

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

WP(C).No. 36866 of 2010 (G)

PETITIONER:

M.O. MARTIN
MENACHERRY HOUSE, MOOKKANNUR P.O., KALARKUZHI
PIN-683577, ERNAKULAM DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS:

1. CHAIRMAN, DISTRICT COLLECTOR
THE DISTRICT BOARD, SINGLE WINDOW CLEARANCE, BOARD
KAKKANAD P.O., KOCHI-682030.
2. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, KADAVANTHARA P.O.
ERNAKULAM, KOCHI-682020.
3. THE MOOKKANUR GRAMA PANCHAYATH,
MOOKKANNUR P.O., ANGAMALY-683577, ERNAKULAM DISTRICT
REP. BY ITS SECRETARY.
4. THE SECRETARY,
THE MOOKKANNUR GRAMA PANCHAYATH, MOOKKANNUR P.O.
ANGAMALY-683577, ERNAKULAM DISTRICT.
5. THE DISTRICT OFFICER,
GROUND WATER DEPARTMENT
OFFICE OF THE GROUND WATER DEPARTMENT, COLLECTORATE
KAKKANAD P.O., KOCHI-682030.
6. SRI.K.S.JOSEPH,
KAIPRAMBATT HOUSE, MOOKKANNUR P.O., KALARKUZHI
ANGAMALY-683577.

R1, 2 & 5 BY GOVERNMENT PLEADER SMT.LILLY K.T.
R3 & 4 BY ADV. SRI.V.M.KURIAN
R3 & 4 BY ADV. SRI.MATHEW B. KURIAN
R3 & 4 BY ADV. SRI.K.T.THOMAS

R6 BY ADV.JAYAKUMAR K
R-6 BY ADV. SRI.K.M.JAMALUDHEEN
R6 BY ADV. SMT.LATHA PRABHAKARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08.09.2015, ALONG WITH WPC. 11035/2011, THE COURT ON 21.10.2015
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1: TRUE COPY OF THE REPORT DATED 25.4.2006 ISSUED BY THE 5TH RESPONDENT.
- EXT.P2: TRUE COPY OF COMPLAINT DATED 28.05.2006 SUBMITTED BY PETITIONER AND OTHERS BEFORE THE PANCHAYAT.
- EXT.P3: TRUE COPY OF THE DECISION NO.2(4) DATED 31.05.2006 OF THE PANCHAYAT COMMITTEE.
- EXT.P4: TRUE COPY OF PROCEEDINGS OF THE GRAMA SABHA MEETING DATED 25.06.2006.
- EXT.P5: TRUE COPY OF PROCEEDINGS OF THE GRAMA SABHA MEETING DATED 17.12.2006.
- EXT.P6: TRUE COPY OF THE ORDER DATED 31.03.2009 ISSUED BY THE 4TH RESPONDENT.
- EXT.P7: TRUE COPY OF PROCEEDINGS DATED 11.02.2010 OF THE SINGLE WINDOW CLEARANCE BOARD.
- EXT.P8: TRUE COPY OF CERTIFICATE DATED 15.03.2010 ISSUED BY THE 2ND RESPONDENT.
- EXT.P9: TRUE COPY OF THE ORDER DATED 15.03.2010 ISSUED BY THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, ERNAKULAM.

RESPONDENTS' EXHIBITS

- EXT.R6(A): COPY OF THE MEMORANADUM DATED 22.06.2006 SUBMITTED BEFORE THE PANCHAYAT SIGNED BY THE PETITIONER.
- EXT.R6(B): COPY OF THE NOTICE ANNOUNCING THE FOUNDATION STONE LAYING CEREMONY OF A PACKAGED DRINKING WATER AT ARUVIKKARA.
- EXT.R6(C): COPY OF PROCEEDINGS OF THE SINGLE WINDOW BOARD DATED 14.07.2008 CONTAINING THE DIRECTION TO THE PANCHAYAT.
- EXT.R6(D): COPY OF PERMISSION DATED 23/12/2008 FROM THE POLLUTION CONTROL BOARD.
- EXT.R6(E): COPY OF THE PERMISSION DATED 5/01/2009 OBTAINED FROM THE DISTRICT MEDICAL OFFICER.
- EXT.R6(F): COPY OF THE PROCEEDINGS DATED 15/3/2010 GRANTING DEEMD LICENCE BY THE SINGLE WINDOW BOARD.

