

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 24095 of 2012 (J)

PETITIONERS:

ST. FRANCIS ASSISSI MINOR SEMINARY, AGED 38 YEARS,
MANALIKKAD, MADATHUMPADI VILLAGE,
KODUNAGLLUR TALUK,
THRISSUR DISTRICT, REP. BY ITS RECTOR
FR.JOY KALLARAKKAL.

BY ADVS.SRI.RENJITH THAMPAN (SR.)
SRI.V.M.KRISHNAKUMAR

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF INDUSTRIES (MINING AND GEOLOGY),
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.

2. GEOLOGIST,
DISTRICT OFFICE, DEPARTMENT OF MINING AND GEOLOGY,
THRISSUR, PIN-680 003.

3. VILLAGE OFFICER,
MADATHUMPADI VILLAGE, POYYA P.O.,
THRISSUR DISTRICT,
PIN-680 733.

BY GOVERNMENT PLEADER SRI. T.J. MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 19-11-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP(C) NO.24095 OF 2012

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 - TRUE COPY OF THE POSSESSION CERTIFICATE DATED 21/5/2011 ISSUED BY THE VILLAGE OFFICER.

EXT.P2 - TRUE COPY OF OTHE BASIC TAX RECEIPT DATED 21/5/2011 ISSUED BY THE VILLAGE OFFICER.

EXT.P3 - PHOTOGRAPHS SHOWING THE RUBBER SAPLINGS IN PETITIONER'S LAND.

EXT.P4 - PHOTOGRAPHS SHOWING THE UNCULTIVATED LAND LYING IN DIFFERENT LEVELS.

EXT.P5 - TRUE COPY OF THE ORDER NO.G.O.(Ms)85/2010/IND. DATD 5/4/2010.

EXT.P6 - TRUE COPY OF THE ORDER G.O.(Ms) NO.180/2011/IND. DATED 19/8/2011.

EXT.P7 - TRUE COPY OF THE LETTER DATED 16/1/2012 OF THE POLLUTION CONTROL BOARD ISSUED TO THE PETITIONER.

EXT.P8 - TRUE COPY OF THE LETTER DATED 4/2/2012 OF THE GROUND WATER DEPARTMENT ISSUED TO THE PETITIONER.

EXT.P9 - TRUE COPY OF THE LETTER DATED 01/02/2012 OF THE GEOLOGIST, MINING AND GEOLOGY DEPARTMENT ISSUED TO THE PETITIONER.

EXT.P10 - TRUE COPY OF THE GOVERNMENT ORDER NO.18/2012 DATED 5/2/2012.

EXT.P11 - TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE GEOLOGIST, THRISSUR DATED 29/3/2012.

EXT.P12 - TRUE COPY OF OTHE INTERIM ORDER IN W.P.(C) NO.8895/2012 DATD 13/8/2012 OF THE HON'BLE COURT.

EXT.P13 - TRUE COPY OF THE LETTER DATED 25/8/2012 OF THE GEOLOGIST, THRISSUR ISSUED TO THE PETITIONER.

EXT.P14 - TRUE COPY OF THE JUDGMENT OF THE HON'BLE SUPREME COURT OF INDIA IN I.A.NOS.12-13 OF 2011 IN SPECIAL LEAVE PETITION © NO.19628-19629 OF 2009 DATED 27/2/2012.

EXT.P15 - TRUE COPY OF THE REQUEST FILED BY THE RECTOR OF THE PETITIONER SEMINARY DATED 11/09/2012 BEFORE THE VILLAGE OFFICER.

RESPONDENTS' EXHIBITS

EXT.R3(a) - PHOTOCOPY OF THE DIRECTIONS ISSUED BY THE ADDITIONAL TAHSILDAR.

EXT.R3(b) - PHOTOCOPY OF THE RESOLUTION NUMBER 17 OF THE POYYA GRAMA PANCHAYAT DATED 1/3/2011.

EXT.R3(C) - PHOTOCOPY OF THE MASS PETITION FILED nby the people in the locality dated 27/1/2011.

EXT.R3(d) - PHOTOCOPY OF THE ACKNOWLEDGEMENT OF THE PETITION DATED 27/1/2011.

//true copy//

P.S. to Judge

K. HARILAL, J.

W.P. (C) No.24095 of 2012-J

Dated this the 19th day of November, 2015

JUDGMENT

The petitioner Seminary is the owner in possession of 6 Acres and 16.5 cents of land comprised in Sy.No.88 of Madathumpadi Village by virtue of a registered assignment deed No.400/1993. Out of the said extent of the property, an extent of 1.25 Acres of land on the southern portion i.e., the back side of the aforesaid property, is still lying at different levels. The petitioner is desirous of making rubber cultivation in that property and for that purpose, he intended to make the land in uniform level. The 2nd respondent Geologist has not accepted the petitioner's application for permission to remove the ordinary earth. Feeling aggrieved, the petitioner approached this Court by filing W.P.(c) No.8895/2012

and this Court passed by Ext.P12 interim order directed the Geologist to accept the application and issue the permit and 'P' Form, on the petitioner furnishing a bond undertaking that he will remit the royalty as fixed by the Government or the appropriate authority. While considering Ext.P12, the 2nd respondent informed the petitioner that in view of the Supreme Court judgment in SLP No.19628/2009, without clearance from the Ministry of Environment, Forest and Climate Change, Union of India, no sanction will be issued for removing the sand and the petitioner is further directed to produce a proper application with all documents as prescribed under the Minor Mineral Concession Rules along with the clearance from the Ministry of Environment, Forest and Climate Change, Union of India or the State Level Environment Impact Assessment Authority. This order is challenged in this writ petition on various grounds.

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. Going by Ext.P13, it is seen that the petitioner is directed to file an application in Form-A along with the required other documents as specified in Ext.P13 and the sanction from the Ministry of Environment, Forest and Climate Change, Union of India, or clearance from the State Level Environment Impact Assessment Authority. It is also seen specifically stated that further proceedings will be taken in the office of the 2nd respondent on receipt of the proper application along with the clearance of the Ministry of Environment, Forest and Climate Change, Union of India or the State Level Environment Impact Assessment Authority. I do not find any reason to interfere with the instructions given to the petitioner by Ext.P13 in view of the decision of the Apex Court in Ext.P14. Further grievance of the petitioner is that the 3rd respondent has not issued the sketch of the property as directed in Ext.P13. When the 2nd respondent insisted for producing the sketch, the 3rd respondent is not justified in withholding the same.

The 3rd respondent is directed to issue a sketch of the petitioner's property to the petitioner. The petitioner is also sought for issuing a writ of mandamus commanding the 2nd respondent Geologist to pass appropriate orders on Ext.P11 in the light of Ext.P12 interim order passed by this Court.

4. Having regard to the above grievance also, the 2nd respondent is directed to pass an order on Ext.P11 within a period of three months from the date of receipt of a proper application along with all necessary documents as required under the Minor Mineral Concession Rules and the clearance of the Ministry of Environment, Forest and Climate Change, Union of India or the State Level Environment Impact Assessment Authority.

This writ petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge