

Hamsakutty vs Director

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Court : Kerala

Decided On : Jun-05-2024

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/39054/2017

Appellant : Hamsakutty

Respondent : Director

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
WEDNESDAY, THE 5TH DAY OF JUNE 2024 / 15TH JYAISHTA, 1946
PETITIONER: HAMSAKUTTY AGED 46 YEARS AGED 46 YEARS,
S/O.MUHAMMED,CHOO LACHIRAYIL, PERUMBALAM
P.O.,ALAPPUZHA - 688 570. BY ADVS. SRI.ROSHEN.D.ALEXANDER
SMT.TINA ALEX THOMAS RESPONDENTS: 1 DIRECTOR MINING
AND GEOLOGY DEPARTMENT,THIRUVANANTHAPURAM - 695 001.
2 GEOLOGIST DEPARTMENT OF MINING AND GEOLOGY,DISTRICT
OFFICE, MINI CIVIL STATION,CHERTHALA, ALAPPUZHA - 688 524.
BY ADV GOVERNMENT PLEADER OTHER PRESENT:
SRI.B.S.SYAMANTAK, GP THIS WRIT PETITION (CIVIL) HAVING

COME UP FOR ADMISSION ON 05.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN,J.

----- W.P (C) No.39054 of 2017 ----- Dated
this the 5th day of June, 2024

JUDGMENT

This writ petition is filed with the following prayers:- i) To call for the records leading to the issuance of Ext.P9 and issue a writ of certiorari or other writ, order or direction quashing the same. ii) To issue a writ in the nature of declaration declaring that the 2nd respondent is not justified in not renewing petitioner's license merely for the reason that petitioner's stock yard is located in Perumbalam island. iii) To issue a writ in the nature of declaration declaring that non existence of facilities of transportation through road is not a ground to reject a Dealers Licence under the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015. iv) to issue a writ in the nature of mandamus directing the 2nd respondent to renew petitioner's Dealers Licence and registration forthwith. v) Issue such other appropriate writ order or direction that may be deemed to be just and equitable in the facts and circumstances of the case. (SIC)

2. The petitioner is aggrieved by the non renewal of Dealers Licence under the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015 (for

short Rules, 2015) for stock and sales of lime shell. It is submitted that the petitioner is a dealer having license under the Rules, 2015 is the submission and he is holding the licence from 2015 onwards is the further submission. Ext.P1 is produced to prove the same. It is also submitted that the petitioner was issued with a Certificate of Registration for stocking and selling under the Mineral Rules as

evident by Ext.P2. The license and registration as evidenced by Exts.P11 and 12 was renewed during the year 2016-2017 and the license and registration were in force till 25.09.2017 is the submission. The petitioner submitted an application for renewal at that stage as evident by Ext.P3. According to the petitioner, the process of stocking and selling of lime shell by the petitioner is in a small island in Alappuzha District, called Perumbalam. According to the petitioner, there are 8 boat services and Jankar service to this Island. The process of collecting lime shell from the backwaters is the livelihood of the native people around

Perumbalam and across Alappuzha is the further submission. After collecting lime shell from the backwaters,

it is submitted that the edible portion will be separated and lime shell will be collected by Co-operative Societies, who sell it to dealers who stock and sell the lime shell. It is also submitted that there are about 8 Societies in Alappuzha District. The petitioner is one of the dealer is the submission. The petitioner stocks lime-shell he bought from Society in his own stock-yard and then sell it to those establishments, who require lime shell for the purpose of various manufacturing process of carbide, lime, fertilizer, pouty-feed etc. The yard owned by the petitioner is at Perumbalam itself and since Perumbalam is an island, petitioner transports the lime shell in boats to the nearby shore is the submission.

3. Pursuant to the application submitted by the

petitioner, the 2nd respondent required the Village Officer, Perumbalam to submit a report regarding the ownership of the yard. The Village Officer reported that the property is in absolute ownership, title and possession of the petitioner and there is no dispute regarding the property as evident by Ext.P4. The petitioner also produced the possession

certificate as evident by Ext.P5. The Village Officer also forwarded a location sketch as evident by Ext.P6 is the submission. While so, the petitioner was issued with a hearing notice as evident by Ext.P7. A hearing was conducted on 10.11.2017 is the submission. According to the petitioner, even though there was no limitation to issue license, the 2nd respondent did not issue licence on

10.11.2017. Aggrieved by non renewal of licence on

10.11.2017, the petitioner preferred a represe

petitioner's application for stocking and selling lime shell in 1.61 Ares of property in Sy.No.285/3 of Perumbalam Village cannot be considered and if the petitioner finds out a place away from Perumbalam island and near to Societies wherein transportation is possible through road, the application can be considered. Aggrieved by Ext.P9, this writ petition is filed.

