

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

WP(C).No. 32157 of 2015 (T)

PETITIONER :

**P. OMANA (AKR INDUSTRIES)
SUKUMARA VILASAM, PONGANAD P.O., KILIMANOOR
THIRUVANANTHAPURAM.**

**BY SENIOR ADVOCATE SRI.BECHU KURIAN THOMAS
BY ADVS.SRI.PAUL JACOB (P)
SRI.ENOCH DAVID SIMON JOEL
SRI.S.SREEDEV
SRI.RONY JOSE
SRI.GEORGE A.CHERIAN**

RESPONDENT(S) :

- 1. KERALA STATE POLLUTION CONTROL BOARD
PATTON PALACE P.O., KESAVADASAPURAM
THIRUVANANTHAPURAM - 695 004.**
- 2. THE ENVIRONMENTAL ENGINEER
KERALA STATE POLLUTION CONTROL BOARD
DISTRICT OFFICE, PLAMOODU JUNCTION
THIRUVANANTHAPURAM - 695 001.**

R1 & R2 BY ADV. SRI. M.AJAY, SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 32157 of 2015 (T)

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1. COPY OF THE QUARRYING LEASE DATED 19.12.2011 VALID TILL 18.12.2023.**
- EXHIBIT P2. COPY OF THE CONSENT DATED 6.5.15 VALID TILL 31.3.16.**
- EXHIBIT P3. COPY OF THE PANCHAYAT LICENSE DATED 12.5.15 ISSUED BY KILIMANOOR GRAMA PANCHAYAT VALID TILL 31.3.16.**
- EXHIBIT P4. COPY OF THE LETTER DATED 19.9.2015 NUMBERED AS PCB/TVM-DO/ICO/AEI/610/2012 ISSUED BY THE 2ND RESPONDENT.**
- EXHIBIT P5. COPY OF THE REPLY DATED 5.10.15 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.**
- EXHIBIT P6. COPY OF THE LETTER DATED 12.10.15 AND NUMBERED AS PCB/TVM-DO/COA/1908 ISSUED BY THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.32157 of 2015

Dated this the 28th day of October, 2015

JUDGMENT

The petitioner approached this Court with the following prayers:

- i. Issue a writ of certiorari or other appropriate writ order or direction quashing Condition No.10 in Ext.P2 consent;
- ii. Issue a writ of certiorari or other appropriate writ order or direction quashing Exts.P4 and P6 letters;
- iii. Issue such other appropriate writ order or direction that may be deemed to be just and equitable in the facts and circumstances of the case.

2. The petitioner has been issued a consent as per Ext.P2 for quarrying. In the consent, stipulation No.10 is as follows:

“Quarrying shall be done only in the area, marked in the site plan. Elevated rock in the land in survey No.128/12 shall not be quarried.”

3. The petitioner submits that there is no point in restricting quarrying operation in Survey No.128/12 as it is located in the distance of beyond 100 metres from the residential building. The petitioner also received Ext.P6 communication from the Pollution

Control Board whereby the restriction has been imposed in quarrying from survey No.127/8 (part) as well. Therefore, in effect, the petitioner has been restricted in quarrying from survey Nos.128/12(part) and 127/8 (part). The petitioner is only permitted to undertake quarrying from survey No.126/1(part).

4. Learned senior counsel appearing for the petitioner would submit that the restriction is without basis. If the distance rule is prescribed in relation to the residential building and the petitioner has satisfied that the distance rule based on the distance, no further restriction can be imposed.

5. As seen from the sketch produced as Ext.P2, the quarrying operation falls outside the distance of 100 metres from the residential building. In that view of the matter, there can be a restriction based on the distance rule.

6. However, as seen from Ext.P6, the restriction is imposed taking note of the complaint of the local residents. In fact, the relevant portion reads thus:

“Prescribing distance is essentially taking note of the objections of the residents in the location of quarry.”

7. The law protects the right of the neighbouring owners based on the distance. However, in the peculiar circumstances of the case, it is to be noted that a portion of the quarry is situated in an elevated level. Perhaps, on account of blasting, the chunk of rock may fall on the neighbouring area on account of the force.

8. This Court is of the view that the proportionality in such circumstances, demands not restriction but suggestive measures to see that no neighbouring owners are affected by such blasting. Therefore, it is open for the Pollution Control Board to make such suggestive measures to secure the interest of the neighbouring owners. In such circumstances, absolute restriction is invalid and unsustainable.

Therefore, stipulation-10 in Ext.P2, Ext.P4 and Ext.P6 are set aside. The Pollution Control Board is directed to make suggestive measures for securing the safety of the neighbouring owners. Needful shall be done by the Pollution Control Board within four weeks. The inspection shall be conducted by the Officials of the Pollution Control Board and find out what measures in this regard are required to protect neighbouring residents. The

petitioner shall abide by the conditions imposed by the Pollution Control Board.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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