

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 21524 of 2015 (M)

PETITIONER(S):

1. RAJU E.P., AGED 51 YEARS,
S/O. PARAMESWARAN NAIR, ILLIKKAL PUTHENPURAYIL,
AYYAMPUZHA P.O., POTTA, ERNAKULAM DISTRICT,
PIN-683 581.
2. SHAJI PULIMOOTTIL, AGED 45 YEARS,
S/O. ELIYAS, PULIMOOTTIL HOUSE, AYYAMPUZHA P.O.,
POTTA, ERNAKULAM DISTRICT-683 581.

**BY DR.K.P.SATHEESAN, SENIOR ADVOCATE.
ADVS. SRI.P.MOHANDAS (ERNAKULAM),
SRI.ANOOP.V.NAIR.**

RESPONDENT(S):

1. THE SENIOR GEOLOGIST,
MINING & GEOLOGY DEPARTMENT, DISTRICT OFFICE,
CIVIL STATION, KAKKANAD, ERNAKULAM-682 030.
2. THE DISTRICT COLLECTOR,
ERNAKULAM CIVIL STATION, KAKKANAD,
ERNAKULAM DISTRICT-682 030.
3. THE DISTRICT POLICE CHIEF,
ERNAKULAM (RURAL), ALUVA,
ERNAKULAM DISTRICT-683 101.
4. THE DIRECTOR, MINING & GEOLOGY,
OFFICE OF THE MINING & GEOLOGY,
KESAVADASAPURAM, PATTOM,
THIRUVANANTHAPURAM-695 001.
5. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT,
GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

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**6. SOMA ENTERPRISES LTD. NO.14,
AVENUE NO.4, BENJARA HILLS HYDERABAD, ANDHRA PRADESH,
REPRESENTED BY ITS DEPUTY GENERAL MANAGER,
FOUR LINE NATIONAL HIGHWAY CONNECTIVITY, WARD NO.II,
GODOWN ROAD, CHERANALLOOR, KOCHI.**

**7. THE AYYAMPUZHA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, AYYAMPUZHA,
ERNAKULAM DISTRICT.**

**R1 TO R5 BY GOVT. PLEADER SRI.BIJU MEENATTOOR.
R6 BY ADV. SRI.MILLU DANDAPANI.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-08-2015, ALONG WITH WP(C).NO.22920 OF 2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

WP(C).No. 21524 of 2015 (M)

APPENDIX

PETITIONER'S EXHIBITS:-

P1 : COPY OF COMPLAINT DATED 06.07.2015 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

P2 : COPY OF GO(P)NO.69/2015/ID DATED 19.05.2015.

P3 : COPY OF JUDGMENT OF THIS HON'BLE COURT DATED 21.05.2015 IN WP(C).NO.14427/2015.

P4 : COPY OF THE INTERIM ORDER IN WP(C).NO.18313/2015 PASSED BY THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

K. VINOD CHANDRAN, J

W.P(C) Nos.21524 of 2015 & 22920 of 2015

Dated this the 05th day of August, 2015

J U D G M E N T

Both the writ petitions are relating to the quarrying activities carried on by the petitioner in W.P(C) 22920/2015, which admittedly is for the purpose of the Metro-project going on within Kochi. W.P(C) No.22920/2015 is a writ petition filed by a contractor who has been awarded the work of the Metro Project and the quarrying is carried on from their own property for the purpose of the said project. The learned counsel for the petitioner would contend that there is a public purpose involved and hence the same would not require an environmental clearance certificate. In any event, the petitioner would also submit that there is an application filed by the petitioner as early as on 02.03.2015 before the Enviromental Impact Assessment Authority and the same has not been considered till date.

2. The petitioners in W.P(C) No.21524/2015 are aggrieved with the carrying on of the quarrying operations without Environmental Clearance Certificate; which they allege to be illegal.

3. The question of quarrying operation being carried on without environmental clearance certificate is no longer res integra and the same cannot be carried on unless and until such certificate is obtained and no permit without such a certificate would enable the quarrying operations even if the permit to that effect is given. The same has been clearly laid down in All Kerala River Protection Council v. State of Kerala [2015 (2) KLT 78] and Najeeb v. Shoukath Ali (2015 (3) KLT 396).

4. The primary contention of the petitioner is that the petitioner having carried on the quarrying operation for a public purpose cannot be interdicted on such requirement. The exemption insofar as a public purpose; is available under Rule 106(3) of the Kerala Minor Mineral Concession Rules 2015, which is extracted herein:

“where in the construction of public works like roads, canals, irrigation projects, railways, as a part of the work, if extraction of minor mineral is inevitable, the department/authority may do so without obtaining quarrying permit under these rules. If the extracted mineral is to be transported out of the work site, competent authority shall issue mineral transit passes on an application made by the authority concerned, after collecting the royalty:

5. The said rule does not apply to extraction of minerals from a different property and takes in only any extraction or quarrying made in the site on which such construction or public work is carried out. Considering an in pari materia provision under the Railways Act, 1989 a Division Bench of this Court found that the empowerment of the railway administration to construct or maintain a railway, notwithstanding anything contained in any other law for the time being in force, under Section 11 of the said

Act does not enable excavation of earth from a different property than in which the work is carried on.

5. It has been found that the public authorities would be only exempted for the quarrying activities carried on in the property of such authority and no quarrying could be carried on in private property availing the exemption under the Rule, for reason of such quarried earth being required for a public work in a different site. Herein the contention raised is that the quarrying has to be done in the private property, for carrying out the Metro Rail project which does not come within the exemption contemplated under the Rules of 2015.

6. In such circumstance, the petitioner in W.P(C) 22920/2015, who is the 6th respondent in W.P(C) 21524/2015 shall not be entitled to carry on such quarrying operations till an environmental clearance certificate is obtained.

7. However, considering the fact that the petitioner is engaged in the work of a prestigious public project, it is only proper that the Environmental Impact Assessment Authority, the 3rd

WPC.No.21524/2015& 22920/2015

: 5 :

respondent in W.P(C) 22920/2015 expedite the process and finalize the consideration, at any rate within one month from the date of receipt of a certified copy of this judgment.

Writ petition is disposed of.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge