

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C).No. 19585 of 2015 (W)

PETITIONER(S):

1. MANU ANAND, AGED 45 YEARS,
S/O. LATE T.G.A NAIR, RESIDING AT
'ARAKKAL PUTHEN VEEDU (H),
SHANTHI LANE, THOTTAKKATTUKARA P.O,
ERNAKULAM DISTRICT - 683 108.
2. CHANDRIKA, AGED 70 YEARS, W/O. T.G.A NAIR,
RESIDING AT 'ARAKKAL PUTHEN VEEDU (H),
SHANTHI LANE, THOTTAKKATTUKARA P.O,
ERNAKULAM DISTRICT - 683 108.
3. MAYA, AGED 50 YEARS, D/O. LATE T.G.A NAIR,
RESIDING AT 'ARAKKAL PUTHEN VEEDU (H),
SHANTHI LANE, THOTTAKKATTUKARA P.O,
ERNAKULAM DISTRICT - 683 108.
4. MEENA, AGED 43 YEARS, D/O. LATE T.G.A NAIR,
RESIDING AT 'ARAKKAL PUTHEN VEEDU (H),
SHANTHI LANE, THOTTAKKATTUKARA P.O,
ERNAKULAM DISTRICT - 683 108.

BY ADVS.SRI.P.G.SURESH
SRI.G.SUDHEER (THURAVOOR)
SRI.RAJAN VISHNURAJ
SRI.V.HARISH

RESPONDENT(S):

1. MINISTRY OF ENVIRONMENT AND FORESTS,
PARYAVARAN BHAVAN, CGO COMPLEX, LODHI ROAD,
NEW DELHI - 110003, REPRESENTED BY ITS SECRETARY.
2. THE STATE OF KERALA,
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY,
DEPARTMENT OF ENVIRONMENT AND CLIMATE CHANGE,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

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3. STATE ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY, PETTAH, THIRUVANANTHAPURAM - 695 024,
REPRESENTED BY ITS MEMBER SECRETARIAT.
4. THE DISTRICT COLLECTOR, CIVIL STATION,
KAKKANAD, ERNAKULAM - 682 030.
5. THE GEOLOGIST, DISTRICT OFFICE,
DEPARTMENT OF MINING AND GEOLOGY,
KAKKANAD, ERNAKULAM - 682 030.
6. KERALA STATE POLLUTION CONTROL BOARD,
HEAD OFFICE, THIRUVANANTHAPURAM - 695 004.
REPRESENTED BY ITS CHAIRMAN.
7. ANGEL GRANITES & CRUSHERS PVT LTD,
P.O PONNURUNNI, ERNAKULAM DISTRICT - 682 019,
REPRESENTED BY ITS MANAGING DIRECTOR MR. K.J PAUL.

R1 BY SRI.N.NAGARESH, A S G OF INDIA
ADV. SRI.B.PREM KUMAR, CGC
R2 TO R5 BY SRI.K.A.JALEEL, ADDL. ADVOCATE GENERAL
BY SENIOR GOVT. PLEADER SRI.T.P.SAJID
R6 BY SRI. M.AJAY, SC
R7 BY ADVS. SRI.PHILIP J.VETTICKATTU
SRI.B.PREMNATH (E)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-11-2015 ALONG WITH WPC. 32703/2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1: A TRUE PHOTOCOPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER, AYYAMPUZHA IN RE. SURVEY NOS 261/5-2, 261/6-2, 262/3-3, 262/3-2.
- EXT.P1(A): A TRUE PHOTOCOPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER, AYYAMPUZHA IN RE-SURVEY NOS. 262/3-3, 262/3-2.
- EXT.P1(B): A TRUE PHOTOCOPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER, AYYAMPUZHA IN RE. SURVEY NOS. 260/10, 260/11, 261/5-3, 261/6-4, 262/3-4.
- EXT. P1(C): A TRUE PHOTOCOPY OF THE POSSESSION CERTIFICATE ISSUED BY THE VILLAGE OFFICER, AYYAMPUZHA IN RE. SURVEY NOS. 260/10, 260/11, 261/5-3, 261/6-4, 262/3-4.
- EXHIBIT P2: A TRUE PHOTOCOPY OF THE JUDGMENT IN O.S NO.56/2010 PASSED BY THE HON'BLE MUNSIF, ALUVA.
- EXHIBIT P3: A TRUE PHOTOCOPY OF THE PERMIT DATED 06-07-2011 ISSUED BY THE 5TH RESPONDENT.
- EXHIBIT P4: A TRUE PHOTOCOPY OF THE LOCATION SKETCH SUBMITTED BY THE 7TH RESPONDENT.
- EXHIBIT P5: A TRUE PHOTOOCOPY OF THE SITE REPORT PREPARED BY THE VILLAGE OFFICER, AYYAMPUZHA TO TAHSIDHAR ALUVA.
- EXHIBIT P6: TRUE PHOTOGRAPHS SHOWING THE QUARRY SITE OF THE 7TH RESPONDENT.
- EXHIBIT P7: A TRUE PHOTOCOPY OF THE GAZETTE NOTIFICATION NO.S.O 394(E) DATED 16-04-1987.
- EXHIBIT P8: A TRUE PHOTOCOPY OF THE GO(RT) NO 1222/2010/ID DATED 21-08-2010 ISSUED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT, INDUSTRIES DEPARTMENT.
- EXHIBIT P9: A TRUE PHOTOCOPY OF THE NOTICE DATED 18-08-2014 ISSUED TO THE 5TH RESPONDENT.
- EXHIBIT P10: A TRUE PHOTOCOPY OF THE REPLY DATED 21-08-2014 FROM THE OFFICE OF THE 5TH RESPONDENT.
- EXHIBIT P11: A TRUE PHOTOCOPY OF THE COMPLAINT DATED 25-05-2015 PREFERRED BEFORE THE RESPONDENTS NO.1,2,4 AND 6.