4. Heard the learned counsel for the petitioner and the learned Government Pleader.

5. The counsel for the petitioner reiterated the

contentions raised by the petitioner. The counsel for the petitioner submitted that the petitioner actually submitted an application for renewal. The licence was earlier granted and the petitioner only want renewal. Now, as per Ext.P9, the same is rejected stating that the petitioner has to find out a place near to the Societies wherein transportation is possible through road. The counsel for the petitioner submitted that, as per Rules, 2015, there is no such

restriction. Hence, it is submitted that Ext.P9 is unsustainable.

6. The Government Pleader opposed the submission

of the petitioner. The Government Pleader takes me through Rule 13(5) of the Rules, 2015 in which it is stated that while granting or refusing a dealers licence under these rules, the District Geologist shall take into consideration the location of the stockyard/sales depot/processing unit etc.

7. This Court considered the contentions of the petitioner and the Government Pleader. This Court also

perused Rule 13(5) of Rules, 2015. A perusal of Rule 13(5) would not show that the stocking place should be a place where transportation through road is necessary. The petitioner submitted an application for renewal of licence. The

licence was granted originally without any objection stating that there is no transportation through road.

8. When this writ petition came up for consideration

on 05.12.2017, this Court passed an interim order staying Ext.P9. Now, based on the interim order, the petitioner is functioning the unit. I am of the considered opinion that Ext.P9 can be set aside and the petitioner can be allowed to file fresh application for renewal. If such an application is filed, the authority concerned will consider the same de hors the reason in Ext.P9. I also make it clear that, if the application for licence submitted by the petitioner is for a property other than the property mentioned in Ext.P1 which is the original licence, the petitioner is free to file fresh application for the new property in which he intended to function the unit.

Therefore, this writ petition is disposed of with the following directions:-

1. Ext.P9 is set aside.

2. The petitioner is free to file appropriate

application for renewal of the licence or fresh licence as deemed fit and if such an application is filed, the authority concerned will consider the same de hors the reason in Ext.P9.

3. The petitioner will file an appropriate application

within one month from the date of receipt of a certified copy of this judgment. The authority concerned will pass appropriate orders in it within one month from the date of receipt of the application.

4. If the application is filed as directed above, no coercive steps shall be taken against the petitioner till final orders are passed in it.

5. I make it clear that, if the application is submitted by the petitioner for renewal, the application should be considered de hors the reason in Ext.P9. Sd/-
P.V.KUNHIKRISHNAN JUDGE bng APPENDIX OF WP(C) 39054/2017
PETITIONER EXHIBITS EXHIBIT P1. TRUE COPY OF THE PETITIONER IS

PRODUCING A TRUE COPY OF DEALERS LICENCE DATED 20.08.2015 ISSUED UNDER RULE 13 OF THE MINERAL STORAGE RULES, 2015.

EXHIBIT P2. TRUE COPY OF THE CERTIFICATE OF REGISTRATION DATED 20.08.2015. EXHIBIT P3. TRUE COPY OF THE CHALAN DATED 26.09.2017 EVIDENCING PAYMENT OF LICENCE FEES. EXHIBIT P4. TRUE COPY OF THE REPORT DATED 26.10.2017 FORWARDED BY THE VILLAGE OFFICER, PERUMBALAM TO THE 2ND RESPONDENT. EXHIBIT P5. TRUE COPY OF THE POSSESSION CERTIFICATE DATED 19.09.2017. EXHIBIT P6. TRUE COPY OF THE LOCATION SKETCH DATED 22.09.2017. EXHIBIT P7. TRUE COPY OF THE HEARING NOTICE DATED 02.11.2017. EXHIBIT P8. TRUE COPY OF THE REPRESENTATION DATED 13.11.2017 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT. EXHIBIT P9. TRUE COPY OF THE LETTER NO.DOA/1579/MM/17 DATED 28.11.2017. RESPONDENTS EXHIBITS EXHIBIT R2(A) TRUE COPY OF THE LETTER DATED 08.11.2016 EXHIBIT R2(B) TRUE COPY OF THE LETTER DATED 14.11.2016 EXHIBIT R2(C) TRUE COPY OF THE LETTER DATED 17.11.2016 EXHIBIT R2(D) TRUE COPY OF THE NOTICE DATED 19.12.2016 AND ITS REPLY

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