

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 31ST DAY OF JULY 2013/9TH SRAVANA, 1935

WP(C).No. 14681 of 2013 (I)

PETITIONER(S):

1. SUBAIDA BEEVI, W/O. ANSARI, VEKANIL VEETIL, KULATHUR
VAIPUR MURI, KOTTANGAL VILLAGE, MALLAPPALLY TALUK
PATHANMATHITTA DISTRICT.
2. AZIYA HASSAN, KANIYAM PARAMBIL VEEDU, KULATHUR, VAIPUR MURI
KOTTANGAL VILLAGE, MALLAPALLY TALUK, PATHANAMTHITTA DISTRICT.
3. NAZEEMA BEEVI, PLANTHOTTATHIL, VAIPUR MURI, KOTTANGAL VILLAGE
MALLAPPALLY TALUK, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENT(S):

1. DISTRICT COLLECTOR, PATHANAMTHITTA-689645
2. REVENUE DIVISIONAL OFFICER, MALLAPPALLY-689645
3. DISTRICT MEDICAL OFFICER, PATHANAMTHITTA-689645
4. GEOLOGIST, MINING AND GEOLOGY, DISTRICT OFFICE, REVENUE TOWER
ADOOR P.O., PATHANAMTHITTA-689645
5. TAHSILDAR, MALLAPALLY TALUK, MALLAPALLY-689645
6. VILLAGE OFFICER
KOTTANGAL VILLAGE, KOTTANGAL, MALLAPALLY TALUK-689645
7. SUB INSPECTOR OF POLICE
PERUMPATTY POLICE STATION, MALLAPALLY TALUK-689645
8. RAVEENDRAN, S/O. SOMASEKHARAN, IDUVINAMPOIKAYIL VEETIL
EZHUMATHOOR P.O., EZHUMATHOOR VILLAGE, MALLAPALLY TALUK
MALLAPALLY, PATHANAMTHITTA-689645.

ADDL.9. THE ENVIRONMENTAL ENGINEER, DISTRICT OFFICE, POLLUTION
CONTROL BOARD, PATHANAMTHITTA DISTRICT -689 645.

* ADDL.R9 IS IMPEADED AS PER ORDER DATED 17.06.13 IN IA 2834/2013.

R1-R7 BY GOVERNMENT PLEADER SMT. SANJEETHA

R8 BY ADV. SRI.P.HARIDAS

R9 BY ADV. SRI.M.R.ARUNKUMAR, SC, POLLUTION CONTROL BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31-07-2013, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER' (S) EXHIBITS:

EXT.P1 TRUE COPY OF THE TAX RECEIPT OF THE PROPERTY ISSUED BY THE 6TH RESPONDENT.

EXT.P2 TRUE COPY OF THE COMPLAINT SUBMITTED BEFORE THE 1ST RESPONDENT DISTRICT COLLECTOR ALONG WITH THE RECEIPT ISSUED.

EXT.P3 TRUE COPY OF THE COMPLAINT SUBMITTED BEFORE THE 4TH RESPONDENT GEOLOGIST ALONG WITH THE RECEIPT ISSUED.

EXT.P4 COPY OF THE PROCEEDINGS OF THE ADDITIONAL TAHSILDAR MALLAPALLY DATED 21.06.2002.

EXT.P5 COPY OF THE PROHIBITORY ORDER ISSUED BY THE VILLAGE OFFICER KOTTANGAL AGAINST THE 8TH RESPONDENT DATED 14.06.2013.

EXT.P6 COPY OF THE ADVOCATE NOTICE TO GEOLOGIST, PATHANAMTHITTA DATED 24.06.2013.

RESPONDENT' (S) EXHIBITS:

EXT.R8 (a) COPY OF THE JUDGMENT IN OS NO744/2002 OF MUNSIFF COURT, THIRUVALLA DATED 12.03.2007.

EXT.R8 (b) COPY OF THE DECREE IN AS NO.29/2007 OF SUB COURT, THIRUVALLA DATED 30.09.2010.

EXT.R8 (c) COPY OF THE QUARRYING PERMITS ISSUED TO THIS RESPONDENT BY THE 4TH RESPONDENT DATED 01.02.2013.

EXT.R8 (c(1) COPY OF THE QUARRYING PERMITS ISSUED TO THIS RESPONDENT BY THE 4TH RESPONDENT DATED 26.02.2013.

EXT.R8 (c(2) COPY OF THE QUARRYING PERMITS ISSUED TO THIS RESPONDENT BY THE 4TH RESPONDENT DATED 28.12.2012.

