

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937H

WP(C).No. 23870 of 2015 (S)

PETITIONER :

SASI. K AGED 56 YEARS
S/O. KRISHNAN, MARIANPAZHANJI HOUSE, THIRUVALLOM P.O.
THIRUVANANTHAPURAM.

BY ADVS.SRI.A.X.VARGHESE
SRI.A.V.JOJO

RESPONDENTS :

1. GOVERNMENT OF KERALA
MINISTRY OF ENVIRONMENT AND FOREST
NEW DELHI -110 001.
2. STATE OF KERALA
REPRESENTED BY SECRETARY, ENVIRONMENT AND FOREST
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
3. DISTRICT COLLECTOR
COLLECTORATE, KUDAPPANAKUNNU
THIRUVANANTHAPURAM - 695 001.
4. DIRECTOR
DIRECTORATE OF MINING AND GEOLOGY DEPARTMENT
KESAVADASAPURAM, PATTOM PALACE P.O.
THIRUVANANTHAPURAM.
5. DIRECTOR,STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY (SEIAA),
DIRECTORATE OF ENVIRONMENT AND CLIMATE CHANGE
PALLIMUKKU, PETTAH P.O., THIRUVANANTHAPURAM - 695 024.
6. REVENUE DIVISIONAL OFFICER,
THIRUVANANTHAPURAM - 695 001.
7. THIRUVANANTHAPURAM CORPORATION
REPRESENTED BY ITS SECRETARY, THIRUVANANTHAPURAM.

8. ANIL KUMAR @ SREE KUMAR
VAARUVILA VEEDU, PUNCHAKKARI, THIRUVALLOM
THIRUVANANTHAPURAM - 695 027.
 9. MURALI
CONTRACTOR, LIJITHA BHAVAN
PRA - 62 (PAZHANCHIRA RESIDENCE ASSOCIATION)
PAZHANCHIRA, AMBALATHARA P.O.
THIRUVANANTHAPURAM - 695 026.
 10. LIJU, S/O. MURALI, LIJITHA BHAVAN
PRA-62(PAZHANCHIRA RESIDENCE ASSOCIATION)
PAZHANCHIRA, AMBALATHARA P.O.
THIRUVANANTHAPURAM - 695 026.
 11. SANKARAN
MUDUMBIL VEEDU, PUNCHAKKARI
THIRUVANANTHAPURAM - 695 027.
 12. A.ANIL KUMAR
S/O. APPUKKUTTAN NADAR, TC 65/1350, LEELA BHAVAN
VISWANATHAPURAM, PUNCHAKKARI
THIRUVANANTHAPURAM - 695 027.
 13. T.R.LALAN
STUDIO MANAGER, CHITRANJALI STUDIO, THIRUVALLOM
THIRUVANANTHAPURAM - 695 027.
 14. ABDUL KARIM
KAREEMS, TC 68/1148, PACHALLOOR
THIRUVALLOM, THIRUVANANTHAPURAM - 695 027.
 15. KUTTAPPAN @ ALIAS ANIL KUMAR
S/O. KARUNAKARAN, CHOTHI TRANSPORT, PACHALLOOR P.O.
THIRUVANANTHAPURAM - 695 027.
- R1 BY ADV. SRI.PRAMOD PRABHAKARAN, CGC
R2 TO R6 BY SR.GOVERNMENT PLEADER, SRI.C.R. SYAM KUMAR.
R7 BY ADV. SRI.N.NANDAKUMARA MENON (SR.)
R7 BY ADV. SRI.P.K.MANOJKUMAR,SC,TVPM CORPORATION
R8 TO R11 BY ADV. SRI.K.P.RAJEEVAN
R12 BY ADV. SRI.R.SUNIL KUMAR
R12 BY ADV. SMT.A.SALINI LAL
R14 BY ADV. SRI.E.S.ASHRAF

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21-08-2015, ALONG WITH WPC. 20267/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP(C).No. 23870 of 2015 (S)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 - TRUE COOY OF THE REPORT DATED NOVEMBER 1995.

EXT.P2 - TRUE COPY OF THE JUDGMENT DT. 25.9.2006 IN OP 7406/1997.

EXT.P3 - TRUE COPY OF THE GO NO. 12/2014/ENVDT. 15.11.2014.

EXT.P3(A) - TRUE COPY OF THE ENGLISH TRNASLATION OF EXT. P3.

EXT.P4 - TRUE COPY OF THE PAPER REPORT COMES IN HINDU DAILY
DT. 07.07.2015.

EXT.P5 - PHOTOGRAPHS SHOWING THE PRESENT CONDITION OF THE AREA.

RESPONDENTS' EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.P.(C) No. 23870 OF 2015

and

W.P.(C) No. 20267 OF 2015

Dated this the 21st day of August, 2015

JUDGMENT

Ashok Bhushan, C.J.

We have heard learned counsel appearing for the petitioners, learned counsel appearing for the respondents and learned Government Pleader.

2. W.P.(C) No. 23870 of 2015 has been filed as a Public Interest Litigation praying for a direction to respondents 1 to 7 to ensure that no mining activities is carried on in Thiruvallom Hills at Thiruvananthapuram. Petitioner in this writ petition claims that he is the President of "Prakrithi Samrakshana Action Council" and he has raised the grievance regarding damage of Thiruvallom Hills. It is pleaded that unchecked soil mining, using heavy machinery, had led to widespread protest. It is further pleaded that unchecked mining operations are going on in violation of relevant rules and Government Orders. It is also pleaded that the State

Officials are not checking properly on the pretext that they have valid permit to carry on the mining operations.

