SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Subramanyan E.K vs Union of India

Subramanyan E.K vs Union of India

SooperKanoon Citation : sooperkanoon.com/1379771

Court : Kerala

Decided On : Feb-21-2023

Judge : Honourable the Chief Justice Mr.S.Manikumar,Honourable Mr.Justice Murali Purushothaman

Appeal No. : WP(C)/8425/2016

Appellant : Subramanyan E.K

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN TUESDAY, THE 21ST DAY OF FEBRUARY 2023 / 2ND PHALGUNA, 1944 WP(C) NO. 8425 OF 2016 PETITIONER: SUBRAMANYAN E.K AGED 40 YEARS ENJERIPARAMBIL HOUSE, AANAPPARA P.O., ELAVANTHY, MANJAPRA PANCHAYATH, ALUVA TALUK, ERNAKULAM DISTRICT. BY ADVS. SRI.A.X.VARGHESE SRI.A.V.JOJO RESPONDENTS: 1 UNION OF INDIA REP. BY THE SECRETARY TO GOVERNMENT MINISTRY OF ENVIRONMENT AND FORESTS, PARIYAWARAN BHAVAN, NEW DELHI, PIN 110 001. 2

STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001. 3 STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF MINING & GEOLOGY, DEPARTMENT OF INDUSTRIES, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001. 4 THE DIRECTOR OF MINING GEOLOGY DIRECTORATE OF MINING GEOLOGY, KESAVADASAPURAM, PATTAM PALACE P.O., THIRUVANANTHAPURAM 695 004. 5 STATEOF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF REVENUE, GOVERNMENT OF KERALA, STATE SECRETARIAT, THIRUVANANTHAPURAM 695 001. WP(C) NO. 8425 OF 2016 ..2.. 6 THE KERALA STATE POLLUTION CONTROL BOARD MEMBER SECRETARY, PATTOM P.O., THIRUVANANTHAPURAM 695 004. 7 THE ENVIRONMENTAL ENGINEER THE KERALA STATE POLLUTION CONTROL BOARD, GANDHI NAGAR, ERNAKULAM 682 020. 8 THE DISTRICT COLLECTOR ERNAKULAM, CIVIL STATION, KAKKANAD, PIN 682 030. 9 THE GEOLOGIST DISTRICT OFFICE DEPARTMENT OF MINING & GEOLOGY, CIVIL STATION, KAKKANADU P.O., KOCHI 682 030. 10 AYYAMPUZHA GRAMA PANCHAYATH AYYAMPUZHA P.O., ERNAKULAM DISTRICT, PIN - 683 581, REPRESENTED BY ITS SECRETARY. BY ADVS. R1 BY SHRI.T.V.VINU, CGC SENIOR GOVERNMENT PLEADER SRI.TEK CHAND V. R 6 & 7 SRI. T.NAVEEN SC, KERALA STATE POLLUTION CONTROL BOARD, R 10 BY SRI. K.S.ARUNKUMAR THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C) NO. 8425 OF 2016 ..3..

JUDGMENT

S. Manikumar, C.J. The petitioner sought for the following reliefs:

(i) Issue a Writ of Mandamus or

appropriate writ, order or direction, directing the respondents to implement the provisions of EIA Notification, 2006, strictly and in accordance with directions contained in the judgment of the Hon'ble Apex Court in Deepak Kumar and others v. State of Haryana reported in

(2012) 4 SCC 629 and the subsequent

judgment of this Court in All Kerala

River Protection Council v. State of Kerala [2015 (3) KLT 78] and The Paristhithy Samrakshana Janakeeya Samithy and another v. State of Kerala and others.

(ii) Issue a Writ of Mandamus or

appropriate writ, order or direction, directing the 3rd respondent to cancel all the Quarry Leases and Quarrying Permits issued by it, without obtaining the Environmental Clearance, as envisaged under the EIA Notification, 2006;

(iii) Issue a Writ of Mandamus or

appropriate writ, order or direction, fixing personal liability to the concerned respondents for its failure in issuing and renewing of Quarry Leases and issuing and renewing of the Consent to Operate without obtaining the Environmental Clearance and allowing such units to operate after the EIA Notification, 2006 WP(C) NO. 8425 OF 2016 ..4.. came into force and for the consequent degradation caused to the Mineral Deposits of the State;

(iv) Issue a Writ of Mandamus or any other

appropriate writ, order or direction to respondents to ensure that no quarrying operations are undertaken by anyone with proper and valid licenses and consent and permit from the concerned authorities as provided under law.

(v) Issue a Writ of Mandamus or any other

appropriate writ, directing the respondents to pay compensation to the affected citizens in State of Kerala due to the illegal quarrying operations under public law in view of the "polluter pay principles enunciated by the Hon'ble Apex Court;

2. Short facts leading to the filing of this writ petition

are that, petitioner is a public spirited person, who approached this Court for a direction to the respondents to issue stop memo forthwith to all the quarry operators extracting mineral under it, who are issued with/renewed the Quarry Lease without having the Environmental Clearance as envisaged under the Environment Impact Assessment Notification, 2006. WP(C) NO. 8425 OF 2016 ..5..

