

Ninu.A. Vs. K.Sajesh

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Court : Kerala

Decided On : Oct-03-2013

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Ninu.A.

Respondent : K.Sajesh

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON THURSDAY, THE 3D DAY OF OCTOBER 2013 11TH ASWINA, 1935 WP(C).No. 23311 of 2013 (L) ----- PETITIONER(S): ----- M/S.NILGIRI CRUSHER INDUSTRIES, NILGIRI ESTATE, KALPATTA, WAYANAD, A PARTNERSHIP FIRM REPRESENTED BY ITS MANAGING PARTNER N.P. ABDUL KHADER, S/O.N.A. MAMOOTY, KALATHIL HOUSE, P.O. EDAYANNUR, KANNUR DISTRICT. BY ADV. SRI.T.H.ABDUL AZEEZ. RESPONDENT(S): ----- 1. STATE OF KERALA, REP.BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. THE DISTRICT COLLECTOR, WAYANAD P.O., KALPATTA, PIN- 673 121.

3. THE TAHASILDAR, VYTHIRI, PIN- 673 576.

4. THE VILLAGE OFFICER, KALPATTA, PIN- 673 121. BY SR. GOVT.PLEADER MR.JOSEPH GEORGE. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR

ADMISSION ON0310-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: rs. WP(C).No. 23311 of 2013 (L) APPENDIX PETITIONER'S EXHIBITS:- EXT.P1 - TRUE COPY OF THE QUARRYING PERMIT ISSUED BY THE GEOLOGIST, MINING AND GEOLOGY DEPARTMENT, WAYANAD DATED0407-2011. EXT.P2 - TRUE COPY OF THE LOCATION SKETCH OF THE QUARRY DATED2211-2011. EXT.P3 - TRUE COPY OF THE SITE LOCATION OF THE PETITIONER'S QUARRY APPROVED BY ASST. ENVIRONMENTAL ENGINEER. EXT.P4 - TRUE COPY OF THE PERMIT ISSUED BY THE POLLUTION CONTROL BOARD PCB/WND/ICO/1070/2011 DATED1606-2011. EXT.P5 - TRUE COPY OF THE LICENSE ISSUED BY THE JOINT CHIEF CONTROLLER OF EXPLOSIVES, SOUTH CIRCLE DATED0208-2011. EXT.P6 - TRUE COPY OF THE LICENSE FOR POSSESSION OF EXPLOSIVES FROM THE CONTROLLER OF EXPLOSIVES DATED0208-2011. EXT.P7 - TRUE COPY OF THE STOP MEMO ISSUED BY THE VILLAGE OFFICER, KALPATTA DATED0609-2011. EXT.P8 - TRUE COPY OF THE REPORT FILED BY THE ADDITIONAL DISTRICT MAGISTRATE ON QUARRY INSPECTION OBTAINED UNDER RTI ACT DATED2910-2011. EXT.P9 - TRUE COPY OF THE FINAL REPORT IN EXHIBIT-P8 OBTAINED UNDER RTI ACT DATED0511-2011. EXT.P10 - TRUE COPY OF THE REPRESENTATION MADE BY THE PETITIONER TO THE SECOND RESPONDENT DATED2506-2012. EXT.P11 - TRUE COPY OF THE REPRESENTATIONS MADE BY THE LOCAL RESIDENTS TO VARIOUS AUTHORITIES AND MINISTER FOR FOREST AFFAIRS. EXT.P12 - TRUE COPY OF THE REPRESENTATION MADE BY INTUC DISTRICT COMMITTEE TO THE MINISTER FOR FOREST AFFAIRS, DATED3005-2012. EXT.P13 - TRUE COPY OF THE REPRESENTATION MADE BY THE UDF DISTRICT LIAISON COMMITTEE, WAYANAD TO THE MINISTER FOR FOREST AFFAIRS, DATED3105-2012. EXT.P14 - TRUE COPY OF THE LETTER FROM GEOLOGIST, WAYANAD TO THE SECOND RESPONDENT DATED0112-2011. EXT.P15 - TRUE COPY OF THE G.O. ISSUED BY THE GOVERNMENT OF KERALA G.O.(MS) NO.239/2010/ID DATED0112-2010. RESPONDENT'S EXHIBITS:- NIL. //TRUE COPY// rs. P.A. TO JUDGE. P.R. RAMACHANDRA MENON, J.

OF2013----- Dated this the 3rd day of October, 2013.

JUDGMENT

The petitioner has approached this Court with the following prayers:- i. To issue a Writ of Certiorari or any other appropriate writ, order or direction quashing Exhibit P7 stop memo. ii. To issue a Writ of Mandamus to the second respondent directing him to lift the ban imposed for the operation of petitioner's quarry at Ratokolly forthwith. iii. To issue a further writ of Mandamus to the second respondent to consider Exhibits P10 to P13 enabling the petitioner to resume the quarry operations on the strength of the various licenses issued by the competent authorities as expeditiously as possible or within a time frame which may be fixed by this Hon'ble Court. iv. To issue such other appropriate Writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case." 2. The learned counsel for the petitioner submits that, because of issuance of Ext.P7 Stop Memo by the 4th respondent, under instructions given by the 2nd respondent, the entire quarrying operations have come to a stand still, virtually affecting the rights and liberties of the petitioner and several employees, who are eking out their livelihood from the income that is being generated from running the quarry. This made the petitioner to W.P.C.No.23311 OF20132 approach the 2nd respondent by filing Ext.P10 representation dated 25.06.2012. The factual position has been brought to the notice of the 2nd respondent, also by the persons of the nearby locality vide Ext.P11. The delay in finalising the proceedings made the petitioner to approach this Court by filing this writ petition.

3. The learned Government Pleader submits that Ext.P7 Stop Memo was issued as early as on 06.09.2011 and further that Ext.P1 permit issued to the petitioner expired on 03.07.2012. it is stated that the petitioner does not have any 'D&O license' issued by the concerned local authority and as such, the petitioner is not entitled to have any relief.

4. The learned counsel for the petitioner however points out, that the petitioner is ready to substantiate the facts and figures before the 2nd respondent and that the prayer is only to cause Exts.P10 and P11 to be considered and disposed of in

accordance with law. In the above circumstances, the 2nd respondent is directed to consider and pass appropriate orders on Exts.P10 and P11 W.P.C.No.23311 OF20133 after giving an opportunity of hearing to the petitioner. This shall be done in accordance with the relevant provisions of law, at the earliest, at any rate, within 'two months' from the date of receipt of a copy of this judgment. It is open for the 2nd respondent to consider the requirements to be satisfied, if at all the petitioner is to be permitted to proceed with the quarrying operation, including the clearance, if any from the Ministry of Environment and Forest and also from the Pollution Control Board. The petitioner shall produce a copy of this judgment, along with a copy of the writ petition, before the 2nd respondent, for further steps. P.R. RAMACHANDRA MENON, JUDGE sp

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