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Kasim Alayan vs the Appellate Authority Constituted Under the Air (Prevention and Control of Pollution) Act, 1974

Kasim Alayan vs the Appellate Authority Constituted Under the Air (Prevention and Control of Pollution) Act, 1974

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Court : Kerala

Decided On : Dec-08-2022

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/39803/2022

Appellant : Kasim Alayan

Respondent : The Appellate Authority Constituted Under the Air (Prevention and Control of Pollution) Act, 1974

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH THURSDAY, THE 8TH DAY OF DECEMBER 2022 / 17TH AGRAHAYANA, 1944 WP(C) NO. 39803 OF 2022 PETITIONERS: KASIM ALAYAN AGED 55 YEARS S/O HAMSA, AGED 55 YEARS, RESIDING AT ALAYAN HOUSE, ALANALLUR P.O, PALAKKAD DISTRICT, PIN: 678601. BY ADV K.M.SATHYANATHA MENON RESPONDENTS:

1 THE APPELLATE AUTHORITY CONSTITUTED UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 KERALA STATE POLLUTION CONTROL BOARD OFFICE, THAMBANOOR, THIRUVANANTHAPURAM, PIN: 695001. 2 THE APPELLATE AUTHORITY CONSTITUTED UNDER WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981, KERALA STATE POLLUTION CONTROL BOARD OFFICE, THAMBANOOR, THIRUVANANTHAPURAM, PIN: 695001. 3 THE ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION CONTROL BOARD, DISTRICT OFFICE, PALAKKAD, PIN: 678 001. 4 THE SECRETARY, ALANALLUR GRAMA PANCHAYAT, ALANALLUR PO, PALAKKAD - 678601. 5 ABDUL RASHEED ALAYAN, S/O HAMSA, ALAYAN HOUSE, ALANALLUR PO, PALAKKAD - 678601.

SRI.T.NAVEEN (SC) R1 TO R3 THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08.12.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 8th day of December, 2022 The petitioner is aggrieved by the withdrawal of Consent to Operate issued by the Kerala State Pollution Control Board to the petitioner for running a Sawmill.

2. The petitioner states that Ext.P21 order is highly

arbitrary and is one passed on the basis of undue influence exerted by the 5th respondent. The petitioner has preferred Exts.P22 and P23 statutory appeals before the Appellate Authority constituted under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 along with interim stay petitions.

3. The counsel for the petitioner states that before

passing Ext.P21, the petitioner was not granted opportunity of personal hearing. The Standing Counsel would submit that a Show-cause notice was issued and the

petitioners objection thereto was considered.

4. The pleadings in the writ petition would show that

the petitioner was issued with No Objection Certificate by the Divisional Forest Officer, Mannarkkad as early as on 16.12.1995. Ext.P8 Licence for Sawmill or other Wood Based Industries issued by the Divisional Forest Officer, Mannarkkad under Rule 11(5) would show that the Licence so issued is valid upto 16.10.2026.

5. The Consent to Operate issued by the Pollution

Control Board was to be valid till 30.06.2026 as is seen from Ext.P9(a). The Alanallur Grama Panchayat has also issued Ext.P11 certifying that the petitioner is using motor upto 36 HP for which licence was granted. The licence issued by the Grama Panchayat is valid upto 31.03.2023 as is seen from Ext.P11(b). The petitioner also holds Licence issued by the Department of Factories and Boilers under Rule 5, which is valid upto 31.12.2024 as is seen from Ext.P12. In view of the the afore facts and since the Sawmill has been functioning from the year 1995, the 1 st respondent- Appellate Authority is directed to consider the appeal or atleast the stay petition filed by the petitioner and pass appropriate orders on the stay petition as expeditiously as possible and at any rate, within a period of two weeks. The writ petition is disposed of as above. sd/- N.NAGARESH JUDGE hmh APPENDIX OF WP(C) 39803/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE LEASE DEED DATED 14.05.1998 EXECUTED BY THE PETITIONER'S LATE FATHER IN FAVOUR OF THE PETITIONER. Exhibit P2 TRUE COPY OF THE TAX RECEIPT ISSUED BY

THE PANCHAYAT FOR THE REMITTANCE OF THE BUILDING TAX FOR THE BUILDING N.XII/548-A DATED 01.02.1997 FOR THE PERIOD 1996-97. Exhibit P3 TRUE COPY OF THE RECEIPT ISSUED BY THE ALANALLUR PANCHAYAT TOWARDS PROFESSIONAL TAX DATED 13.05.1997 . Exhibit P3 A TRUE COPY OF THE RECEIPT ISSUED BY

ALANALLUR PANCHAYATH FOR REMITTANCE OF D&O LICENSE FEE FOR BUILDING NO. 9/406 AND 407 DATED 4.02.2016. Exhibit P3 B TRUE COPY OF

THE RECEIPT ISSUED BY ALANALLUR PANCHAYATH FOR REMITTANCE OF PROFESSIONAL TAX FOR BUILDING NO. 9/406 AND 407 DATED 4.02.2016. Exhibit P4 TRUE COPY OF THE REPORT ABOUT ELECTRICAL CONNECTION TO CONSUMER NO: 7725 ISSUED BY THE ASSISTANT ENGINEER, KSEB, ALANALLUR SECTION, ALANALLUR DATED 6.03.2017.