3. Learned counsel for the petitioner, Sri.A.X. Varghese has also placed reliance on the Division Bench judgment reported in **All Kerala River Protection Council v. State of Kerala and others** [2015 (2) KHC 359]. It is submitted that in view of the Division Bench judgment which also considered the Kerala Minor Mineral Concession Rules, 2015, no mining permit under Rules 2015 can be granted except after obtaining environmental clearance from the State Environment Impact Assessment Committee. It is submitted that the District Collector is obliged to ensure that no one is carrying on mining operations without getting necessary permissions including environmental clearance.

4. W.P.(C) No.20267 of 2015 has been filed by the petitioner praying for police protection for removing red earth from his property in accordance with the permit issued by the Mining and Geology Department. But due to the illegal threats of

the 4th respondent, he is unable to do the work. Petitioner's case is that he is the owner of 5 cents of property in Survey No.165/2-1 of Thiruvallom Village. He submits that he has obtained Ext.P1 permit for construction of a residential building from the Thiruvananthapuram Corporation and Ext.P2 is the proceedings of Mining and Geology Department where the petitioner has been granted permit after site inspection for extracting 300 MT of ordinary earth. He submits that the said permit was valid only up to 10.07.2015. Petitioner's case is that when he proceeded to extract red earth in pursuance of Exts.P1 and P2 permits, he was obstructed by 4th respondent. Hence he came with this writ petition seeking police protection. The petitioner in W.P.(C) No.20267 of 2015 is the 12th respondent in W.P.(C) No. 23870 of 2015.

5. We have considered the submissions of learned counsel for the parties and perused the records.

6. The Division Bench of this Court in All Kerala River Protection Council's case (supra), after considering the provisions

of Environmental Protection Act, 1986 and Kerala Minor Mineral Concession Rules, 2015 has laid down that mining operations after getting permit under 2015 Rules have to be carried out only after obtaining Environmental Clearance. The conclusion of the Division Bench was recorded in paragraph 82 which is extracted hereunder for ready reference:

"82. In view of the foregoing discussion, we come to the following conclusions.

(i) In case where quarrying/mining/lease which were existing on the date of issuance of Notification dated 14.09.2006 or on the date of issue of the order dated 18.05.2012 by the Government of India, Ministry of Environment and Forests with regard to area less than 5 hectares no environmental clearance with regard to extraction of minor mineral is required. Notification dated 14.09.2006 contemplated obtaining environmental clearance only with regard to new projects/new activities.

(ii) Government Order dated 10.01.2014 cannot be relied on by the parties in view of the restraint order issued by the National Green Tribunal dated 27.09.2013 till such time the restraint order continues.

(iii) By amendment of Section 14 by Act 37 of 1986 making Section 4 applicable to minor minerals also the provision contained in Section 4 shall be applicable to mining

operations by a person holding mining lease or any other kind of mineral concession. It cannot be accepted that mining operation with effect from 10.02.1987 cannot be continued by a person holding any other mineral concession apart from mining lease.

(iv) Judgment of the Apex Court in **Deepak Kumar's case (supra)** did not contemplate environmental clearance for an area less than 5 hectares with regard to existing mining lease/mining permits on the date of judgment. Paragraph 29 of the judgment clearly directed that leases of minor minerals including their renewal for an area of less than five hectares be granted by the State/Union Territories only after getting environmental clearance.

(v) Environmental clearance as contemplated by Notification dated 14.09.2006 required environmental clearance for new projects/new activities.

(vi) The Notification dated 14.09.2006 having been applied vide order dated 18.05.2012 of the Government of India, Ministry of Environment and Forests all mining operations for new project and new activities for an area less than 5 hectares after 18.05.2012 required environmental clearance carried through either a mining lease or mining permit.

(vii) Interim order passed by the Apex Court on 27.01.2012 was intended by the Supreme Court to operate till the Rules have been framed by the States taking into consideration the guidelines and recommendations of the

Ministry of Environment and Forests.

(viii) As per Rule 68 no mining/quarrying operations can be permitted without there being an approved mining plan. But such rule is subject to exception as engrafted in Rule 66, i.e., for existing lease holders, time has been allowed to submit mining plan. "

7. There cannot be any dispute that no one can be allowed to do mining operations unless all necessary permits including the environmental clearance as per 2015 Rules are obtained and the Division Bench of this Court in the aforesaid case has already issued directions to the District Collector to take appropriate measures. Thus so far as the prayer made in the Public Interest Litigation that directions be issued to ensure that no mining activities is carried on without necessary permissions, we deem it fit and proper to direct the authorities that they shall ensure that mining operations are not carried out without obtaining all necessary and statutory permissions as required under 2015 Rules.

8. However, in so far as those persons who have

WP(C) No. 23870 of 2015 and
W.P.(C) No. 20267 OF 2015

-:7:-

obtained permission for construction of residential building and permission to extract red earth, they can carry out their process as permitted and the police authorities have to extend due protection in that regard. Learned counsel for the petitioner in W.P.(C) No.20267 of 2015 has submitted that permission granted to the petitioner, Sri.A. Anilkumar, was limited up to 10.07.2015 and subsequently he got renewal of the same.

8. Be that as it may, we direct respondent No.3 in W.P.(C) No.20267 of 2015 to afford adequate protection only when the petitioner's permission is renewed and till the currency of the permission.

With the above direction, both the Writ Petitions are disposed of.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**

ttb/21/08