

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 29TH DAY OF NOVEMBER 2019 / 8TH AGRAHAYANA, 1941

WP(C).No.17679 OF 2019(H)

PETITIONER:

GEORGE ANTONY,  
AGED 67 YEARS,  
MANAGING DIRECTOR, M/S.CRYSTAL GRANITE LIMITED,  
CHULLY P.O., ANGAMLY, ERNAKULAM DISTRICT,  
PIN - 683 581.

BY ADV. SRI.N.JAMES KOSHY

RESPONDENTS:

- 1 THE DIRECTOR OF MINING AND GEOLOGY,  
KESAVADASAPURAM, PATTOM PALACE P.O.,  
THIRUVANANTHAPURAM - 695 004.
- 2 STATE OF KERALA,  
REPRESENTED BY THE PRINCIPAL SECRETARY,  
INDUSTRIES DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001.
- 3 THE GEOLOGIST, DEPARTMENT OF MINING AND GEOLOGY,  
DISTRICT OFFICE, CIVIL STATION, ERNAKULAM,  
KAKKANAD, KOCHI - 682 030.
- 4 STATE ENVIRONMENTAL IMPACT ASSESSMENT AUTHORITY  
(SEIAA)  
PALLIMUKKU -KANNAMMOOLA ROAD, VELAKUDI,  
THIRUVANANTHAPURAM, KERALA-695 024.

IS SUO MOTU IMPEADED AS ADDL.RESPONDENT AS PER ORDER  
DATED 07-11-2019 IN WP(C) .

R1-3 BY SRI.S.KANNAN, GOVERNMENT PLEADER  
SC FOR SEIAA SRI.M.P.SREEKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
29.11.2019, ALONG WITH WP(C).21196/2019(Y), WP(C).25544/2019(P),  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 29TH DAY OF NOVEMBER 2019 / 8TH AGRAHAYANA, 1941

WP(C).No.21196 OF 2019(Y)

PETITIONER:

AYKKARATHUNDATHIL AGGREGATES,  
A PARTNERSHIP FIRM, REPRESENTED BY ITS MANAGING  
PARTNER SIBY JAMES, AGED 56, S/O.A.T.CHACKO,  
AYKARATHUNDATHIL HOUSE, ETTUMANOOR P.O.,  
KOTTAYAM DISTRICT-686631.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

- 1 THE STATE OF KERALA,  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,  
REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695001.
- 2 THE DIRECTOR OF MINING AND GEOLOGY,  
DIRECTORATE OF MINING AND GEOLOGY,  
KESAVADASAPURAM, PATTOM P.O.,  
THIRUVANANTHAPURAM DISTRICT-695004.
- 3 THE DISTRICT GEOLOGIST,  
SENIOR GEOLOGIST, MINING AND GEOLOGY DEPARTMENT,  
CIVIL STATION, KOTTAYAM DISTRICT-686001.
- 4 ADDL.R4- THE STATE ENVIRONMENT IMPACT ASSESSMENT  
AUTHORITY(SEIAA)  
PALLIMUKKU- KANNAMMOOLA ROAD, VELAKUDI,  
THIRUVANANTHAPURAM, KERALA- 695 024  
(ADDL.R4 IS SUO MOTU IMPEADED AS PER ORDER DATED  
07.11.2019 IN WP(C))

5        ADDL.R5- M.D.GEORGE,  
          GENERAL SECRETARY, ALL KERALA LICENSED QUARRY  
          OWNERS ASSOCIATION, VMS COMPLEX, PERUMBAVOOR P.O,  
          PIN-683 542, ERNAKULAM DISTRICT (ADDL.R5 IS IMPELADED  
          AS PER ORDER DATED 29.11.2019 IN IA.NO.1/2019 IN  
          WP(C))

R1-R3 BY SRI.S.KANNAN, GOVERNMENT PLEADER  
SC FOR SEIAA SRI.M.P.SREEKRISHNAN  
BY ADV. SRI.BABY KURIAKOSE  
BY ADV. SRI.GRASHIOUS KURIAKOSE (SR.)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
29.11.2019, ALONG WITH WP(C).17679/2019(H), WP(C).25544/2019(P),  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 29TH DAY OF NOVEMBER 2019 / 8TH AGRAHAYANA, 1941

WP(C).No.25544 OF 2019(P)