Exhibit P5 TRUE COPY OF THE REGISTERED SETTLEMENT DEED NO.528/2008 OF SRO ALANALLUR EXECUTED IN FAVOUR OF THE PETITIONER DATED 12/8/2008. Exhibit P6 TRUE COPY OF THE REGISTERED SETTLEMENT DEED EXECUTED PETITIONER'S LATE FATHER IN FAVOUR OF SRI.ABDUL RASHEED, THE 5TH RESPONDENT BY DOCUMENT NO.527/2008 OF SRO, ALANALLUR DATED 12.02.2008. Exhibit P7 TRUE COPY OF THE INFORMATION RECEIVED BY THE PETITIONER FROM THE STATE PUBLIC INFORMATION OFFICER OF ALANALLUR GRAMA PANCHAYAT DATED 19.10.2022 . Exhibit P8 TRUE COPY OF THE COMMUNICATION ISSUED BY THE D.F.O. MANNARKKAD TO ASSISTANT DISTRICT INDUSTRIAL OFFICER, MANNARKKAD STATING ABOUT THE NOC WITH RESPECT TO THE PETITIONER'S SAW MILL DATED 16.12.1995.

Exhibit P8 A TRUE COPY OF NO OBJECTION CERTIFICATE DATED 14.08.2017 ISSUED BY THE DIVISIONAL FOREST OFFICER, MANNARKKAD IN FAVOUR OF THE PETITIONER. Exhibit P8 B TRUE COPY OF NO OBJECTION CERTIFICATE DATED 22.01.2019 THE DIVISIONAL FOREST OFFICER, MANNARKKAD IN FAVOUR OF THE PETITIONER. Exhibit P8 C TRUE COPY OF THE LICENSE FOR SAW MILL

OR OTHER WOOD BASED INDUSTRIAL UNIT DATED 23.11.2021 ISSUED BY THE DIVISIONAL FOREST OFFICER, MANNARKKAD IN FAVOUR OF THE PETITIONER. Exhibit P9 TRUE COPY OF THE CONSENT TO OPERATE THE SAW MILL ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD IN FAVOUR OF THE PETITIONER DATED 01.11.2015 AND VALID UP TO 31.08.2021.

Exhibit P9 A TRUE COPY OF THE INTEGRATED CONSENT TO OPERATE THE SAW MILL ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD

DATED 17.12.2021. Exhibit P10 TRUE COPY OF THE CERTIFICATE ISSUED BY THE SECRETARY, ALANALLUR GRAMA PANCHAYAT DATED 15.03.2017. Exhibit P11 TRUE COPY OF THE D&O LICENSE ISSUED BY THE SECRETARY OF ALANALLUR GRAMA PANCHAYAT DATED 19.05.1997 FOR THE PERIOD 1997-98. Exhibit P11 A TRUE COPY OF THE D&O LICENSE DATED

04.05.2000 ISSUED BY THE SECRETARY, ALANALLUR GRAMA PANCHAYAT IN FAVOUR OF THE PETITIONER'S SAW MILL FOR THE PERIOD 2000-2001.

Exhibit P11 B TRUE COPY OF THE D&O LICENSE ISSUED BY THE SECRETARY, ALANALLUR GRAMA PANCHAYAT IN FAVOUR OF THE PETITIONER FOR CONDUCTING THE SAW MILL DATED 09.05.2022 VALID FROM 1.04.2022 TO 31.03.2023. Exhibit P12 TRUE COPY OF THE OF LICENSE BEARING NO. N/OTP/09/612/1998 ISSUED BY DEPARTMENT OF FACTORIES AND BOILERS DATED 29.10.2022. Exhibit P13 TRUE COPY OF THE COMPLAINT SUBMITTED BY 5TH RESPONDENT, BEFORE THE SECRETARY OF THE ALANALLUR GRAMA PANCHAYAT DATED 26.07.2022. Exhibit P14 TRUE COPY OF THE COMPLAINT DATED NIL

SUBMITTED BY THE 5TH RESPONDENT BEFORE THE FOREST RANGE OFFICER, MANNARKKAD AND OBTAINED BY THE PETITIONER UNDER THE RTI ACT. Exhibit P15 TRUE COPY OF THE COMMUNICATION RECEIVED BY THE PETITIONER FROM THE ALANALLUR GRAMA PANCHAYAT DATED 04.08.2022. Exhibit P16 TRUE COPY OF THE PRELIMINARY REPLY GIVEN BY THE PETITIONER TO THE SECRETARY, ALANALLUR GRAMA PANCHAYAT DATED 08.08.2022 TO EXT.P15 NOTICE.

Exhibit P17 TRUE COPY OF THE NOTICE SERVED ON THE PETITIONER BY THE 3RD RESPONDENT DATED 14.09.2022. Exhibit P18 TRUE COPY OF THE REPLY DATED 24.09.2022 SUBMITTED BY THE PETITIONER WITH THE 3RD RESPONDENT. Exhibit P19 TRUE COPY OF THE SHOW CAUSE NOTICE BEARING NO. PCB/PLKD/TG180/2021 DATED 13.10.2022 SERVED UPON THE PETITIONER BY 3RD RESPONDENT. Exhibit P20 TRUE COPY OF THE EXPLANATION DATED 21.10.2022 SUBMITTED BY THE PETITIONER TO EXT P19. Exhibit P21 TRUE COPY OF THE ORDER BEARING NO. PCB/PLKD/TG-

180/2012 DATED 31.10.2022 TO WITHDRAW CONSENT TO OPERATE ISSUED BY THE 3RD RESPONDENT. Exhibit P22 TRUE COPY OF THE APPEAL NO: 21/2022 ALONG WITH STAY PETITION I.A NO: RESPONDENT. Exhibit P23 TRUE COPY OF THE APPEAL NO: 22/2022 ALONG WITH STAY PETITION I.A NO: RESPONDENT.

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