

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 33819 of 2014 (B)

PETITIONER:

ATHANI BRICKS AND METALS (PVT.) LTD.,
NARIPPARA, P.O- VARAMBETTA,
PADINJARETHARA, KALPETTA, WAYANAD DISTRICT,
REPRESENTED BY ITS MANAGING DIRECTOR,
MATHEW JOSEPH.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:

1. THE DISTRICT COLLECTOR,
WAYANAD-670 731
2. THE REVENUE DIVISIONAL OFFICER,
WAYANAD-670 731
3. THE TAHSILDAR,
MANANTHAVADY, WAYAND DISTRICT- 670 731

*ADDL.R4 IMPEADED

*ADDL.R4: E.K.RADHAKRISHNAN, KARAKKATTUKUNNU,
VELLAMUNDA, WAYANADU.

*ADDL.R4 IS IMPEADED AS PER ORDER DATED 27/03/2015 IN IA.NO.2334/2015

R1 TO R 3 BY GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN
ADDL.4 BY ADV. SRI.R.KRISHNA RAJ
SRI.BIJITH S.KHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE COPY OF THE ORDER NO.65/2010-2011/3006/ME/2010 DTD 26/4/2010
- P2:- TRUE COPY OF THE QUARRYING LEASE DTD 12/5/2010
- P3:- TRUE COPY OF THE REPORT CR NO.295/2013 DTD 4/10/2013 OF THE VILLAGE OFFICER
- P4:- TRUE COPY OF THE STOP MEMO NO.A3-3654/13(1) DTD 16/12/2013 ISSUED BY THE 3RD RESPONDENT
- P5:- TRUE COPY OF THE REPORT OF THE TAHSILDAR NO.A3-14593/13 DTD 24/12/2013
- P6:- TRUE COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR NO. L2-35726/13 DTD 15/2/2014
- P7:- TRUE COPY OF THE STOP MEMO A 3-14593/13 DTD 1/4/2014
- P8:- TRUE COPY OF THE ORDER NO. A7/994/14 DTD 6/6/2014 ISSUED BY THE SECRETARY, VELLAMUNDA GRAMA PANCHAYATH
- P9:- TRUE COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR NO. L2-235726/2013 DTD 22/8/2014
- P10:- TRUE COPY OF THE STOP MEMO NO.A3-14593/2013 DTD 10/12/2014
- P11:- TRUE COPY OF THE COMMUNICATION NO A3-14593/13 DTD 10/12/2014 ISSUED BY THE TAHSILDAR , MANANDAVADY
- P12:- TRUE COPY OF THE REPORT NO.CR NO.903/2014 DTD 11/12/2014 GIVEN BY THE VILLAGE OFFICER, MELLAMUNDA TO THE TAHSILDAR, MANANTHAVADY

RESPONDENT(S)' EXHIBITS

- R4(A): COPY OF THE STATEMENT OF ADIVASIS DATED NIL.
- R4(B): COPY OF THE STATEMENT OF ADIVASIS DATED 04/10/2013.
- R4(C): COPY OF THE STATEMENT OF ADIVASIS DATED 04/10/2013
- R4(D): COPY OF THE STATEMENT OF ADIVASIS DATED 04/10/2013
- R4(E): COPY OF THE PETITION OF ADIVASIS DATED 30/10/2013.

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R4(F): COPY OF THE STATEMENT OF ADIVASIS DATED 23/12/2013.

R4(G): COPY OF THE STATEMENT OF ADIVASIS DATED NIL

R4(H): COPY OF THE STATEMENT OF ADIVASIS DATED NIL.

R4(I): COPY OF THE REPORT OF THE TAHSILDAR DATED 01/02/2014

**R4(J): COPY OF THE LEGAL OPINION OF DISTRICT GOVERNMENT PLEADER DATED
14/02/2014**

R4(K): COPY OF THE COMPLAINT OF ADIVASIS DATED 08/12/2014

R4(L): COPY OF THE COMPLAINT OF ADIVASIS DATED 09/12/2014

R4(M): COPY OF THE COMPLAINT OF ADIVASIS DATED 31/12/2014

R4(N): COPY OF THE COMPLAINT OF ADIVASIS DATED 01/01/2015

R4(O): COPY OF THE COMPLAINT OF ADIVASIS DATED 01/01/2015

R4(P): COPY OF THE COMPLAINT OF ADIVASIS DATED 27/11/2014

R4(Q): COPY OF THE ENVIRONMENT REPORT DATED NIL.