PETITIONER:

PIOUS ANTONY,  
AGED 64 YEARS,  
MANAGING PARTNER, P.J.ASSOCIATES, ANTHIYALAM,  
PAYAPPAR.P.O., PALA, KOTTAYAM DISTRICT, PIN-686651

BY ADV. SRI.GEORGEKUTTY MATHEW

RESPONDENTS:

- 1 THE DIRECTOR,  
MINING AND GEOLOGY, KESAVADSAPURAM P.O.,  
THIRUVANANTHAPURAM, PIN-695004.
- 2 THE GEOLOGIST,  
OFFICE OF MINING AND GEOLOGY, KOTTAYAM, PIN-686002.
- 3 ADDL. R3. STATE ENVIRONMENT IMPACT ASSESSMENT  
AUTHORITY (SEIAA),  
PALLIMUKKU-KANNAMMOOLA ROAD, VELAKUDI,  
THIRUVANANTHAPURAM, KERALA-695024.

(ADDITIONAL R3 IS SUO MOTU IMPLEADED AS PER ORDER  
DATED 07/11/2019 IN WPC)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
29.11.2019, ALONG WITH WP(C).17679/2019(H), WP(C).21196/2019(Y),  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**C.R.**

**JUDGMENT**

**[ WP(C).17679/2019, WP(C).21196/2019,  
WP(C).25544/2019 ]**

**Dated this the 29th day of November 2019**

The cause in these writ petitions has its genesis in a Bench judgment of this Court in **Binoy Kumar Vs. State of Kerala (2019 (2) KLT 227)**, which has inexorably postulated that the person holding a valid Mining Lease from the Government can only extract that amount of mineral which is specifically permitted under it and no more.

2. The petitioners in these cases, who claim to be holding valid Mining Leases, contend that, notwithstanding the specification of the quantity of the minerals that can be prospected

under the said leases, they are legally entitled to extract such quantity of it as is permitted under the Mining Plans approved by the competent Authority under Section 5(2)(b) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act' for short). They assert that this contention had not been impelled and consequently, not considered in **Binoy Kumar** (*supra*).

3. It is this singular issue which this Court is now called upon to answer in these writ petitions.

4. The petitioners in these cases, which are being heard together on account of the comparable factual matrix presented therein and the similarity in the reliefs sought, are stated to be persons and entities involved in the activity of granite quarrying, based on valid Mining Leases; and all of them, except the

petitioner in W.P.(C) No.21196 of 2019, assert that they are doing so on the strength of valid Environmental Clearances.

5. The petitioners impugn the orders and instructions issued by the Director of Mining and Geology notifying them that they cannot be allowed to extract more quantity of granite than what is sanctioned in their Mining Leases and that they will have to confine their production solely to the quantity as per the said Leases. The petitioners say that these orders and directions issued by the Director of Mining and Geology are illegal and untenable, since they have already obtained duly sanctioned Mining Plans, as per which, much larger quantities have been allowed to be extracted and commensurate royalty paid and accepted by the competent Authorities for such purpose. They, therefore, pray that the impugned orders and directions of

the Director of Mining and Geology be interdicted and vacated.

6. In response, the learned Advocate General, Sri.C.P.Sudakara Prasad, instructed by Sri.S.Kannan - learned Government Pleader; submitted that the impugned instructions and orders of the Director of Mining and Geology have been issued strictly in compliance with and in deference to the directions of the learned Division Bench of this Court in **Binoy Kumar** (*supra*). The learned Advocate General points out that it has been unequivocally declared therein that by the learned Bench that licencees can be allowed to quarry only that quantity of mineral, as is specifically mentioned in the Mining Leases; and, therefore, that the Director had no other option but to issue the impugned directions and orders.

7. The learned Advocate General,

thereafter, submitted that if this court is so inclined, the Government is willing to consider grant of supplemental/additional leases to the petitioners herein, so that the extraction of mineral by them will be in tune with the Mining Plans now obtained by them, which sanctions extraction of a larger quantity of minerals than what has been permitted in the original Mining Leases. He concludes by saying that the Government is willing to adhere to any directions that may issued by this Court in this regard.

