

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

WP(C).No. 24930 of 2014 (M)

PETITIONER(S):

**ABDUL KHADER, AGED 40, S/O.SULAIMAN,
THARUVOKODE HOUSE, MANKURISSI,
MANKARA, PALAKKAD- 678 613,
ALSO HAVING ADDRESS AT M/S. SILVER SAND,
VANDAZHY VILLAGE, ALATHUR TALUK,
PALAKKAD DISTRICT.**

**BY SRI.C.C.THOMAS, SENIOR ADVOCATE.
ADVS. SRI.PRAVEEN K. JOY,
SRI.T.A.JOY.**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY,
TOWN PLANNING DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. CHIEF TOWN PLANNER,
TOWN PLANNING DEPARTMENT, TRIVANDRUM- 33.**
- 3. DISTRICT COLLECTOR, PALAKKAD.**
- 4. THE CHAIRMAN,
SINGLE WINDOW CLEARANCE BOARD,
PALAKKAD.**
- 5. GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE,
PALAKKAD.**
- 6. SENIOR TOWN PLANNER,
SENIOR TOWN PLANNING OFFICE,
PALAKKAD.**

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**7. ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
PALAKKAD.**

**8. VADAZHY GRAMA PANCHAYATH COUNCIL,
VADAZHY GRAMA PANCHAYATH OFFICE,
MUDAPALLOOR P.O., PALAKKAD -687 705.**

**9. THE SECRETARY,
VADAZHY GRAMA PANCHAYATH,
MUDAPALLOOR P.O., PALAKKAD- 687 705.**

*** ADDL. R10 IMPEADED**

**10. MARY MATHEW, D/O.LATE SHRI.MATHEW,
CHEMPARATHY HOUSE, THODUPUZHA-685 584.**

*** ADDL. R10 IMPEADED AS PER ORDER DATED 13.01.2015 IN IA. 127/2015.**

R1 TO R6 BY GOVT. PLEADER SRI.G. GOPAKUMAR.

R7 BY ADV. SRI. M.AJAY, SC.

**R9 BY ADVS. SRI.P.RAVINDRA NATH,
SRI.N.KRISHNA PRASAD.**

**ADDL. R10 BY ADVS. SRI.ISSAC M.PERUMPILLIL,
SRI.JIJO PAUL KALLOOKKARAN.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03/07/2015, ALONG WITH WP(C).NO.31911 OF 2014 AND
CONNECTED CASES, THE COURT ON 06/10/2015 DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

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| EXHIBIT P1 | COPY OF THE CONSENT OF THE KERALA STATE POLLUTION CONTROL BOARD 10.12.2013. |
| EXHIBIT P2. | COPY OF THE NO OBJECTION OF ASSISTANT DIVISIONAL OFFICE, FIRE AND RESCUE SERVICES, PALAKKAD DATED 23.10.2013. |
| EXHIBIT P3. | COPY OF THE MINUTES OF MEETING DATED 17.12.2013 OF THE 3RD RESPONDENT. |
| EXHIBIT P4. | COPY OF THE LETTER DATED 30.11.2013 BY 9TH RESPONDENT. |
| EXHIBIT P5. | COPY OF THE LETTER ISSUED BY GENERAL MANAGER, SINGLE WINDOW CLEARANCE BOARD, PALAKKAD DATED 22.02.2014. |
| EXHIBIT P6. | COPY OF THE MINUTES OF MEETING DATED 03.03.2014 OF CONVENER, SINGLE WINDOW CLEARANCE BOARD, PALAKKAD. |
| EXHIBIT P7. | COPY OF THE LETTER DATED 28.04.2014 OF CONVENOR, SINGLE WINDOW CLEARANCE BOARD, PALAKKAD. |
| EXHIBIT P8. | COPY OF THE MINUTES OF MEETING DATED 02.07.2014 OF SINGLE WINDOW CLEARANCE BOARD, PALAKKAD TO THE 9TH RESPONDENT. |
| EXHIBIT P9. | COPY OF THE COMMUNICATION DATED 05.08.2014 OF CONVENER, SINGLE WINDOW CLEARANCE BOARD, PALAKKAD TO THE 9TH RESPONDENT. |
| EXHIBIT P10. | COPY OF THE ORDER DATED 24.01.2014 OF DISTRICT MEDICAL OFFICER OF HEALTH PALAKKAD. |
| EXHIBIT P11. | COPY OF THE ORDER DATED 21.02.2014 OF CHIEF TOWN PLANNER, TRIVANDRUM. |
| EXHIBIT P12. | COPY OF THE ACKNOWLEDGMENT DATED 16.08.2013 OF DEPARTMENT OF INDUSTRIES, PALAKKAD. |
| EXHIBIT P13. | COPY OF THE REPORT DATED 25/07/2014 OF THE 9TH RESPONDENT. |
| EXHIBIT P14. | COPY OF THE DECISION OF 8TH RESPONDENT PANCHAYATH DATED 30.07.2014. |

