IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 22ND DAY OF JULY 2024 / 31ST ASHADHA, 1946

WP(C) NO. 15420 OF 2024

PETITIONER:

JITHESH N.E.,
AGED 43 YEARS
S/O. KRISHNAN NAMBOOTHIRI, MANGALASSERY ILLAM,
POST, PERUVALLUR, KONDOTTY, MALAPPURAM DISTRICT,
PIN – 673638

BY ADVS.
MEENA.A.
VINOD RAVINDRANATH
K.C.KIRAN
M.R.MINI
M.DEVESH
ANISH ANTONY ANATHAZHATH
THAREEQ ANVER K.
NIVEDHITHA PREM.V
T.KRISHNANUNNI, SENIOR COUNSEL

RESPONDENTS:

1 **STATE OF KERALA,**
REPRESENTED BY SECRETARY, DEPARTMENT OF INDUSTRIES,
THIRUVANANTHAPURAM, PIN – 695001

2 **THE SUB COLLECTOR,**
TIRUR, MALAPPURAM DISTRICT, PIN – 676101

3 **THE GEOLOGIST,**
DISTRICT OFFICE, DEPARTMENT OF MINING AND GEOLOGY,
MINI CIVIL STATION, MANJERI P.O, MALAPPURAM
DISTRICT, PIN – 676121

4 **THE VILLAGE OFFICER,**
PERUVALLUR, MALAPPURAM DISTRICT, PIN – 673638

**5 PERUVALLUR GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, POST PERUVALLUR,
PARAMBIL PEEDIKA, MALAPPURAM DISTRICT, PIN – 673638**

**6 THE SECRETARY,
PERUVALLUR GRAMA PANCHAYATH, POST PERUVALLUR,
PARAMBIL PEEDIKA, MALAPPURAM DISTRICT, PIN – 673638**

**BY ADVS.
B.S.SYAMANTHAK, GP**

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is a member of Mangalassery Illam, which is an ancient Namboothiri family at Peruvallur in Malappuram District. There is a private temple namely, “Edaparambil Kshethram” owned by the above family in the property owned by the Illam and situated in R.S No.318/8. A trust by name “Edaparambil Kshetra Trust” is formed to manage the affairs of the temple. The trust took a decision to dig a temple pond in the compound of the temple. The trust also took a decision to renovate the “Aarattukadavu” in the Illam compound along with digging the new pond in the temple compound. When the work of digging the pond was going on, the 3rd respondent informed the trust that the laterite stones cannot be excavated without getting permission from him. He directed the trust to get No Objection Certificate from the Sub Collector, Tirur. Accordingly, Ext.P5 No Objection Certificate was obtained from the Sub Collector, Tirur. The trust also paid penalty for the excavation done till then and royalty for the future excavation. Exts.P6 and P7 are receipts for the payment of penalty and royalty. According to the petitioner, penalty and royalty were collected from the trust not for digging the new pond alone, but also for taking laterite stones excavated to the “Aarattukadavu” for renovation of the same.

2. Ext.P9 is the order issued by the 3rd respondent granting permission to the trust to excavate the stones for the purpose of digging the pond. In order to remove the excavated stones from the temple pond to “Aarattukadavu”, the trust gave Ext.P10 representation before the Revenue Divisional Officer, Tirur. A similar representation was given to the 3rd respondent on 10.05.2023 which is marked as Ext.P11. Similar representations were given to the respondents 2 and 3 on 09.04.2024 as well which are marked as Exts.P12 and P12(a). The grievance of the petitioner is that, the respondents 2 and 3 are not taking a decision on the request made by the petitioner to permit the trust to remove the excavated stones from the temple compound and to transport it to the “Aarattukadavu”.

3. I have heard Sri. T Krishnanunni, the learned Senior Counsel for the petitioner and Sri. B.S Syamanthak, the learned Government Pleader.