8. In response, the various learned counsel appearing for the petitioners in these writ petitions submitted that the directions in **Binoy Kumar** (*supra*) would not apply to the facts presented in these writ petitions, because, as is evident from the factual circumstances noticed by the learned Bench in the said case, the petitioner therein had not obtained any approved

Mining Plan; and consequently, that the learned Bench did not have the occasion to consider the impact of such a plan on the existing Mining Lease. They then contend that, as far as these cases are concerned, all the petitioners are in possession of valid Mining Plans wherein the quantity of minerals to be extracted has been specifically mentioned, for which royalty has already been paid by them and accepted by the competent Authority. They, therefore, pray that these writ petitions be allowed; or in the alternative, that this Court may allow the Government to grant them additional Mining Leases as has now been suggested by the learned Advocate General.

9. Sri.Gracious Kuriakose, learned Senior Counsel, instructed by George Mathew - learned counsel appearing for the party respondents in W.P.(C) No.21196 of 2019, submits

that his clients are supporting the petitioners in these writ petitions but have an additional argument that, going by clause 17 of the Mining Lease, a supplemental Lease for extraction of additional quantity is not necessary to be executed, provided the licensee has a requisite Environmental Clearance. He prays that his clients may also be, therefore, heard by the Director as and when any further process is ordered to be done by this court.

10. I have considered the afore submissions with great amount of care and have also analysed and evaluated the materials available.

11. When one closely scrutinates the observations and conclusions in **Binoy Kumar** (*supra*), it becomes **irrefragable** that the learned Bench has affirmatively declared that a licensee can be allowed to extract only that amount of

minerals as are specifically sanctioned by the Mining Lease, since it is this document which operates as the sole agreement between the Government and the licensee as regards the quantity of the Minerals to be extracted. The judgment further declares that it is solely for the Government, as the owner of the minerals, to decide how much of it can be extracted, which is then specified in the Mining Lease. Therefore, it is irrelevant, whether a person thereafter obtains a Mining Plan showing a larger quantity of minerals to be extracted or otherwise, since the unequivocal declaration of law is to the effect that the Mining Lease should be the sole document to guide all action for quarrying the minerals and in determining its amount that can be extracted.

12. My afore view is inevitable because, going by Rule 9(1) of the Mineral Conservation

and Development Rules, 1988, no person can commence mining operations in any area, except in accordance with a Mining Plan approved under the Mines and Minerals (Development and Regulation) Act, 1957; while Section 5(2)(b) of the said Act provides that no Mining Lease can be granted by the Government unless it is satisfied that there is an approved Mining Plan obtained by the applicant. Further, even with respect to a Mining Lease obtained prior to the coming into force of the afore Rules, it provides, through Rule 11 thereof, that the holder of the said Lease shall obtain a Mining Plan within a period of one year from the date of the commencement of the Rules. Ineluctably, therefore, while the Mining Plan controls and modulates the manner of prospecting the minerals; the quantity of it is exclusively regulated by the Mining Lease and no other.

13. I am, consequently, of the firm view that the conclusions and directions in **Binoy Kumar** (*supra*) would apply the facts of these cases also.

14. That said, I find favour with in the suggestion now made by the learned Advocate General, that the State is willing to consider grant of additional Mining Leases to the petitioners, provided they have the necessary approved Mining plans and Environmental Clearances for extraction of larger quantity of minerals that what was specified in the original leases. This is because, even going by **Binoy Kumar** (*supra*), the forensic enunciation therein is that the Government is the final custodian and owner of the minerals and that it is upto them to decide the amount of it to be extracted, following the applicable Statutes, Rules and Regulations. I am, axiomatically, of the view

that this suggestion of the learned Advocate General certainly can be allowed to be considered by the competent Authorities in terms of law, particularly since it would not be in conflict with the Mines and Minerals (Development and Regulation) Act, 1957 or the Mineral Conservation and Development Rules, 1988 as already discussed above.

15. Resultantly, I order these writ petitions and leave liberty to the competent Authority, namely, the Director of Mining and Geology, to consider the grant of additional Mining Leases to the petitioners; however, implicitly following all applicable and due procedure and after ensuring that the petitioners have the necessary Mining Plans and Environmental Clearances for the additional quantity of minerals to be extracted.

16. The afore exercise may be completed

by the Director after affording an opportunity of being heard to the petitioners also, who will be at liberty to produce all their documents before him.

