constitutional remedy available. Hence, this writ petition.

3. In the counter affidavit filed by the respondent panchayath, it is contended as follows;

The writ petition is misconceived and ill advised and the petitioner is not entitled to file this writ petition. The petitioner filed WP(C) No.8123/2014 earlier, seeking same or similar reliefs based on the very same cause of action, which was dismissed as per Ext.P8 judgment reserving the right of the petitioner to challenge Ext.P7 order before the statutory appellate authority under Section 276 of the Kerala Panchayath Raj Act. However,

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the petitioner did not approach the Tribunal for Local Self Government Institutions, Thiruvananthapuram (LSGD Tribunal) with the statutory appeal within the prescribed time and the appeal was filed only belatedly. Therefore, by Ext.P10 judgment, this Court found that the appeal is time barred. According to the respondent panchayath, it is due to the laches and lapses of the petitioner, the alternate remedy provided by way of appeal could not be entertained and for that reason, the petitioner cannot approach this Court by invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

The subject matter involved in this writ petition and in the earlier writ petition by the petitioner is the one and same and the reliefs sought for are same or similar. According to the respondent panchayath, due to the dismissal of WP(C) No.8123/2014 as per Ext.P8 judgment and in view of Ext.P10 judgment, the petitioner is not entitled to get the subject matter of the writ petition and the writ petition is bad for principles of res judicata.

It is further contended that the writ petition is bad for non-joinder of necessary parties. The permit applied

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for by the petitioner is refused on various aspects including the objections raised by the local inhabitants. Some of the local inhabitants got themselves impleaded in the statutory appeal as additional respondents and they filed a petition questioning the maintainability of the appeal, on the basis of which, Ext.P9 order was passed by the LSGD Tribunal. Against Ext.P9 order, those persons approached this Court and obtained Ext.P10 judgment in their favour. Hence, according to the respondent panchayath, those persons and other objectors are also necessary parties to the writ petition. It is further contended that the petitioner has approached this Court without any bona fides and with ulterior motives; and it has also suppressed many material facts and twisted or concocted the same in order to mislead this Court.

The petitioner submitted an application for establishing a granite quarry in tis property along with necessary documents in support of its application. On receipt of the application, the respondent panchayath conducted an inspection at site and prepared a report dated 15.02.2014. On a perusal of the application and documents produced by the petitioner, it is found that 'No

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Objection Certificate' issued by the District Medical Officer or the Divisional Officer, Fire & Safety, which are necessary for consideration of an application under Section 233 of the KPR Act, are not produced along with the documents submitted by the petitioner. Hence, it was decided to write to the District Medical Officer and the Divisional Officer, Fire & Safety for their opinion. Accordingly, letters were issued to those authorities. The petitioner was informed that its application would be placed before the meeting of the panchayath council scheduled to be held on 26.02.2014. It was also informed to the petitioner that from the copy of the blaster licence produced, the date of renewal cannot be discerned; and therefore, a legible copy should be furnished. Later, the petitioner, with a covering letter dated 19.02.2014, submitted the study report of the MoEF. The panchayath committee, in its meeting held on 26.02.2014, considered the application for establishment permit submitted by the petitioner, the supporting documents and the report of the then Secretary. The committee decided to conduct a site inspection and to consider the application in the next meeting. The members of the committee conducted a site

inspection and prepared a report. In that report, it was stated that though the petitioner was not permitted to conduct quarrying operations in areas having slopes of more than 45° in the land in question, the slope is more than 70° and clearance of MOEF was issued without seeking opinion from the panchayath and without conducting any inspection at site, but, based on Google map and without adhering to other formalities; according to the respondent panchayath. It is also found that if quarrying operations are permitted in the land in question, it would pollute natural water sources, cause ecological imbalance to the area, which is prone to earthquake, 'urulpottal', land sliding etc. Hence, the panchayath committee, in its meeting held on 14.03.2014, considered the matter in detail and decided not to grant establishment permit or licence to the petitioner as per Ext.P7 decision. The said decision was communicated to the petitioner by letter dated 14.03.2014. There was no extraneous consideration/influence in taking Ext.P7 decision, which was taken after considering all the relevant aspects and on public interest; according to the respondent panchayath.