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EXHIBIT P15. COPY OF THE CERTIFICATE DATED 13/11/2014.

**EXHIBIT P16. COPIES OF THE PROCEEDINGS BY THE GENERAL MANAGER,
DISTRICT SINGLE WINDOW CLEARANCE BOARD, PALAKKAD
DATED 13/11/2014.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) Nos.24930, 31911, 33850 of 2014,
12114 of 2015 and 16010 of 2015

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Dated this the 6th day of October, 2015

JUDGMENT

The issue involved in these writ petitions relates to the decision taken by the Single Window Clearance Board, Palakkad (for short, the Board) recommending licence to run a metal crusher unit by name “M/s.Silver Sand”, within the local limits of Vandazhy Grama Panchayat in Palakkad district.

2. W.P(C) No.24930 of 2014 is filed by the applicant before the Board seeking to install the unit. He alleges that his property is lying contiguously single plot in Sy. Nos.81/3 and 81/4 of Vandazhy II village. He alleges that he has obtained Ext.P1 consent from the Pollution Control Board for installing sand making machine and auxiliaries. He further alleges that he wants to produce M Sand for which, consent has already been issued. He obtained Ext.P2 no

objection of the Assistant Divisional Office, Fire and Rescue Services, Palakkad. Thereafter he approached the Board with an application and the General Manager forwarded the same to all statutory authorities for getting report in the matter. It was noted by the 9th respondent and recommended to the Chief Town Planner for layout approval. A meeting of the Board was held on 3.3.2014 and through Ext.P6, they recommended for further approval of the petitioner's unit. Moreover, there was a direction issued by the Board that the application for panchayat licence has to be considered and granted immediately. The petitioner points out as there was again delay on the part of respondents 8 and 9, the Board again directed the panchayat to give sanction without insisting for NOC from the Department of Environment and Climate Change. Ext.P8 direction was issued on 2.7.2014 and the same was communicated by the Convener of the Board to the 9th respondent through Ext.P9 dated 5.8.2014. The petitioner further alleges that the District Medical

Officer (DMO) has issued Ext.P10 NOC for the unit. Therefore, according to the petitioner, in public health point of view, the unit has got approval. Moreover, the Town Planning Department has issued Ext.P11 order. Further the DMO has issued approval for the site for installation of the motor for running the M Sand unit.

3. It is further alleged that the Board has taken decision directing immediate action by the panchayat for considering the petitioner's application. Thereafter the Secretary of the panchayat also through Ext.P13 recommended to grant licence/sanction to the petitioner's unit. The petitioner further alleges that all the statutory authorities have issued consent for establishing the unit. Now, the layout approval of the Town Planning Department is granted and the approval is only for constructing a building. Thereafter there are several procedures like licence of the panchayat, consent to run from the Board and also other procedures to be followed. As far as the panchayat is concerned, the present consent of the Pollution Control

Board, Fire Department and DMO are more than enough and moreover the Board also had issued directions. However, the 8th respondent panchayat took an arbitrary decision (Ext.P14), which according to the petitioner is illegal, arbitrary, unreasonable, unjust and against law. The petitioner alleges that Ext.P14 has been passed before the recommendations received by other authorities. The petitioner points out that Ext.P9 is dated 5.8.2014 and Ext.P13 is seen forwarded on 18.8.2014 and, therefore, Ext.P14 decision is totally illegal and against the law. The petitioner further alleges that the decision is taken without conducting a hearing.

