

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C). No.28581 of 2013 (W)

PETITIONER(S):

**SULAIMAN.K.,
S/O.ALAVI, KOOLYADAN HOUSE, VAYPARA PADY,
MANJERI, MALAPPURAM DISTRICT, PIN 676 121.**

**BY ADVS.SRI.K.M.SATHYANATHA MENON
SMT.KAVERY S. THAMPI**

RESPONDENT(S):

- 1. THE VILLAGE OFFICER
MANJERI, MALAPPURAM DISTRICT, PIN 676 121.**
- 2. THE SUB COLLECTOR
PERINTHALMANNA, MALAPPURAM DISTRICT, PIN 679 322.**

R1 & R2 BY GOVERNMENT PLEADER SRI. NOUSHAD THOTTATHIL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:-

- P1: TRUE COPY OF THE QUARRYING PERMIT ISSUED IN FAVOUR OF SRLASOKAN DATED 17.12.2012.**
- P2: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE MANJERI MUNICIPALITY IN W.P. 24877 OF 2013.**
- P3: TRUE COPY OF THE SEIZURE MAHAZAR PREPARED BY THE 1ST RESPONDENT.**
- P4: TRUE COPY OF THE CASH MEMORANDUM NO.109 ISSUED TO THE PETITIONER HEREIN DATED 24.09.2013.**
- P5: TRUE COPY OF THE RECEIPT ISSUED TO THE PETITIONER FROM THE OFFICE OF THE 2ND RESPONDENT DATED 11/10/2013.**
- P6: TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED 20/10/2013.**
- P7: TRUE COPY OF THE CHALAN RECEIPT DATED 23/10/2013 ISSUED TOWARDS THE PAYMENT OF ROYALTY FOR 5 TON OF GRANITE STONE.**

RESPONDENT(S)' EXHIBITS:-NIL

KRJ

/True Copy/

P.A to Judge

A.V.RAMAKRISHNA PILLAI, J.

=====

W.P(C) No.28581 of 2013

=====

Dated this the 9th day of February, 2015

JUDGMENT

Ext.P6 order is under challenge.

2. The petitioner is engaged in the business of transporting granites in goods vehicles. The petitioner alleges that he used to take granites from an authorised quarry owned by one P. R. Asokan. There was some agitation by some local people against the functioning of the quarry. However, the municipality has granted licence to the said quarry and the same is still valid.

3. The petitioner further alleges that while he was transporting granites on 24.9.2013, the first respondent along with some others seized the lorry on the ground that the petitioner was holding a blank cash memorandum and the matter was referred to the second respondent under the Kerala Minor Mineral Concession Rules. The petitioner alleges that the office of the second respondent without

providing an opportunity of being heard, wrongly recorded that the petitioner had submitted the guilt and an amount of ₹20,000/- was fixed on the petitioner towards fine. The petitioner points out that even in case of pleading guilty, the maximum fine would be ₹5,000/- as per Section 58(4) of the Rules. Therefore, he challenged the validity of Ext.P6.

4. In the counter affidavit filed by the respondent State, it was contended that on 11.10.2013, the petitioner approached the respondent with a request to compound the said case as envisaged under Section 23A of the aforesaid Act by expressing his willingness to pay the fine amount to be imposed by this respondent. Accordingly, the respondent issued Ext.P6 order imposing a sum of ₹20,000/- as fine as contemplated under Section 21 clause (1) of Minor Minerals (Development and Regulation) Act, 1957. But, due to oversight, the requisite application for compounding was not obtained from the petitioner in this regard. Contentions were also

raised regarding the validity of Ext.P4 which was seized from the possession of the petitioner. Therefore, they prayed for a dismissal of the writ petition.

5. Arguments have been heard.

6. The specific case of the petitioner is that the impugned order was passed without affording the petitioner an opportunity of being heard. The State in their counter affidavit admits that due to an oversight the requisite application for compounding was not obtained. That would strengthen the case of the petitioner that he was not given an opportunity of being heard. Therefore, this Court is of the view that it is only just and proper to direct the second respondent to reconsider the issue after affording the petitioner an opportunity of being heard.

7. Though it was argued by the learned Government Pleader that in the event of reconsideration the petitioner be directed to surrender the vehicle, this Court is of the view that it is not necessary

to direct the petitioner to do that at this point of time as it would cause prejudice to him.

Therefore, the writ petition is allowed. Ext.P6 is quashed. The matter is remitted back to the respondent concerned for reconsideration after affording the petitioner an opportunity of being heard.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

krj