

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 29692 of 2014 (J)

PETITIONER(S) :

ELSY JOSE AGED 45 YEARS
W/O.JOSE KUNNATH, KUNNATH VEEDU, EDAVAKA P.O.
MANANDAVADI TALUK, WAYANAD - 670 645.

BY ADVS.SRI.P.G.SURESH
SRI.G.SUDHEER (THURAVOOR)
SRI.RAJAN VISHNURAJ
SRI.V.HARISH

RESPONDENT(S) :

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1. MINISTRY OF ENVIRONMENT AND FORESTS
PARYAVARAN BHAVAN, CGO COMPLEX, LODHI ROAD
NEW DELHI - 110 003, REPRESENTED BY ITS SECRETARY.
 2. KERALA STATE ENVIRONMENTAL IMPACT ASSESSMENT AGENCY,
DIRECTORATE OF ENVIRONMENT AND CLIMATE CHANGE
PALLIMUKKU, PETTAH P.O., THIRUVANANTHAPURAM
KERALA, REPRESENTED BY ITS MEMBER SECRETARY
DEPARTMENT OF ENVIRONMENT AND CLIMATE CHANGE
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
 3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF ENVIRONMENT, SECRETARIAT
THIRUVANANTHAPURAM.
 4. THE GEOLOGIST,
DISTRICT OFFICE, DEPARTMENT OF MINING AND GEOLOGY
MEENANGADY, WAYANAD - 673 591.
 5. THE DISTRICT COLLECTOR,
CIVIL STATION, KALPETTA, WAYANAD DISTRICT.
 6. KERALA STATE POLLUTION CONTROL BOARD, HEAD OFFICE,
PATTOM, THIRUVANANTHAPURAM, KERALA- 695 004
REPRESENTED BY ITS CHAIRMAN.
 7. THE ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD
DISTRICT OFFICE, JASSAM COMPLEX, PINANGODE ROAD
KALPETTA, WAYANAD - 673 121.
 8. THE REVENUE DIVISIONAL OFFICER,
MANANTHAVADI, WAYANAD DISTRICT.

9. THE TAHSILDAR,
TALUK OFFICE, MANANTHAVADI, WAYANAD.
10. THE VILLAGE OFFICER,
EDAVAKA VILLAGE OFFICE, MANANTHAVADI TALUK
WAYANAD - 670 645.
11. M/S.ROSE GRANITES, EDAVAKA,
KALLODY REPRESENTED BY ITS MANAGING
PARTNER SMT.ROSAMMA P.A.
RESIDING AT MOOPPATTIL HOUSE, EDAVAKA P.O.
KOLLODY DESAM, MANANTHAVADY, WAYANAD.

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R11 BY ADV. DR.GEORGE ABRAHAM
R2,R3,R4, R5, R8, R9, R10 BY GOVERNMENT PLEADER
SRI.M.AMOHAMMED SAVAD
R6,R7 BY ADV. SRI. M.AJAY, SC, KERALA STATE POLLUTION
CONTROL BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXT.P1: A TRUE PHOTOCOPY OF THE QUARRYING PERMIT ISSUED BY THE 4TH RESPONDENT IN FAVOUR OF THE 11TH RESPONDENT IN THE YEAR 2010.
- EXT.P2: A TRUE PHOTOCOPY OF THE QUARRYING PERMIT ISSUED BY THE 4TH RESPONDENT IN FAVOUR OF THE 11TH RESPONDENT IN THE YEAR 2011.
- EXT.P3: A TRUE PHOTOCOPY OF THE QUARRYING PERMIT NO.59/2012-13/MM/GS/DOW/M-210/2013 DATED 4/2/2013 ISSUED BY THE 4TH RESPONDENT.
- EXT.P4: A TRUE PHOTOCOPY OF THE QUARRYING PERMIT NO.49/2013-14/MM/GS/DOW/M-527/2014 DATED 12/2/2014.
- EXT.P5: A TRUE PHOTOCOPY OF THE QUARRYING PERMIT NO.49/2013-14/MM/GS/DOW/M-527/2014 DATED 12/2/2014.
- EXT.P6: A TRUE PHOTOCOPY OF THE CONSENT TO OPERATE NO.PCB/WND/CO/5065/2010 DATED 5/5/2010.
- EXT.P7: A TRUE PHOTOCOPY OF THE CIRCULAR NO.PCB/T4/115/97 DATED 20/7/2011
- EXT.P8: A TRUE PHOTOCOPY OF THE RELEVANT PAGE OF THE FILE NOTING OF THE 7TH RESPONDENT'S ENQUIRY.
- EXT.P9: A TRUE PHOTOCOPY OF THE LETTER SENT BY THE 4TH RESPONDENT DATED 5/7/2013.
- EXT.P10: A TRUE PHOTOCOPY OF THE LETTER SENT BY THE 4TH RESPONDENT DATED 5/7/2013.
- EXT.P11: A TRUE PHOTOCOPY OF THE RELEVANT PAGES OF THE FILE NOTES DATED 3/9/2013 PREPARED BY THE OFFICE OF THE 7TH RESPONDENT.
- EXT.P12: A TRUE PHOTOCOPY OF THE LETTER NO.PCB/WND/ICO113/2010 DATED 4/10/2013 ISSUED BY THE 7TH RESPONDENT.
- EXT.P13: A TRUE PHOTOCOPY OF THE CONSENT TO OPERATE ISSUED BY THE 7TH RESPONDENT HEREIN DATED 4/2/2014.
- EXT.P14: A TRUE PHOTOCOPY OF THE CONSENT VARIATION ORDER DATED 5/3/2014 BEARING NO.PCB/WND/ICO/1113/2010.
- EXT.P15: A TRUE PHOTOCOPY OF THE LETTER NO.DOW/M-1662/2013 DATED 25/7/2013 ISSUED BY THE 4TH RESPONDENT TO THE 5TH RESPONDENT.
- EXT.P16: A TRUE PHOTOCOPY OF THE OFFICE MEMORANDUM ISSUED BY THE 1ST RESPONDENT
- EXT.P17: A TRUE PHOTOCOPY OF THE SAID QUARRY OF THE 11TH RESPONDENT.
- EXT.P18: A TRUE PHOTOCOPY OF THE NEWS PAPER ARTICLES DATED 31/1/2014 IN THE LOCAL DAILES.