3. Learned counsel for the petitioner contended that

the respondents, who are bound to protect the environment and ecology, are siding with the operators of illegal quarry and permitting them to exploit mines and minerals indiscriminately.

4. Learned counsel for the petitioner placed reliance

on the decision of the Hon'ble Supreme Court in Deepak Kumar and Others v. State of Haryana and Others [(2012) 4 SCC 629], in which, it was held that lease of minor mineral, including their renewal thereof, for an area of less than 5 hectares, be granted by the State/Union Territories, only after getting environmental clearance from the Ministry of Environment, Forest and Climate Change. On the basis of the said direction, Government of Kerala has amended the Minor Mineral Concession Rules, 2015.

5. When this matter came up for consideration today, Mr. V. Tek Chand, learned Senior Government Pleader, WP(C) NO. 8425 OF 2016 ..6.. invited the attention of this Court to the common

judgment in W.A. Nos.2034 of 2015 and connected cases

dated 07.12.2016.

6. Mr. Tek Chand submitted that in view of the

judgment in SLP No.30103 of 2015 and connected

matters, decided on 02.12.2016, all the writ appeals were dismissed by the Hon'ble Division Bench.

7. By inviting attention of this Court to the prayers

sought for and Rule 9 of the Kerala Minor Mineral Concession Rules, 2015, learned Senior Government Pleader further submitted that the requirement of Environmental Clearance before undertaking quarrying operations, as contemplated under the EIA Notification, 2006, has been incorporated in Rule 9 of the rules, which reads as under:

9. Disposal of application for the grant of quarrying permit.- (1) On receipt of the application for grant of quarrying permit for undertaking quarrying operations, the competent authority shall make site inspection and take decision regarding the precise area to be WP(C) NO. 8425 OF 2016 ..7.. granted for the said purpose and intimate the applicant to submit approved mining plan and Environmental Clearance for the precise area: Provided that, approved mining plan and environmental clearance shall not be insisted, for the issuance and renewal of permits in the case of Laterite Building Stone.

(2) On receipt of an approved mining plan

> and Environmental Clearance for the precise area and on production of all other statutory licenses/clearances/ No Objection Certificate etc. from other statutory authorities concerned, the competent authority shall issue a quarrying permit to the applicant within thirty days in Form N for ordinary earth and in Form M for all other minor minerals.

Having regard to the above and taking note of the common judgment in W.A. No.2034 of 2015 & connected cases dated 07.12.2016, and also the statutory provisions, nothing survives in this writ petition and accordingly, writ petition is

disposed of. Sd/- S.MANIKUMAR CHIEF JUSTICE Sd/- MURALI PURUSHOTHAMAN JUDGE SBxxxx WP(C) NO. 8425 OF 2016 ..8.. APPENDIX OF WP(C) 8425/2016 PETITIONER EXHIBITS EXT.P1: PHOTOGRAPHS SHOWING THE QUARRYING UNIT OF THE SAID JOSEPH EXT.P2: TRUE COPY OF THE APPLICATION DATED 25.5.2015. EXT.P2(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P2. EXT.P3: TRUE COPY OF THE REPLY DATED 20.06.2015. EXT.P3(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P3 EXT.P4: TRUE COPY OF THE COMPLAINT DATED 17.11.2015. EXT.P4(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P4 EXT.P5: TRUE COPY OF THE ORDER DARTED 17/11/2015. EXT.P5(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P5 EXT.P6: TRUE COPY OF THE COMPLAINT DATED NIL. EXT.P6(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P6 EXT.P7: TRUE COPY OF TH DECISION OF THE 8TH RESPONDENT DATED 4/12/2015. EXT.P7(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P7 EXT.P8: TRUE COPY OF THE COMPLAINT DATED NIL. EXT.P8(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P8 EXT.P9: TRUE COPY OF THE REPORT PUBLISHED IN DSHABHIMANI DAILY DATED 22.1.2016. EXT.P9(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P9 EXT.P10: TRUE COPY OF THE COMPLAINT DATED 20/11/2015. WP(C) NO. 8425 OF 2016 ..9.. EXT.P10(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P10 EXT.P11: TRUE COPY OF THE INFORMATION OBTAINED IN THE WEB SITE OF 3RD RESPONDENT. EXT.P12: TRUE COPY OF THE LIST OF QUARRIES IN ERNAKULAM DISTRICT. EXT.P13: TRUE COPY OF THE APPLICATION DATED 6.5.2015. EXT.P14: TRUE COPY OF THE REPLY DATED 7/7/2015. EXT.P14(A): TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P14. RESPONDENTS EXHIBITS: NIL

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com