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EXT.R6(G): COPY OF THE CERTIFICATE DATED 15/3/1010 GRANTED BY THE
SINGLE WINDOW BOARD TO THE PACKAGED DRINKING WATER UNIT.

EXT.R6(H): COPY OF THE BUILDING PERMIT DT.19/7/2010 SANCTIONED BY THE
CHIEF TOWN PLANNING OFFICER, THIRUVANANTHAPURAM.

EXT.R6(I): COPY OF THE NOC DATED 19/8/2010 FROM THE FIRE AND RESCUE
SERVICES, ERNAKULAM.

TRUE COPY

P.A.TO JUDGE

ANU SIVARAMAN, J.

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**W.P.(C).Nos.36866 of 2010 &
11035 of 2011**

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Dated this the 21st day of October, 2015

JUDGMENT

1. W.P.(C).No.36866 of 2010 is filed by a resident of ward No.VII of Mookkannur Grama Panchayat challenging the clearance granted by the single window clearance board for starting a packaged drinking water unit to the sixth respondent at Kalarkuzhi in Ward No.VII of the Panchayat. A prayer for a direction to the fifth respondent to conduct a detailed hydro geological study with respect to availability of ground water and to submit a report before this Court is also made in the writ petition.

2.W.P.(C).No.11035 of 2011 is filed challenging Ext.P24 order of the Panchayat refusing building permit, Ext.P28 decision of the Panchayat refusing licence for the unit and Ext.P30 order of the Tribunal for Local Self Government Institutions dismissing the appeal preferred by the petitioner against Ext.P24. The petitioner contends that he is the owner in

possession of 1 acre 23 cents of property in Sy.No.15/361/4 of Mookkannur village, as also another extent of 1 acre and 93 cents of property. The said properties are a part of 10 acres which devolved on the petitioner and his siblings. He had sought a registration from the District Industries Centre for setting up a drinking water packaging unit in his property. By Ext.P1, he was issued with a provisional registration. He submitted Ext.P2 application for licence to the Panchayat. He was required to get no objection from the Ground Water Department and by Ext.P3, after conducting a study the said clearance was also given by the ground water department. It is stated that on 31.5.2006 the Panchayat had passed a resolution to grant licence to the petitioner. However, this decision which is evidenced by Ext.P4 was not communicated to the petitioner. He also obtained requisite permission from the Green Channel Clearance Committee which is produced as Ext.P5. No objection certificates from the Pollution Control Board and D.M.O were also obtained which were marked as Exts.P6 and P7. Thereafter, he submitted an application dated

17.01.2009 to the Panchayat for issuance of a building permit. However, the same was rejected which was intimated to the petitioner by Ext.P8 communication. The petitioner therefore again approached the Single Window Clearance Board which by its order dated 23.6.2009 directed the Panchayat to issue licence within seven days. The petitioner therefore filed an application before the Panchayat on 24.6.2009 which was rejected by Ext.P11 order dated 13.07.2009. By Ext.P12 communication, the Single Window Clearance Committee directed the petitioner to submit a revised application for starting his industrial unit in the property recorded in the register as dry land. Pursuant thereto, Ext.P13 revised application dated 28.4.2011 was also submitted. All necessary permissions for the shifting of the site were also procured by him. By Ext.P15 dated 16.11.2009 Single Window Clearance Board issued permit to the petitioner and directed the Panchayat to issue necessary permission for construction of the building. Deemed licence was also granted by the Board by its proceedings Exts.P16 and P17. Thereafter, by Ext.P18

the Panchayat informed the petitioner that his application has been rejected. Even thereafter, in spite of directions issued by the Chief Town Planner and the Single Window Clearance Board, building permits were not issued and by Ext.P23 resolution dated 31.08.2010 the request for building permit was also rejected. This was intimated to the petitioner by Ext.P24 communication of the Secretary dated 08.09.2010. This was taken in appeal before the eighth respondent Tribunal but the appeal was also dismissed by Ext.P30 order dated 17.2.2011. The said orders are under challenge before this Court in this writ petition.