It is further contended that WP(C) No.8123/2014 (Ext.R1A) filed by the petitioner challenging the rejection of its application was not on the ground of deemed licence alone. In that writ petition, the petitioner challenged the decision on other grounds also. On behalf of the respondent panchayath, a detailed counter affidavit (Ext.R1B) was filed with relevant documents refuting the contentions of the petitioner. When the writ petition was heard, this Court found that the petitioner has an alternate and efficacious remedy against Exts.P6 & P7 decisions by way of appeal provided under the Kerala Panchayath Raj Act; and, therefore, without exhausting such remedy, the writ petition cannot be entertained. The further contention of the petitioner about its entitlement for the deemed licence is also repelled in Ext.P8 judgment. There is no challenge against Ext.P8 judgment. On the other hand, the petitioner has accepted Ext.P8 judgment and acted upon its basis. Hence, according to the respondent panchayath, the petitioner is not entitled to re-agitate or re-open the matters involved in or questions arose for consideration in Ext.P8 again; and therefore, the writ petition is bad for principles of res

judicata.

Ext.P7 decision was passed on 14.03.2014. By letter dated 14.03.2014, the said decision was sent to the petitioner. On 18.03.2014, the petitioner received the communication. On 19.03.2014, the petitioner filed Ext.R1A writ petition. Pursuant to the notice, the panchayath appeared and filed Ext.R1B counter on 07.04.2014. Ext.P7 resolution was one of the documents produced along with the counter affidavit. In the counter affidavit, it was the specific contention of the panchayath that against Exts.P6 & P7, the petitioner has the alternate remedy of appeal provided under Section 276 of the KPR Act. However, the petitioner did not opt for filing statutory appeal and with ulterior motives, pursued the writ petition. On 28.05.2014, this Court, by Ext.P8 judgment, dismissed WP(C) No.8123/2014 reserving the right of the petitioner to file appeal and rejecting the claim of deemed licence. The judgment was delivered in open court in the presence of the counsel for the petitioner. The petitioner had full knowledge about the contents of Ext.P8 judgment and the directions contained therein. At the time of Ext.P8 judgment, the appeal was

not time barred and there was sufficient time left/available to the petitioner for filing the appeal. However, the petitioner did not file the appeal immediately thereafter within a reasonable time or even within the prescribed time. The appeal was filed only on 10.07.2014.

It was further contended that the delay in filing the appeal was not 12 days as stated, but, for 42 days. There is no merit or bona fides in the feeble explanation made by the petitioner for the delay in filing the appeal. According to the respondent panchayath, if the petitioner was waiting for getting certified copy of the judgment in WP (C) No.8123/2014, then there was no justification for filing the appeal even before the receipt of the same. Moreover, for filing the appeal, the copy of the judgment in WP(C) No.8123/2014 was not a requirement and that fact is proved by the filing of the appeal without the certified copy of the judgment. Hence, the petitioner, by its own laches or lapses or willful refusal or neglect, did not file the appeal within the prescribed time or within the extended time. The petitioner, who is well aware about the time limit provided by the statute for filing appeal,

cannot show such a casual approach or lethargic attitude in seeking redressal of its alleged grievances. Hence, there is no explanation for the delay of 42 days in filing the appeal. Some of the local inhabitants, who got themselves impleaded in the appeal, filed IA No.2503/14 questioning the maintainability of the appeal on the ground of delay. At that time, the petitioner claimed for exclusion of the time, during which, WP(C) No.8123/2014 was pending. By Ext.P9 order, the tribunal found that the petitioner is entitled for exclusion of time and the IA was dismissed. Against Ext.P9, the petitioners therein approached this Court with WP(C) No.35078/2014. As per Ext.P10 judgment, this Court found that the petitioners are not entitled for seeking exclusion of time as Section 14 of the Limitation Act is not applicable to appeals and allowed the writ petition and found that the appeal is time barred.

According to them, the present situation arose due to the laches, lapses, neglect or willful omission of the petitioner and it cannot take advantage of its own mistakes, failures etc. By virtue of Ext.P10 judgment, it is now found that the petitioner failed to challenge Ext.P7

decision as provided by law. Because of its failures to avail the statutory remedies provided by law, the petitioner cannot invoke the extra ordinary jurisdiction of this Court. The failure of the petitioner to avail the statutory remedies provided by law disentitles it to approach this Court under Article 226 of the Constitution of India. Further, as per Ext.P10 judgment, the challenge made by the petitioner against Exts.P6 & P7 in appeal before the LSGD Tribunal is set at rest. Hence, the very same questions cannot be re-agitated again in this writ petition. It is further contended that the petitioner has not made out any case for violation of any of its rights in order to invoke the constitutional remedies.

