

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

WP(C).No. 21897 of 2015 (J)

PETITIONER(S):

1. SHAJI P. JOHN,
PANATHOTTATHIL, NARANAMOOZHY P.O.,
PATHANAMTHITTA DISTRICT.

2. BOSE VARGHESE,
THOPURATHU HOUSE, VEHOCHIRA P.O.

BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT IN
DEPARTMENT OF MINING & GEOLOGY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2. DIRECTOR OF MINING AND GEOLOGY,
DIRECTORATE OF MINING AND GEOLOGY, KESHAVADASAPURAM,
THIRUVANANTHAPURAM-695 004.

3. SENIOR GEOLOGIST,
PATHANAMTHITTA DISTRICT OFFICE,
DEPARTMENT OF MINING AND GEOLOGY, CIVIL STATION,
ARANMULA P.O., PATHANAMTHITTA DISTRICT-689 533.

4. KURIAKOSE SABU,
MANAGING PARTNER, KAVUMKAL GRANITES, ANGADI P.O.,
RANNI, PATHANAMTHITTA-689 672.

R1-R3 BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN
R4 BY ADV. SRI.MATHEW A KUZHALANADAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 21897 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: A TRUE COPY OF JUDGMENT DATED 26.6.2013 IN WPC 9094/13 OF THE HONOURABLE HIGH COURT.

EXHIBIT P2: A TRUE COPY OF ORDER NO.B1-34/2013 DATED 9.5.2013 OF SUB DIVISIONAL MAGISTRATE, THIRUVALLA.

EXHIBIT P3: A TRUE COPY OF ORDER NO.B1-34/2013 DATED 24.5.2013 OF SUB DIVISIONAL MAGISTRATE, THIRUVALLA.

EXHIBIT P4: A TRUE COPY OF REPRESENTATION DATED 20.8.2013 MADE BEFORE THE 2ND RESPONDENT.

EXHIBIT P5: A TRUE COPY OF COMMON JUDGMENT DATED 3.1.2014 IN WPC 23054/13 OF THE HON'BLE HIGH COURT.

EXHIBIT P6: A TRUE COPY OF NOTICE NO.1645/M2/2014 DATED 14.2.2014 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P7: A TRUE COPY OF ORDER NO.135/2015-16/06/206/DOPTA/M/15 DATED 29.5.2015 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P8: A TRUE COPY OF ORDER NO.894/2013-14/1645/M2/2014 DTD.22.3.2014 OF THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:

EXT.R4(a): TRUE COPY OF THE ORDER DTD.30.6.2015 ISSUED BY REVENUE DIVISIONAL OFFICER, THIRUVALLA.

EXT.R4(b): TRUE COPY OF THE NOTICE DTD.6.3.2014 ISSUED BY THE 2ND RESPONDENT.

EXT.R4(c): TRUE COPY OF THE ORDER DTD.22.3.2014 ISSUED BY THE 2ND RESPONDENT.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.21897 of 2015

Dated this the 30th day of October, 2015

JUDGMENT

This writ petition is filed challenging Exts.P7 and P8 orders.

2. The issue gained attention in an earlier round of writ petition filed by the first petitioner as per Ext.P5. This Court after a detailed judgment, directed the Geologist to take appropriate decision on Ext.P4 produced therein by the second respondent. Ext.P4 therein is produced as Ext.P4 in this writ petition as well. The request of the petitioners in Ext.P4 is to take action under Section 21(4) of the Mines and Minerals (Development & Regulation) Act, 1957 (for short, the 'Act') as against the party respondent herein. According to the petitioners, on account of contraventions of the provisions of the Act, the authorities are bound to implement the same and take action against the party respondent in terms of Section 21(4) of the Act. It is appropriate to refer Section 21 of the Act. Section 21(4) of the Act reads as follows:

Whenever any person raises, transports or

causes to be raised or transported, without any lawful authority, any mineral from any land, and for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

4(A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section(1) and shall be disposed of in accordance with the directions of such court.

3. The impugned order(Ext.P8) purported to have been passed in compliance of the judgment of this Court, which is produced as Ext.P5. It is observed in Ext.P8 that more than one year is elapsed since the quarrying activities are stopped and there is no scope of invoking the power to seize the tools and equipments used in the vehicles in terms of the Act.

4. Learned counsel for the petitioners submits that the Director has not adverted to the impact of Section 21(2) of the Act. It is submitted that the minerals from the land, vehicles and other

equipments shall be liable to be confiscated by the Authority.

5. On the other hand, the learned counsel for the party respondent would submit that the party respondent has already remitted the royalty and therefore, there is no scope for further adjudication of the matter in terms of Section 21 of the Act.

6. It is further submitted that the Authority has, infact, adverted to Section 21 of the Act, non-reference to a provision in the impugned order is not a ground to challenge that this has not been considered in terms of Section 21 of the Act.

7. This Court is of the view that when clear penalty proceedings are prescribed in the Act, the Authorities are bound to consider the same in terms of the penalty proceedings and take appropriate decision.

8. Learned counsel for the petitioners submits that in this case, Section 21(5) of the Act would apply, in as much as there was an illegal quarrying. On the other hand, the learned counsel for the party respondent submits that he has a valid quarrying lease except D & O licence from the local Authority.

This Court is of the view that the matter requires reconsideration in the light of Section 21 of the Act. The Director is free to take appropriate decision in the matter after adverting to impact of Section 21 of the Act and appropriate orders shall be passed within a period of six weeks from the date of receipt of a copy of this judgment. It is made clear that if the party respondent is entitled to remove minerals, he shall be permitted based on the royalty already paid. Needless to say that, the party respondent and the petitioners shall be heard.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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