

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR.JUSTICE GOPINATH.P.

TUESDAY, THE 12TH DAY OF MAY, 2020/22ND VAISAKHA, 1942

W.P(C) NO.9798 OF 2020

PETITIONER:-

MR.BINUMON.J, S/O.JOHN,
ELLANORA, ERAVICHIRA EAST,
SOORANAD P.O., KOLLAM DISTRICT
PIN - 690 522

BY ADV. P MARTIN JOSE,

RESPONDENTS

1. KALANJOORGRAMAPANCHAYAT,
REPRESENTED BY ITS SECRETARY,
KALANJOOR P.O.,
PATHANAMTHITTA DISTRICT, PIN - 689 694
2. THE SECRETARY,
KALANJOORGRAMAPANCHAYAT,
KALANJOOR P.O.,
PATHANAMTHITTA DISTRICT, PIN - 689 694
3. THE KERALA STATE POLLUTION CONTROL BOARD,
REPRESENTED BY THE ENVIRONMENTAL ENGINEER,
DISTRICT OFFICE, PATHANAMTHITTA, PIN NO.689 645
4. THE PRESIDENT,
KALANJOORGRAMAPANCHAYAT,
KALANJOOR P.O.,
PATHANAMTHITTA DISTRICT, PIN - 689 694

R1-2 AND 4 BY

R3 BY SRI. GOVERNMENT PLEADER SMT VINITHA.B

THIS WRIT PETITION HAVING COME UP FOR ADMISSION ON 12.05.2020,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated this the 12th day of May, 2020

ORDER

This writ petition is filed challenging Ext.P10 decision of the Panchayath directing the petitioner to stop operations of his quarry. On a perusal of Ext.P10, it appears that the decision is taken on the premise that there are complaints of dust pollution etc. from the public and that there is an Anganvadi nearby and that the quarrying operations may result in threat to the said Ankanvadi. The learned senior counsel for the petitioner invited my attention to the judgment of a Full Bench of this Court in ***Tomy Thomas vs. State of Kerala and others (2019 (4) KHC 553)*** to contend that once all necessary permissions from statutory authorities such as the Pollution Control Board, Explosives Department etc. are in place, it is not open to the village Panchayath to take a contrary view and deny licence for conducting the quarrying operation. When this

matter came up on 8.5.2020, I heard Sri.T.Naveen, learned Standing Counsel for the Pollution Control Board and directed the Pollution Control Board to cause an inspection of the petitioners quarrying site and to file a report to this Court. Today, the learned Standing Counsel for the Pollution Control Board has produced a report filed by the Environmental Engineer, Kerala State Pollution Control Board, District Office, Pathanamthitta. Paragraph 2 and 3 of the report read as follows:

2. As per the directions of this Hon'ble Court an Inspection of the site was conducted by the Board officials on 09/05/2020. It is respectfully submitted that the consent of the board for operating the quarry was originally issued to the petitioner on 17/02/2012. At the time of inspection it was observed that the quarrying is conducted as per the norms of the Board. As per the norms of the Board, prevailing at the time of original issuance of the Consent, there has to be no residences, public buildings etc. within 100m radius of the quarrying area. During the inspection the distance

to anganvadi was measured and found that distance criterion is correctly satisfied as the anganvadi is situated more than 150m from the quarrying unit.

3. It is respectfully submitted that the consent of the board for operating the quarry was issued to the petitioner on 17/02/2012. Consent to operate was issued as there were no residence or public buildings within 100 m of the quarry. The consent was later renewed with validity up to 13/02/2023. It is respectfully submitted that the petitioner has produced copy of Environment Clearance No.30/2018 dated 14/02/2018 valid for 5 year. Dust or noise pollution is not likely to affect the nearby anganvadi as per the preliminary observations.

Today, when the matter taken up for consideration, Advocate Sri.K.Shaj appears for respondents 1 and 2 and states that the decision of the Panchayath was taken in public interest and that this Court should not interfere with such decision especially, at the interim stage. He pleads that he may be given time

to file a detailed counter affidavit in the matter. Taking into account, the law laid down by the Full Bench of this Court reported in **2019 (4) KHC 553** and also taking into account the report filed by the Environmental Engineer the relevant portions of which have been extracted above, I am of the opinion that the petitioner is entitled to grant of an interim order staying the operation and implementation of Ext.P10 and permitting the petitioner to continue operations in accordance with Exts.P1 and P6 pending disposal of the writ petition. In such circumstances, there will be an interim order staying the operation and implementation of Ext.P10 and permitting the petitioner to conduct the quarrying operations provided all other statutory clearances are in place, pending disposal of the above writ petition. The Environmental Engineer, Kerala State Pollution Control Board, District Office, Pathanamthitta shall conduct such periodical inspections, which are necessary to ensure that the operation of the quarry is not causing any nuisance to the public or to the nearby Anganvadi. Sri.K.Shaj, learned counsel

appearing for respondents 1 and 2 would submit that the State Environment Impact Assessment Authority is a proepr and necessary party to this writ petition. The State Environment Impact Assessment Authority represented by its Member Secretary is hereby suo-motu impleaded as the additional 5th respondent to this writ petition. The petitioner shall take steps to serve notice on the additional 5th respondent by speed post and also by e-mail/WhatsApp message forthwith.

Post immediately after filing of counter affidavit by respondents 1 and 2.

GOPINATH.P, JUDGE

pm

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT.P1 TRUE COPY OF THE PROCEEDINGS OF THE ADDITIONAL DIRECTOR OF MINING AND GEOLOGY DATED 30-08-2019

EXHIBIT.P2 TRUE COPY OF QUARRYING LEASE DATED 04-11-2019 REGISTERED AS DOCUMENT NO.1119/2019

EXHIBIT.P3 TRUE COPY OF ENVIRONMENTAL CLEARANCE NO.30/2018 DATED 14-02-2018 ISSUED BY THE DISTRICT ENVIRONMENT IMPACT ASSESSMENT AUTHORITY, PATHANAMTHITTA

EXHIBIT.P4 TRUE COPY OF LICENCE IN FORM LE-3 DATED 23-10-2018 TO POSSESS EXPLOSIVES ISSUED BY GOVERNMENT OF INDIA

EXHIBIT.P5 TRUE COPY OF INTEGRATED CONSENT TO OPERATE DATED 14.11.2018 ISSUED BY THE 3RD RESPONDENT

EXHIBIT.P6 TRUE COPY OF LICENCE ISSUED BY THE PANCHAYAT ON 07-08-2019

EXHIBIT .P7 TRUE COPY OF RECEIPT DATED 27-02-2020 ISSUED BY THE 2ND RESPONDENT

EXHIBIT.P8 TRUE COPY OF JUDGMENT DATED 26-08-2019 IN W.P. (C) .NO.21247 OF 2019 OF THIS HON'BLE COURT

EXHIBIT.P9 TRUE COPY OF COMMUNICATION DATED 19-03-2020 ISSUED BY THE 2ND RESPONDENT

EXHIBIT.P10 TRUE COPY OF DECISION OF THE 1ST RESPONDENT PANCHAYAT DATED 17-03-2020

RESPONDENTS EXHIBITS: NIL