

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 35490 of 2014 (I)

PETITIONER :

**SUNIL KUMAR S.,
THACHITTATHIL VADAKKATHIL, PUTHIYAKAVU,
MAVELIKKARA.**

**BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
PATHANAMTHITTA, PIN -689 645**
- 2. THE TAHSILDAR,
KOZHENCHERRY, PIN. 689 641**
- 3. THE VILLAGE OFFICER,
PATHANAMTHITTA VILLAGE OFFICE,
PATHANAMTHITTA, PIN.689 645**
- 4. THE GEOLOGIST,
DISTRICT MINING AND GEOLOGY DEPARTMENT,
PATHANAMTHITTA, PIN. 689 645**
- 5. THE SOUTHERN RAILWAY,
REPRESENTED BY THE DIVISIONAL MANAGER,
PALAKKAD PIN. 678 001**

**R1 TO R4 BY SR GOVERNMENT PLEADER SRI.K.C.VINCENT
R5 BY SRI.C.S.DIAS,SC, RAILWAYS**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - COPY OF THE APPLICATION SUBMITTED BEFORE THE 1ST
RESPONDENT DATED 27-11-14
- EXT.P2 - COPY OF THE LETTER ISSUED DATED 24-11-14 BY THE 5TH
RESPONDENT TO THE 1ST RESPONDENT
- EXT.P3 - COPY OF THE REPORT OF THE 3RD RESPONDENT
- EXT.P4 - COPY OF THE REPORT OF THE 2ND RESPONDENT
- EXT.P5 - COPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT
- EXT.P6 - COPY OF THE JUDGMENT IN WRIT PETITION NO.29439/14

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 35490 of 2014

Dated this the 8th day of January, 2015

JUDGMENT

The petitioner is a Contractor entrusted with the contract for doubling the Railway track between Harippad and Ambalapuzha. Since the above said work was for a public purpose, the petitioner applied for getting NOC for excavation of read earth from the property before the 1st respondent. After site verification, Ext.P4 report was filed by the 2nd respondent to the effect that excavation can be carried out. Even after Ext.P4 1st respondent is insisting for environmental clearance as per Ext.P5 which hence is under challenge in this writ petition.

2. The learned counsel for the petitioner also relied on the decision of the Bombay High Court in **Goa Foundation v. Konkan Railway Corporation** [AIR 1992 BOMBAY 471] wherein it is held that, the provisions of the Environment Act have no application in respect of the work undertaken in exercise of powers conferred under Section 11 of the Railways Act, 1989.

3. Heard the learned Standing Counsel as well.

4. Section 11 envisages the right of the Railways to carryout the activities for public purposes and that public purposes over-ride the provisions of law under the Environmental Act. Considering the similar purpose of Rule 57 of Minor Mineral Concession Rules, 1967, wherein the Government has given power to grant special permission in cases of public purposes over riding any other matter, this Court is of the view that the permit shall be renewed to the limited extent of removing earth of the quantity mentioned in Ext.P1, after ascertaining the required quantity already removed and used for filling Railway Track. It is made clear that removal shall be only for the purpose of doubling the railway track which shall be done after ascertaining the quantity that is required for the doubling work. Needless to say that, the petitioner shall follow all other relevant rules, and the direction as per this judgment is only to renew the permit without obtaining environmental clearance for the purpose of doubling the Railway line.

In the said circumstance, the 1st respondent is directed to consider and pass appropriate orders on Ext.P1 application for

NOC in accordance with law, also in the light of the observations as above. This shall be done at the earliest, at any rate, within 'one week' from the date of receipt of a copy of this judgment.

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

**P.R. RAMACHANDRA MENON,
JUDGE.**

kp/-