EXT.R8 (d) COPY OF THE CONSENT TO OPERATE THE CRUSHER UNIT DATED 29.04.2013.

EXT.R8 (e) COPY OF THE CONSENT TO OPERATE THE QUARRY UNIT DATED 20.05.2013.

EXT.R8 (f) COPY OF CONSENT TO OPERATE QUARRY ON A DIFFERENT AREA DATED 20.05.2013.

EXT.R8 (g) COPY OF THE EXPLOSIVE LICENSE DATED 24.02.2000.

EXT.R8 (h) COPY OF THE LICENSE ISSUED BY GRAMA PANCHAYATH FOR CONDUCTING THE METAL CRUSHER UNIT FOR 2013-2014.

EXT.R8 (i) COPY OF THE LICENSES TO CONDUCT QUARRYING FOR 2013-2014.

EXT.R8 (j) COPY OF THE APPOINTING ORDER DATED 01.04.2013.

WP(C) .No. 14681 of 2013 (I)

EXT.R8 (k) COPY OF THE CERTIFICATE OF COMPETENCY OF THE MANAGER
DATED 06.01.2011.

EXT.R8 (l) COPY OF THE APPOINTMENT ORDER OF FOREMAN DATED 01.04.2013

EXT.R8 (m) COPY OF THE CERTIFICATE OF THE FOREMAN DATED 03.01.95.

EXT.R8 (n) COPY OF THE APPOINTMENT ORDER OF MATE DATED 01.04.2013.

EXT.R8 (o) COPY OF NO OBJECTION CERTIFICATE ISSUED BY THE FIRE AND
RESCUE SERVICES 26.11.2004.

//TRUE COPY//

PA TO JUDGE

BKA

P.R.RAMACHANDRA MENON, J.

W.P.(c) No. 14681 OF 2013

Dated this the 31st day of July, 2013

JUDGMENT

The petitioners have approached this Court with the following prayers :

“ i) *Call for the records, relating to Exts.P1 to P3 and issue a writ or appropriate direction to the respondents 1 to 4 to stop the quarry operating by the 8th respondent in violation of the provisions of law and rules as well as the permit conditions.*

ii) *Issue a writ or appropriate direction to the 2nd and 4th respondents to verify the sketch issued by the village officer and ensure that the property of the petitioners shall not be affected by the quarrying operations.*

iii) *Issue a writ or appropriate directions to the 7th respondent Sub Inspector to take necessary action in the matter.*

iv) *Pass any other order or direction as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.”*

2. The pleadings and proceedings are sought to be rebutted by the 8th respondent by filing counter affidavit, also producing copies of the relevant documents.

3. The case of the petitioner is that the 8th respondent is pursuing quarrying activities without any regard to the permit issued to him and by encroaching even into the nearby village where the property of the petitioner is situated and hence the challenge. The concerned Village Officer has conducted a spot inspection and issued Ext.P5 prohibitory order, despite which, the quarrying operation is being pursued by the 8th respondent, which is sought to be intercepted in this writ petition.

4. The learned counsel for the petitioner submits that the 8th respondent has been granted permit to conduct quarrying operations only in 'Ezhumathoor' village of Mallappally Taluk. Reference is made to Exts.R8(c) series, wherein the survey number of the property has been mentioned with reference to 'Ezhumathoor' village in Mallappally Taluk in Pathanamthitta district. The learned counsel for the petitioner submits that, the petitioner does not have any objection at all in

carrying out the quarrying operation, confining the activity to the said village and the objection is with regard to encroachment to the nearby village i.e. 'Kottangal' village of the very same Taluk.

5. The learned counsel for the 8th respondent submits that the said respondent is pursuing the activity based on Ext.R3(C) series permits and that the property is situated in 'Ezhumathoor' village.

6. After hearing the learned counsel for the parties concerned, the learned standing counsel for the Pollution Control Board and the learned Government Pleader, this Court finds that there is no case for the 8th respondent that he is permitted to carry out the quarrying operation in any village other than 'Ezhumathoor' Village and in the particular survey number.

7. This being the position, the 8th respondent cannot and shall not be permitted to carry out the quarrying operations in 'Kottangal' village under any circumstance. It will be open for the respondents 4 to 6 to ensure that the quarrying operations being pursued by the 8th respondent are confined to the particular survey number of the property in 'Ezhumathoor' village and to prevent such exercise, if it extends to

any portion of the nearby 'Kottangal' village. Appropriate action shall be taken, if there is any violation of the permit conditions as well.

Writ petition is disposed of.

P.R.RAMACHANDRA MENON
JUDGE

SV.