4. The pond is situated in the temple compound and the “Aarattukadavu” is situated in the Illam compound. The trust and the temple committee took a decision to renovate the “Aarattukadavu” in the Illam Compound along with digging a new pond in the temple compound.

5. According to the petitioner, the stones excavated from the temple compound while digging the pond have to be transported to the “Aarattukadavu” for renovating it. The stand taken by the 2nd and 3rd respondents is that, since the “Aarattukadavu” is situated one kilometer away from the temple compound, it cannot be transported without getting a fresh NOC under Rule 104 of the Kerala Minor Mineral Concession Rules, 2015. They have also taken the stand that petitioner has to obtain the transit permit. I cannot subscribe to the said stand taken by the 2nd and 3rd respondents. The penalty as well as the royalty were collected from the trust, as evident from Exts.P6 and P7. The trust is in the process of digging a pond in the temple compound and also renovating the “Aarattukadavu” situated in the Illam compound. The excavation of stones for the purpose of digging the new pond has been done by the trust after obtaining Ext.P9 order from the 3rd respondent. Inasmuch as the penalty and royalty have been paid by the trust for excavating the stones, the 3rd respondent cannot insist for a fresh permission under Rule 104 of the Kerala Minor Mineral Concession Rules, 2015 for the simple reason that “Aarattukadavu” is situated one kilometer away from the temple pond. However, the petitioner has to get transit permit to transport the excavated stone to the

“Aaraattukadavu” which is situated in the Illam compound. Hence, the petitioner shall file an application for issuance of transit permit before the 2nd respondent. The 2nd respondent is directed to grant transit permit in accordance with law, within a period of three weeks from the date of receipt of a copy of this judgment.

This writ petition is disposed of as above.

Sd/-

DR. KAUSER EDAPPAGATH
JUDGE

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The word 2nd respondent appearing in the last two sentences of paragraph 5 of the judgment dated 22.07.2024 in WP(C)No.15420/2024 is corrected and substituted as **‘3rd respondent’** as per the order dated 05/08/2024 in I.A.1/2024 in WP(C)No.15420/2024.

Sd/-
Joint Registrar

APPENDIX OF WP(C) 15420/2024

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, PERUVALLUR DATED 01.07.2023**
EXHIBIT P2	**TRUE COPY OF THE TRUST DEED DATED 31.05.2006**
EXHIBIT P3	**TRUE COPY OF THE CERTIFICATE ISSUED BY SECRETARY, PERUVALLUR GRAMA PANCHAYATH DATED 30.11.2021**
EXHIBIT P4	**TRUE COPY OF THE MINUTES OF THE MEETING DATED 16.10.2022**
EXHIBIT P5	**TRUE COPY OF NO OBJECTION CERTIFICATE ISSUED BY SUB COLLECTOR, TIRUR DATED 10.11.2023**
EXHIBIT P6	**TRUE COPY OF THE RECEIPT OF PAYMENT OF PENALTY DATED 11.12.2023**
EXHIBIT P7	**TRUE COPY OF THE RECEIPT FOR PAYMENT OF ROYALTY DATED 29.02.2024**
EXHIBIT P8	**TRUE COPY OF THE ORDER ISSUED BY THE DEPARTMENT OF INDUSTRIES DATED 21.02.2024**
EXHIBIT P9	**TRUE COPY OF THE ORDER ISSUED BY GEOLOGIST, MALAPPURAM DATED 07.03.2024**
EXHIBIT P10	**TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE TRUST BEFORE REVENUE DIVISIONAL OFFICER, TIRUR DATED 10.05.2023**
EXHIBIT P11	**TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE TRUST AND THE COMMITTEE BEFORE THE GEOLOGIST ON 10.05.2023**
EXHIBIT P12	**TRUE COPY OF THE REPRESENTATION BEFORE THE RESPONDENTS 2 ON 09.04.2024.**
EXHIBIT P12(A)	**TRUE COPY OF THE REPRESENTATION BEFORE THE RESPONDENT NO. 3 ON 09.04.2024.**