3. Heard Sri.K.Jayakumar, learned Senior Counsel appearing for the petitioner, Smt.Lilly Leslie, learned Government Pleader appearing for respondents 1 and 8, Sri.Thomas K.T., learned counsel appearing for respondents 2 and 3 and Sri.Kaleeswaram Raj, learned counsel appearing for respondents 4, 5 and 7. In view of the later developments which has lead to the filing of W.P.(C).No.11035 of 2011, it is

submitted by the parties that the said writ petition can be heard and disposed of in which event, nothing would survive for consideration in W.P.(C).No.36866 of 2010. It was contended by the learned counsel appearing for the petitioner that the petitioner owned nearly 3 acres of land which is a part of larger area of 10 acres of property which belongs to his siblings. He had obtained all the necessary permissions for starting drinking water packaging unit in his property. The well situated in his property was being used for agricultural purposes since time immemorial. The feasibility study conducted by the Ground Water Department shows that 10,000 litres of water could be pumped from the well without creating any impact on the water table. Petitioner relies on Ext.P3 recommendation issued by the District Officer of the ground water department in this regard. The recommendation is dated 25.4.2006 and is valid for one year from the date of commencement of pumping. Petitioner contends that since commercial pumping has not started, the validity of recommendation is still current. Petitioner further contends in

spite of having procured all necessary permissions for starting an industrial unit, the necessary building permit and licence is being denied to him by the Panchayat only on account of an unfounded protest raised by certain persons residing in the locality. It is stated that the petitioner's fundamental right to carry on occupation, trade or business is being violated by the actions of the respondents. It is further submitted that Ext.P30 order rejecting the appeal preferred by the petitioner against the rejection of building permit is unsustainable in so far as the Tribunal has relied on the unfounded apprehensions of respondents 4 to 7 in denying relief to the petitioner. The order of rejection of license is sustained by the Tribunal by holding that the clearance granted by the Single Window Clearance Board was in respect of a different site. The petitioner contends that the order of the Tribunal is completely vitiated by want of application of mind and errors of facts and law apparent on the face of the record. Petitioner also relies on a bench decision of this Court in **Urangattiri Grama Panchayat v. P.M.R. Granites India Private Limited**

(W.A.No.1873 of 2015) to contend that where decisions are being taken by statutory authorities, public protest and public agitation shall not be a ground to dissuade them from following statutory requirements.

4. The learned counsel appearing for the Panchayat would submit that the Panchayat had decided not to permit the petitioner to start the unit in the property in question due to the objections raised by the people of the locality including respondents 4 to 7. It is also contended that Ext.P3 issued on the basis of hydro geological study conducted in 2006 cannot be relied upon by the petitioner to contend that he is entitled to start the unit. It is further submitted that it is completely within the jurisdiction of the Panchayat to deny the permit for starting a drinking water packaging unit to the petitioner since all sources of water vest in the Panchayat and the Panchayat has the exclusive jurisdiction to grant or refuse a permit. It is contended that Ext.P4 was not a unanimous decision and it was never acted upon. It is stated that a mass complaint was

received in the Panchayat and a sub-committee formed by the Grama Sabha conducted a study and came to the conclusion that it was not advisable to grant licence to the petitioner as prayed for. It is also contended that Ext.P28 was not under challenge before the Tribunal. The learned counsel relied on decisions of this Court reported in **Chettikulangara Grama Panchayat v. State of Kerala** (2014(3) KLT 105) to contend that when the Single Window Clearance Board takes a decision, the concerns of the Panchayat are necessarily to be addressed. Reliance is also placed on a decision of this Court in **John v. Kalamassery Municipality** (2006 (2) KLT 386) where a stop memo issued to a drinking water unit on the basis of a report of the Ground Water Department was upheld by this Court on the ground that the larger public interest of depletion of ground water is to be taken into account in a case of this nature.