4. W.P(C) No.31911 of 2014 is filed by the residents of the locality where the unit is proposed to be installed seeking a direction to the respondents 1 to 7 to ensure that respondents 8 and 9, and their men shall not conduct quarrying operations, crusher unit or constructing M Sand unit in the property mentioned in Exts.P1 to P4, P7 and P10 without permission and licence from the first respondent

under Sections 232 and 233 of the Kerala Panchayat Raj Act, 1994.

According to the petitioners, the unit is a red category polluting industry for which mandatory requirements are to be complied with as mentioned in Exts.P4 and P7. According to them, Exts.P9 and P11 are illegal attempts on the part of the 5th respondent to overreach Exts.P7 and P10 actions of statutory authorities. The grievance of the petitioners is that inspite of the complaints and representations as evidenced by Ext.s.P5, P6 and P12, respondents 8 and 9 continue the illegalities like unauthorised quarrying and the construction of M Sand unit without any licence or permission from the 1st respondent.

5. W.P(C) No.33850 of 2014 is filed by the adjacent land owner of the land where the unit is proposed to be installed. According to the petitioner, there is civil dispute pending between the petitioner and the 2nd respondent regarding the property as O.S No.169 of 2014 before the Munsiff's Court, Alathoor, wherein the petitioner has moved an application for injunction to restrain the 2nd

respondent from demolishing her eastern boundary and from trespassing into her property. She alleges that the eastern boundary of her property was demolished and granite poles were installed by the men of the 2nd respondent. According to the petitioner, the land owned by the 2nd respondent and the adjacent lands owned by her come under the industrial area. According to her, it is not an area benefited by industrial area. Therefore, the proceedings of the Board is without jurisdiction.

6. W.P(C) No.12114 of 2015 is filed by the President as well as the Secretary of Vandazhy Grama Panchayat. They contended that the decision of the the Board recommending the proposed unit is untenable insofar as no building permit is granted in the light of Rule 61(4) of the Kerala Panchayat Building Rules, 2011. They also contend that the consent to operate obtained from the Pollution Control Board is vitiated by suppression of facts.

7. W.P(C) No.16010 of 2015 is also filed by the residents of

the locality. According to them, the DMO as well as the Pollution Control Board has not taken note of the fact that the residential buildings of the petitioners are the nearest buildings from the proposed site. In the case of the 3rd petitioner, it is hardly 83 metres. It was pointed out that the road that has been shown by the applicant before the Board does not have 7 metres width, as could be seen from Ext.P11. Therefore, according to the the petitioners, there is violation of the conditions imposed by the chief town Planner. They further pointed out that without obtaining permit and clearance from the panchayat, the work cannot be proceeded with.

8. Counter affidavit has been filed by the applicant for the licence in the writ petitions filed against the decision of the Board.

9. Arguments have been heard.

10. While Mr.C.C.Thomas, the learned Senior Counsel appearing for the applicant submitted that inspite of clear direction by the Board, the respondent panchayat took an arbitrary decision on

18.8.2014 to grant permit for the installation of the unit without affording the applicant an opportunity of being heard. The learned counsel appearing for the petitioners in other writ petitions, including the learned Senior Court Mr. Jaju Babu would point out that the clearance given by the Board is incompetent for various reasons.

11. The learned single Judge, who heard W.P(C) No.31911 of 2014 on 7.1.2015, made it clear that notwithstanding the proceedings dated 2.12.2014 said to have been issued by the respondent panchayat, the applicants are at liberty to erect the unit strictly in terms of whatever the sanction they said to have obtained. However, it was observed that they shall not commission the same without prior permission from this Court.

