

**Thomas vs the State of Kerala**

**Thomas vs the State of Kerala**

**SooperKanoon Citation :** [sooperkanoon.com/1407153](http://sooperkanoon.com/1407153)

**Court :** Kerala

**Decided On :** Feb-01-2023

**Judge :** Honourable Mr. Justice P.V.Kunhikrishnan

**Appeal No. :** WP(C)/39858/2016

**Appellant :** Thomas

**Respondent :** The State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN  
WEDNESDAY, THE 1ST DAY OF FEBRUARY 2023 / 12TH MAGHA,  
1944 WP(C) NO. 39858 OF 2016 PETITIONER/S: 1 THOMAS AGED 62  
YEARS S/O.CHACKU  
VALOOKKARAN,THURAVOOR.P.O,ANGAMALY,ERNAKULAM 2  
TONYAGED 42 YEARS S/O.VARGHESE,PANJIKARAN  
HOUSE,THURAVOOR.P.O,ANGAMALY,ERNAKULAM 3  
GEORGEAGED 59 YEARS S/O.OUSEPH,MULAVARIACKAL  
HOUSE,THURAVOOR.P.O,ANGAMALY,ERNAKULAM BY ADVS.  
SRI.K.ABDUL JAWAD SMT.A.GRANCY JOSE SRI.M.K.PRASANTH  
KUMAR RESPONDENT/S:

1 THE STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT,INDUSTRIES DEPARTMENT,GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM-695001. 2 KERALA STATE POLLUTION CONTROL BOARD REPRESENTED BY ITS CHAIRMAN,PATTOM,THIRUVANANTHAPURAM-695004. 3 THE ENVIRONMENTAL ENGINEER KERALA STATE POLLUTION CONTROL BOARD,DISTRICT OFFICE-1,ERNAKULAM-682030. 4 THURAVOOR GRAMA PANCHAYATH REPRESENTED BY ITS SECRETARY,THURAVOOR.P.O,ANGAMALY,ERNAKULAM -2-

DISTRICT-683572. 5 MS.PERIYAR ROCK PRODUCTS REPRESENTED BY ITS MANAGING PARTNER,JOHN KACHAPPALLY,THURAVOOR.P.O,ANGAMALY,ERNAKULAM DISTRICT-683572. BY ADVS. SRI.SAIBY JOSE KIDANGOOR SRI.ISSAC.M.PERUMPILLIL, SC, THURAVOOR GRAMA PANCHAYAT OTHER PRESENT: SRI.K.M.FAISAL, GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -3-

**P.V.KUNHIKRISHNAN, J.**

===== W.P.(C)  
No. 39858 of 2016  
=====

Dated this the 1st day of February, 2023

## **JUDGMENT**

The above writ petition is filed with following prayers: (i) To call for the records leading to Ext.P3 and to quash the same, by issuing a writ of certiorari declaring that the site is unsuitable for the establishment/expansion of the crusher unit;

(ii) To issue a writ of mandamus declaring that Ext.P12 is not a permission issued under or in terms of Sec. 233 of the Kerala Panchayath Raj Act and hence the same is liable to be ignored or quashed;

(iii) To call for the records leading to Ext. P12 and to issue a writ of certiorari quashing Ext.P12.

(iv) To issue a writ or order commanding the respondents

2, 3 and 4 to ensure that the 5th respondent is not constructing, establishing and operating any crusher unit in the site in question beyond the capacity of 30 HP.  
And

(v) Issue such other writ, direction or order that this Hon'ble Court may deem fit, just and necessary in the

**facts and circumstances of the case. (sic)**

-4-

2. The main prayer in this writ petition is against Exts.P3

which is a consent to operate. Ext.P12 is also challenged, which is a permission given by the local Panchayat for the functioning of crusher unit. After Ext.P12, the same was reversed by the Panchayat as per Ext.P13. When this writ petition came up for consideration on 17.12.2016, this Court passed the following

**order:**

The petitioners' contention is against the establishment of a crusher unit by the 5th respondent. The petitioners have a contention that they are within the prohibited distance of the crusher unit, which residences were, however, not noticed in the plan submitted by the 5 th respondent before the Kerala State Pollution Control Board, as is seen from Exhibit P3.

2. The learned Counsel for the respondent-Panchayat also

submits that the re-consideration of Consent to Establish, as contemplated in Section 233 of the Kerala Panchayat Raj Act, 1994 and

as directed in Exhibit P8, has also not been undertaken by the Panchayat. The 5th respondent is said to be carrying on a building construction to house the crusher unit, which is also said to be without a building permit. In such circumstances, the activities carried on by the 5th respondent shall be immediately stopped. -5-

3. Counter affidavit, if any, to be placed on record within three weeks. Handover the order.

3. The interim order is in force even now. Moreover, Ext.P3 consent to operate was valid only up to 30.06.2017. That period is also over. In the light of the same, nothing survives in this case.

**Therefore, this writ petition is closed recording the order**

dated 17.12.2016. SD/- P.V.KUNHIKRISHNAN JUDGE das -6- APPENDIX OF WP(C) 39858/2016 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED 17.10.2007 EXHIBIT P2 TRUE COPY OF THE CIRCULAR ISSUED BY THE 2ND RESPONDENT EXHIBIT P3 TRUE COPY OF THE CONSENT DATED 17.06.2015,ISSUED IN FAVOUR OF THE 5TH RESPONDENT EXHIBIT P4 TRUE COPY OF THE COMPLAINT DTD.25.11.2016 SUBMITTED BY THE PETITIONERS AND OTHER NEIGHBOURS BEFORE THE 2ND RESPONDENT EXHIBIT P5 TRUE COPY OF THE RECEIPT OF THE OFFICE OF THE 2ND RESPONDENT DATED 25.11.2016 EXHIBIT P6 TRUE COPY OF THE RELEVANT PAGES OF THE

REPRESENTATION DATED 17.12.2011,FILED BY THE PETITIONERS AND NEIGHBOURS,BEFORE THE STATUTORY AUTHORITIES AND THE DISTRICT COLLECTOR

EXHIBIT P7 A TRUE COPY OF THE RECEIPT ISSUED BY THE 4TH RESPONDENT DATED 19.12.2011 EXHIBIT P8 TRUE COPY OF THE JUDGMENT IN W.P. (C)NO.6490/2012 ON THE FILES OF THIS HON'BLE COURT EXHIBIT P9 A TRUE COPY OF THE APPLICATION UNDER THE RIGHT TO INFORMATION ACT,PREFERRED BY A NEIGHBOUR NAMELY,BIJU

THARIAN EXHIBIT P10 TRUE COPY OF THE REPLY OBTAINED UNDER RIGHT TO INFORMATION ACT EXHIBIT P11 TRUE COPY OF THE REPLY OBTAINED UNDER RIGHT TO INFORMATION ACT EXHIBIT P12 TRUE COPY OF THE PROCEEDINGS OF THE PANCHAYATH DATED 28.09.2015 EXHIBIT P13 TRUE COPY OF THE PROCEEDING DATED 07.04.2016 OF THE 4TH RESPONDENT EXHIBIT P14 TRUE PHOTOGRAPHS SHOWING THE PEACEFUL AGITATION OF THE PEOPLE.

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