R4(R): COPY OF THE LETTER THE DFO DATED 11/12/2013

R4(S): COPY OF THE LETTER OF TRIBAL DEVELOPMENT OFFICER DATED 16/12/2013

**R4(T): COPY OF THE LETTER OF THE CHIEF CONSERVATOR OF FOREST DATED
16/10/2013**

/TRUE COPY/

P.A.TO JUDGE

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P.R.RAMACHANDRA MENON, J.
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W.P.(C) No.33819 of 2014
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Dated this the 27th day of March, 2015

JUDGMENT

The petitioner has approached this Court challenging the correctness and sustainability of Ext.P10 stop memo issued by the District Collector. It is stated that the petitioner is running a quarry in the property concerned herein for the past several years. However, intervention was being made from the part of the respondents under the guise of protection of interest of 'Adivasies' and causing the operation to be stalled at different points of time. Finally, Ext.P9 order was passed by the District Collector on 22.08.2014, as to the course to be pursued, so as to continue the operation.

2. The relief sought for by the petitioner is opposed from the part of the additional 4th respondent, also producing copies of the relevant documents as Exts.R4(a) to R4(t). A counter affidavit has been filed by the 3rd respondent as well, pointing out the facts and figures.

3. During the course of hearing, the learned counsel for the petitioner submits that the further course of action stands declared by a Division Bench of this Court as per the common judgment dated 23.03.2015 in W.P(C) No.31148 of 2014 and connected cases, including W.A No.1566 of 2014. Paragraph 82 deals with the conclusion arrived at, which is extracted below.

“82. In view of the foregoing discussion, we come to the following conclusions.

(i) In case where quarrying/mining/lease which were existing on the date of issuance of Notification dated 14.09.2006 or on the date of issue of the order dated 18.05.2012 by the Government of India, Ministry of Environment and Forests with regard to area less than 5 hectares no environmental clearance with regard to extraction of minor mineral is required. Notification dated 14.09.2006 contemplated obtaining environmental clearance only with regard to new projects/new activities.

(ii) Government Order dated 10.01.2014 cannot be relied on by the parties in view of the restraint order issued by the National Green Tribunal dated 27.09.2013 till such time the restraint order continues.

(iii) By amendment of Section 14 by Act 37 of 1986 making Section 4 applicable to minor minerals also the provision contained in Section 4 shall be applicable to mining operations by a person holding mining lease or any other kind of mineral concession. It cannot be accepted that mining operation with effect from 10.02.1987 cannot be continued by a person holding any other mineral concession apart from mining lease.

(iv) Judgment of the Apex Court in **Deepak Kumar's case (supra)** did not contemplate environmental clearance for an area less than 5 hectares with regard to existing mining lease/mining permits on the date of judgment. Paragraph 29 of the judgment clearly directed that leases of minor minerals including their renewal for an area of less than five hectares be granted by the State/Union Territories only after getting environmental clearance.

(v) Environmental clearance as contemplated by Notification dated 14.09.2006 required environmental clearance for new projects/new activities.

(vi) The Notification dated 14.09.2006 having been applied vide order dated 18.05.2012 of the Government of India, Ministry of Environment and Forests all mining operations for new project and new activities for an area less than 5 hectares after 18.05.2012 required environmental clearance carried through either a mining lease or mining permit.

(vii) Interim order passed by the Apex Court on 27.01.2012 was intended by the Supreme Court to operate till the Rules have been framed by the States taking into consideration the guidelines and recommendations of the Ministry of Environment and Forests.

(viii) As per Rule 68 no mining/quarrying operations can be permitted without there being an approved mining plan. But such rule is subject to exception as engrafted in Rule 66, i.e., for existing lease holders, time has been allowed to submit mining plan."

4. The learned counsel submits that the petitioner will be satisfied if a direction is given to the 1st respondent to consider the matter in the light of the ruling rendered by the Division Bench as aforesaid.

5. In the above circumstance, the writ petition is disposed of, directing the 1st respondent to consider the matter in the light of the observations made by the Division Bench of this Court as per the decision cited supra, which shall be done after hearing, at the earliest, at any rate, within six weeks from the date of receipt of a copy of this judgment.

'Status quo' as on date shall be continued till the proceedings are finalised as above.

The petitioner shall produce a copy of this judgment along with a copy of this writ petition before the concerned respondent for further steps.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

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