According to them, Exts.P6 & P7 are perfectly legal and valid. Merely because other authorities granted licence/permit/consent, the panchayath is not bound to give permit or licence for a unit. It has every right and authority to examine the merits of the application for permit/licence submitted before it and take an independent decision on the grounds of density of population in the neighborhood, possibility to cause nuisance or pollution and public interest etc. It is further

contended that all those allegations relate to the correctness of findings, the factual things or decision made in Exts.P6 & P7. They point out that why the environmental clearance produced by the petitioner is objected to is detailed in the report of the sub committee and Ext.R1B. According to them, the objections to the EC are glaring and of serious nature, for the appreciation of which do not require any expertise even. None of the contentions involve any legal question rather than constitutional questions/issues, which can be entertained in the above writ petition as contended by the petitioner. The allegation that the sub committee report is prepared even without inspecting the site is wrong; it is contended. According to them, the said report is prepared after site inspection and based on factual findings. As already reported, the site in question is part of a hill having a height of 1500 feet above the sea level and the proposed site is at a height of 1000 feet. According to them, the area is prone to earth quake. They have produced Ext.R1C statement given by the Ministry of Earth Sciences before the Raja Sabha, showing the details of seismic tremors experienced in Kottayam and Idukki District. It is

further pointed out that the water sources in and near to the proposed site as reported in the sub committee report, are fully correct. They have taken the stand that the application for permit submitted by the petitioner is rejected for valid and sound reasons and there is no ground or reason for interfering with the decision. According to them, by Exts.P8 & P10 judgments, the matter is now closed and the same cannot be re-agitated by the principles of res judicata.

4. I have heard the learned senior counsel for the petitioner and the learned counsel for the respondent panchayath.

5. Ext.P6 order was previously challenged before this Court in WP(C) No.8123/2014. However, the learned senior counsel for the petitioner pointed out that this Court did not examine the correctness of Ext.P6 order in the said writ petition and the only contention considered therein was as to whether the petitioner had got the benefit of deemed licence and as to whether Ext.P6 order was passed within the time allowed by the statute. This

Court, as per Ext.P8 judgment, held that the order was passed within the time allowed by the statute and that the petitioner was not entitled to the benefit of deemed licence. As regards the challenge against Ext.P6 order, it was held that the petitioner could avail the alternate remedy of appeal before the Local Self Government Tribunal. The learned senior counsel for the petitioner would point out that though the judgment was dictated in open court on 28.05.2014, he received the certified copy of the judgment only later. It was pointed out that though the petitioner could have immediately filed an appeal before the tribunal, he was advised to wait till the judgment was signed and a certified copy of the same was issued. Therefore, the petitioner waited for the certified copy. However, the certified copy was issued only on 24.07.2014 and the appeal was filed with an application for condonation of delay on 10.07.2014. The tribunal, as per Ext.P9 order, held that the petitioner was entitled to the benefit of Section 14 of the Limitation Act

as he had been bona fide prosecuting the writ petition and after excluding that period, there is only a delay of 12 days, which was condonable. However, Ext.P9 order was challenged before this Court; and by Ext.P10 judgment, this Court held that the benefit of Section 14 was not available in the case of appeals; and therefore, the order of the tribunal was set aside. Accordingly, the appeal was rejected on the ground of delay.

6. According to the learned senior counsel for the petitioner, the constitutional remedy is not dependent on the existence of the statutory remedy or otherwise. It was pointed out that in hundreds of cases, the orders of panchayaths or other local authorities are interfered with, by this Court under Article 226 of the Constitution of India without insisting for availing the alternate remedies. It is the definite case of the petitioner that the fact that the petitioner had, at one point of time, availed the statutory remedy and by the time, the remedy was barred by limitation, is not a ground for holding that the petitioner

is not entitled to approach this Court again. It was pointed out that this is a case, where the panchayath had declined licence to a quarry on environmental grounds despite the fact that the project had environmental clearance. In such a situation, it can be seen that there is naked violation of the fundamental right of the petitioner guaranteed as per Article 19(1)(g) of the Constitution. Therefore, I see valid force in the submission made by the learned senior counsel for the petitioner, where there is no legal impediment in maintaining the present writ petition.