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RESPONDENT(S)' EXHIBITS:

- EXT.R7(A) :** TRUE COPY OF INTERIM ORDER DATED 2.7.2015 PASSED BY THIS HON'BLE COURT.(IA.15985/2015)
- EXT.R7(B) :** TRUE COPY OF PERMITS ISSUED BY THE COMPETENT AUTHORITY TO THE PETITIONER.(IA.15985/2015)
- EXT.R7(A) :** TRUE COPY OF PATTa CERTIFICATE ISSUED TO THE PREDECESSOR OF THIS RESPONDENT.
- EXT.R7(B) :** TRUE COPY OF NOTICE DATED 7.1.2012 ISSUED BY THE DISTRICT COLLECTOR TO THIS RESPONDENT.
- EXT.R7(C) :** TRUE COPY OF REPORT OF THE ADDITIONAL DISTRICT MAGISTRATE.
- EXT.R7(D) :** TRUE COPY OF EXPLOSIVE LICENSE, DATED 4.11.2013 ISSUED BY THE EXPLOSIVE DEPARTMENT.
- EXT.R7(E) :** TRUE COPY OF REPORT DATED 10.1.2013 FILED BY THE SENIOR SUPDT. PERFORMANCE AUDIT UNIT III, NEDUMBASSERRY, TO THE DY.DIRECTOR OF PANCHAYATS.
- EXT.R7(F) :** TRUE COPY OF REPORT DATED 3.4.2013 FILED BY THE AYYAMPUZHA GRAMA PANCHAYAT.
- EXT.R7(G) :** TRUE COPY OF RELEVANT PAGES OF THE REPORT OF THE AYYAMPUZHA POLICE.
- EXT.R7(H) :** PHOTOGRAPHS SHOWING THE BENCH FORMATION IN THE QUARRY SITE OF THIS RESPONDENT.

//TRUE COPY//

P.S. TO JUDGE

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A.MUHAMMED MUSTAQUE, J.

W.P(C).No. 19585 & 32703 of 2015

Dated this the 13th November, 2015

J U D G M E N T

These writ petitions are relating to quarrying operations by M/s Angel Granites. W.P.(C) No.19585/2015 is filed by a neighboring resident alleging illegal quarrying operation by M/s Angel Granites & Crushers Pvt. Ltd (hereinafter referred to as 'Objector'). W.P.C() No. 32703/2015 is filed by M/s Angel Granites & Crushers Pvt. Ltd. (hereinafter referred to as 'operator' for short) on account of the non-consideration for the application of renewal of permit in terms of the Government Order No.144/2015.

2. According to the objector, operator was carrying quarrying operation partially in Government land and also in land assigned for agricultural operations. It is further submitted that the quarrying operation was carrying without obtaining environmental clearance. The objector submits that environmental clearance was pre-requisite at the relevant point of time. The Objector refers to Ext.P5 report submitted

by the Village Officer

3. In Ext.P5 report it is stated that the quarrying activities causing environmental hazards and pollution. However, it is pointed out that on account of nature of terrain, survey number could not be determined. It is pointed out that, it is necessary to refix the survey boundaries with the assistance of the Taluk Surveyor to find out whether there is an encroachment in the Government land. The learned Counsel for the Objector would submit that since the operator has violated the environmental norms, he is not entitled to operate the quarrying activities in future. The Objector has also a case that the land was specifically assigned for agricultural operations and the operator cannot use this land for any other purpose other than for agricultural purpose.

4. The learned Counsel for the operator would submit that they are operating the quarry strictly in accordance with environmental norms and they have not encroached on any Government land. It is submitted that the operator is entitled to operate the quarry in the light of the Government Order 144/2015.

5. The learned Special Government Pleader would submit that the Revenue Divisional Officer as per the proceedings No. 4741 dated 2.6.2014 reported that boundary of the Objector with the Operator has been fixed and demarcated.

6. This is essentially a dispute as to whether there is an encroachment in the Government land by the Operator. The decision of the Revenue Divisional Officer in determining and demarcating boundary of the objector with the operator is of no consequence. The objector has no such dispute before this Court. The objector's case is that the operator has violated the environmental norms as well as they have encroached upon the Government land.

7. Considering the issue, this Court is of the view that Objector's complaint before the District Collector produced as Ext.P11 shall be adverted to by the District Collector. This shall be done within a period of one month from the date of receipt of a copy of this judgment after hearing operator and objector. Depend upon the outcome of the enquiry to be conducted by the District Collector, the Geologist is free to

issue/refuse quarrying permit to the operator. The District Collector shall ensure that if any quarrying operation is permitted, same shall be confined to the land belongs to the operator without encroaching upon the Government land.

These writ petitions are disposed of as above.

Sd/-
A.MUHAMMED MUSTAQUE
JUDGE

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P.A. to Judge