RESPONDENT(S) ' EXHIBITS

- EXT.R11 (a) : TRUE COPY OF THE TOTAL STATION SURVEY PLAN DATED 17.8.2013 SHOWING THE DISTANCE OF THE QUARRY OF THE 11TH RESPONDENT AND THE PETITIONER'S RESIDENCE AT A DISTANCE OF 116.98 METERS.
- EXT.R11 (b) : TRUE COPY OF G.O9MS)NO.144/2012/ID DATED 11.12.2012 PASSED BY THE GOVERNMENT OF KERALA.
- EXT.R11 (c) : TRUE COPY OF THE G.O(MS) No.5/2014/ID DATED 20.01.2014 PASSED BY THE GOVERNMENT OF KERALA.

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EXT.R11 (d) : TRUE COPY OF THE CIRCULAR DATED 6.8.2014 ISSUED BY
THE KERALA STATE POLLUTION CONTROL BOARD.

EXT.R11 (e) : TRUE COPY OF THE SURVEY SKETCH ISSUED BY THE
VILLAGE OFFICER, EDAVAKA VILLAGE DATED 6.5.2013.

//TRUE COPY//

P.A TO JUDGE

A.M.SHAFIQUE, J.

W.P.(C) No.29692 of 2014

Dated this the 10th day of April, 2015

JUDGMENT

This writ petition is filed seeking the following reliefs:

- i) Issue a writ of certiorari quashing Exhibit P13 consent and Exhibit P5 quarrying permit issued in favour of the 11th respondent.
- ii) Issue a writ of mandamus or any other appropriate writ directing the official respondents to prohibit the 11th respondent from the illegal quarrying operation in Sy.Nos356/2 and 354/2 of Edavaka Village of Mananthavady Taluk.
- iii) Declare that Exhibit P5 permit and Exhibit P13 Consent with respect to rock quarrying is illegal and violative of the dictum laid down by Hon'ble Supreme Court in Deepak Kumar's case.
- iv) Declare that Environmental Clearance under EIA notification, 2006 is mandatory requisite to be complied by the 11th respondent before continuing quarrying process in Sy.Nos 356/2 and 354/2 of Edavaka Village of Mananthavady Taluk.
- v) Pass such any other order, direction or reliefs as this Hon'ble Court may deem fit in the interest of justice, equity and good conscience.

2. It is now brought to the notice of this Court that the period for which Ext.P5 mining permit had been issued by the Geologist has expired and the 11th respondent therefore cannot proceed with the mining operations unless he gets a valid mining permit. It is submitted by the learned counsel for the petitioner that Ext.P5 by itself was invalid on account of the fact that the Geologist had no jurisdiction to grant renewal of the permit for more than three occasions as per Rule 8(1)D of the Kerala Minor Mineral Concession Rules, 1967. Initially, the Geologist had jurisdiction only to extend the mining permit by one year. But, by way of the amendment, it was made as two years. In the 2015 Rules as well mining permits cannot be extended for a period of more than three years.

3. The learned counsel for the 11th respondent submits that in view of the judgment of the Division Bench in **All Kerala River Protection Council v State of Kerala (2015(2) KLT 78)**, the Division Bench has given appropriate directions to the District Collector to ensure the manner in which the mining activities are to be done in the State of Kerala. As far as the

renewal of permits is concerned, it has to be in accordance with the 2015 Rules.

4. The learned counsel for the 11th respondent submits that he has applied for a mining permit as per the new Rules in respect of a different property other than what is stated in Ext.P5 and that he is entitled for renewal of Ext.P5 for one more time.

5. In the light of the aforesaid factual situation and the fact that the period prescribed under Ext.P5 is over, I do not think that it is necessary for this Court to consider the issue on merits. On the other hand, as already indicated, the petitioner has a case that even Ext.P5 is illegal as renewals had been granted more than three times and in gross violation of the statutory provisions. In the light of the aforesaid facts and circumstances this writ petition is disposed of as under.

If the 4th respondent considers any application of the 11th respondent for renewal of Ext.P5 permit, the same shall be considered in accordance with law after verifying whether renewal can be granted in accordance with the 2015 Rules and

in the light of the judgment of the Division Bench in **All Kerala River Protection Council v State of Kerala (2015(2) KLT 78)**.

Sd/-

A.M.SHAFFIQUE, JUDGE

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