7. The learned counsel for the respondent panchayath made a frontal attack against the writ petition mainly on the ground that the present writ petition is barred by res judicata. Now, the question is whether the said argument is legally sustainable. The learned senior counsel for the petitioner would argue that unless the original order of the panchayath merges with the order of the tribunal and later, with Ext.P10

judgment, it cannot operate as res judicata. As rightly pointed out by the learned senior counsel for the petitioner, the only effect of Ext.P10 is that the statutory appeal is dismissed as time barred. When an appeal is dismissed as time barred, there is no merger as observed by this Court in **Chandi Prasad v. Jagdish Prasad** [2004 (3) KLT 654], wherein it was held that when an appeal is dismissed on the ground of delay, the doctrine of merger has no application. In **State of Kerala v. Kondottyparambanmoosa** [2008 (3) KLT 730 (SC)], the apex court has reiterated the same principle. The question in that case was whether the Taluk Land Board has right in reviewing its decision after the dismissal of the revision petition by this Court. The apex court has held that the revision was dismissed on the ground of delay; and therefore, the order of the Taluk Land Board had not merged with the order of this Court and a review by the Taluk Land Board was possible. Viewed in that profile, it can be seen that the order of the respondent

panchayath has not merged with any order of the appellate authority or the judgment of this Court vide Ext.P10; and therefore, the principle of res judicata has no application.

8. This takes me to the next question as to whether Ext.P8 judgment in WP(C) No.8123/204 would operate as res judicata. The answer of the learned senior counsel for the petitioner in this regard is that it is not a decision rendered on merits. As rightly pointed out, the said judgment did not examine the validity of the impugned order. It only directed the petitioner to exhaust the alternate remedy. The apex court in **Gulabchand Chhotalal Parikh v. State of Gujarat** [AIR 1965 SC 1153] has laid down the principle regarding applicability of res judicata to proceedings under Article 226. Para 53 of the said decision states that if a petition under Article 226 is considered on merits as a contested matter and is dismissed, the decision would continue to bind the parties unless it is otherwise modified or

reversed in appeal. It was further held that if the petitioner under Article 226 is dismissed not on merits, but, because of the laches of the party applying for the writ or because it is held that the party had alternative remedy available, the dismissal would not constitute a bar. The following are the certain instances, where the apex court had occasions to consider this issue;

a) In **Paul Industries (India) v. Union of India & Others** [(2004) 13 SCC 340], the petitioner was permitted to withdraw the writ petition to enable him to file a rectification petition before the Settlement Commission. There, the Court did not go into the merits of the order of the Settlement Commission. Subsequently, the rectification petition was filed, which was rejected holding that there was no error apparent on the face of the record. The petitioner again challenged the original order before the High Court, which was dismissed holding that the earlier disposal would constitute a bar. However, the apex court held

that in the first round, there was no decision on merits and would not, therefore, constitute a bar.

b) Similarly, in **Mool Shankar Singh v. Regional Manager, PNB & Another** [(2004) 9 SCC 754], the earlier writ petition was disposed of directing consideration of a representation. There, the apex court held that the second writ petition, after rejection of the representation, was maintainable.

c) Again in **Hoshnak Singh v. Union of India & Others** [AIR 1979 SC 1328], the first writ petition was dismissed with a non-speaking order. The only order passed was “dismissed”. Thereupon, the petitioner approached the statutory authority by filing a revision petition. When that was dismissed again, the orders were challenged and a fresh writ petition was filed. The High Court held that the judgment dismissing the first writ petition would operate as res judicata. However, the apex court reversed the said decision and held that as there was no decision on merits, there was

no question of the doctrine of res judicata applying in the said case.