12. Mr. Jaju Babu, the learned Senior Counsel appearing for the petitioners in W.P(C) No.31911 of 2014 would argue that a proprietary concern like M/s.Silver Sand cannot be owned by two persons namely, respondents 8 and 9. According to the learned Senior

Counsel, quarrying operations and construction of M Sand unit are without necessary permission and licence under the Kerala Panchayat Raj Act. It was pointed out that the State Level Environmental Impact Assessment Authority is the authority constituted by the Government of India to deal with environmental clearance for projects falling under Category B of the Schedule of notification issued on 14.9.2006 and, therefore, the Board has no authority to curtail the jurisdiction or power of the Environmental Impact Assessment Authority. Hence, the action evidenced by Ext.P9 is that the writ petition is without authority or jurisdiction; so submitted the learned Senior Counsel. According to Mr. Jaju Babu, the respondent panchayat itself would consider independently as to whether the setting up of metal crusher unit or M Sand Unit within its area would affect the people of the locality. Reference was placed on the decision in **Manjappa Grama Panchayat v. State of Kerala** [1996 (2) KLT 719].

13. Mr. Issac M. Perumpillil, the learned counsel for the

petitioner in W.P(C) No.33850 of 2014 submitted that the applicant has obtained Form C certificate from the Board suppressing the pendency of O.S No.169 of 2014 before the Munsiff's Court, Alathur. The learned counsel further submitted that Sections 8 and 10 of Act 5 of 2000 have application only to industrial area within the meaning of Section 2(f) of the Act as well as the areas benefited by the industrial areas, within the meaning of Explanation to Section 14(1) of the Act. It was argued that the Board cannot usurp the powers or functions, statutorily assigned to the local authority concerned.

14. Mr. N. Krishna Prasad, the learned counsel appearing for the petitioners in W.P(C) No.12114 of 2015 would argue that norms have been issued by the Pollution control Board invoking its statutory powers. Inviting my attention to Ext.P10 in that writ petition, it was argued by the learned counsel that Ext.P10 clearly prescribes that there has to be a minimum distance of 200 metres from the centre of the proposed crusher unit to the structure of any

residence, public building or place of worship. Reference was made to the field inspection report of the Assistant Engineer of the panchayat which is marked as Ext.P11 in W.P(C) No.12114 of 2015. According to Mr.Krishna Prasad, Ext.P11 makes it clear that there are residential units situated even at a distance of 83 metre from the proposed crusher unit.

15. Mr. P.R.Venkatesh, the learned counsel for the petitioners in w.P(C) No.16010 of 2015 would submit that in the order issued by the Chief Town Planner, it is made clear that the grant of approval of the layout is only subject to the conditions stipulated therein. It was pointed out that there should be a road with statutory width which means that the width has to be in conformity with Rule 61 of the Kerala Panchayat Building Rules i.e., atleast 7 metres. Therefore, as long as there is no compliance with the conditions, it cannot be said that the approval has come into force; so submitted Mr.Venkatesh.

16. Mr. C.C.Thomas, the learned Senior Counsel appearing for

the applicant, per contra, invited my attention to Section 10 of the Single Window Clearance Board and Industrial township Area Development Act, 1999 which reads as follows:

“Issuing of clearance licenses, certificates based on the recommendations:- Notwithstanding anything contained in any other law for the time being in force the authority concerned shall, on receipt of the recommendation of the State Board, District Board or Industrial Area Board, issue the clearances, licenses or certificates applied for in accordance with the recommendations of the State Board, District Board or Industrial Area Board as the case may be within ten working days from the date of receipt of the recommendations. If no clearance, licence or certificate, as the case may be is issued within the said time limit the clearance, licence or certificate, as the case may be, recommended for by the respective Board shall be deemed to have been issued after the expiry of the said period of ten working days.”

17. According to the learned Senior Counsel, it is clear from the above provision that if there is any failure on the party of any

local authority in not issuing licence or permit as recommended by the Board, there shall be a deemed licence on the expiry of 10 days from the date of issue of such recommendation. According to the learned Senior Counsel, the recommendation was made on 4.10.2014 vide decision No.3 of the Board and thereafter on 29.10.2014 Letter No.C3/SWCB/7578/13 was issued to the panchayat. Thereafter on 13.11.2014, the certificate as well as the order was issued by the Board. According to the learned Senior Counsel, there is deemed licence much before the writ petition was filed.