17. I, reiteratingly clarify that unless the petitioners have the necessary approved Mining Plans and Environmental Clearances for the additional quantity to be extracted, the Director shall not grant them any supplemental/additional Mining Leases in terms of the afore liberty.

18. Needless to say, once a decision is taken by the Director in terms of the above exercise and the petitioners appropriately intimated, they will be enjoined to remit the additional stamp duty and such other charges and fees, as are required in law, so as to enable the said Authority to execute the Supplemental/additional Mining Leases in their favour.

I make it further clear that the directions in this judgment are intended to cover only the petitioners herein and no other person or entity.

These writ petitions are thus ordered.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

## APPENDIX OF WP(C) 17679/2019

### PETITIONER'S/S EXHIBITS:

- |            |  |
|------------|--|
| EXHIBIT P1 | TRUE COPY OF QUARRYING LEASE EXECUTED BETWEEN THE GOVERNMENT OF KERALA AND THE PETITIONER DATED 03/03/2008.  |
| EXHIBIT P2 | TRUE COPY OF THE FORM-S REGISTRATION AS REGISTERED METAL CRUSHER UNIT NO.138/RMCU/EKM/4719/M3/2009 ISSUED BY THE 1ST RESPONDENT DATED 25/06/2009.                      |
| EXHIBIT P3 | TRUE COPY OF REGISTRATION CERTIFICATE NO.137/2019-20/RMCU/EKM/3074/M3/2019 DATED 03/04/2019 FOR THE PERIOD FROM 03/04/2019 TO 02/03/2020 ISSUED BY THE 1ST RESPONDENT. |
| EXHIBIT P4 | TRUE COPY OF THE CIRCULAR NO.8925/M3/2008 DATED 20/05/2009 ISSUED BY THE 1ST RESPONDENT.   |
| EXHIBIT P5 | TRUE COPY OF THE RELEVANT PORTION OF THE APPROVED MINING PLAN AS PER NO.DOE/1973/E2/2015 DATED 28/05/2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.              |
| EXHIBIT P6 | TRUE COPY OF THE REPRESENTATION DATED 06/06/2019 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.  |
| EXHIBIT P7 | TRUE COPY OF THE ORDER NO.5705/M3/2019 DATED 19/06/2019 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.  |
| EXHIBIT P8 | TRUE COPY OF THE JUDGMENT IN W.A.NO.338 OF 2019 DATED 25/03/2019 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.   |
| EXHIBIT P9 | TRUE COPY OF THE JUDGMENT IN W.A.NO.866/2019 DATED 26/03/2019 OF THE HON'BLE HIGH COURT OF KERALA,   |

ERNAKULAM.

- EXHIBIT P10 TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.21898/2011 DATED 20/03/2017 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.
- EXHIBIT P11 TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.7295/2018 DATED 09/11/2018 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.
- EXHIBIT P12 TRUE COPY OF THE ORDER IN S.L.P.NO.11153 OF 2019 DATED 10/05/2019 OF THE HON'BLE SUPREME COURT OF INDIA.
- EXHIBIT P13 TRUE COPY OF THE CONSENT LETTER DATED 29.10.2019 SUBMITTED BY THE PETITIONER BEFORE THE DIRECTOR OF MINING & GEOLOGY, THIRUVANANTHAPURAM.
- EXHIBIT P14 TRUE COPY OF THE METHOD OF ESTIMATION OF RESERVES IN THE LEASE AREA AS PER MINING PLAN
- EXHIBIT P15 TRUE COPY OF THE LETTER DATED 28.03.2015 SUBMITTED BEFORE THE STATE ENVIRONMENTAL IMPACT ASSESSMENT AUTHORITY, THIRUVANANTHAPURAM BY THE PETITIONER
- EXHIBIT P16 TRUE COPY OF MINUTES OF THE 44TH MEETING OF THE STATE ENVIRONMENTAL IMPACT ASSESSMENT AUTHORITY, KERALA HELD ON 13TH NOVEMBER, 2015
- EXHIBIT P17 TRUE COPY OF THE MINUTES OF THE 46TH MEETING OF THE SEAC, KERALA HELD ON 29TH AND 30TH SEPTEMBER, 2015
- EXHIBIT P18 TRUE COPY OF THE ORDER NO.523/SEIAA/EC3/382/2014 DATED 28.11.2015 GRANTING ENVIRONMENTAL CLEARANCE NO.116/2015 ISSUED BY THE

STATE ENVIRONMENTAL IMPACT ASSESSMENT  
AUTHORITY, KERALA TO THE PETITIONER.