9. The learned counsel for the respondent panchayath would submit that the decision of this Court in **Rermal Padmanabhan v. Tribunal For Local Self Government Institutions** [2015 (3) KLT 201], as per which, the judgment in **Thomas Thomas v. Kottayam Municipality** [2008 (3) KLT 964] was affirmed by a Division Bench, is applicable to the present case. In those cases, the appeals were filed before the Local Self Government Tribunal, which were rejected as time barred and the orders of the tribunal were challenged before this Court. In both the cases, this Court held that the tribunal did not have the power to condone the delay beyond 30 days and that the petitioners cannot obtain such condonation by approaching this Court under Article 226 of the Constitution of India.

10. The decision in **Thomas Thomas v. Kottayam Municipality** [2008 (3) KLT 964] would show that the

contention raised therein was that the limitation prescribed in relation to the power of the tribunal has no application to the power of this Court under Article 226 of the Constitution; and this Court can consider the matter on merits. However, this Court, relying on the decisions in **Krishnan T. & Others v. State of Kerala & Others** [ILR 2007 (1) KER 233] and **Assistant Commissioner of Central Excise v. Krishna Poduval** [2005 (4) KLT 947], took the view that Article 226 cannot be invoked for bypassing the limitation prescribed by a statute.

11. The basic decision relied on by the court in all the cases is the decision in **Assistant Commissioner of Central Excise v. Krishna Poduval** [2005 (4) KLT 947]. what could be discerned from para 7 & 8 of the said decision is that in a proceeding under Article 226, where the order refusing to condone the delay was being considered, this Court cannot be compelled to consider the case on merits so as to defeat the statutory prohibition. However, the last sentence of para 8 would

clearly indicate that if there had been any extra ordinary circumstance pleaded, this Court could have interfered with the matter. The dictum laid down in the aforesaid case was followed by another Division Bench in **Krishnan T. & Others v. State of Kerala & Others** [ILR 2007 (1) KER 233] and the learned Single Judge in **Thomas Thomas v. Kottayam Municipality** [2008 (3) KLT 964]. Thus, the net effect of these decisions is that in writ petitions, where the order of the tribunal refusing to condone the delay is under challenge, the alternate plea of considering the matter on merits by invoking Article 226 cannot be entertained in the ordinary circumstances. However, even in such cases, if there are extra ordinary circumstances in existence, this Court can invoke its power under Article 226.

12. This takes me to the next question as to whether there is any extra ordinary circumstance prevailing in the present case. As already pointed out, the order of the panchayath, by which, licence for the

quarry was declined, was on environmental grounds despite the fact that the petitioner had environmental clearance from the statutory authority, which is supposed to be the last word on environmental issues. Therefore, it is a clear violation of the fundamental rights vested with the petitioner as per Article 19(1)(g) of the Constitution of India. In none of the decisions mentioned above, there is a plea of violation of fundamental rights, which cannot be waived as has been held by the apex court in **Olga Tellis & Others v. Bombay Municipal Corporation & Others** [AIR 1986 SC 180], wherein, the apex court has observed as under;

“There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppels is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. There can also be no waiver of fundamental rights. No individual can barter away the freedoms conferred upon him by the Constitution.”

13. It is crucial to note that the decision of the

panchayath has not been subjected to any kind of judicial review or the evaluation by a quasi judicial body. No citizen of this country could be denied the benefit of judicial review unless there is huge laches or negligence on his part. The petitioner had been diligently and bona fide prosecuting the matter. It would be put to grave injustice if the present writ petition is rejected on technicalities. Unlike the cases pointed out above, the substantial rights of a citizen are prejudicially affected. This is a case, where, by the impugned order, the licence was permanently declined for a project, over which, the petitioner expended huge amount of money. Here, one could be reminded the words of the apex court in **Dwaraka Nath v. Income Tax Officer, Special Circle D Ward, Kanpur** [AIR 1966 SC 81], which reads as follows;

“Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. A wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used by the Constitution.”

14. The panchayath is an authority amenable to the writ jurisdiction of this Court. This Court can directly examine the correctness of any order passed by the panchayath irrespective of the fact whether the statutory remedy of appeal was in existence or not, especially, because, when the fundamental rights of a citizen are at peril. Therefore, this Court is of the definite view that the petitioner is entitled to the reliefs as prayed for.

In the result, the writ petition is allowed.

- Exts.P6 & P7 are quashed.
- The respondent panchayath is directed to reconsider the issue and grant licence on the basis of Ext.P1 environmental clearance and to issue formal orders granting permit within a period of one month from the date of receipt of a copy of this judgment.

A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-