18. This Court, in **Chettikulangara Grama Panchayat v. State of Kerala** [2014 (3) KLT 105] which covered a similar situation, had occasion to consider the authority of the District Single Window Clearance Board vis-a-vis the local authority. In that case, the petitioner had decided to set up an injection moulding unit for manufacturing paper plates and the petitioner approached this Court seeking permission to operate the unit in the light of the certificate

issued by the Board without any interference by the local panchayat.

In that case, this Court held that the rejection of the application for building permit by the panchayat and the failure to challenge the same could not preclude the applicant from approaching the Single Window Clearance Board. This Court was of the view that the power of the Board includes the power to grant permission for installation of machineries as well. In that case, the argument advanced on behalf of the local authority as well as the local residents who opposed the unit was that there should be a distinction with respect to the power of the District Board and the local authority and other authorities to issue clearance, licence, certificates etc.

19. The argument advanced by the learned counsel for the respondent panchayat as well as the local residents is that the Board cannot take away or reserve the powers or functions statutorily assigned to the local authority. The Single Window Clearance Boards are established in different districts under the provisions of Kerala

Industrial Single Window Clearance Boards and Industrial Township Area Development Act, 1999 (Act 5 of 2000) which was enacted for the purpose of providing special provision for speedy issue of various licenses, clearance and certificates required for setting up of industrial undertakings in the State of Kerala and for the Constitution of Industrial Township Area Development authorities for matter connected therewith. The Preamble states that it was enacted in the light of Clause (1) of Article 243Q of the Constitution for the purpose of constitution of industrial townships as well as industrial area development authorities for promoting industrial growth and for administering affairs of the industrial townships. It is a special enactment aimed at the promotion of rapid growth and orderly development of industries in the State. It is true that under Section 232 of the Kerala Panchayat Raj Act, the Village Panchayat is empowered to notify that no place in the panchayat area shall be used without a licence for any of the purpose specified in the Rules made

on that behalf, which in the opinion of the Government are likely to be offensive or dangerous to human life or health etc. It is also true that Section 233 of the Act mandates that no person shall without the permission of the village Panchayat and except in accordance with such permission, establish any factory, workshop or work place or install machinery or manufacturing plant driven by steam power, water power or other mechanical power or electrical power in any of the premises.

20. As observed by this Court in *Chettikulangara Grama Panchayat's case* (cited supra) the power conferred on the District Board or the State Board does not intend to undermine the functioning of the Local Self Government Institutions. On the other hand, it is intended to co-ordinate the authorities in stream lining the issue of licence and connected matters for the purpose of promotion of small scale industries. It was observed by this Court that the relevant legislations are not intended to create repugnancy in exercise

of their respective powers. The legislative scheme for issuing licence under the Single Window clearance Act remains with the object of sustaining core competence of the panchayat to express its view on the subject. Therefore, once permission is granted by the Board, the panchayat is bound by it. Here, it is crucial to note that the applicant had obtained clearance from the other authorities concerned also.

21. Viewed in that profile, this Court is of the view that the argument advanced by the learned counsel appearing for the panchayat and the local residents that the Board has no authority to issue clearance to the applicant has to be repelled.

In the result, W.P(C) 24930 of 2014 is allowed. Ext.P14 order is quashed. The respondent panchayat is directed to take up the application for licence and grant the same to the petitioner's unit "M/s.Silver Sand", in terms of the directions of the Single Window Clearance Board and also in terms in Exts.P1 to P13 within a period of two months from the date of receipt of a copy of this judgment.

WP(C)s.24930, 31911, 33850/14,
12114/15&16010/15

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W.P(C) Nos. 31911 of 2014, 33850 of 2014, 12114 of 2015 and 16010 of 2015 are dismissed.

However, it is hereby made clear that this judgment will not stand in the way of the respondent panchayat from exercising its powers to deal with any post operational variations.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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P.A to Judge