RESPONDENT'S/S EXHIBITS:

- EXHIBIT R1 A            A TRUE COPY OF THE NOTICE DATED  
02.11.2019 ISSUED BY THE 1ST  
RESPONDENT.
- EXHIBIT R1 B            A TRUE COPY OF THE DISTRICT WISE  
DETAILS PERTAINING TO THE QUARRYING  
LEASES GRANTED IN THE STATE OF KERALA,  
AS PER THE KERALA MINOR MINERAL  
CONCESSION RULES OF 1967
- EXHIBIT R1 (c) :        A TRUE COPY OF THE LIST OF APPLICANTS,  
WHO HAD RESPONDED TO NOTICE DATED  
02/11/2019, PREPARED FROM THE OFFICE  
OF 1ST RESPONDENT.

## APPENDIX OF WP(C) 21196/2019

### PETITIONER'S/S EXHIBITS:

- EXHIBIT P1                      A TRUE COPY OF THE QUARRYING LEASE ISSUED TO THE MANAGING PARTNER DATED 13.3.09.
- EXHIBIT P2                      A TRUE COPY OF THE PROCEEDINGS OF THE DIRECTOR OF MINING AND GEOLOGY DATED 5.3.09.
- EXHIBIT P3                      A TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED TO THE PETITIONER FIRM AS A REGISTERED METAL CRUSHER UNIT DATED 13.3.2019.
- EXHIBIT P4                      A TRUE COPY OF THE CERTIFICATE ISSUED BY THE ADDL. DIRECTOR FOR MINING AND GEOLOGY DATED 13.3.19.
- EXHIBIT P5                      A TRUE COPY OF THE CHALAN RECEIPT DATED 15.3.19.
- EXHIBIT P6                      A TRUE COPY OF THE MOVEMENT PERMIT ISSUED ON 1.4.19.
- EXHIBIT P7                      A TRUE COPY OF THE JUDGMENT IN W.A.NO.388 OF 19 DATED 25.3.19 OF THIS HON'BLE COURT.
- EXHIBIT P8                      A TRUE COPY OF THE COMMUNICATION BY THE DIRECTOR DATED 6.4.19.
- EXHIBIT P9                      A TRUE COPY OF THE I A NO.1 OF 19 IN WA NO.338 OF 19 DATED 9.7.19 BEFORE THIS HON'BLE COURT.

### RESPONDENT'S/S EXHIBITS:

- EXHIBIT R2 (a)                A TRUE COPY OF THE CIRCULAR DATED 20.05.2009 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT R2 (b)                A TRUE COPY OF THE NOTICE DATED 02.11.2019 ISSUED BY THE 2ND RESPONDENT

- EXHIBIT R2 (C)                    A TRUE COPY OF THE DISTRICT WISE DETAILS  
PERTAINING TO THE QUARRYING LEASES GRANTED  
IN THE STATE OF KERALA, AS PER THE KERALA  
MINOR MINERAL CONCESSION RULES OF 1967
- EXHIBIT R1 (C)                    A TRUE COPY OF THE LIST OF APPLICANTS, WHO  
HAD RESPONDED TO NOTICE DATED 02.11.2019,  
PREPARED FROM THE OFFICE OF 1ST RESPONDENT

**APPENDIX OF WP(C) 25544/2019**

**PETITIONER'S/S EXHIBITS:**

EXHIBIT P1	TRUE COPY OF THE MINING LEASE AGREEMENT DATED 16.08.2010
EXHIBIT P2	TRUE COPY OF THE LETTER DATED 01.03.2016 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER
EXHIBIT P3	TRUE COPY OF RELEVANT EXTRACT OF THE APPROVED MINING PLAN
EXHIBIT P4	TRUE COPY OF THE ENVIRONMENTAL CLEARANCE DATED 26.07.2018
EXHIBIT P5	TRUE COPY OF THE RECEIPT DATED 15.03.2019 OF PAYMENT OF CONSOLIDATED ROYALTY REMITTED BY THE PETITIONER
EXHIBIT P6	TRUE COPY OF THE REPRESENTATION DATED 16.09.2019 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT

//TRUE COPY//  
PA TO JUDGE