5. The learned counsel appearing for respondents 4,5 & 7 would submit that all sources of ground water are vested in the

Panchayat under Section 218 of the Kerala Panchayat Raj Act. When specialised Tribunals are constituted under the NGT Act, the question raised in this case which is substantially an environmental issue should be left to the decision of such Tribunal. It is also contended that no building permit has been issued by the competent authority and the construction of the building in question is therefore unauthorised and is liable to be demolished. It is further averred that in a case of this nature where the right to drinking water which is an incident of the right to life of the residents of the locality is concerned, the reliance by the authorities on the arguments raised by the persons who are likely to be affected by the uncontrolled exploitation of resources is completely in order. Relying on a decision reported in **Bishnu Ram Borah and Another v. Parag Saikia and Others** (1984 KHC 641) the learned counsel submits that it was impermissible for this Court to embark upon an enquiry into facts where a statutory appellate authority has considered the facts and passed an order. He seeks to support the findings of fact made by the Tribunal in

Ext.P30 order. Relying on a decision of a learned single Judge of this Court in **Manjapra Grama Panchayat v. State of Kerala** (1996 (2) KLT 719) it is contended that the Panchayat is not bound by no objection certificate issued by the DMO or the Pollution Control Board but is expected to apply its mind to the issue regarding desirability of grant of licence. It is also contended that the fundamental right to life of the persons living in the locality are also to be taken into account vis a vis the right of the petitioner to conduct a trade or profession.

6. After having considered the rival contentions and the decisions relied upon on either side, I am of the opinion that the question raised in this writ petition is not one which comes within the purview of the National Green Tribunal Act, 2010. All statutory authorities have considered the petitioners eligibility for grant of licence for the setting up of the unit in question. The petitioner's right to engage in a trade or business is to be balanced with the right of the residents of the locality for retention of their rights to drinking water. Any

unbridled exploitation of drinking water would lead to depletion of the ground water table and the apprehensions of the people of the locality cannot be said to be unfounded. However, in view of the fact that the petitioner seeks to locate his unit in extensive property belonging to his family members and since permissions have been received from all authorities except the Panchayat which also had by Ext.P4, once adopted a resolution for grant of license to the petitioner, I am of the opinion that the Panchayat and the Tribunal have misdirected themselves in relying on the protests of the nearby residents alone for denying the requests made by the petitioner. In the above circumstances, I am convinced that a fresh study is to be conducted by the ground water department regarding the feasibility of the petitioner's project. On the basis of the recommendation of the ground water department, the Panchayat has to take up the request made by the petitioner for issuance of license as well as building permit and pass orders thereon in accordance with law. To facilitate such reconsideration, Exts.P24, P28 and P30 are set aside.

7. The District Officer, Ground Water Department is directed to conduct a hydro geological survey in respect of the petitioner's property with specific reference to the well from which water is proposed to be drawn within a period of one month from the date of receipt of a copy of this judgment. After the receipt of the recommendation of the District Officer, the petitioner shall approach the Panchayat with a copy thereof. Thereupon, the Panchayat shall within a further period of one month consider and pass orders in accordance with law taking into account the recommendation of the Ground Water Department as well as the Single Window Clearance Board. Before passing orders as directed above, respondents 4, 5 and 7, who are principal objectors, shall also be heard.

W.P.(C).No.11035 of 2011 is ordered accordingly. Nothing survives for consideration in W.P.(C).No.36866 of 2010, the same is accordingly closed.

Anu Sivaraman, Judge